CITY COUNCIL

AGENDA
MONDAY, JANUARY 10, 2022

VIRTUAL REGULAR MEETING – 7:00 PM

TELECONFERENCE:

MEETING PARTICIPATION INFORMATION CAN BE FOUND AT THE END OF THE AGENDA

CITY OF LIVERMORE YOUTUBE CHANNEL:
https://www.youtube.com/c/CityofLivermoreCalifornia

ZOOM WEBINAR:
https://us02web.zoom.us/j/83392023549

Zoom dial in phone number:
1 669 900 6833
Meeting ID: 833 9202 3549

Bob Woerner, Mayor
Regina Bonanno, Vice Mayor
Robert W Carling, Council Member
Brittni Kiick, Council Member
Trish Munro, Council Member

1. CLOSED SESSION - NONE

2. CALL TO ORDER

ROLL CALL

Council Member Robert W. Carling
Council Member Brittni Kiick
Council Member Trish Munro
Vice Mayor Regina Bonanno
Mayor Bob Woerner

PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND PRESENTATIONS

4. CITIZENS FORUM

- In conformance with the Brown Act, no City Council action can occur on items presented during Citizens Forum.
- Please log into Zoom to provide verbal public comment during the City Council Meeting.
- Comments are limited to a maximum of 3 minutes per person, per item. The Mayor may reduce the amount of time based on the number of persons wishing to speak.
- Citizens Forum will conclude after 30 minutes; however, if there are additional speakers, Citizens Forum will reconvene before the meeting adjourns.

5. CONSENT CALENDAR

Consent Calendar items are considered routine and are acted upon by the City Council with a single action. Members of the audience wishing to provide public input must use the raise hand feature.

5.1 Approval of draft minutes - December 13, 2021 Regular Meeting.

Recommendation:
Staff recommends the City Council approve the draft minutes.

Staff Report
Attachments:
1. 2021-12-13 Regular City Council Draft Minutes

5.2 Resolution authorizing the City Manager to execute an agreement with Axon Enterprise Inc. for a law enforcement technology update package in an amount not-to-exceed $1,747,850.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to enter into a 5-year agreement with Axon Enterprise Inc. for the modernization of multiple law enforcement technology products including, but not limited to: new police camera technologies (body-worn and in-car), new conducted energy weapons (Tasers), accountability related hardware/software, unlimited data storage, and software to increase personnel efficiency in an

amount not-to-exceed $1,747,850.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Master Services and Purchasing Agreement

5.3 Resolution authorizing execution of the renewal subscription agreement with Info-Tech Research Group for Information Technology (IT) and Cybersecurity research, advisory, and consulting services in an amount not-to-exceed $170,000

Recommendation:
Staff recommends City Council authorize execution of the renewal subscription agreement with Info-Tech research Group under their Federal GSA supply schedule for a three-year term not-to-exceed $170,000.

Staff Report
Attachments:
1. Info-Tech GSA Federal Supply Schedule
2. Resolution
3. Exhibit A - City of Livermore ITRG Membership Renewal df

5.4 Resolution authorizing the appropriation of funding for development of the Vineyard 2.0 affordable housing and community care facilities project and approving funding agreements and related documents between the City of Livermore and Tri Valley BMR, LLC.

Recommendation:
Staff recommends the City Council adopt a resolution:

1. Appropriating up to $1,182,772 of City Affordable Housing Trust Funds and $2,457,750 of Housing Successor Agency Funds to Tri Valley BMR, LLC for a development loan for the Vineyard 2.0 project located at 460 North Livermore Avenue; and
2. Appropriating up to $1,620,135 of Human Services Facility Funds to Tri Valley BMR, LLC for a grant to develop community care facilities located at 460 North Livermore Avenue; and
3. Appropriating up to $1,500,000 of Non-Housing Residual Property Taxes (County "Boomerang Funds”) to Tri Valley BMR, LLC for a grant to develop of the Vineyard 2.0 project as awarded and directed by the Alameda County Board of Supervisors; and
4. Authorizing the City Manager, or his designee, to execute the Affordable Housing Loan Agreement attached to the Resolution as Exhibit A, Amended and Restated Affordable Housing Regulatory Agreement attached to the Resolution as Exhibit B, Social and Human Services Facility Fee Grant Agreement attached to the Resolution as Exhibit C, Services Facility Regulatory Agreement attached to the Resolution as Exhibit D, between the City of Livermore and Tri Valley BMR, LLC; and all other related documents authorized and described in those agreements; and
5. Authorizing the City Manager to execute a Grant Agreement, attached to the Resolution as Exhibit E, between the City of Livermore and Tri Valley BMR, LLC, that governs the use of the funds awarded to the City from the County of Alameda for Vineyard 2.0,

subject to final form approval by the City Attorney; and

6. Authorizing the City Manager, or his designee, to execute a Subordination Agreement with Tri Valley BMR, LLC, the County of Alameda, and JP Morgan Chase Bank, in substantially the form attached to the Resolution as Exhibit F, and subject to final form approval by the City Attorney.

Staff Report

Attachments:

1. Resolution
2. Exhibit A - Affordable Housing Loan Agreement
3. Exhibit B - Amended and Restated Regulatory Agreement
4. Exhibit C - Human Services Facility Fee Grant Agreement
5. Exhibit D - Services Facility Regulatory Agreement
6. Exhibit E - Vineyard Alameda County Grant Agreement
7. Exhibit F - Vineyard Subordination Agreement

5.5 Resolution authorizing submission of a joint grant application to the State of California Housing and Community Development Department Homekey Program for the Project Reclamation Program in a total not-to-exceed amount of $20,000,000

Recommendation:

Staff recommend the City Council adopt a resolution:

1. Authorizing and directing the submission of a joint Application with Bay Area Community Services (BACS) and other jurisdictions within Alameda County to the State of California Housing and Community Development Department in response to the Homekey NOFA, and to apply for Homekey grant funds in a total amount not to exceed $20,000,000; and
2. Authorizing, entering into, executing, and delivering a Standard Agreement related to acquired properties that are located in the City of Livermore, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds for properties acquired in the City of Livermore, from the Department and to participate in the Homekey Program, and all amendments thereto (collectively, the Homekey Documents); and
3. Acknowledging and agreeing that the City shall be subject to the terms and conditions specified in the Standard Agreement, and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof; that any and all activities, expenditures, information, and timelines represented in the Application are enforceable through the Standard Agreement; and, that funds are to be used for the allowable expenditures and activities identified in the Standard Agreement; and
4. Authorizing the City Manager, or his designee, to approve the final joint Application to the State and execute the Application and the Homekey Documents on behalf of the City of Livermore (Co-Applicant) for participation in the Homekey Program; and
5. The City Manager, or his designee, to negotiate and develop an agreement with the Lead Applicant and Bay Area Community Services outlining the roles and responsibilities of each entity if the Application is approved, subject to the review and approvals as to form by the City Attorney.

Staff Report

Attachments:
1. Resolution

5.6 Resolution authorizing submission of a US Fish and Wildlife Service Cooperative Endangered Species Conservation Fund - Habitat Conservation Plan Planning Assistance grant application

Recommendation:
Staff recommends the City Council adopt a resolution:

1. Authorizing staff to prepare and submit a US Fish and Wildlife Service Cooperative Endangered Species Conservation Fund - Habitat Conservation Plan Planning Assistance grant application; and
2. Authorizing the City Manager or designee to sign all documents related to the grant and the Habitat Conservation Plan.

Staff Report
Attachments:
1. Resolution

5.7 Resolution of a continued local emergency and reauthorizing remote teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361

Recommendation:
Staff recommends City Council adopt a resolution of a continued local emergency and reauthorizing remote teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

Staff Report
Attachments:
1. Resolution

6. PUBLIC HEARINGS

6.1

Hearing to consider approving an Amended and Restated Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC to develop a four-story hotel on the southeast corner of Railroad Avenue and South Livermore Avenue, which includes a site acquisition loan for 2205 Railroad Avenue LLC to develop a parking facility on 2080 Railroad Avenue; to declare that the parcels to be transferred from the City to 2205 Railroad Avenue LLC are identified for disposition for the development of a hotel in the Livermore Successor Agency's Long Range Property Management Plan and are exempt surplus land; and authorizing a supplemental appropriation of $1,923,750 from the General Fund for the site acquisition loan.

Recommendation:
Staff recommends the City Council adopt two resolutions and direct the following:

1. Declaring that Parcel A and Subsurface Parcel C of Parcel Map 9999 are exempt

surplus land as defined in Government Code Section 54221; and

2. Finding the Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC is consistent with, and analyzed by, the addendums to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that were adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, and the 2004 Downtown Specific Plan Environmental Impact Report, and authorizing the City Manager to execute the DDLA, including the $1,923,750 Predevelopment Loan, and all documents necessary to effectuate the actions described in the DDLA;
3. Authorizing the City Manager to execute on behalf of the City the amended and Restated Disposition and Development and Loan Agreement with 2205 Railroad Avenue LLC; and
4. Supplemental appropriation of $1,923,750 from the General fund to be directed to the Site Acquisition Loan described in the DDLA.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Plat & Legal Description Hotel Parcel
3. Exhibit B - City Council Resolution 2018-155
4. Exhibit C - City Council Resolution 2018-156
5. Resolution
6. Exhibit A - Amended and Restated Disposition, Development and Loan Agreement

7. MATTERS FOR CONSIDERATION

7.1 Oral report from the Director of Emergency Services regarding the COVID-19 emergency, its impacts, and the governmental operations in response to that emergency, as well as discussion and direction regarding the City's emergency operations in response to that emergency.

Recommendation:
An oral report will be given at the meeting.

Staff Report

7.2 Comprehensive General Plan and Housing Element Update – Draft Vision Statement and Guiding Principles

Recommendation:
The Planning Commission and staff recommend the City Council adopt a Resolution approving the General Plan Update – Draft Vision Statement and Guiding Principles.

Staff Report
Attachments:
1. Community Input Themes
2. Community Input Received

3. Community Survey Analysis
4. Advisory Committee and Planning Commission Visioning Comments
5. Resolution
6. Exhibit A Planning Commission Resolution 29-21
7. Exhibit B - Vision Statement and Guiding Principles

7.3 Discussion and direction on Livermore's preferred approach regarding the Livermore Amador Valley Transit Authority's draft Zero Emission Bus Fleet Transition Study.

Recommendation:
Staff recommends City Council receive the presentation and provide direction to the Livermore representatives on the Livermore Amador Valley Transit Authority Board of Directors on Livermore's preferred approach to transition to a zero-emission bus fleet.

Staff Report
Attachments:
1. Draft LAVTA ZEB Transition Master Plan

8. COUNCIL COMMITTEE REPORTS AND MATTERS INITIATED BY CITY MANAGER, CITY ATTORNEY, STAFF, AND COUNCIL MEMBERS

9. ADJOURNMENT

To a Special Closed Session City Council Meeting on January 18, 2022 at 5:00 p.m. and a Joint Special Meeting Workshop of the City Council and Planning Commission on January 20, 2022 at 5:00pm both held virtually using Zoom.

10. SUPPLEMENTAL MATERIALS

10.1 Supplemental materials received prior to the meeting.
Staff Report
Attachments:
1. Supplemental Materials

10.2 Items received at the meeting.
Staff Report
Attachments:
1. Items Received at the Meeting

HOW TO PARTICIPATE IN YOUR CITY COUNCIL MEETING

You can participate in the meeting in a number of ways:

Citizens Forum is an opportunity for the public to speak regarding items not listed on the agenda. Speakers are limited to a maximum of 3 minutes per person. To submit a comment using Zoom, you may use the 'raise hand' feature. You should be aware that the City Council is prohibited by State law from taking action on any items that are not listed on the agenda. However, if your item requires action, the City Council may place it on a future agenda or direct staff to work with you and/or report to the City Council on the issue.

Public Hearings - The topic of the hearing is typically summarized by staff, followed by questions from the City Council and a presentation by the applicant. The Mayor will then open the hearing to the public and offer an opportunity for public comments. You may use the 'raise hand' feature in Zoom and take 3 minutes to make your comments.

Other Agenda Items are also open for public input including Consent Calendar or Matters for Consideration items. These comments are also subject to the 3 minute limit.

Special Meetings, Workshops - The public will have the opportunity to address the City Council regarding the item that is the subject of the special meeting or workshop. Public comments are limited to a maximum of 3 minutes per person.

Platforms to Participate in Virtual Meetings:

Submission of Comments Prior to the Meeting:

Email Comments may be submitted by the public to the City Clerk's Office (cityclerk@cityoflivermore.net). Items received no later than 12:00 pm on the day of the meeting will be provided to the City Council and available on the City website prior to the meeting. These items will NOT be read into the record.

eComments may be submitted by the public using the eComment link here. Comments may be up to 1000 characters in length and will be accepted up until 4PM the day of the meeting. These items will NOT be read into the record and are viewable by the the City Council and the public upon submittal.

Submission of Comments During the Meeting:

Speakers are limited to a maximum of 3 minutes per person. To submit a comment using Zoom, you may use the 'raise hand' feature. You should be aware that the City Council is prohibited by State law from taking action on any items that are not listed on the agenda. However, if your item requires action, the City Council may place it on a future agenda or direct staff to work with you and/or report to the City Council on the issue.

The City will be using YouTube and TV29 as two tools to provide the public access to view City Council meetings. No public comment will be accepted via YouTube.

TV29: tv29live.org

YouTube: http://youtube.com/c/CityofLivermoreCalifornia

Zoom Webinar: https://us02web.zoom.us/j/83392023549

Zoom dial in phone number:
1 669 900 6833
Meeting ID: 833 9202 3549

If you would like to deliver written materials to the City Council as part of their electronic comments

during a meeting, the speaker must identify that intent in his or her comment submitted and immediately email the materials to the City Clerk at cityclerk@cityoflivermore.net.

The **City Council Agenda and Agenda Reports** are prepared by City staff and are available for public review on Tuesday evening, six days prior to the City Council meeting in the Civic Center Library, 1188 South Livermore Avenue, Livermore, and at the City Clerk's Office, 1052 South Livermore Avenue, Livermore. The Agenda is also available on the City's website, http://cityoflivermore.net/agenda.

Under Government Code §54957.5, any **supplemental material** distributed to the members of the City Council after the posting of this agenda will be available for public review in the City Clerk's Office, 1052 South Livermore Avenue, Livermore, and included in the agenda packet available on the City's web site at http://cityoflivermore.net/agenda.

PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT (CODIFIED AT 42 UNITED STATES CODE SECTION 12101 AND 28 CODE OF FEDERAL REGULATIONS PART 35), AND SECTION 504 OF THE REHABILITATION ACT OF 1973, THE CITY OF LIVERMORE DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, ANCESTRY, SEX, DISABILITY, AGE OR SEXUAL ORIENTATION IN THE PROVISION OF ANY SERVICES, PROGRAMS, OR ACTIVITIES. TO ARRANGE AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PUBLIC MEETING, PLEASE CONTACT THE ADA COORDINATOR AT ADACOORDINATOR@CITYOFLIVERMORE.NET OR CALL (925) 960-4170 (VOICE) OR (925) 960-4104 (TDD) AT LEAST THREE (3) BUSINESS DAYS IN ADVANCE OF THE MEETING.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.1**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Bhavna Chaudhary, Acting Administrative Services Director

SUBJECT: Approval of draft minutes - December 13, 2021 Regular Meeting.

RECOMMENDED ACTION

Staff recommends the City Council approve the draft minutes.

SUMMARY

DISCUSSION

ATTACHMENTS

1. 2021-12-13 Regular City Council Draft Minutes

Prepared by: Marie Weber
City Clerk

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

DRAFT MINUTES

LIVERMORE
CALIFORNIA

CITY COUNCIL
DECEMBER 13, 2021

CLOSED SESSION

CALL TO ORDER – The Closed Session of the City Council was called to order by Mayor Bob Woerner at 6:00 pm, held via teleconference using Zoom and YouTube.

ROLL CALL – Present: Mayor Bob Woerner, Vice Mayor Trish Munro, and Council Members Regina Bonanno, Robert W. Carling and Brittni Kiick.

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE CITY COUNCIL REGARDING CLOSED SESSION ITEMS.

Mayor Woerner opened the public comment period.

There were no speakers and the comment period was closed.

1. ADJOURN TO CLOSED SESSION

1.1 Conference with Legal Counsel - Existing Litigation. To meet with legal counsel pursuant to Government Code section 54956.9(d)(1) to discuss litigation that has been formally initiated. (One case)

Livermore v. The Alameda County Board of Supervisors, et al., Alameda County Superior Court Case No. RG18906336.

1.2 Threat to Public Services or Facilities – Consultation with: Police Chief Jeramy Young, Livermore Police Department, pursuant to Government Code section 54957

REGULAR MEETING

2. CALL TO ORDER – The meeting of the City Council was called to order by Mayor Bob Woerner at 7:00 pm, held via teleconference using Zoom and YouTube.

ROLL CALL – Present: Mayor Bob Woerner, Vice Mayor Trish Munro and Council Members Regina Bonanno, Robert W. Carling, and Brittni Kiick.

PLEDGE OF ALLEGIANCE

REPORT OF ACTION TAKEN IN CLOSED SESSION

City Attorney Jason Alcala said there was no reportable action.

3. PROCLAMATIONS AND PRESENTATIONS – NONE

4. CITIZENS FORUM

Mayor Woerner opened the public comment period.

Alan Marlon provided a comment.

Alan Heckman provided a comment.

Dennis Skillen provided a comment.

There were no more speakers and the public comment period was closed.

Mayor Woerner reordered the agenda to hear items 7.2 and 7.3 before the Consent Calendar.

7.2 Resolution approving an amended and restated employment contract with the City Manager.

Recommendation: Mayor Woerner recommended the City Council adopt a Resolution approving an amended and restated employment contract with the City Manager.

7.3 Resolution approving an amended and restated employment contract with the City Attorney

Recommendation: Mayor Woerner recommended the City Council adopt a resolution approving an amended and restated employment contract with the City Attorney.

Mayor Woerner opened the public comment period for items 7.2 and 7.3.

There were no more speakers and the public comment period was closed.

ON THE MOTION OF VM MUNRO, SECONDED BY CM KIICK AND CARRIED ON A 5-0 VOTE, THE CITY COUNCIL ADOPTED THE FOLLOWING RESOLUTIONS:

Resolution 2021-200 approving an amended and restated employment contract with the City Manager.

Resolution 2021-201 approving an amended and restated employment contract with the City Attorney.

5. CONSENT CALENDAR

Mayor Woerner opened the public comment period.

Karl Wente provided a comment

There were no more speakers and the public comment period was closed.

ON THE MOTION OF CM BONANNO, SECONDED BY CM CARLING, AND CARRIED ON A 5-0 VOTE, THE CITY COUNCIL APPROVED THE CONSENT CALENDAR.

5.1 Approval of draft minutes draft minutes - November 18, 2021 Adjourned Special Meeting and November 22, 2021 City Council Regular Meeting.

Recommendation: Staff recommended the City Council approve the draft minutes.

5.2 Adoption of Omnibus Ordinance 2130 amending the Livermore Municipal Code to update references, update formal names for certain locations, clarify existing provisions, and to make additional technical and non-substantive corrections.

Recommendation: Staff recommended City Council adopt an ordinance amending the Livermore Municipal Code to update references, update formal names for certain locations, clarify existing provisions, and to make additional technical and non-substantive corrections.

5.3 Adoption of Ordinance 2131 amending the Livermore Development Code Section 6.02.060 (Home Occupations) and section 9.05.100 (Home Occupation Permits)

Recommendation: The Planning Commission and staff recommended the City Council adopt an ordinance amending the Livermore Development Code Section 6.02.060 (Home Occupations) and section 9.05.100 (Home Occupation Permits).

5.4 Resolution 2021-202 authorizing a supplemental appropriation of funds in the amount of $820,000 from general funds in Fiscal Year 2021-22 and authorizing execution of an agreement with Watry Buehler Collaborative, LLP in the not-to-exceed amount of $1,410,000 to provide design and engineering construction support services.

Recommendation: Staff recommended the City Council adopt a resolution authorizing a supplemental appropriation of funds in the amount of $820,000 from general funds in Fiscal Year 2021-22 and authorizing execution of an

agreement with Watry Buehler Collaborative, LLP in the not- to-exceed amount of $1,410,000 to provide design and engineering construction support services.

5.5 Resolution 2021-203 authorizing execution of an agreement with HQ Construction Co. Inc. for handyperson services, in an amount not-to-exceed $550,000.

Recommendation: Staff recommended the City Council adopt a resolution authorizing execution of a three-year agreement with HQ Construction Co. Inc. (HQ) for on-call handyperson services at various City facilities in an amount not-to-exceed $550,000.

5.6 Resolution 2021-204 authorizing execution of a public works contract with EVRA Construction, Inc. for construction of the Police Facility Real Time Awareness Center, Project No. 2019-58, in an amount not-to-exceed $472,000.

Recommendation: Staff recommended the City Council adopt a resolution authorizing execution of a public works contract with EVRA Construction, Inc. (Police Facility Real Time Awareness Center Project No. 2019-58).

5.7 Resolution 2021-205 authorizing execution of an amendment to the City's current agreement with ArborPro, Inc. to increase the total compensation in an amount not to exceed $165,000 and extend the term of the agreement.

Recommendation: Staff recommended the City Council adopt a Resolution authorizing the City Manager to execute an amendment to the City's current agreement with ArborPro, Inc. to increase the total compensation in an amount not to exceed $165,000 and extend the term of the agreement.

5.8 Resolution 2021-206 authorizing the City Manager to execute the third amendment to the agreement with Watry Buehler Collaborative, LLP increasing the not-to-exceed contract amount from
$1,290,783 to $1,534,083 to provide additional support services and extend the term of the agreement

Recommendation: Staff recommended City Council adopt a resolution authorizing the City Manager to execute the third amendment to the agreement with Watry Buehler Collaborative, LLP increasing the not- to-exceed contract amount from $1,290,783 to $1,534,083 to provide additional support services and extend the term of the agreement.

5.9 Resolution 2021-207 authorizing an extension and sixth amendment of the Exclusive Negotiating Rights Agreement with Shakespeare's Associates, Inc. for the development of a black box theater

Recommendation: Staff recommended the City Council adopt a resolution authorizing an extension and sixth amendment of the Exclusive Negotiating Rights Agreement with Shakespeare's Associates, Inc. for the development of a black box theater.

5.10 Resolutions 2021-208 authorizing execution of documents and delegating authority to the City Manager to participate in the two national settlement agreements for the National Prescription Opiate Litigation (distributors) and **2021-209** authorizing execution of documents and delegating authority to the City Manager to participate in the two national settlement agreements for the National Prescription Opiate Litigation (manufacturers).

Recommendation: Staff recommended the City Council adopt two resolutions:

1. Authorizing the City Manager to execute all documents and forms for the City of Livermore to participate in the settlement agreement with the distributors in the national prescription opiate litigation, and delegating authority to the City Manager to determine whether to accept or redirect settlement funds allocated to Livermore; and,
2. Authorizing the City Manager to execute all documents and forms for the City of Livermore to participate in the settlement agreement with the manufacturers in the national prescription opiate litigation, and delegating authority to the City Manager to determine whether to accept or redirect settlement funds allocated to Livermore.

5.11 Resolution 2021-210 authorizing issuance of a purchase order to National Auto Fleet Group in an amount not-to-exceed $104,411 for three 2022 Chevrolet Bolt Electric Vehicle's (EV's).

Recommendation: Staff recommended the City Council adopt a Resolution authorizing issuance of a purchase order to National Auto Fleet Group in an amount not-to-exceed $104,411 for three 2022 Chevrolet Bolt EV's.

5.12 Resolution 2021-211 authorizing a supplemental appropriation of $561,309 from the Traffic Impact Fee fund (Fund 306) in Fiscal Year 2021-22 to the El Charro Specific Plan Infrastructure, Project No. 200720.

Recommendation: Staff recommended City Council adopt a resolution appropriating $561,309 from Traffic Impact Fee fund (Fund 306) in Fiscal Year 2021-22 to the El Charro Specific Plan Infrastructure, Project No. 200720.

5.13 Resolution 2021-212 making findings regarding the continuing need for unexpended balances of Development Impact Fees as of June 30, 2021 and accepting the Annual Report of Development Fee and Connection Fee Revenues and Expenditures for Fiscal Year 2020-21.

Recommendation: Staff recommended the City Council adopt a Resolution making findings regarding the continuing need for unexpended balances of Development Impact Fees as of June 30, 2021 and accepting the Annual Report of Development Fee and Connection Fee Revenues and Expenditures for Fiscal Year 2020-21.

5.14 Resolution 2021-213 accepting annual special tax and bond

accountability reports for fiscal year 2020- 21 Community Facilities District No. 99-1, 2009-1, 2012-1, 2015-1, 2016-1, 2016-2, and 2018- 1.

Recommendation: Staff recommended the City Council adopt a resolution accepting annual special tax and bond accountability reports for fiscal year 2020-21 Community Facilities District No. 99-1, 2009-1, 2012-1, 2015-1, 2016-1, 2016-2, and 2018-1.

5.15 Resolution 2021-214 approving Executive Management Group employees wage and benefits adjustments.

Recommendation: Staff recommended the City Council adopt a resolution approving Executive Management Group employees wage and benefits adjustments.

5.16 Resolution 2021-215 adopting the City of Livermore Salary Plan as of December 2021 in accordance with California Code of Regulations, Title 2, Section 570.5.

Recommendation: Staff recommended the City Council adopt a resolution approving the City of Livermore Salary Plan as of December 2021 in accordance with California Code of Regulations, Title 2, Section 570.5.

5.17 Resolution 2021-216 designating the Finance Manager as the City Treasurer

Recommendation: Staff recommended City Council adopt a resolution designating the Finance Manager as the City Treasurer.

5.18 Resolution 2021-217 of a continued local emergency and reauthorizing remote teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

Recommendation: Staff recommended City Council adopt a resolution of a continued local emergency and reauthorizing remote teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

6. PUBLIC HEARINGS – NONE

7. MATTERS FOR CONSIDERATION

7.1 Oral report from the Director of Emergency Services regarding the COVID-19 emergency, its impacts, and the governmental operations in response to that emergency, as well as discussion and direction regarding the City's emergency operations in response to that emergency.

Recommendation: An oral report was given at the meeting.

Director of Emergency Services Marc Roberts presented the staff report.

Mayor Woerner opened the public comment period.

There were no speakers and the public comment period was closed.

THE CITY COUNCIL RECEIVED THE REPORT.

Mayor Woerner reordered the agenda to hear items 7.2 and 7.3 before the Consent Calendar.

7.4 Appointment of Vice Mayor

Recommendation: Staff recommended the Mayor appoint a Vice Mayor for the period of 2021-2022.

Mayor Woerner opened the public comment period.

There were no speakers and the public comment period was closed.

MAYOR WOERNER APPOINTED CM BONANNO AS VICE MAYOR FOR THE PERIOD OF 2021-2022.

7.5 Appointment of Council Members to the City Council Subcommittee on Advisory Bodies for the period of January 1 - June 30, 2022

Recommendation: Staff recommended the Mayor appoint two Council Members to serve on the City Council Subcommittee on Advisory Bodies for the period of January 1 - June 30, 2022.

Mayor Woerner opened the public comment period.

There were no speakers and the public comment period was closed.

MAYOR WOERNER APPOINTED CM KIICK AND VM BONANNO TO SERVE ON THE CITY COUNCIL SUBCOMMITTEE ON ADVISORY BODIES FOR THE PERIOD OF JANUARY 1 – JUNE 30, 2022

7.6 Council Members Appointments to Intergovernmental Agencies

Recommendation: Staff recommended the Mayor appoint Council Members to intergovernmental agencies.

Mayor Woerner opened the public comment period.

Karl Wente provided comment.

There were no more speakers and the public comment period was closed.

THE MAYOR APPROVED THE EXISTING APPOINTMENTS WITH THE

FOLLOWING UPDATES:
Livermore Amador Valley Water Management Agency
Delegate – CM Carling
Delegate – VM Bonanno
Alternate – Mayor Woerner

Livermore Cultural Arts Council
Delegate – CM Munro
Alternate – VM Bonanno

8. COUNCIL COMMITTEE REPORTS AND MATTERS INITIATED BY CITY MANAGER, CITY ATTORNEY, STAFF AND COUNCIL MEMBERS

CITY MANAGER MARC ROBERTS ANNOUNCED HIS UPCOMING RETIREMENT EFFECTIVE JUNE 3, 2022, DISCUSSED THE PROCESS FOR REPLACING THE POSITION, THANKED THE CITY COUNCIL AND EXPRESSED HIS COMMITMENT TO ASSISTING WITH THE TRANSITION IN THE COMING MONTHS.

MAYOR WOERNER ANNOUNCED A CLOSED SESSION MEETING OF THE CITY COUNCIL TO BE HELD ON THURSDAY, DECEMBER 16, 2021 TO DISCUSS THE CITY MANAGER EMPLOYMENT PROCESS.

THE MAYOR AND CITY COUNCIL MEMBERS PROVIDED A SUMMARY OF RECENTLY ATTENDED EVENTS AND MEETINGS IN ADDITION TO THE INFORMATION PROVIDED IN THE SUPPLEMENTAL PACKET.

Tri-Valley Transportation Council Council Member Kiick noted her attendance at the November 23, 2021 and December 13, 2021 special meetings.

IN RESPONSE TO COMMENTS FROM MR. MARLON, THE CITY COUNCIL DIRECTED STAFF TO RETURN WITH A STAFF REPORT PROVIDING ADDITIONAL INFORMATION REGARDING MOVING TO BRILLIANT 100 WITH EAST BAY COMMUNITY ENERGY.

CITY COUNCIL DIRECTED STAFF TO PROVIDE INFORMATION REGARDING WHAT THE PROCESS AND INVESTMENT FOR SUPPORTING THE BAY ADAPT REGIONAL STRATEGY WOULD ENCOMPASS.

8. ADJOURNMENT – at 7:53 pm to a closed session on December 16, 2021 at 7:00 pm and to a regular City Council meeting on January 10, 2022 at 7:00 pm, both held virtually using Zoom.

APPROVED: _____
BOB WOERNER, MAYOR

ATTEST: _____
MARIE WEBER, CITY CLERK

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.2**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Jeramy Young, Police Chief

SUBJECT: Resolution authorizing the City Manager to execute an agreement with Axon Enterprise Inc. for a law enforcement technology update package in an amount not-to-exceed $1,747,850.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to enter into a 5-year agreement with Axon Enterprise Inc. for the modernization of multiple law enforcement technology products including, but not limited to: new police camera technologies (body-worn and in-car), new conducted energy weapons (Tasers), accountability related hardware/software, unlimited data storage, and software to increase personnel efficiency in an amount not-to-exceed $1,747,850.

SUMMARY

Law enforcement technologies have become a prevalent and effective tool in ensuring safety, transparency, efficiency, and accountability. Staff is requesting to enter into an agreement with Axon Enterprises Inc. for a technology modernization and data storage package for a 5-year term. The upgrade is known as AXON's Officer Safety Plan (OSP) 7+ package.

DISCUSSION

The use of technology by law enforcement professionals has increased exponentially over the past 10-15 years. It is not only relied upon for efficiency, but it enhances the safety of officers and community members. Technology also plays a key role in creating and maintaining public trust through providing foundations for police transparency and accountability. The highlights of the products and services related to this recommendation include the following:

- Upgrade to the Taser 7 conducted energy weapon (CEW) from the Taser X2 model. Enhancements include yellow exterior coloring for distinguishability from firearms, a rechargeable battery, the auto-download of data via an included docking station, potential increased effectiveness in the field (Taser 7 is effective at 4 ft. standoff distance vs. the required 9 ft. of standoff distance for the current X2 model), included cartridges for training and field use,

warranties, and peripheral supplies. The upgrade also includes multiple instructor and master instructor training certification vouchers for the further development of in-house instructors

- In-car cameras with Signal technology (note: Signal technology automatically triggers a recording during emergency vehicle operations). The camera systems also include installation costs and a related 5G modem. LPD does not currently use in-car cameras. This technology is expected to provide critical audio/video evidence that cannot be captured on body-worn camera systems (i.e., emergency response driving, pursuits, traffic violations, vehicle identification, and a third-party perspective of enforcement contacts)
- New body worn cameras (BWC's)- 2 per officer over the 5-year contact term, including applicable upgrades, docking stations, body mounts, warranties, etc.
- Unlimited data storage for BWC, In-Car cameras, interview room cameras, and CEW data
- Signal Sidearm Program- this automatically starts camera system recordings when a firearm is removed from a holster within a given proximity of the camera(s)
- Performance Program- this is an auditing program that tracks camera usage and allows for comparisons between different shifts for policy adherence related to manual activations
- Auto-tagging of videos- this feature automatically assigns the related incident number or case number to a recording for tracking purposes
- Channel Services- this product allows for the migration of data from the current unsupported digital image management system (DIMS) into evidence.com, which is the storage platform for AXON systems.
- Redaction Assistant Program- allows for automatic video redaction of faces, license plates, etc. for Public Records Act requests and other releases
- Respond Program- this feature provides supervisory ability to live-view cameras during recording mode and provides individual GPS data related to camera systems
- Third Party Video Support- this provides technologies to view video from outside sources, including home and business surveillance systems that have been uploaded to evidence.com
- Citizen for Communities Program- this program allows the police department to create an event specific link where any citizen can upload evidence directly to the police department's evidence.com account
- Data storage and maintenance for camera systems related to current police interview rooms

This comprehensive system is expected to provide greater safety to officers and others, increase police transparency and accountability, reduce liability, enhance and expedite the gathering of evidence, allow for additional community partnership opportunities, and provide a more efficient utilization of personnel time.

Purchasing Ordinance Section 2.68.370(B)2
2. Where it is determined that the supplies and equipment are unique or available only from one source, so that the bidding required by this section would be meaningless. The basis upon which this determination is made shall be in writing;

Per LMC 2.68.370 (B) (2), a sole source justification exists because the goods and services required to satisfy the agency's needs are only manufactured and available for purchase from Axon Enterprise Inc. Additionally, the technology products offered are compatible with each other, and with systems that are already in place within the organization.

FISCAL AND ADMINISTRATIVE IMPACTS

The agreement with Axon is for a 5-year term, which begins when certain equipment and services are delivered. For ease of reference, Year 1 of the contract is considered the remainder of this fiscal year and FY 2022-23. The current approved FY 2021-22 and FY 2022-23 budget includes sufficient funding under the General Fund in the amount of $81,486.54 and $290,753.87, respectively, for the first year cost of the five-year contract. The remaining four years of the contract, each in the amount of $343,902.50, will be included in future police department budgets. These costs are comprehensive and include all services and supplies related to the equipment.

ATTACHMENTS

1. Resolution
2. Exhibit A - Master Services and Purchasing Agreement

Prepared by: Robin Morris
Police Business Services Manager

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH AXON ENTERPRISE, INC. FOR A LAW ENFORCEMENT TECHNOLOGY UPDATE PACKAGE IN AN AMOUNT NOT-TO-EXCEED $1,747,850

Law enforcement technologies have become a prevalent and effective tool in ensuring safety, transparency, efficiency, and accountability.

Modernization is necessary of multiple law enforcement technology products including, but not limited to, new police camera technologies (body-worn and in-car), new CEW's (Tasers), accountability related hardware/software, unlimited data storage, and software to increase personnel efficiency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to sign, on behalf of the City of Livermore, the Services Agreement for Axon Enterprise, Inc.'s Sales Terms and Conditions between the City of Livermore and Axon Enterprise, Inc. in an amount not to exceed $1,747,850.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that a sole source justification exists under LMC 2.68.370(B)(2) because the goods and services required to satisfy the agency's needs are only manufactured and available for purchase from Axon Enterprise, Inc.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM

/s/ Kelly J. Trujillo
Kelly J. Trujillo
Assistant City Attorney

Exhibit A – Master Services and Purchasing Agreement

RESOLUTION NO. _____

Master Services and Purchasing Agreement between Axon and Agency

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the agency on the Quote ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions**.

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term**. This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

3 **Payment**. Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4 **Taxes**. Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping**. Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB delivery site via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns**. All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 **Warranty**.

7.1 **Hardware Limited Warranty**. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties

run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 **Claims**. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 **Spare Axon Devices**. For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

7.4 **Limitations**. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.**

7.4.2 **Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory**.

8 **Statement of Work**. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9 **Axon Device Warnings**. See www.axon.com/legal for the most current Axon Device warnings.

10 **Design Changes**. Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.

11 **Bundled Offerings**. Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.

12 **Insurance**. Axon shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "A" against claims that may arise from or in connection with this Agreement and performance of the Services. Upon reasonable written notice, Axon shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by Agency's Risk Manager..

13 **Indemnification**. Axon will indemnify Agency's officers, directors, and employees ("**Agency Indemnitees**") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.

14 **IP Rights**. Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.

15 **IP Indemnification**. Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.

16 **Agency Responsibilities**. Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.

17 **Termination**.

17.1 **For Breach**. A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.

17.2 **By Agency**. If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.

17.3 **Effect of Termination**. Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.

18 **Confidentiality**. "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon may

publicly announce information related to this Agreement.

19 General.

19.1 Force Majeure. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2 Independent Contractors. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

19.3 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

19.4 Non-Discrimination. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5 Export Compliance. Each Party will comply with all import and export control laws and regulations.

19.6 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7 Waiver. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8 Severability. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

19.9 Survival. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.

19.10 Governing Law. The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11 Notices. All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc. Attn: Legal 17800 N. 85th Street Scottsdale, Arizona 85255 legal@axon.com	Agency: Livermore Police Dept. Attn: Robin Morris Business Services Manager 1110 S. Livermore Ave. Livermore, California 94550 rmorris@cityoflivermore.net

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as

of the date of signature.

Axon Enterprise, Inc.	**Agency**
Signature:	Signature:
Name: Robert E. Driscoll, Jr.	Name:
Title: VP, Assoc. Gen. Counsel	Title:
Date: 12/8/21	Date:

Axon Cloud Services Terms of Use Appendix

1 **Definitions**.
"Agency Content" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"**Evidence**" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"**Non-Content Data**" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

"**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2 **Access**. Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

3 **Agency Owns Agency Content**. Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4 **Security**. Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5 **Agency Responsibilities**. Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately

if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at https://www.youtube.com/static?template=terms.

6 **Privacy**. Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at https://www.axon.com/legal/cloud-services-privacy-policy. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7 **Axon Body 3 Wi-Fi Positioning**. Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.

8 **Storage**. For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.

9 **Location of Storage**. Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.

10 **Suspension**. Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services , the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.

11 **Axon Cloud Services Warranty**. Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.

12 **Axon Records**. Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records

Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term ("**Axon Records Subscription**")

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

13 **Axon Cloud Services Restrictions**. Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

- **13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
- **13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
- **13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
- **13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
- **13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
- **13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
- **13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

14 **After Termination**. Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.

15 **Post-Termination Assistance**. Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

16 **U.S. Government Rights**. If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.

17 **Survival**. Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

AXON

Master Services and Purchasing Agreement

Axon Customer Experience Improvement Program Appendix

1 Axon Customer Experience Improvement Program (ACEIP). The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, "**ACEIP Purposes**"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

1.1 ACEIP Tier 1.

1.1.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1[1]. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices

[1] For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

applicable to the Agency Content or ACEIP Content ("Use Case"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at https://www.axon.com/aceip and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("**New Use Case**").

1.1.2. **Expiration of ACEIP Tier 1**. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.

1.2 **ACEIP Tier 2**. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2, grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. By checking this box, Agency hereby agrees to the Axon Customer Experience Improvement Program Tier 2 Terms of Service, available at https://www.axon.com/sales-terms-and-conditions and incorporated herein by reference.

AXON

Master Services and Purchasing Agreement

Professional Services Appendix

1 **Utilization of Services**. Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.

2 **Body-Worn Camera Full Service (BWC Full Service)**. BWC Full Service includes advance remote project planning and configuration support and up to 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, Agency must purchase additional days. BWC Full Service options include:

System set up and configuration • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories and custom roles based on Agency need • Register cameras to Agency domain • Troubleshoot IT issues with Axon Evidence and Axon Dock ("**Dock**") access • One on-site session included
Dock configuration • Work with Agency to decide the ideal location of Docks and set configurations on Dock • Authenticate Dock with Axon Evidence using admin credentials from Agency • On-site assistance, not to include physical mounting of docks
Best practice implementation planning session • Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata in the field for organization purposes and other best practice for digital data management • Provide referrals of other agencies using the Axon camera devices and Axon Evidence • Recommend rollout plan based on review of shift schedules
System Admin and troubleshooting training sessions Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon instructor training (Train the Trainer) Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations
Evidence sharing training Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide
Post go-live review

3 **Body-Worn Camera Starter Service (BWC Starter)**. BWC Starter includes advance remote project planning and configuration support and one day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency requires more than 1 day of on-site Services, Agency must purchase additional on-site Services. The BWC Starter options include:

System set up and configuration (Remote Support) • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Agency need • Troubleshoot IT issues with Axon Evidence and Axon Dock ("**Dock**") access
Dock configuration • Work with Agency to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using "Administrator" credentials from Agency • Does not include physical mounting of docks
Axon instructor training (Train the Trainer) Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

4 **Body-Worn Camera Virtual 1-Day Service (BWC Virtual)**. BWC Virtual includes all items in the BWC Starter Service Package, except one day of on-site services.

5 **CEW Services Packages**. CEW Services Packages are detailed below:

System set up and configuration • Configure Axon Evidence categories & custom roles based on Agency need. • Troubleshoot IT issues with Axon Evidence. • Register users and assign roles in Axon Evidence. • **For the CEW Full Service Package**: On-site assistance included • **For the CEW Starter Package**: Virtual assistance included
Dedicated Project Manager Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout
Best practice implementation planning session to include: • Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata and best practices for digital data management • Provide referrals to other agencies using TASER CEWs and Axon Evidence • **For the CEW Full Service Package:** On-site assistance included • **For the CEW Starter Package:** Virtual assistance included
System Admin and troubleshooting training sessions On-site sessions providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon Evidence Instructor training • Provide training on the Axon Evidence to educate instructors who can support Agency's subsequent Axon Evidence training needs. • **For the CEW Full Service Package:** Training for up to 3 individuals at Agency • **For the CEW Starter Package:** Training for up to 1 individual at Agency

TASER CEW inspection and device assignment Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.
Post go-live review **For the CEW Full Service Package**: On-site assistance included. **For the CEW Starter Package**: Virtual assistance included.

6 **Smart Weapon Transition Service**. The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.
Return of Old Weapons Axon's on-site professional service team will ship all old weapons back to Axon's headquarters. Axon will provide Agency with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7 **Signal Sidearm Installation Service**. If Agency purchases Signal Sidearm Installation Service, Axon will provide one day of on-site Services and one professional services manager and will cover the installation of up 100 Signal Sidearm devices per package purchased. Agency is responsible for providing an appropriate work area and ensuring all holsters that will have Signal Sidearm installed onto them are available on the agreed-upon installation date(s). Installation includes:

Removal of existing connection screws that affix a holster to a holster mount
Proper placement of the Signal Sidearm Mounting Plate between the holster and the mount
Reattachment of the holster to the mount using appropriate screws
Functional testing of Signal Sidearm device

8 **Out of Scope Services**. Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

9 **Delivery of Services**. Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.

10 **Access Computer Systems to Perform Services**. Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

11 **Site Preparation**. Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it

12 **Acceptance**. When Axon completes professional Services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.

13 **Agency Network**. For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.

AXON

Technology Assurance Plan Appendix

If Technology Assurance Plan ("**TAP**") or a bundle including TAP is on the Quote, this appendix applies.

1 **TAP Warranty**. The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.

2 **Officer Safety Plan**. If Agency purchases an Officer Safety Plan ("**OSP**"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.

3 **OSP 7 Term**. OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month ("**OSP 7 Term**").

4 **TAP BWC Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.

5 **TAP Dock Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.

6 **Upgrade Delay**. Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.

7 **Upgrade Change**. If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.

8 **Return of Original Axon Device**. Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

9 **Termination**. If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:

- **9.1** TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
- **9.2** Axon will not and has no obligation to provide the Upgrade Models.
- **9.3** Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

AXON

Master Services and Purchasing Agreement

TASER 7 Appendix

This TASER 7 Appendix applies to Agency's TASER 7, OSP 7, or OSP 7 Plus purchase from Axon.

1 **Duty Cartridge Replenishment Plan**. If the Quote includes "**Duty Cartridge Replenishment Plan**", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.

2 **Training**. If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "**Training Content**"), Agency may access Training Content. Axon will deliver all Training Content electronically.

3 **Extended Warranty**. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer's warranty plus the 4-year extended term.

4 **Trade-in**. If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("**Trade-In Units**") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Agency Size	Days to Return from Start Date of TASER 7 Subscription
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

5 **TASER 7 Subscription Term**. The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.

6 **Access Rights**. Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not upload any non-TASER 7 data or any other files to Axon Evidence. Agency may not exceed the number of end users than the Quote specifies.

7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.

8 **Termination**. If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:

8.1 TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.

8.2 Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.

8.3 Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.

AXON

Axon Auto-Tagging Appendix

1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.

2 **Support**. For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.

3 **Changes**. Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.

4 **Agency Responsibilities**. Axon's performance of Auto-Tagging Services requires Agency to:

- **4.1** Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
- **4.2** Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
- **4.3** Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
- **4.4** Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
- **4.5** Promptly install and implement any software updates provided by Axon;
- **4.6** Ensure that all appropriate data backups are performed;
- **4.7** Provide assistance, participation, and approvals in testing Auto-Tagging Services;
- **4.8** Provide Axon with remote access to Agency's Axon Evidence account when required;
- **4.9** Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
- **4.10** Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.

5 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

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Axon Fleet Appendix

1 **Agency Responsibilities**. Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "Axon Fleet") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.

2 **Cradlepoint**. If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.

3 **Third-party Installer**. Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.

4 **Wireless Offload Server.**

4.1 **License Grant**. Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.

4.2 **Restrictions**. Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.

4.3 **Updates**. If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.

4.4 **WOS Support**. Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.

5 **Axon Vehicle Software.**

5.1 **License Grant**. Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "Axon Vehicle Software".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.

5.2 **Restrictions**. Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h)

remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.

6 **Axon Fleet Upgrade**. If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("Fleet Upgrade") as schedule on the Quote.

If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.

Within 30 days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

7 **Privacy**. Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.

8 **Axon Fleet Termination**. Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:

8.1 Axon Fleet subscription coverage terminates, and no refunds will be given.

8.2 Axon will not and has no obligation to provide the Axon Fleet Upgrade.

8.3 Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.

AXON

Master Services and Purchasing Agreement

Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus.

1 **Axon Respond Subscription Term**. If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency.

If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date.

The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

2 **Scope of Axon Respond**. The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.

3 **Axon Body 3 LTE Requirements**. Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

4 **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

5 **Axon Respond Service Limitations**. Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

6 **Termination**. Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Aware services, including any Axon-provided LTE service.

AXON

Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

1 **Subscription Term**. If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

2 **Axon Citizen Storage**. For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

3 **Performance Auto-Tagging Data**. In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.

EXHIBIT A

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Axon shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $3,000,000 per occurrence/**$6,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Axon is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Cyber and Professional Liability/Errors and Omissions:
   $3,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Axon in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Axon; or automobiles owned,

leased, hired or borrowed by Axon. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under Axon's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. Axon's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Axon shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

EXHIBIT A

Q-336865-44538.697KP

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Issued: 12/08/2021
Quote Expiration: 01/31/2022
EST Contract Start Date: 03/15/2022
Account Number: 113456
Payment Terms: N30
Delivery Method: Fedex - Ground

SHIP TO	BILL TO
Business;Delivery;Invoice-1110 S Livermore Ave 1110 S Livermore Ave Livermore, CA 94550-9315 USA	Livermore Police Dept. - CA 1110 S Livermore Ave Livermore, CA 94550-9315 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kyle Panasewicz Phone: +1 4803294734 Email: kylep@axon.com Fax: (480) 905-2071	Phone: 925-371-4834 Email: mtrudeau@cityoflivermore.net Fax:

Program Length	60 Months
TOTAL COST	$1,665,746.75
ESTIMATED TOTAL W/ TAX	$1,747,850.42

Bundle Savings	$580,647.86
Additional Savings	$414,630.61
TOTAL SAVINGS	$995,278.47

PAYMENT PLAN

PLAN NAME	INVOICE DATE	TAX AMOUNT	AMOUNT DUE
Year 1 - Partial	Feb, 2022	$3,827.76	$81,486.54
Year 1 - Remaining	Jul, 2022	$13,657.90	$290,753.87
Year 2	Jul, 2023	$16,154.50	$343,902.50
Year 3	Jul, 2024	$16,154.50	$343,902.50
Year 4	Jul, 2025	$16,154.50	$343,902.50
Year 5	Jul, 2026	$16,154.50	$343,902.50

EXHIBIT A

Quote Details

Bundle Summary

Item	Description	QTY
OSP7+	2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811)	93
AB3C	AB3 Camera Bundle	93
AB3MBD	AB3 Multi Bay Dock Bundle	17
AB31BD	AB3 1-Bay Dock Bundle	4
BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5
BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	4
BWCUwTAP	BWC Unlimited with TAP	9
AB3C	AB3 Camera Bundle	9
DynamicBundle	Dynamic Bundle	1
Fleet3A	Fleet 3 Advanced	45
DynamicBundle	Dynamic Bundle	45

Bundle: 2021 - OFFICER SAFETY PLAN 7 PLUS (Formerly SKU 73811) Quantity: 93 Start: 3/15/2022 End: 3/14/2027 Total: 851307.37 USD

Category	Item	Description	QTY
Holsters	20160	TASER 7 HOLSTER - SAFARILAND, RH+CART CARRIER	93
HALT Suit	20050	HOOK-AND-LOOP TRAINING (HALT) SUIT	2
Handle License	20248	TASER 7 EVIDENCE.COM LICENSE	93
Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	279
Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	279
Handles	20008	TASER 7 HANDLE, YLW, HIGH VISIBILITY (GREEN LASER), CLASS 3R	93
Inert Cartridges	22179	TASER 7 INERT CARTRIDGE, STANDOFF (3.5-DEGREE) NS	50
Inert Cartridges	22181	TASER 7 INERT CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	50
Admin License	20248	TASER 7 EVIDENCE.COM LICENSE	1
Taser 7 Target	80087	TASER 7 TARGET, CONDUCTIVE, PROFESSIONAL (RUGGEDIZED)	2
Spare Handles	20008	TASER 7 HANDLE, YLW, HIGH VISIBILITY (GREEN LASER), CLASS 3R	3
Taser 7 Target Frame	80090	TARGET FRAME, PROFESSIONAL, 27.5 IN. X 75 IN., TASER 7	2
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	186
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	186
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	186
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	186

Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	186
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	186
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	186
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	186
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	186
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	186
Batteries	20018	TASER 7 BATTERY PACK, TACTICAL	111
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1
Training Halt Cartridges	22177	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, STANDOFF NS	186
Training Halt Cartridges	22177	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, STANDOFF NS	186
Training Halt Cartridges	22178	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, CLOSE QUART NS	186
Training Halt Cartridges	22178	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, CLOSE QUART NS	186
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1
Docks	74200	TASER 7 6-BAY DOCK AND CORE	1
Dock Mount	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	1
Dock Power Cord	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	1
Duty Cartridge Replenishment Program	20246	TASER 7 DUTY CARTRIDGE REPLACEMENT LICENSE	93
E.com License	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	93
Device Storage	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	93
A La Carte Storage	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	2790
Respond Plus	73680	RESPOND DEVICE PLUS LICENSE	93
Records	73681	AXON RECORDS FULL	93
Citizen	73618	CITIZEN FOR COMMUNITIES USER LICENSE	93
Redaction	73478	REDACTION ASSISTANT USER LICENSE	93
Auto Tagging	73682	AUTO TAGGING LICENSE	93
Performance	73739	PERFORMANCE LICENSE	93
3rd Party Video	11642	THIRD-PARTY VIDEO SUPPORT LICENSE	93
E.com Channel	80190	Evidence.com Channel Services	1
Auto Tagging Implementation	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1
Signal Sidearm Kit	75015	SIGNAL SIDEARM KIT	93
Signal Sidearm Batteries	71044	BATTERY, SIGNAL SIDEARM, CR2430 SINGLE PACK	186
Camera Warranty	80464	EXT WARRANTY, CAMERA (TAP)	93

Camera Refresh 1 with Spares	73309	AXON CAMERA REFRESH ONE	96
Camera Refresh 2 with Spares	73310	AXON CAMERA REFRESH TWO	96
Warranty	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	12
Multi-bay Dock Refresh 1	73689	MULTI-BAY BWC DOCK 1ST REFRESH	12
Multi-bay Dock Refresh 2	73688	MULTI-BAY BWC DOCK 2ND REFRESH	12
Inactive Channel	80223	INACTIVE CHANNEL LICENSE	1
Spare Camera Warranty	80464	EXT WARRANTY, CAMERA (TAP)	3
Other	80395	EXT WARRANTY, TASER 7 HANDLE	93
Other	80395	EXT WARRANTY, TASER 7 HANDLE	3
Other	80374	EXT WARRANTY, TASER 7 BATTERY PACK	111
Other	80396	EXT WARRANTY, TASER 7 SIX BAY DOCK	1

Bundle: AB3 Camera Bundle Quantity: 93 Start: 3/15/2022 End: 3/14/2027 Total: 0 USD

Category	Item	Description	QTY
Camera	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	93
Spare Camera	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	3
Camera Mount	74028	WING CLIP MOUNT, AXON RAPIDLOCK	103
USB	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	103

Bundle: AB3 Multi Bay Dock Bundle Quantity: 17 Start: 3/15/2022 End: 3/14/2027 Total: 0 USD

Category	Item	Description	QTY
Dock	74210	AXON BODY 3 - 8 BAY DOCK	17
Power Cord	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	17

Bundle: AB3 1-Bay Dock Bundle Quantity: 4 Start: 3/15/2022 End: 3/14/2027 Total: 0 USD

Category	Item	Description	QTY
1-Bay Dock	74211	AXON BODY 3 - 1 BAY DOCK	4
1-Bay Power Cord	71104	NORTH AMER POWER CORD FOR AB3 1-BAY DOCK	4

Bundle: Body Worn Camera Multi-Bay Dock TAP Bundle Quantity: 5 Start: 3/15/2022 End: 3/14/2027 Total: 8850 USD

Category	Item	Description	QTY
Dock Warranty	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	5
Multi-Bay Dock Refresh 1	73689	MULTI-BAY BWC DOCK 1ST REFRESH	5
Multi-Bay Dock Refresh 2	73688	MULTI-BAY BWC DOCK 2ND REFRESH	5

Bundle: Body Worn Camera Single-Bay Dock TAP Bundle Quantity: 4 Start: 3/15/2022 End: 3/14/2027 Total: 2160 USD

EXHIBIT A

Category	Item	Description	QTY
Dock Warranty	80466	EXT WARRANTY, SINGLE-BAY DOCK (TAP)	4
Single-bay Dock Refresh 1	73313	1-BAY DOCK AXON CAMERA REFRESH ONE	4
Single-bay Dock Refresh 2	73314	1-BAY DOCK AXON CAMERA REFRESH TWO	4

Bundle: BWC Unlimited with TAP Quantity: 9 Start: 3/15/2022 End: 3/14/2027 Total: 48060 USD

Category	Item	Description	QTY
Camera Warranty	80464	EXT WARRANTY, CAMERA (TAP)	9
E.com License	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	9
Camera Refresh 1 with Spares	73309	AXON CAMERA REFRESH ONE	9
Device Storage	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	9
Camera Refresh 2 with Spares	73310	AXON CAMERA REFRESH TWO	9
A La Carte Storage	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	36

Bundle: AB3 Camera Bundle Quantity: 9 Start: 3/15/2022 End: 3/14/2027 Total: 0 USD

Category	Item	Description	QTY
Camera	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	9
Camera Mount	74028	WING CLIP MOUNT, AXON RAPIDLOCK	10
USB	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	10

Bundle: Dynamic Bundle Quantity: 1 Start: 3/15/2022 End: 3/14/2027 Total: 44477.4 USD

Category	Item	Description	QTY
Other	50037	AXON CLIENT SW (EACH CLIENT AND TOUCH PANEL) LICENSE ACCESS	3
Other	50045	INTERVIEW ROOM UNLIMITED EVIDENCE.COM STORAGE LICENSE	6
Other	71210	FLEET DOOR TRIGGER HARDWARE, US	45
Other	50043	AXON STREAMING SERVER MAINTENANCE (PER SERVER)	2

Bundle: Fleet 3 Advanced Quantity: 45 Start: 3/15/2022 End: 3/14/2027 Total: 561600 USD

Category	Item	Description	QTY
Storage	80410	FLEET, EVIDENCE LICENSE, 1 CAMERA STORAGE, LICENSE	90
E.com License	80400	FLEET, VEHICLE LICENSE, LICENSE	45
ALPR License	80401	FLEET 3, ALPR LICENSE, 1 CAMERA, LICENSE	45
Respond License	80402	RESPOND DEVICE LICENSE - FLEET 3 - LICENSE	45
Camera Kit & Warranty	72036	FLEET 3 STANDARD 2 CAMERA KIT	45
Ethernet Cable	74110	FLEET ETHERNET CABLE, CAT6, 25 FT	45
Vehicle Installation	73391	FLEET 3 NEW INSTALLATION (PER VEHICLE)	45

Camera Refresh	72040	FLEET REFRESH, 2 CAMERA KIT	45
Axon Signal Unit	70112	AXON SIGNAL UNIT	45
Cable Assembly	70117	AXON SIGNAL UNIT, CABLE ASSEMBLY	45
Spare Camera Kit & Warranty	72036	FLEET 3 STANDARD 2 CAMERA KIT	1
Spare Camera Refresh	72040	FLEET REFRESH, 2 CAMERA KIT	1
Other	80495	EXT WARRANTY, FLEET 3, 2 CAMERA KIT	45
Other	80379	EXT WARRANTY, FLEET 2 SIGNAL UNIT	45
Other	80495	EXT WARRANTY, FLEET 3, 2 CAMERA KIT	1

Bundle: Dynamic Bundle Quantity: 45 Start: 3/15/2022 End: 3/14/2027 Total: 148455 USD

Category	Item	Description	QTY
Other	100146	CRADLEPOINT R1900-5GB-GA+5YR NETCLOUD	45
Other	71203	FLEET ANT, AIRGAIN, 7-IN-1, 4LTE/5G, 2WIFI, 1GNSS, BL	45

This Rough Order of Magnitude estimate is being provided for budgetary and planning purposes only. It is non-binding and is not considered a contractable offer for sale of Axon goods or services.

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Exceptions to Standard Terms and Conditions

Agency has existing contracts #00017234, #00012578, and #00012579 (originated via Q-165879 Q-103332) and is terminating those contracts upon the new license start date (2/15/2022) of this quote.

The parties agree that Axon is granting a refund of $31,412.27 to refund paid, but undelivered services. This discount is based on a ship date range of 2/15/2022-2/28/2022, resulting in a 3/15/2022 license date. Any change in this date and resulting license start date will result in modification of this discount value which may result in additional fees due to or from Axon.

EXHIBIT A

EXHIBIT A

FLEET STATEMENT OF WORK BETWEEN AXON ENTERPRISE AND AGENCY

Introduction

This Statement of Work ("SOW") has been made and entered into by and between Axon Enterprise, Inc. ("AXON"), and Livermore Police Dept. - CA the ("AGENCY") for the purchase of the Axon Fleet in-car video solution ("FLEET") and its supporting information, services and training. (AXON Technical Project Manager/The AXON installer)

Purpose and Intent

AGENCY states, and AXON understands and agrees, that Agency's purpose and intent for entering into this SOW is for the AGENCY to obtain from AXON deliverables, which used solely in conjunction with AGENCY's existing systems and equipment, which AGENCY specifically agrees to purchase or provide pursuant to the terms of this SOW.

This SOW contains the entire agreement between the parties. There are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in the SOW.

Acceptance

Upon completion of the services outlined in this SOW, AGENCY will be provided a professional services acceptance form ("Acceptance Form"). AGENCY will sign the Acceptance Form acknowledging that services have been completed in substantial conformance with this SOW and the Agreement. If AGENCY reasonably believes AXON did not complete the professional services in conformance with this SOW, AGENCY must notify AXON in writing of the specific reasons within seven (7) calendar days from delivery of the Acceptance Form. AXON will remedy the issues to conform with this SOW and re-present the Acceptance Form for signature. If AXON does not receive the signed Acceptance Form or written notification of the reasons for rejection within 7 calendar days of the delivery of the Acceptance Form, AGENCY will be deemed to have accepted the services in accordance to this SOW.

Force Majeure

Neither party hereto shall be liable for delays or failure to perform with respect to this SOW due to causes beyond the party's reasonable control and not avoidable by diligence.

Schedule Change

Each party shall notify the other as soon as possible regarding any changes to agreed upon dates and times of Axon Fleet in-car Solution installation-to be performed pursuant of this Statement of Work.

Axon Fleet Deliverables

Typically, within (30) days of receiving this fully executed SOW, an AXON Technical Project Manager will deliver to AGENCY's primary point of contact via electronic media, controlled documentation, guides, instructions and videos followed by available dates for the initial project review and customer readiness validation. Unless otherwise agreed upon by AXON, AGENCY may print and reproduce said documents for use by its employees only.

Security Clearance and Access

Upon AGENCY's request, AXON will provide the AGENCY a list of AXON employees, agents, installers or representatives which require access to the AGENCY's facilities in order to perform Work pursuant of this Statement of Work. AXON will ensure that each employee, agent or representative has been informed or and consented to a criminal background investigation by AGENCY for the purposes of being allowed access to AGENCY's facilities. AGENCY is responsible for providing AXON with all required instructions and documentation accompanying the security background check's requirements.

Training

AXON will provide training applicable to Axon Evidence, Cradlepoint NetCloud Manager and Axon Fleet application in a train-the-trainer style method unless otherwise agreed upon between the AGENCY and AXON.

Local Computer

AGNECY is responsible for providing a mobile data computer (MDC) with the same software, hardware, and configuration that AGENCY personnel will use with the AXON system being installed. AGENCY is responsible for making certain that any and all security settings (port openings, firewall settings, antivirus software, virtual private network, routing, etc.) are made prior to the installation, configuration and testing of the aforementioned deliverables.

Network

AGENCY is responsible for making certain that any and all network(s) route traffic to appropriate endpoints and AXON is not liable for network breach, data interception, or loss of data due to misconfigured firewall settings or virus infection, except to the extent that such virus or infection is caused, in whole or in part, by defects in the deliverables.

Cradlepoint Router

When applicable, AGENCY must provide AXON Installers with temporary administrative access to Cradlepoint's NetCloud Manager to the extent necessary to perform Work pursuant of this Statement of Work.

Evidence.com

AGENCY must provide AXON Installers with temporary administrative access to Axon Evidence.com to the extent necessary to perform Work pursuant of this SOW.

Wireless Upload System

If purchased by the AGENCY, on such dates and times mutually agreed upon by the parties, AXON will install and configure into AGENCY's existing network a wireless network infrastructure as identified in the AGENCY's binding quote based on conditions of the sale.

VEHICLE INSTALLATION

Preparedness

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer less weapons and items of evidence. Vehicle(s) will be deemed 'out of service' to the extent necessary to perform Work pursuant of this SOW.

Existing Mobile Video Camera System Removal

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer which will remove from said vehicles all components of the existing mobile video camera system unless otherwise agreed upon by the AGENCY.

Major components will be salvaged by the AXON Installer for auction by the AGENCY. Wires and cables are ~~not~~ considered expendable and will not be salvaged. Salvaged components will be placed in a designated area by the AGENCY within close proximity of the vehicle in an accessible work space.

Prior to removing the existing mobile video camera systems, it is both the responsibility of the AGENCY and the AXON Installer to test the vehicle's systems' operation to identify and operate, documenting any existing component or system failures and in detail, identify which components of the existing mobile video camera system will be removed by the AXON Installer.

In-Car Hardware/Software Delivery and Installation

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer, who will install and configure in each vehicle in accordance with the specifications detailed in the system's installation manual and its relevant addendum(s). Applicable in-car hardware will be installed and configured as defined and validated by the AGENCY during the pre-deployment discovery process.

If a specified vehicle is unavailable on the date and time agreed upon by the parties, AGENCY will provide a similar vehicle for the installation process. Delays due to a vehicle, or substitute vehicle, not being available at agreed upon dates and times may results in additional fees to the AGENCY. If the AXON Installer determines that a vehicle is not properly prepared for installation ("Not Fleet Ready"), such as a battery not being properly charged or properly up-fit for in-service, field operations, the issue shall be reported immediately to the AGENCY for resolution and a date and time for the future installation shall be agreed upon by the parties.

Upon completion of installation and configuration, AXON will systematically test all installed and configured in-car hardware and software to ensure that ALL functions of the hardware and software are fully operational and that any deficiencies are corrected unless otherwise agreed upon by the AGENCY, installation, configuration, test and the correct of any deficiencies will be completed in each vehicle accepted for installation.

Prior to installing the Axon Fleet camera systems, it is both the responsibility of the AGENCY and the AXON Installer to test the vehicle's existing systems' operation to identify, document any existing component or vehicle systems' failures. Prior to any vehicle up-fitting the AXON Installer will introduce the system's components, basic functions, integrations and systems overview along with reference to AXON approved, AGENCY manuals, guides, portals and videos. It is both the responsibility of the AGENCY and the AXON Installer to agree on placement of each components, the antenna(s), integration recording trigger sources and customer preferred power, ground and ignition sources prior to permanent or temporary installation of an Axon Fleet camera solution in each vehicle type. Agreed placement will be documented by the AXON Installer.

AXON welcomes up to 5 persons per system operation training session per day, and unless otherwise agreed upon by the AGENCY, the first vehicle will be used for an installation training demonstration. The second vehicle will be used for an assisted installation training demonstration. The installation training session is customary to any AXON Fleet installation service regardless of who performs the continued Axon Fleet system installations.

The customary training session does not ‘certify’ a non-AXON Installer, customer-employed Installer or customer 3rd party Installer, since the AXON Fleet products does not offer an Installer certification program. Any work performed by non-AXON Installer, customer-employed Installer or customer 3rd party Installer is not warrantied by AXON, and AXON is not liable for any damage to the vehicle and its existing systems and AXON Fleet hardware.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.3**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Bhavna Chaudhary, Acting Administrative Services Director

SUBJECT: Resolution authorizing execution of the renewal subscription agreement with Info-Tech Research Group for Information Technology (IT) and Cybersecurity research, advisory, and consulting services in an amount not-to-exceed $170,000

RECOMMENDED ACTION

Staff recommends City Council authorize execution of the renewal subscription agreement with Info-Tech research Group under their Federal GSA supply schedule for a three-year term not-to-exceed $170,000.

SUMMARY

Info-Tech Research Group provides Information Technology (IT) and Cybersecurity research, advisory, and consulting services including technology-based business research, industry-specific reporting, best-practice methodologies, benchmarking, and market analysis research. Info-Tech's library of research and consulting are needed practice aids for proper Governance of Information and Technology. Without consultant services the IT and Cybersecurity divisions would need additional staffing and budget to conduct research.

DISCUSSION

Info-Tech Research Group provides the City with a number of resources including software and service reviews, monthly local government roundtable meetings, project blueprints, tool and templates, online workshops, training, unlimited analyst calls, contract reviews, industry research, industry benchmarking, and a dedicated executive advisor.

In the last year, City staff have leveraged many tools, templates, training resources, analysis calls, advisory calls, and industry research resources. The City will be leveraging Info-Tech's online workshop in January to conduct an IT and Cybersecurity strategic plan. Last year the City also conducted five assessments from Info-Tech including:

- CIO Business Vision InfoTech Assessment
- Security Business Satisfaction & Alignment Assessment

- End User Satisfaction Survey
- Security Governance & Management Scorecard Assessment
- CIO/CEO Alignment Assessment

Staff recommends Council authorize execution of the renewal subscription agreement with Info-Tech Research Group under their Federal GSA supply schedule for a three-year term not-to-exceed $170,000.

The Federal GSA supply schedule is a long-term governmentwide contract with commercial firms providing federal, state, and local government buyers access to more than 11 million commercial supplies (products) and services at volume discount pricing. By leveraging the Federal GSA schedule the City ensures a best value prices for those product and services.

The use of the Federal GSA supply schedule is authorized by Livermore Municipal Code 2.68.390 "*Purchases of supplies and equipment through cooperative purchasing arrangements.*"

FISCAL AND ADMINISTRATIVE IMPACTS

An appropriation for Info-Tech Research Group subscription already exists in both years of the current budget as part of the Cybersecurity Fund (725), therefore no additional appropriation is necessary. Appropriations sufficient to cover future year's licensing costs will be incorporated into future budget cycles for approval.

ATTACHMENTS

1. Info-Tech GSA Federal Supply Schedule
2. Resolution
3. Exhibit A - City of Livermore ITRG Membership Renewal df

Prepared by: Donald Hester
Acting Administrative Services Director

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

U.S. General Services Administration

Federal Supply Service Authorized Federal Supply Schedule Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address GSA Advantage!® is: GSAAdvantage.gov.

SCHEDULE	Multiple Award Schedule (MAS)
LARGE CATEGORY	Information Technology
SUBCATEGORY	IT Services, IT Software
SPECIAL ITEM NUMBER (SIN)	511210 Software Licenses 54151S Information Technology Professional Services OLM Order Level Materials
FCS/PSC CODE	DA01 IT and Telecom - Business Application/Application Development Support Services (Labor) 7A21 IT and Telecom - Business Application Software (Perpetual License Software)
CONTRACT NUMBER	GS-35F-298GA
PERIOD COVERED BY CONTRACT	March 17, 2017 to March 16, 2022

Pricelist current through Modification PA-0033 Effective August 05, 2021

For more information on ordering from Federal Supply Schedules go to the GSA Schedules page at GSA.gov.

Info-Tech Research Group Inc.
3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169 | 1-888-670-8889, 702-446-3782 (Fax) | www.infotech.com

Business size: Large Business

Customer Information 3

About Info-Tech Research Group (ITRG) 5

GSA Offering – Service Levels 7
Service Levels GSA Rates

Membership Features 10

Product & Feature Definitions 12

GSA Offering – Consulting 25
Labor Category Descriptions
Experience/Education Substitution Methodology
Labor Category GSA Rates

GSA Offering – Software Licenses 33

Service Level Details 34
Accessing Info-Tech Services
Dedicated Account Management

Info-Tech GSA Approved Terms of Use 35

Info-Tech GSA Approved Privacy Policy 40

myPolicies GSA Approved Terms of Use 42

McLean & Company GSA Offering – Service Levels 47
Service Levels GSA Rates

McLean & Company Membership Features 51

McLean & Company Product Offering 52

McLean & Company GSA Approved Terms of Use 65

McLean & Company GSA Approved Privacy Policy 70

Customer Information

1	Awarded Special Item Number (SIN)	**SIN 511210 Software Licenses** **SIN 54151S Information Technology Professional Services** **OLM Order Level Materials** *Eligible for Cooperative Purchasing and Disaster Recovery
2	Maximum order	$500,000.00
3	Minimum order	$100.00
4	Geographic coverage (delivery area)	Domestic delivery within 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and US territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.
5	Point(s) of production	London, Ontario, CANADA
6	Discount from list prices or statement of net price	GSA prices represent net price with discount included. To view and order from the complete catalog of products available under this GSA Schedule, please search under our contract number at the GSA Advantage! website.
7	Quantity discounts	None
8	Prompt payment terms	0%, Net 30 days Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.
9	Foreign items	All offerings are of Canadian origin.
10a	Time of delivery	1-day ARO
10b	Expedited delivery	Not applicable
10c	Overnight and 2-day delivery	Not applicable
10d	Urgent requirements	Not applicable
11	FOB point(s)	FOB destination
12a	Ordering addresses	Info-Tech Research Group Inc. 3960 Howard Hughes Parkway, Suite 500 Las Vegas, Nevada 89169

12b	Ordering procedures	For supplies and services, the ordering procedures information on Blanket Purchase Agreements (BPAs) is found in Federal Acquisition Regulation (FAR) 8.405-3
13	Payment address	Info-Tech Research Group Inc. 3960 Howard Hughes Parkway, Suite 500 Las Vegas, Nevada 89169
14	Warranty provision	Refer to GSA Approved Terms of Use and Privacy Policy
15	Export packing charges	Not covered on contract
16	Terms and conditions of rental, maintenance, and repair (if applicable)	Not applicable
17	Terms and conditions of installation (if applicable)	Not applicable
18a	Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable)	Not applicable
18b	Terms and conditions for any other services (if applicable)	Not applicable
19	List of service and distribution points	
20	List of participating dealers	Not applicable
21	Preventive maintenance	Not applicable
22a	Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants)	Not applicable
22b	If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g., contractor's website or other location). The EIT standards can be found at: www.Section508.gov/.	Not applicable
23	Data Universal Number System (DUNS) number	79692602
24	Notification regarding registration in System for Award Management (SAM) database	Info-Tech Research Group is registered in SAM.gov.

About Info-Tech Research Group (Info-Tech or ITRG)

About Us

Info-Tech Research Group ("Info-Tech" or "ITRG") is a full-service IT research, advisory, and professional services firm, founded in 1997, with over 700 full-time employees.

Over 40,000 members from around the globe rely on Info-Tech's practical approach and best-in-class research and services to help them navigate their complex IT and business issues.

Our IT research, advisory, and consulting services include technology-based business research, industry-specific reporting, best-practice methodologies, benchmarking, and market analysis research.

Additionally, Info-Tech's HR research and advisory division, McLean & Company, is the trusted partner of HR and leadership professionals around the world. Our unparalleled offering includes full-service assessments, practical action plans, impactful training, and more.

Our Approach

Info-Tech offers a practical approach to complex IT, HR, and business issues. Our consultants, including veteran IT professionals and CXOs, work side by side with you and your team in a cooperative approach that delivers results and provides you with the tools you need for continued success.

Our Memberships

Info-Tech's membership options provide services tailored for each role and member, ensuring clients pay only for services they are using. Our desire is to exceed expectations in delivering business value through the optimal execution of IT strategies, governance, project management, applications, infrastructure, security, business intelligence, and various other IT- and HR-related disciplines.

How We'll Work With You

Info-Tech's team of in-house analysts are available to support you with your top issues, including process improvement and project management on technical issues as well as strategic and management issues. We work with our clients as subject matter experts, developers, collaborators, and partners, connecting with individuals at their pace, not ours. We understand that each working environment is unique, and one size does not fit all.

ITRG Advantage

The following describes how Info-Tech provides unmatched services via our subscription offerings:

- Research publications that are practical and built to execute on projects.
- A research taxonomy that is connected and provides comprehensive coverage.
- Content format that is visual and built upon framework-driven content.
- Analyst calls are structured to be a series of calls to complete key initiatives.
- Contract Review Services offer thorough contract assessments where the member always retains the savings.
- Executive services are outcome driven based upon personalized relationships.

- Our unique Concierge Services are high-impact, one-day consulting engagements.
- Benchmarking services are powerful diagnostic tools based on real data and included within memberships.
- Our Workshops are five-day facilitated engagements to solve our members' biggest issues/most-pressing projects and initiatives.
- Membership terms are designed to maximize usage and value.

ITRG's GSA Offering

ITRG's current GSA offering consists of the following:

- **Service Levels** include advisory services, research content, and digital experiences.
- **Consulting** provides expert practitioners and advisors to effectively outsource IT initiatives or projects with the knowledge, skills, and tools to deliver quality-driven value.
- **Software Licenses** – myPolicies is an online policy management and administration software that streamlines the creation, approval, distribution, and monitoring of corporate policies, procedures, and forms.

GSA Offering – Service Levels (SIN 54151S)

SIN	MFR Part No	Product Group	Product Name	Product Description	Discount Price Offered To GSA (Including IFF)
54151S	21-009	Executive & Leadership Service Levels	CIO Counselor Membership	Key Membership Features: • A dedicated executive counselor to help you reach your goals and excel as a leader • 8 full-day onsite/online counselor visits (4 additional days) • 5-day onsite or online workshop to complete a key initiative • Access to Industry research & benchmarking • PLUS: All features of the Executive Counselor Membership are included	$90,931.99
54151S	21-008	Executive & Leadership Service Levels	Executive Counselor Membership	Key Membership Features: • A dedicated executive counselor to help you reach your goals and excel as a leader • 4 full-day onsite/online counselor visits (2 additional days) • Unlimited access to Concierge Services • 360° Personal Evaluation & Coaching Program to advance your career • Boardroom-level communication support • PLUS: All features of the Counselor Membership are included	$52,644.84
54151S	21-007	Executive & Leadership Service Levels	Counselor Membership	Key Membership Features: • A dedicated executive counselor to help you reach your goals and excel as a leader • 2 full-day onsite/online counselor visits • Unlimited software selection engagements • Custom benchmarking access • Access to McLean & Company • HR research • 90-day "Follow-Me" Service for leaders in transition • PLUS: All features of the Leadership Membership are included	$42,115.87
54151S	21-006	Executive & Leadership Service Levels	Leadership Membership	Key Membership Features: • An executive advisor to ensure you get the most out of your membership • Front-of-the-line analyst access • Unlimited Contract Review service • Unlimited analyst calls to help you through your most challenging projects • Full access to all diagnostic benchmarking programs • One annual software selection engagement • PLUS: All features of the Advisory Membership are • included	$25,460.96

54151S	21-005	Advisory & Team Service Levels	Advisory Membership	Key Membership Features: • An executive advisor to ensure you get the most out of your membership • Unlimited analyst calls to help you through your most challenging projects • Access to 100+ research analysts with deep subject matter expertise • Full access to all diagnostic benchmarking programs • One annual software selection engagement • PLUS: All features of the Team Membership are included	$18,760.71
54151S	21-035	Advisory & Team Service Levels	Industry Roundtable & Benchmarking	Access to industry-specific content and benchmarking Industry-specific advisory service included Coverage includes: Government, Professional Services, Financial Services, Retail & Wholesale, Professional Associations, Transportation & Warehousing Gaming & Hospitalities, Media & Information, Arts & Entertainment, Manufacturing, Education, Healthcare, Utilities, Construction, Mining, Real Estate, Food & Beverage, Agriculture	$18,760.71
54151S	20-030	Advisory & Team Service Levels	Concierge Service	• Unlimited access to 20+ high-impact Concierge Services • Accelerated 1-day consulting • Engagements with onsite or online delivery • Also available to Advisory & Team Services Levels (Small Enterprise)	$18,760.71
54151S	21-004	Advisory & Team Service Levels (Small Enterprise)	Small Enterprise Advisory Membership	Key Membership Features: • An executive advisor to ensure you get the most out of your membership • Unlimited analyst calls to help you through your most challenging projects • Access to 100+ research analysts with deep subject matter expertise • Full access to all diagnostic benchmarking programs • One annual software selection engagement • One Contract Review engagement • PLUS: All features of the Team Membership are included	$14,261.96
54151S	21-036	Advisory & Team Service Levels (Small Enterprise)	Industry Research and Benchmarking (Small Enterprise)	Access to industry-specific content and benchmarking Industry-specific advisory service included Coverage includes: Government, Professional Services, Financial Services, Retail & Wholesale, Professional Associations, Transportation & Warehousing Gaming & Hospitalities, Media & Information, Arts & Entertainment, Manufacturing, Education, Healthcare, Utilities, Construction, Mining, Real Estate, Food & Beverage, Agriculture	$4,690.18
54151S	21-101	Advisory & Team Service Levels	Team Membership	Key Membership Features: • Unlimited role-based access to all research & project methodologies • Access to the Info-Tech Academy online eLearning platform • Unlimited software selection content & reports • IT Leadership Development Certificate & Online Training Program	$2,775.82

54151S	WSHOP-076	Info-Tech Research Group	Onsite Workshop	Onsite Workshops offer an easy way to accelerate your project. We take you through every phase of your project and ensure you have a roadmap in place to complete your project successfully. Over the course of five days, our expert facilitators help you complete a key initiative, work through critical project deliverables, and train your team.	$17,372.80
54151S	WSHOP-077	Info-Tech Research Group	Add an Onsite Workshop to Info-Tech Membership	Add an Onsite Workshop to an Info-Tech Membership to obtain our lowest Onsite Workshop prices (limited to one workshop per Info-Tech Membership at this price). 1 Onsite Workshop: Increase your level of support by adding onsite expert services to your Info-Tech Membership. Engage your team for up to 5 days in an Onsite Workshop on any number of core IT processes or IT projects, facilitated by the analysts who wrote the research.	$13,898.24

Membership Features

	CIO Counselor Membership	Executive Counselor Membership	Counselor Membership	Leadership Membership	Advisory Membership	Team Membership	Reference Membership
Service Delivery							
Dedicated Executive Counselor	✓	✓	✓				
Onsite Counselor Visits	8/year	4/year	2/year				
Executive Advisor				✓	✓		
Custom Key Initiative Plan	✓	✓	✓	✓	✓		
Advisory Services							
Five-Day Onsite or Online Workshop*	✓						
Industry Advisory Access*	✓	(Optional) **					
Concierge Services*	✓	✓					
Custom Benchmarking	✓	✓	✓				
Software Selection as a Service	Unlimited	Unlimited	Unlimited	1/year	1/year		
Contract Review Service	Unlimited	Unlimited	Unlimited	Unlimited			
Analyst Calls	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited		
Front-of-the-Line Analyst Access	✓	✓	✓	✓			
Research Content							
Industry Research & Benchmarking*	✓	(Optional) **					
Technology Project Research	✓	✓	✓	✓	✓	✓	✓
IT Process Research	✓	✓	✓	✓	✓	✓	✓
People & Leadership Research	✓	✓	✓	✓	✓	✓	✓
Tools & Templates Library	✓	✓	✓	✓	✓	✓	✓
Software Selection Content	✓	✓	✓	✓	✓	✓	✓
McLean & Company HR Research	✓	✓	✓				
Digital Experiences							
Info-Tech Academy Training Platform	✓	✓	✓	✓	✓	✓	✓
Leadership Development Program	✓	✓	✓	✓	✓	✓	
IT Diagnostic & Benchmarking Programs	✓	✓	✓	✓	✓		
IT Metrics Dashboard	✓	✓	✓	✓	✓		
Industry Roundtables - Virtual	✓	✓	✓	✓	✓		
360-Degree Feedback Tool	✓	✓					

* Product is available as a separate add-on
** Feature can be added to Membership as a substitute for onsite visits

SE Membership Features

	CIO Counselor Membership	Executive Counselor Membership	Counselor Membership	Leadership Membership	SE Advisory Membership	Team Membership	Reference Membership
Service Delivery							
Dedicated Executive Counselor	✓	✓	✓				
Onsite Counselor Visits	8/year	4/year	2/year				
Executive Advisor				✓	✓		
Custom Key Initiative Plan	✓	✓	✓	✓	✓		
Advisory Services							
Five-Day Onsite or Online Workshop*	✓						
Industry Advisory Access*	✓	(Optional) **					
Concierge Services*	✓	✓					
Custom Benchmarking	✓	✓	✓				
Software Selection as a Service	Unlimited	Unlimited	Unlimited	1/year	1/year		
Contract Review Service	Unlimited	Unlimited	Unlimited	Unlimited	1/year		
Analyst Calls	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited		
Front-of-the-Line Analyst Access	✓	✓	✓	✓			
Research Content							
Industry Research & Benchmarking*	✓	(Optional) **					
Technology Project Research	✓	✓	✓	✓	✓	✓	✓
IT Process Research	✓	✓	✓	✓	✓	✓	✓
People & Leadership Research	✓	✓	✓	✓	✓	✓	✓
Tools & Templates Library	✓	✓	✓	✓	✓	✓	✓
Software Selection Content	✓	✓	✓	✓	✓	✓	✓
McLean & Company HR Research	✓	✓	✓				
Digital Experiences							
Info-Tech Academy Training Platform	✓	✓	✓	✓	✓	✓	✓
Leadership Development Program	✓	✓	✓	✓	✓	✓	
IT Diagnostic & Benchmarking Programs	✓	✓	✓	✓	✓		
IT Metrics Dashboard	✓	✓	✓	✓	✓		
Industry Roundtables - Virtual	✓	✓	✓	✓	✓		
360-Degree Feedback Tool	✓	✓					

* Product is available as a separate add-on
** Feature can be added to Membership as a substitute for onsite visits

Product & Feature Definitions

Service Delivery	
Dedicated Executive Counselor	Members receive personalized and confidential one-on-one support from a seasoned IT executive to achieve their personal/organizational goals, grow as a leader, and prepare for the next chapter of their career.
Onsite Counselor Visits	The Executive Counselor will travel to the member's location throughout the year to spend the day working through the member's agenda. The Counselor will address their top personal and organizational challenges, presenting relevant research and conducting working sessions.
Executive Advisor	Executive Advisors provide quarterly strategy planning support calls to members to help curate membership content and ensure they succeed against their initiatives.
Custom Key Initiative Plan	A fully customized plan of the member's top three to five initiatives mapped to all relevant Info-Tech content and experiences to assist with execution and to ensure success.
Advisory Services	
Five-Day Onsite or Online Workshop*	A five-day onsite or online engagement where our expert facilitators help our members complete a key initiative, work through critical project deliverables, and train your team.
Industry Advisory Access*	Unlimited phone access to our team of industry experts to guide members through our industry research content and provide insights into the specific trends and challenges of our members' industries.
Concierge Services*	A powerful set of over 20 high-impact, single-day consulting engagements designed to be delivered online or onsite.
Custom Benchmarking	The ability to request customized benchmark reporting from our vast database and member network by using our diagnostics & benchmarking.
Software Selection as a Service	Five advisory calls over a five-week period to accelerate and improve the member's software selection process.
Contract Review Service	Unlimited access to our IT contracts experts where they will provide members with a thorough assessment of the terms and conditions and proposed spending to help the member get the best deal possible. The member receives a written summary of the notes and recommended next steps to optimize upcoming purchases and renewals.
Analyst Calls	Unlimited phone access to our team of subject matter experts to guide members through their most challenging technology projects. An analyst from the team who wrote the research works with the member at key project milestones to advise, coach, and offer insight.
Front-of-the-Line Analyst Access	Members receive priority booking and are guaranteed an analyst call within one business day after the request is submitted.
Research Content	
Industry Research & Benchmarking*	In-depth, industry-specific research content that includes benchmarking reports, trends analysis, technology evaluations, and reference architectures.
Technology Project Research	Over 450 do-it-yourself project blueprints to help our members save time and money when executing their most-critical IT initiatives.
IT Process Research	A comprehensive and connected set of 45 project methodologies and best practices for improving and optimizing core IT processes.
People & Leadership Research	Strategies on how to lead teams effectively and resources proven to help you become a better manager.
Tools & Templates Library	Members save time creating critical IT documents and project deliverables with our massive, ready-to-deploy library of over 1,000 tools and templates.
Software Selection Content	SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.
McLean & Company HR Research	Unlimited access to all HR research content through our human resources division, McLean & Company.
Digital Experiences	
Info-Tech Academy Training Platform	An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.
Leadership Development Program	An online or in-person leadership program focused on improving decision-making and people-management skills for high-potential staff.
IT Diagnostic & Benchmarking Programs	Over 20 prebuilt survey programs to ask business and IT stakeholders insightful questions and convert their responses into reports that help IT departments make critical decisions.
IT Metrics Dashboard	An online portal for collaboratively collecting, managing, and communicating success on key IT metrics and projects.
Industry Roundtables - Virtual	Access to monthly virtual industry roundtable discussions and peer networking to explore common challenges, share best practices, and help shape our industry research agenda.
360-Degree Feedback Tool	An easy-to-use, customizable employee feedback tool to give IT leaders a multi-faceted evaluation across their key competencies.

CIO Counselor Membership

The CIO Counselor is our premier membership designed to help CIOs in larger, complex organizations deliver results and improve their effectiveness as a leader. It includes all available content and services and is the best way to experience Info-Tech.

Service Delivery

Dedicated Executive Counselor

Members receive personalized and confidential one-on-one support from a seasoned IT executive to achieve their personal/organizational goals, grow as a leader, and prepare for the next chapter of their career.

Also Includes:

- 8 Onsite Counselor Visits
- Custom Key Initiative Plan
- Designated Account Manager

Research Content

Project Blueprints

Over 450 step-by-step project methodologies to help members execute technology projects and improve core IT processes.

Tools & Templates Library

Over 1,000 ready-to-deploy tools and templates to save members time creating critical IT documents and project deliverables.

Software Selection Content

SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.

Premium Industry Content

In-depth, industry-specific research content that includes benchmarking reports, trends analysis, technology evaluations, and reference architectures.

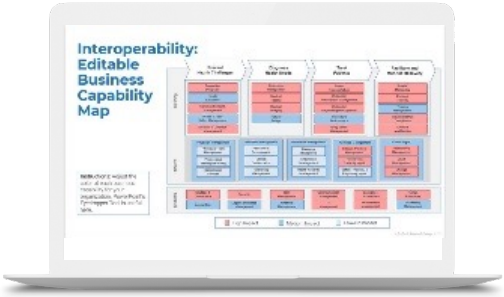
Also Includes:

- People & Leadership Research
- McLean & Company HR Research

Sample Key Initiative Plan

Sample Template

Sample Data Quadrant Report



Sample Industry Content

CIO Counselor Membership

Advisory Services

Onsite or Online Workshop
A one-week collaborative engagement where our expert analysts help you complete one of your most urgent initiatives, produce a finished deliverable, and transfer knowledge to your team.

Unlimited Analyst Calls
Unlimited phone access to our team of subject matter experts to guide you through your most challenging technology projects. An analyst from the team who wrote the research works with the member at key project milestones to advise, coach, and offer insight.

Industry Research & Benchmarking
In-depth, industry-specific research content and advisory service that includes benchmarking reports, trends analysis, technology evaluations, and reference architectures.

Also Includes:
- Concierge Services
- Software Selection as a Service
- Contract Review Service
- Custom Benchmarking
- Front-of-the-Line Analyst Access

Digital Experiences

IT Diagnostic & Benchmarking Programs
Over 20 prebuilt survey programs to ask business and IT stakeholders insightful questions and convert their responses into reports that help IT departments make critical decisions.

Info-Tech Academy Training Platform
An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.

Also Includes:
- Industry Roundtable – Virtual
- IT Metrics Dashboard
- Leadership Development Program
- 360-Degree Feedback Tool

Sample Diagnostic Report

Executive Counselor Membership

The Executive Counselor is one of our top memberships, designed to help CIOs and IT leaders deliver value, achieve goals, and improve and grow the contributions of IT. It includes all People & Leadership content required to manage the department and develop as a leader.

Service Delivery

Dedicated Executive Counselor

Members receive personalized and confidential one-on-one support from a seasoned IT executive to achieve their personal/organizational goals, grow as a leader, and prepare for the next chapter of their career.

Also Includes:

- 4 Onsite Counselor Visits
- Custom Key Initiative Plan
- Designated Account Manager

Sample Key Initiative Plan

Research Content

Project Blueprints

Over 450 step-by-step project methodologies to help members execute technology projects and improve core IT processes.

Tools & Templates Library

Over 1,000 ready-to-deploy tools and templates to save members time creating critical IT documents and project deliverables.

Software Selection Content

SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.

McLean & Company HR Research

Unlimited access to all human resources research content through our HR division, McLean & Company.

Also Includes:

- People & Leadership Research
- IT Process Research

Sample Template

Sample Data Quadrant Report

Executive Counselor Membership

Advisory Services

Onsite or Online Workshop
A one-week collaborative engagement where our expert analysts help you complete one of your most urgent initiatives, produce a finished deliverable, and transfer knowledge to your team.

Unlimited Analyst Calls
Unlimited phone access to our team of subject matter experts to guide you through your most challenging technology projects. An analyst from the team who wrote the research works with the member at key project milestones to advise, coach, and offer insight.

Industry Research & Benchmarking
In-depth, industry-specific research content and advisory service that includes benchmarking reports, trends analysis, technology evaluations, and reference architectures.

Also Includes:
- Concierge Services
- Software Selection as a Service
- Contract Review Service
- Custom Benchmarking
- Front-of-the-Line Analyst Access

Digital Experiences

IT Diagnostic & Benchmarking Programs
Over 20 prebuilt survey programs to ask business and IT stakeholders insightful questions and convert their responses into reports that help IT departments make critical decisions.

Info-Tech Academy Training Platform
An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.

Also Includes:
- Industry Roundtable – Virtual
- IT Metrics Dashboard
- Leadership Development Program
- 360-Degree Feedback Tool

Sample Diagnostic Report

Counselor Membership

The Counselor membership is designed to improve the maturity of IT and develop CIOs and IT leaders with expert guidance complemented by robust services, research, tools, and resources. It includes our most popular content and services to execute key initiatives.

Service Delivery

Dedicated Executive Counselor

Members receive personalized and confidential one-on-one support from a seasoned IT executive to achieve their personal/organizational goals, grow as a leader, and prepare for the next chapter of their career.

Also Includes:

- 2 Onsite Counselor Visits
- Custom Key Initiative Plan
- Designated Account Manager

Sample Key Initiative Plan

Research Content

Project Blueprints

Over 450 step-by-step project methodologies to help members execute technology projects and improve core IT processes.

Tools & Templates Library

Over 1,000 ready-to-deploy tools and templates to save members time creating critical IT documents and project deliverables.

Software Selection Content

SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.

McLean & Company HR Research

Unlimited access to all human resources research content through our HR division, McLean & Company.

Also Includes:

- People & Leadership Research
- IT Process Research

Sample Template

Sample Data Quadrant Report

Counselor Membership

Advisory Services

Software Selection as a Service
Five advisory calls over a five-week period to accelerate and improve the member's software selection process.

Unlimited Analyst Calls
Unlimited phone access to our team of subject matter experts to guide you through your most challenging technology projects. An analyst from the team who wrote the research works with the member at key project milestones to advise, coach, and offer insight.

Custom Benchmarking
The ability to request customized benchmark reporting from our vast database and member network by using our Diagnostic & Benchmarking Programs.

Also Includes:
- Contract Review Service
- Front-of-the-Line Analyst Access

Digital Experiences

IT Diagnostic & Benchmarking Programs
Over 20 prebuilt survey programs to ask business and IT stakeholders insightful questions and convert their responses into reports that help IT departments make critical decisions.

Info-Tech Academy Training Platform
An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.

Also Includes:
- Industry Roundtable – Virtual
- IT Metrics Dashboard
- Leadership Development Program

Sample Diagnostic Report

Leadership Membership

The Leadership membership is designed to help IT leaders manage teams, improve processes, and save time with access to analysts and world-class research, services, tools, and templates. It includes our most popular content and services to execute on IT projects.

Service Delivery

Executive Advisor

Executive Advisors provide quarterly strategy planning support calls to members to help curate membership content and ensure they succeed against their initiatives.

Also Includes:

- Custom Key Initiative Plan
- Designated Account Manager

Research Content

Project Blueprints

Over 450 step-by-step project methodologies to help members execute technology projects and improve core IT processes.

Tools & Templates Library

Over 1,000 ready-to-deploy tools and templates to save members time creating critical IT documents and project deliverables.

Software Selection Content

SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.

People & Leadership Research

Strategies on how to lead teams effectively and resources proven to help you become a better manager.

Also Includes:

- IT Process Research

Sample Key Initiative Plan

Sample Template

Sample Data Quadrant Report

Leadership Membership

Advisory Services

Software Selection as a Service (1/year)
Five advisory calls over a five-week period to accelerate and improve the member's software selection process.

Unlimited Analyst Calls
Unlimited phone access to our team of subject matter experts to guide you through your most challenging technology projects. An analyst from the team who wrote the research works with the member at key project milestones to advise, coach, and offer insight.

Contract Review Service
Unlimited access to our IT contracts experts where they provide members with a thorough assessment of the terms and conditions and proposed spending to help them get the best deal possible. The member receives a written summary of the notes and recommended next steps to optimize upcoming purchases and renewals.

Also Includes:
- Front-of-the-Line Analyst Access

Digital Experiences

IT Diagnostic & Benchmarking Programs
Over 20 prebuilt survey programs to ask business and IT stakeholders insightful questions and convert their responses into reports that help IT departments make critical decisions.

Info-Tech Academy Training Platform
An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.

Also Includes:
- Industry Roundtable – Virtual
- IT Metrics Dashboard
- Leadership Development Program

Sample Diagnostic Report

Advisory Membership

The Advisory membership is designed to help IT leaders and managers complete projects and improve processes by leveraging our team of expert analysts and world-class research. It includes our basic content and services and is a great way for IT employees to experience and leverage the core services of Info-Tech.

Service Delivery

Executive Advisor

Executive Advisors provide quarterly strategy planning support calls to members to help curate membership content and ensure they succeed against their initiatives.

Also Includes:

- Custom Key Initiative Plan
- Designated Account Manager

Sample Key Initiative Plan

Research Content

Project Blueprints

Over 450 step-by-step project methodologies to help members execute technology projects and improve core IT processes.

Tools & Templates Library

Over 1,000 ready-to-deploy tools and templates to save members time creating critical IT documents and project deliverables.

Software Selection Content

SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.

People & Leadership Research

Strategies on how to lead teams effectively and resources proven to help you become a better manager.

Also Includes:

- IT Process Research

Sample Template

Sample Data Quadrant Report

Advisory Membership

Advisory Services

Software Selection as a Service (1/year)
Five advisory calls over a five-week period to accelerate and improve the member's software selection process.

Unlimited Analyst Calls
Unlimited phone access to our team of subject matter experts to guide you through your most challenging technology projects. An analyst from the team who wrote the research works with the member at key project milestones to advise, coach, and offer insight.

Digital Experiences

IT Diagnostic & Benchmarking Programs
Over 20 prebuilt survey programs to ask business and IT stakeholders insightful questions and convert their responses into reports that help IT departments make critical decisions.

Info-Tech Academy Training Platform
An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.

Also Includes:
- Industry Roundtable – Virtual
- IT Metrics Dashboard
- Leadership Development Program

Sample Diagnostic Report

Team Membership

The Team membership is our basic membership designed to help IT managers and employees execute on projects and improve processes with world-class research, tools, and templates. It includes the core research product and is a great way to become familiar with Info-Tech.

Service Delivery

Account Manager

Your Account Manager will ensure you get the most value from your membership by helping you understand your entitlements and the resources you can leverage to help you excel in your role.

Research Content

Project Blueprints

Over 450 step-by-step project methodologies to help members execute technology projects and improve core IT processes.

Tools & Templates Library

Over 1,000 ready-to-deploy tools and templates to save members time creating critical IT documents and project deliverables.

People & Leadership Research

Strategies on how to lead teams effectively and resources proven to help you become a better manager.

IT Process Research

A comprehensive and connected set of 45 project methodologies and best practices for improving and optimizing core IT processes.

Software Selection Content

SoftwareReviews' vendor evaluations and rankings reports that aggregate feedback from real IT professionals and business leaders.

Sample Key Initiative Plan

Sample Template

Sample Data Quadrant Report

Team Membership

Digital Experiences

Leadership Development Program
An online or in-person leadership program focused on improving decision-making and people-management skills for high-potential staff.

Info-Tech Academy Training Platform
An online learning management platform with 100+ hours of video content, 50+ quizzes, and 9 certification programs.

Sample Diagnostic Report

GSA Offering – Consulting (SIN 54151S)

Info-Tech Research Group is a full-service professional IT research, advisory, and professional services firm founded in 1997, with approximately 700 full-time employees throughout North America. Our services include technology-based business research, industry-specific reporting, best-practice methodologies, benchmarking, and market analysis research. Info-Tech offers a practical approach to complex technology and business issues.

Our consulting services provide you with expert practitioners and advisors throughout the duration of your engagement, enabling you to effectively outsource your IT initiative or project to those with the knowledge, skills, and tools to deliver quality-driven value. Info-Tech Consulting Services blends the insights of our more than 30,000 members with the market-approved talents and methodologies of our consulting staff to bring your organization a unique, powerful, and holistic professional services offering.

Leveraging the deep knowledge of our renowned research firm, our management consultants build practical, tactical, and actionable roadmaps for IT departments to harness the power of technology. Whether resolving complex issues or accelerating projects, our custom engagements drive measurable results, not only in the next three to six months but also in the years beyond.

With decades of IT consulting experience, our principals have introduced cultures of innovation across various industries in public and private sectors, empowering IT professionals to execute and accelerate strategic initiatives that drive value for their organization at any stage.

As part of the world's fastest-growing IT research firm, our consultants are backed by a team of subject matter experts who have made careers of studying the nuances of IT, together spending 70,000 hours annually researching best practices, benchmarks, and trends across numerous industries.

Info-Tech Research Group Consulting – Scope

Info-Tech's Scope of Work is defined broadly by the following strategic and high-value activities:

CIO Services

Info-Tech can provide the client with advisory services pertaining to Strategy, Transformation, and Governance to build a forward-looking organization. Through its Strategy practice, Info-Tech can support leaders and executive teams by analyzing the client's current state of initiatives and processes, identifying key organizational priorities, and building a forward-oriented, business-aligned strategy. Info-Tech can also provide transformation support and support the client through times of change by outlining a future-oriented digital delivery model and aligned business models. Lastly, Info-Tech CIO Services also provides Governance advisory, which includes improving decision making and building alignment through process improvement, business-IT alignment, and policy management.

Data and Analytics/AI

Info-Tech can provide the client with analysis and recommendations for developing data and analytics/BI/AI strategies, governance, assessment/benchmarking, system selections, applied research, operating models, business cases, and implementation roadmaps/plans to better meet business objectives. Info-Tech can also assist the client with optimizing data management capabilities, including helping the client to mature data quality, metadata management, primary/reference data, data architecture, data modeling, data warehousing, and data integration. Info-Tech can provide advanced analytics/BI/AI capabilities to the client to enable better business insight and more effective decision making.

Infrastructure

Info-Tech can provide the client with the development of IT Infrastructure services working to develop an IT infrastructure strategy that is right for the client's needs. This includes IT cloud strategies, designs, roadmaps and selection services for infrastructure solutions encompassing private/public/hybrid cloud services, data center migrations, secure remote work/unified communications, and business continuity planning and disaster recovery planning program management. Info-Tech can also assist with the complete IT infrastructure lifecycle from design to implementation, enabling the successful adoption of selected solutions.

Security

Info-Tech's cybersecurity-certified consultants, engineers, and analysts provide a vendor-agnostic and holistic approach to identifying, managing, and remediating organizational risk. Our cybersecurity practice introduces operational stability, data privacy, and digital brand protection. Using industry-recognized frameworks and best practices, our consultants deliver repeatable, affordable, and goals-orientated solutions that meet the most complex enterprise requirements. Info-Tech's core teams and partners are considered subject matter experts who have attained the highest industry certifications.

Independent Verification & Validation

Info-Tech can provide a variety of implementation/technical oversight and Independent Verification & Validation (IV&V) services. Using an adaptable methodology developed for the UN and vetted through public and private clients, our goal is to help ensure the success of your project. We holistically evaluate the management areas (program management, team structure, risk management, staffing levels, etc.), major technical areas (development methodologies, quality assurance, data migration management, etc.), and major communication areas (OCM, knowledge transfer, stakeholder management, etc.) to help the project meet its budgetary, scope, and timeline goals. We can adapt the methodology across virtually all moderate to large IT project types.

Vendor Management and Selection

Info-Tech can provide the client with Vendor advisory services including Vendor Management, Requirements Gathering, and Vendor Selection and Benchmarking. Info-Tech Vendor services can build a vendor strategy for the client through interviews and analysis and identify recommendations

to optimize or develop a Vendor Management program. Through its Requirements and Selection service, Info-Tech can support teams by building the case for change, evaluating key capabilities required, documenting functional and non-functional requirements aligned with the client's needs, and using our strategic selection framework to assist the client during the vendor selection phase. Additionally, Info-Tech also offers Market Assessment and Benchmarking services to assess the client's market/solution landscape and benchmarking in terms of capabilities and spend.

Enterprise Applications

Info-Tech can provide the client with the development of enterprise application strategies, roadmaps, and selection services for solutions including ERP, HCM/HRIS, CRM/CXM, and most other business applications. This includes developing solution requirements, RFPs/RFQs, vendor validation, and solution/implementation partner recommendations. Info-Tech can also assist with implementation activities such as risk and change management, project management, business process design, and testing/training support to enable successful implementation and adoption of selected solutions. Additionally, Info-Tech can assist in the rationalization of your application portfolios and deliver a roadmap to achieve savings.

Item No.	GSA Schedule Labor Category	Minimum Education	Minimum Experience	Labor Category Description
1	Vice President	Master's	12 years	Lead and consult on large business process/technology transformation programs. Manage business unit/segment. Advise technology clients. Deliver improvements and cost savings. Recruit, develop, and manage teams. Deliver value to customers. Act as primary contact with client executives; plan and facilitate critical meetings. Support clients in defining agenda or corporate strategy. Develop account plans and take responsibility for the development and growth of strategic client accounts. Develop overall administrative, financial, and time commitments for multiple engagements; set overall goals and drive agendas to ensure goals are met. Manage multiple engagements and provide mentoring and guidance to project managers and team members. Perform engagement quality reviews and drive continuous improvement efforts. Act as a subject matter expert on engagements. Serve as a sounding board for engagement team's strategic direction. Provide executive leadership on sales calls and oversee multiple proposal development efforts.
2	Director	Bachelor's	12 years	Extensive technology/business process knowledge in area(s) of expertise (SME). Develop business/technology strategy capabilities. Drive client thinking and act as thought leader. Support client partners in defining client agenda or corporate strategy. Manage multiple engagements and provide mentoring and guidance to project managers and team members. Act as a subject matter expert on engagements. Perform engagement quality reviews and drive continuous improvement efforts. Plan and facilitate significant meetings with client executives. Develop overall administrative, financial, and time commitments for multiple projects and set overall goals for each. Ensure effective and creative idea generation among team members. Conduct primary research, including market surveys of customers, vendors, lines of business, and users, as well as secondary research. Analyze findings, develop insights, and integrate individual work streams into a single, cohesive report with client-specific actionable recommendations.
3	Senior Manager	Bachelor's	10 years	Leading or consulting on large business process/technology projects and programs. Drive client thinking and act as thought leader. Support client partner in defining client agenda or corporate strategy. Plan and facilitate significant meetings with client executives. Develop overall administrative, financial, and time commitments for multiple projects and set overall goals for each. Ensure effective and creative idea generation among team members. Conduct primary research, including market surveys of vendors and users, as well as secondary research. Analyze findings, develop insights, and integrate individual work streams into a single, cohesive report with client-specific actionable recommendations. Prepare engagement review forms and provide coaching and mentoring for team members. Identify and pursue sales opportunities and leads, which may come from meetings, clients, other consultants, the sales force, vendors, and others. Support and assist the sales organization by making joint sales calls. Contribute to account plan development and proactively follow up on all assigned leads. Write and present proposals to prospective clients and contracts for engagements.

4	Manager	Bachelor's	8 years	Manage and support business/technology projects. Plan and facilitate meetings with client project management. Meet with client and develop project questions, gain understanding of the client's environment and assure that recommendations can be implemented. Manage small-to-medium teams by developing work plans and managing project execution timelines. Prepare engagement review forms for team members. As an independent contributor, complete sections of significant customized consulting assignments covering a variety of subject areas, including specific technologies and products, markets and market trends, competitor analysis, financial impact, etc. Act as project point person both internally and externally. Lead the team's analytical thinking and structure for an assignment. Conduct primary research, including market surveys of vendors and users, as well as secondary research. Analyze findings, develop insights, and integrate individual work streams into a single, cohesive report with client-specific actionable recommendations. Develop and submit content for proposals. Support development of work plan estimates and resource/staff plans. Recognize and report new business opportunities; collaborate with sales partners and subject matter experts to pursue and close opportunities.
5	Senior Consultant	Bachelor's	5 years	Support business and technology projects by gathering, compiling, and analyzing data; surveying and statistical analysis; and developing deliverable reports. Participate in client conferences and take part in client communications. Completesections of significant customized consulting assignments covering a variety of subject areas, including specific technologies and products, markets and market trends, competitor analysis, financial impact, etc. Provide the analytical thinking and structure for an assignment and participate in discussion groups. Conduct and lead interviews and small meetings for assignment. Analyze findings, develop insights, and prepare reports with client-specific actionable recommendations. Monitor project execution to timeline and budget. Develop and submit content for proposals. Support development of work plan estimates and resource/staff plans. May serve as project manager for well-defined engagements.
6	Consultant	Bachelor's	2 years	Provide analytical support to project team. Conduct research using library facilities, Info-Tech analysts, other Info-Tech resources, and primary research. Analyze, interpret, extrapolate, project, and model data to reach conclusions. Prepare written reports with text, charts, and spreadsheets for internal presentation and for inclusion in reports for clients. Participate in project/initiative planning and support the completion of estimates. May participate on lead qualification to learn processes and fundamental skills needed for consulting sales process. Participate in opening client conference at which the engagement is defined (kick-off meetings) and begin to take lead role for client communications. May participate in final conference with client at which final report is delivered. As assigned, complete sections of significant customized consulting assignments covering a variety of subject areas, including technologies, markets, products, competitive analysis, financial impact, etc.

Criteria for Experience/Education Substitutions Methodology

A college degree is a valuable asset and communicates the caliber of the employee. Info-Tech Research Group (ITRG) has a standard commercial practice of allowing education to be substituted for years of experience as shown in our Education Substitution Methodology (e.g. a Bachelor's degree may be substituted for 4 years of required experience with a high school diploma). From ITRG's years of experience observing employee development, ITRG has determined that a beginner with a college degree is most likely to perform the work requirements to meet the quality assurance standards of the company.

ITRG has also found that actual on-the-job training (performing a job under the tutelage of a senior-level experienced manager) is an exceptionally valuable way to teach an employee how to perform a job that meets the high-quality standards expected by clients. ITRG has found that a non-degreed employee after 4 years of specific experience in a position begins to perform at the same level as the degreed individual. Therefore, ITRG also has a standard commercial practice of allowing experience to be substituted for education as shown in our Experience Substitution methodology (e.g. high school diploma and 4 years of additional experience equals a Bachelor's degree).

Experience Substitutions

• High school diploma + 2 years' additional experience • Trade/vocational school or technical training or military	Equals	Associate's Degree
• Associate's degree + 2 years' additional • experience • High school diploma + 4 years' additional experience • High school diploma + professional or industry-standard technical certification in a relevant field (e.g. Digital Video Engineering Professional, Microsoft Certified Solutions Expert, Certified Information Professional, Adobe Certified Associate, Certified Meeting Professional)	Equals	Bachelor's Degree
• Bachelor's degree + 2 years' additional experience • High school diploma + professional license (e.g. Project Management Professional (PMP), Strategic Communication Management Professional)	Equals	Master's Degree
• Master's degree + 3 years' additional experience	Equals	Ph.D.

Experience Substitutions

A Ph.D. may be substituted for 3 years of required experience with a Master's degree or 5 years of required experience with a Bachelor's degree.
A Master's degree may be substituted for 2 years of required experience with a Bachelor's degree.
A Bachelor's degree may be substituted for 4 years of required experience with a high school diploma.
An Associate's degree may be substituted for 2 years of required experience with a high school diploma.
A professional certification in a relevant field may be substituted for 4 years of required experience with a high school diploma.

GSA Offering – Consulting (GSA Rates)

SIN	Labor Category	GSA Price (including IFF)
54151S	Vice President	$352.64
54151S	Director	$302.27
54151S	Senior Manager	$251.89
54151S	Manager	$201.51
54151S	Senior Consultant	$172.29
54151S	Consultant	$151.13

GSA Offering – Software Licenses (SIN 511210)

myPolicies

MFR PART NO	PRODUCT NAME	PRODUCT DESCRIPTION	UOI	PRICE OFFERED TO GSA (including IFF)
MPO-017	myPolicies software annual license - Small	myPolicies software license use for small business	EA	$ 2,584.38
MPO-018	myPolicies software annual license - Medium	myPolicies software license use for medium business	EA	$6,221.66
MPO-019	myPolicies software annual license - Large	myPolicies software license use for large business	EA	$12,443.32
MPO-020	myPolicies software annual license per user - Enterprise	myPolicies software license use per user for Enterprise business	EA	$28.72

Service Level Details

Accessing Info-Tech Services

Our Services include an easy-to-administrate access model that will allow maximum access by IT team members. Each Research Member is assigned a username and password and receives a new user tour upon registration.

Our services are provided via the web and are supported on the following web browsers:

- Chrome 55+
- Edge 12+
- Firefox 52+
- Safari 10+
- IE 11+

It is possible that our web-based services will run without issue on older software; however, we do not currently actively test using browser versions older than those listed above.

All online downloads are available in either MS Office or PDF formats and may also be available in compressed ZIP archives of the same formats.

We have clients in a wide variety of locations and time zones, and we accommodate them based on the times that are common to our respective time zones.

Analysts are available at their earliest opportunity, but due to the amount of preparation involved, a minimum of 24 hours lead time is required. Generally, if there are no travel complications, analysts are available within 2-3 business days of the request.

Dedicated Account Management

Info-Tech will provide members (license/seat holders) with an Account Manager who will be the main point of contact for all IT research & advisory service requirements.

These requirements include (but are not limited to):

- Onboarding all new members via teleconference.
- Creation and delivery of a Key Initiative Plan to align Info-Tech resources to the user's specific requirements and needs based on role and upcoming technology projects.
- Handle all basic service requests (adding/deleting members, sending documents, answering all membership questions, sending usage reports, renewal duties, etc.).
- Book advisory services for members such as analyst calls, Guided Implementation calls, Workshop requests, contract review calls, data-driven diagnostic benchmarking programs, etc.
- Scheduled touchpoint to ensure maximum usage by the members.

Info-Tech's Account Manager will be one dedicated person supported by a team. Users will also have access to Info-Tech's entire bench of research analysts and subject matter experts to guide them through technology projects via their advisory services access. It is important to note that while the Account Manager will be one dedicated person, members will have access to hundreds of IT experts through their account manager and membership subscription services.

All these management services are included within the overall services offered to Info-Tech members. Please note it is Info-Tech's mission to ensure our services are used, not just read. We will work with your team tirelessly to ensure all named members get the absolute most out of their membership and drive year-over-year services to provide ongoing and dedicated support to project success and sustainability.

Info-Tech has self-serve options in terms of booking calls, diagnostic programs, requesting research, etc. on our site that the members will all have access to. However, the dedicated Counselors and account management team will have developed project and technology plans to drive the membership services unique to the specific needs of the various members and shape the research and project assistance over a 12-month span. Info-Tech's dedicated account manager will also work with non-named users via the named users for training program access and shared research and advisory service inclusion access.

Info-Tech GSA Approved Terms of Use

Exhibit A

This document states the terms and conditions under which you may use this website and the Services, which are the property of Info-Tech Research Group Inc., ("Info-Tech"). Executing this Agreement or the accompanying purchase order in writing constitutes acceptance of these terms and conditions.

1. General Use Restrictions

Info-Tech services, advice, materials, products, websites and network (collectively the "Services") are to be used for the User's (meaning a named individual user that uses the publicly available Services, or is authorized by Info-Tech in a service agreement to use the Services that require paid access) use and benefit only pursuant to the terms and limitations of the paid subscription and may not be disclosed, disseminated or distributed to any other party, except as Info-Tech otherwise agrees in writing. The User will not circumvent any encryption or otherwise gain access to Services for which the User has not been expressly granted the appropriate rights of access.

The User will not use the Services for or knowingly transmit to Info-Tech or upload to any Info-Tech site or network any illegal, improper or unacceptable material or use them for illegal, improper or unacceptable practices including without limitation the dissemination of any defamatory, fraudulent, infringing, abusive, lewd, obscene or pornographic material, viruses, Trojan horses, time bombs, worms, or other harmful code designed to interrupt, destroy, or limit the function of any software, hardware or communications equipment, unsolicited mass email or other internet-based advertising campaigns, privacy breaches, denial of use attacks, spoofing, or impersonation.

2. Copyright

The Services are © Info-Tech Research Group Inc. All rights reserved.

The Services are owned by and copyrighted by Info-Tech and other parties and may contain trademarks of Info-Tech or others. They are protected by Canadian, U.S. and international copyright and trademark laws and conventions.

User may use the Services solely for their own information purposes pursuant to the terms and limitations of the paid subscription. The User may download any of the Service's tools or templates for their individual use, but may not distribute any articles, tools, templates or blueprints internally, subject to the exceptions below.

Info-Tech is proud of and believes in the value of the Services it provides to Users. Info-Tech also appreciates referrals that Users generate by forwarding articles, tools and templates downloaded from the Services to non-Users. Info-Tech encourages Users to forward copies of individual articles, tools, templates and blueprints contained in the Services to colleagues and others who may be interested Info-Tech's Services in order for the recipient to evaluate Info-Tech's Services ("Evaluation Copy"), provided all copyright, trademark and other notices are not altered or removed. For greater

certainty, Users may forward Evaluation Copies of articles, tools, templates and blueprints contained in the Services to other non-User individuals both internal and external to the User's organization strictly for the purpose of the recipient's evaluation of Info-Tech's Services and not for any other purpose or use.

User acknowledges and agrees that they will forward Evaluation Copies to non-Users for the sole purpose of the recipient non-User's evaluation of Info-Tech's Services. Info-Tech reserves the right to review, at its sole discretion, User's account for forwarding activity, including but not limited to reviewing the quantity and description of any Evaluation Copies forwarded as well as the identification and contact information of the recipients of all Evaluation Copies. The User acknowledges that Info-Tech views Evaluation Copies as a referral system and understands that Info-Tech may attempt to contact the recipient non-User in order to assess their satisfaction with the Evaluation Copy and interest in Info-Tech's Services. User also acknowledges and agrees that Info-Tech reserves the right, at Info-Tech's sole discretion, to limit or disable User's ability to forward Evaluation Copies of articles, tools, templates and blueprints upon review of User's forwarding activities.

Any other reproduction or dissemination of the Services in any form or by any means is forbidden without Info-Tech's written permission, and without limiting the generality of the foregoing, the User will not:

a. record and re-transmit the Service over any network (including any local area network), except as otherwise stated above;
b. use any Service in any timesharing, service bureau, bulletin board or similar arrangement or public display;
c. post any Service to any other online service (including bulletin boards or the Internet);
d. sublicense, lease, sell, offer for sale or assign the Service; or
e. use Info-Tech's name or any excerpts from the Services in the promotion of its products or services.

3. Users

Users must be authorized to use the Services by Info-Tech. Users must maintain and protect the confidentiality of any password(s) and are responsible to ensure that the passwords are effective. Users shall advise Info-Tech immediately if they discover that their password has been compromised, at the following number 1-888-670-8889 (US) or 1-844-618-3192 (CAN).

4. User Submissions

Info-Tech's research services include the ability for clients to contribute content for publication on Info Tech's websites. If your account is used to submit, post, or add content to Info-Tech's websites, (collectively "User Submissions"), you agree to accept sole responsibility for those User Submissions, including the information, statements, facts, and material contained in any form or medium (e.g., text, audio, video, and photographic) therein.

By using Info-Tech's research services, you agree that none of your User Submissions will:

- infringe on the intellectual property, trade secret, privacy, publicity, or other rights of others;
- contain false statements or misrepresentations that could damage Info-Tech or any third party;
- include obscene, libelous, defamatory, threatening, harassing, abusive, hateful, sexually explicit, sexually oriented, profane, or embarrassing material, as determined by Info-Tech in its sole discretion;
- be illegal or otherwise objectionable;
- contain the personal information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers, and credit card numbers;
- encourage or facilitate insider trading or anticompetitive behavior;
- include commercial advertisements or solicitations; or
- purport to or actually provide legal or professional advice.

Because Info-Tech's websites are available to the public, we cannot guarantee that User Submissions on Info-Tech's websites will remain confidential.

Although you are solely responsible for the content you provide and we do not have a policy of reviewing or monitoring all User Submissions, we reserve the right to pre-screen and/or monitor User Submissions.

If you believe that any User Submissions appear to violate these Terms of Service, or if you believe any other user is engaged in illegal, harassing, or objectionable behavior, please contact us.

You acknowledge, consent and agree that Info-Tech may access, preserve and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to (i) comply with legal process; (ii) enforce these Terms; (iii) respond to claims that any content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property, or personal safety of Info-Tech, its users and the public.

5. Non-Disclosure of Confidential Information

In consideration of, and reliance upon, the covenants of Company and Info-Tech herein contained, the parties have or will disclose to each other certain information (hereinafter referred to as "Confidential Information"), including, without limitation, information concerning future or proposed products, financial performance and projections, customers, employees, contracts, strategic relationships, marketing plans and business plans and other information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"). Information which is disclosed orally shall not be considered Confidential Information unless (i) it is identified as Confidential Information prior to such disclosure, and (ii) it is memorialized in writing within fifteen (15) days following such disclosure by the Disclosing Party. Information which is disclosed visually or in tangible form (whether by document, electronic media or other form) shall not be considered Confidential Information unless it is clearly marked as Confidential Information, whether disclosed orally, visually or in tangible form (whether by document, electronic media or other form). Information shall not be considered Confidential Information if such information is actually non-confidential:

- It was in the public domain at the time of communication to the Receiving Party or is later placed in the public domain by the Disclosing Party;
- It entered the public domain through no fault of the Receiving Party subsequent to the time of disclosure hereunder to the Receiving Party;
- It was in the Receiving Party's possession free of any obligation of confidence prior to disclosure hereunder; or
- It was developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information.

Except as provided herein, Confidential Information shall include, without limitation, proprietary, technical, marketing, operating, performance, cost, business pricing policies, programs, inventions, discoveries, trade secrets, techniques, processes, source code, unlinked object modules, computer programming techniques, and all record bearing media containing or disclosing such information and techniques disclosed pursuant to this Agreement. Information regarding current products shall be treated as non-Confidential Information unless marked "Confidential".

The Receiving Party shall not disclose, publish or communicate the Confidential Information to any third party without the prior written consent of the Disclosing Party. However, the Receiving Party may disclose the Confidential Information to a third party who has a need to know the Confidential Information and (i) is an accountant, attorney, underwriter or advisor under a duty of confidentiality; or (ii) is under a written obligation of confidentiality at least as restrictive as this Agreement.

Info-Tech recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

6. Term

Many of the Services are "subscription" services that have a fixed term. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Info-Tech shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7. [Reserved]

8. [Reserved]

9. Accuracy of Information and Warranty
The information contained in the Services has been obtained from sources believed to be reliable but Info-Tech does not warrant the completeness, timeliness or accuracy of any information contained in the Services. The Services are intended to: help identify business risks; provide insights based on industry research; and to help you focus on certain matters which may be affecting your business. Info-Tech does not provide legal, accounting or other professional advice, nor should any advice from Info-Tech be construed as such. We encourage you to seek professional advice whenever necessary.

Info-Tech expressly excludes and disclaims all express or implied conditions, representations and warranties including, without limitation, any implied warranties or conditions of merchantability or fitness for a particular purpose, to the extent allowable by law.

Although Info-Tech takes reasonable steps to screen Services for infection by viruses, worms, Trojan horses or other code manifesting contaminating or destructive properties before making the Services available, Info-Tech cannot guarantee that any Service will be free of infection.

User assumes sole responsibility for the selection of the Services to achieve its intended results. The opinions expressed in the Services are subject to change without notice.

Info-Tech does not endorse third-party products or services. Info-Tech assesses and analyzes the effectiveness and appropriateness of information technology in the context of a general business environment only unless specifically hired by a User to assess in the context of their own environment.

This agreement does not limit or disclaim any of the warranties specified in the GSA schedule 70 contract under far 52.212-4(O). In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the federal acquisition regulations, and the contract disputes act, 41 U.S.C. 7101-7109.

10. Limitation of Liability
In no event is Info-Tech liable for any direct, special, indirect, consequential, incidental, punitive or other damages however caused, whether in contract, tort, negligence, strict liability, operation of law or otherwise, (including without limitation damages for lost profits, business interruption or loss arising out of the use of or inability to use the Services, or any information provided in the Services, or claims attributable to errors, omissions or other inaccuracies in the Service or interpretations thereof), even if Info-Tech has been advised of the possibility of such damages. Info-Tech's total liability shall in no event exceed the amount paid by the User for the Service in question.

The User acknowledges that Info-Tech has set its prices and sold the Services in reliance on the limitations of liability and disclaimers of warranties and damages set forth herein and that the same form a fundamental and essential basis of the bargain between the parties. They shall apply even if the contract between the User and Info-Tech is found to have failed in its fundamental or essential purpose or has been fundamentally breached.

This agreement shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this contract under any federal fraud statute, including the false claims act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA schedule contract (e.g., Clause 552.238-75 – Price reductions, clause 52.212-4(H) – patent indemnification, and GSAr 552.215-72 – Price adjustment – failure to provide accurate information).

11. Links to Third-Party Sites
Any third-party sites that are linked to the Services are not under Info-Tech's control. Info-Tech is not responsible for anything on the linked sites, including without limitation any content, links to other sites, any changes to those sites, or any policies those sites may have. Info-Tech provides links as a convenience only and such links do not imply any endorsement by Info-Tech of those sites.

12. Investment Advice

The Services are not intended to be used for the purpose of, or as a basis for, making investment decisions or recommendations with respect to securities of any company or industry and Info-Tech assumes no liability for decisions made, in whole or in part, on the basis of any information contained in the Services.

13. Governing Law

This site and agreement is governed by the Federal laws of the United States, excluding any conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods.

14. Privacy

A User's right to privacy is of paramount importance to Info-Tech. See our Privacy Policy below for more detail. The identity of our research clients is not considered personal or confidential information, and we may disclose that information for promotion and marketing purposes.

15. Contact Information

CORPORATE COUNSEL
Toll-free (US): 1-888-670-8889
Toll-free (CAN): 1-844-618-3192
International: +1-519-432-3550

Info-Tech GSA Approved Privacy Policy

This is the privacy policy of Info-Tech Research Group Inc. ("Info-Tech"). This document explains Info-Tech's policies for the collection, use and disclosure of personal information.

The information we collect

Info-Tech collects information by various methods including information actively provided by its lead providers and its customers and information arising from customer surveys and general feedback.

The types of personal information we collect include name, contact information, identification information, and credit information. Credit card information is used for billing purposes only. We may record calls to or from our customer service representatives for purposes of accuracy, performance reviews, training and general quality assurance.

How we use this information

This information is used to provide our various products including customer service, accounting, billing, collections, and the marketing of other Info-Tech products.

Info-Tech may use aggregate or anonymous information, which will not be linked to identified individuals, for various other uses for itself and third parties. The identity of our corporate clients is not considered personal or confidential information, and we may disclose that information for promotion and marketing purposes.

Info-Tech users may have the option to participate in online discussion communities. Such communities are exclusive communities for certain Info-Tech subscribers and are accessible only by subscribers through their Info-Tech login name and password. Participation in the community is completely voluntary. By opting into the community, subscribers agree to share basic contact information (Name, Company, Address) with their peers in the community.

Who we share this information with

Info-Tech does not share personal information with any third parties except as disclosed in this policy. Info-Tech may provide personal information to Info-Tech's consultants, subcontractors and professional advisors (which shall be bound by privacy obligations) to assist Info-Tech's uses disclosed herein.

Security

Personal information is stored in a combination of paper and electronic files. They are protected by security measures appropriate to the nature of the information.

Accessing information

Individuals may review their personal information contained in Info-Tech files by contacting the Info-Tech privacy officer. If an individual believes that any of their personal information is inaccurate, we will make appropriate corrections.

Cookies

Cookies are used by Info-Tech for the convenience of our users. They are used to streamline access to the online subscriber service. Cookies automatically authenticate the user. A user can access Info-Tech products with the cookie feature turned off; however, in doing so they may find themselves challenged for username and password information on multiple occasions. Info-Tech also uses cookies to track user's visits and uses that information to improve the user's experience and track use of our products.

Links
Info-Tech seeks out the best web sources and resources for our advisory services. Many of our pages contain links to information at other websites. When you click on one of these links, you are moving to another website. We encourage you to read the privacy statements of these linked sites as their privacy policy may differ from ours.

General
Notwithstanding the general terms of this policy, the collection, use, and disclosure of personal information may be made outside of the terms herein to the extent provided for in any applicable privacy or other legislation in effect from time to time.

Info-Tech may disclose personal information to another entity purchasing (including for diligence purposes prior to purchase) the assets of Info-Tech, provided that entity abides by this or a similar privacy policy.

Opt-out
If at any time you would like to discontinue email communication from Info-Tech Research Group, please notify us via the Contact Us page.

Contact us
For more information on Info-Tech and privacy please contact our Privacy Officer at:

CORPORATE COUNSEL
Toll-free (US): 1-888-670-8889
Toll-free (CAN): 1-844-618-3192
International: +1-519-432-3550

myPolicies GSA Approved Terms of Use

This document states the terms and conditions under which you may use this website and the Services, which are the property of myPolicies, a division of Info-Tech Research Group Inc., a corporation incorporated pursuant to the laws of Canada ("myPolicies").

Executing this Agreement or accompanying purchase order constitutes acceptance of these terms and conditions. Registered users will be provided with a username and password to access and use the secure portal within the myPolicies website (the "Secure Portal"). If User wishes to use single sign-on (SSO), myPolicies would be pleased to work with a SSO provider of User's choice. If you are accessing this site or any mobile application thereof, these Terms of Use ("Terms") govern your access and use of the myPolicies website, its successor domains and any mobile application of the myPolicies website (collectively the "Site").

Please take the time to read these Terms carefully. The Terms describe how you may use this Site and what you must refrain from doing while using this Site. The Terms also describe how information you contribute will be shared, who owns information on the Site and other important matters relating to your use of the Site. Executing this Agreement or accompanying purchase order constitutes acceptance of these terms and conditions and you acknowledge that you have read and understood these Terms and that you agree to be legally bound by the Terms. We ask that you review the Terms regularly, as we reserve the right to make changes to the non-material terms and conditions of the Terms without giving you prior notice. For your reference, we will post when the non-material terms and conditions of the Terms were last updated. Accessing and/or using the Site after modification of the Terms shall constitute acceptance of the Terms. Any material updates to these Terms shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

In these Terms, "us", "we", "our" and myPolicies refers to myPolicies, a division of Info-Tech Research Group Inc., a corporation incorporated pursuant to the laws of Canada. When "you" or "your" is stated in these Terms, it refers to the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document using the Site and to any person contributing content in any manner to the Site. If you are accessing the Site on behalf of an organization, including a business, "you" refers to the organization you are working on behalf of and the organization agrees to be bound by these Terms to the fullest extent allowable by applicable law. When you are agreeing to these Terms on behalf of an organization, your agreement to these Terms also signifies to us your authority to bind the organization for the purposes of these Terms. "User" or "Users" refer to individuals who are authorized to access and/or contribute information to the Site, whether or not they are doing so on behalf of an organization. You further agree to nominate one individual as a contact for myPolicies. Communications regarding the Services will be between that contact and a contact provided by myPolicies.

1. General Use Restrictions

myPolicies services, advice, materials, products, websites and network (collectively the "Services") are to be used for the User's (meaning a named individual user that uses the publicly available Services or is authorized by myPolicies in a service agreement to use the Services that require paid access) use and benefit only pursuant to the terms and limitations of the paid subscription and may not be disclosed, disseminated or distributed to any other party, except as myPolicies otherwise agrees in writing. The User will not circumvent any encryption or otherwise gain access to Services for which the User has not been expressly granted rights of access.

The User will not use the Services for or knowingly transmit to myPolicies or upload to any myPolicies site or network any illegal, improper or unacceptable material or use them for illegal, improper or unacceptable practices including without limitation the dissemination of any defamatory, fraudulent, infringing, abusive, lewd, obscene or pornographic material, viruses, Trojan horses, time bombs, worms, or other harmful code designed to interrupt, destroy, or limit the function of any software, hardware or communications equipment, unsolicited mass email or other internet-based advertising campaigns, privacy breaches, denial-of-service of use attacks, spoofing, or impersonation.

The User SHALL NOT use the Services to anonymously report any type of harassment or abuse. Any anonymous complaints of harassment or abuse shall not be made via the Services, and User agrees to report any harassment or abuse to their supervisor or their Human Resources department, or the police, as required. Any anonymous reports of harassment or abuse made via the Services will not be acknowledged or acted upon.

2. Intellectual Property Rights including Copyright

The Services are © Info-Tech Research Group Inc. All rights reserved.

The Services are owned by and copyrighted by myPolicies, a division of Info-Tech and other parties and may contain trademarks of Info-Tech or others. They are protected by Canadian, U.S. and international copyright and trademark laws and conventions.

User may use the Services solely for their own information purposes pursuant to the terms and limitations of the paid subscription. The User may download any of the Service's tools or templates for their individual use, but may not distribute any articles, tools, templates or blueprints internally, subject to the exceptions below. The User may create derivative works from the Service's tools or templates and distribute these for internal use but may not distribute these derivative works externally for any commercial or resale purposes.

We retain all right, title, interest, in and to any policy templates, report templates or any blueprints, documents, PowerPoint slides or outlines that may be provided as part of the Services ("myPolicies IP"). You obtain a royalty-free, transferable, fully paid-up license to use and incorporate myPolicies' IP into the policies and reports you create using the Services.

"Work Product" in these Terms is defined as the customized policies or reports or other tangible results that you create through the use of the Services. You will own the Work Product as a whole, provided you do not resell it or allow it to be resold. You do not obtain any intellectual property interest in myPolicies' IP, other than the limited license set out above. We reserve the right to review the Work Product and to use any portion of the Work Product to improve the Services. We warrant that your identity and confidential information will be held in strict confidence and will never form part of the Services.

When you upload any documents or policies to the Site ("Your IP"), you represent that you have all necessary rights and interests in and to such policies or reports necessary to share the same with us, and you grant us and our affiliates the right to review Your IP and to use any portion of Your IP to improve the Services, provided we do not share your identity or confidential information with any third parties.

Any other reproduction or dissemination of the Services in any form or by any means is forbidden without myPolicies' written permission, and without limiting the generality of the foregoing, the User will not:

a. record and re-transmit the Service over any network (including any local area network), except as otherwise stated above;
b. use any Service in any timesharing, service bureau, bulletin board or similar arrangement or public display;
c. post any Service to any other online service (including bulletin boards or the Internet);
d. sublicense, lease, sell, offer for sale or assign the Service; or
e. use myPolicies name or any excerpts from the Services in the promotion of its products or services.

3. Users

Users must be authorized to use the Services by myPolicies. Users must maintain and protect the confidentiality of any password(s), and are responsible to ensure that the passwords are effective. Users shall advise Info-Tech immediately if they discover that their password has been compromised, at the following number: 1-888-670-8889 (US) or 1-844-618-3192 (CAN).

4. Non-Disclosure of Confidential Information

In consideration of, and reliance upon, the covenants of the User and myPolicies herein contained, the parties have or will disclose to each other certain information (hereinafter referred to as "Confidential Information"), including, without limitation, information concerning future or proposed products, financial performance and projections, customers, employees, contracts, strategic relationships, marketing plans and business plans and other information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"). Information which is disclosed orally shall not be considered Confidential Information unless (i) it is identified as Confidential Information prior to such disclosure, and (ii) it is memorialized in writing within fifteen (15) days following such disclosure by the Disclosing Party. Information which is disclosed visually or in tangible form (whether by document, electronic media or other form) shall not be considered Confidential Information unless it is clearly marked as Confidential Information, whether disclosed orally, visually or in tangible form (whether by document, electronic media or other form). Information shall not be considered Confidential Information if:

- It was in the public domain at the time of communication to the Receiving Party or is later placed in the public domain by the Disclosing Party;
- It entered the public domain through no fault of the Receiving Party subsequent to the time of disclosure hereunder to the Receiving Party;
- It was in the Receiving Party's possession free of any obligation of confidence prior to disclosure hereunder; or
- It was developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information.

Except as provided herein, Confidential Information shall include, without limitation, proprietary, technical, marketing, operating, performance, cost, business pricing policies, programs, inventions, discoveries, trade secrets, techniques, processes, source code, unlinked object modules, computer programming techniques, and all record bearing media containing or disclosing such information and techniques disclosed pursuant to this Agreement. Information regarding current products shall be treated as non-Confidential Information unless marked "Confidential".

The Receiving Party shall not disclose, publish or communicate the Confidential Information to any third party without the prior written consent of the Disclosing Party. However, the Receiving Party may disclose the Confidential Information to a third party who has a need to know the Confidential Information and (i) is an accountant, attorney, underwriter or advisor under a duty of confidentiality; or (ii) is under a written obligation of confidentiality at least as restrictive as this Agreement.

You acknowledge, consent and agree that myPolicies may access, preserve and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to (i) comply with legal process; (ii) enforce these Terms; (iii) respond to claims that any content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property, or personal safety of myPolicies, its users and the public.

Info-Tech recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

5. Term

Many of the Services are "subscription" services that have a fixed term. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Info-Tech shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

6. Reserved

7. Reserved

8. Accuracy of Information and Warranty
The information contained in the Services has been obtained from sources believed to be reliable but myPolicies does not warrant the completeness, timeliness or accuracy of any information contained in the Services. myPolicies is an online policy management solution that streamlines the creation, approval, distribution, and monitoring of corporate policies, procedures, and forms developed in the context of a general business environment. Policies are to be modified by Users in the context of their own environment. The Site does not provide legal, accounting or other professional advice, nor should any advice from myPolicies be construed as such. We encourage you to seek professional advice whenever necessary, including, but not limited to, ensuring regulatory compliance for you or your organization. We do not warrant or otherwise guarantee that your use of the Services will ensure regulatory compliance in your jurisdiction or industry.

myPolicies warrants that the Services will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Services written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, myPolicies expressly excludes and disclaims all express or implied conditions, representations and warranties including, without limitation, any implied warranties or conditions of merchantability or fitness for a particular purpose, to the extent allowable by law.

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The User acknowledges that myPolicies has set its prices and sold the Services to it in reliance on the limitations of liability and disclaimers of warranties and damages set forth herein and that the same form a fundamental and essential basis of the bargain between the parties. They shall apply even if the contract between the User and myPolicies is found to have failed in its fundamental or essential purpose or has been fundamentally breached.

This agreement shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this contract under any federal fraud statute, including the false claims act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA schedule contract (e.g., clause 552.238-75 – Price reductions, clause 52.212-4(H) – patent indemnification, and GSAr 552.215-72 – Price adjustment – failure to provide accurate information).

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14. Contact Information

MYPOLICIES SUPPORT
Toll-free (US): 1-888-670-8889
Toll-free (CAN): 1-844-618-3192
International: +1-519-432-3550

McLean & Company GSA Offering – Service Levels (SIN 54151S)

Each MLE account (>1,000 employees) requires a minimum of 2 Advisory/Leadership/Counselor-level seats.

SIN	MFR Part No	Product Group	Product Name	Product Description	Unit of Issue	Discount Price Offered to GSA (including IFF)
54151S	M20-008	McLean's Executive & Leadership Service Levels	McLean CHRO Counselor Membership	Our highest level of service, this membership includes the features of the Counselor Membership PLUS: • 2 additional remote analyst days • Exclusive access to our annual CHRO Roundtable • 90-Day "Follow-Me" Service Each MLE account (>1,000 employees) requires a minimum of 2 Advisory/ Leadership/Counselor-level seats	Per Year	$43,073.05
54151S	M20-007	McLean's Executive & Leadership Service Levels	McLean Counselor Membership	A high-touchpoint, customized experience to help CHROs develop themselves and their teams while increasing personal and functional strategic impact. Receive 1:1 support from a highly experienced HR leader who has faced similar challenges. Includes all features of the Leadership Membership PLUS: • 2 remote full-day analyst visits • Prescheduled & ad hoc calls to move your agenda forward • Help to understand and prepare for boardroom-level challenges • Fully personalized Leadership Development Accelerator Program • Access to Info-Tech research • Additional event ticket: 1 Signature event ticket or 1 training program ticket (transferable) Each MLE account (>1,000 employees) requires a minimum of 2 Advisory/Leadership/ Counselor-level seats.	Per Year	$33,501.26

54151S	M20-006	McLean's Executive & Leadership Service Levels	McLean Leadership Membership	Employ hands-on support to transform the HR department while developing your capacity as a strategic leader through personalized counseling and valuable peer networking opportunities. Includes all features of the Advisory Membership PLUS: • Dedicated Executive Advisor • Annual remote half-day analyst session • One 360° personal evaluation and results session • Contract review for HR technology • Your choice of 1 Signature event ticket or 1 training program ticket (transferable) • Full web content access Each MLE account (>1,000 employees) requires a minimum of 2 Advisory/Leadership/ Counselor-level seats.	Per Year	$21,057.93
54151S	M21-005	McLean's Executive & Leadership Service Levels	McLean Advisory Membership	Leverage unlimited access to our team of advisors, diagnostic suite*, library of best-practice tools, templates, training materials, and step-by-step methodologies that are proven to accelerate projects and transform HR departments. The Advisory Membership Includes: • Dedicated Account Manager • Unlimited advisory assistance • Access to diagnostics* • Full web content access • Online eLearning Academy access * Up to 1,000 employees are included as part of the employee lifecycle diagnostics for a single Advisory/Leadership/Counselor seat purchase. Each MLE account (>1,000 employees) requires a minimum of 2 Advisory/Leadership/ Counselor-level seats and each seat purchased by an MLE account will cover up to 3,000 employees.	Per Year	$15,314.86
54151S	M20-003	McLean's Executive & Leadership Service Levels	McLean Team Seat (add-on to an Advisory/ Leadership/ Counselor-level member-ship only)	Full access to McLean's online content and Academy courses. Can only be purchased as an add-on to an Advisory/Leadership/ Counselor-level membership.	Per Year	$2,297.23

54151S	WSHOP-055	Workshop Support	McLean Onsite Membership Add-Ons (per workshop with membership)	Add an Onsite Workshop to a McLean membership to obtain our lowest Workshop prices. Onsite/Online Workshops offer an easy way to accelerate your project. We take you through every phase of your project and ensure that you have a roadmap in place to complete your project successfully. Over the course of 3-4 days, our expert facilitators help you complete a key initiative, work through critical project deliverables, and train your team.	Per Year	$15,314.86
54151S	WSHOP-102	Workshop Support	McLean Onsite Membership Add-Ons (per workshop without membership)	Onsite/Online Workshops offer an easy way to accelerate your project. We take you through every phase of your project and ensure that you have a roadmap in place to complete your project successfully. Over the course of 3-4 days, our expert facilitators help you complete a key initiative, work through critical project deliverables, and train your team.	Each	$19,143.58
54151S	M20T-003	Management Fundamentals Cohort	McLean Management Fundamentals 10-Week Online Training Course (one cohort with membership)	Provide managers with the opportunity to study management concepts at their own pace, from the comfort of their home or office, over a multi-week period. McLean & Company facilitators guide live discussions with participants to deepen learning. The Online Management Fundamentals Program spans 10 weeks, and each cohort can include up to 30 participants.	Per Year	$22,972.29
54151S	M20T-004	Management Fundamentals Cohort	McLean Management Fundamentals 10 Week Online Training Course (one cohort without membership)	Provide managers with the opportunity to study management concepts at their own pace, from the comfort of their home or office, over a multi-week period. McLean & Company facilitators guide live discussions with participants to deepen learning. The Online Management Fundamentals Program spans 10 weeks, and each cohort can include up to 30 participants.	Each	$28,715.37

54151S	M21T-001	Management Fundamentals Cohort	McLean Management Fundamentals Online Leadership Session (add-on to Management Fundamentals Cohort)	This 3-hour online session allows managers of Management Fundamentals Online participants to become familiar with key concepts to sustain change. This session cannot be sold separately.	Each	$4,307.30
54151S	M20T-007	Quarterly Manager Training	McLean Facilitated Online Training Sessions	Develop your managers with our varied, interactive, remote training sessions that are 2-4 hours each. Please note there is a minimum of 5 up to a maximum of 12 participants required. Choose up to 4 different topics per year, or repeat one session four times or two sessions two times across different groups within your organization. Topics include: • Lead Through Change • Effectively Manage Remote Teams • Build Key Resilience Behaviors • Provide Impactful Feedback • Learn Effective Feedback Practices • Give Effective Feedback & Coaching • Build Data Literacy	Per Year	$11,486.15
54151S	WSHOP-055 / MCO-0022 / MCO-0021 / WSHOP-104	Workshop Support	McLean Full Engagement Workshop Support (add-on to membership only)	Full support in communicating results, training managers, and gathering feedback. Purchased as an add-on to a McLean membership, which includes the Engagement Survey, Full Engagement Workshop Support includes: • Develop an Organizational Strategy • Introduction to Engagement Webinar • Focus Groups • Senior Leader Action-Planning Sessions	Per Year	$29,672.54
54151S	WSHOP-055 / WSHOP-104	Workshop Support	McLean Full Diversity, Equity, and Inclusion (DEI) Strategy Workshop Support (add-on to membership only)	Support in building the organization's DEI strategy. Purchased as an add-on to a McLean membership, DEI Strategy Workshop Support includes: • Diagnostic Focus Groups • Create a DEI Strategy Workshop • DEI Governance Model Development • Action & Communication Planning • Employee Lifecycle Analysis	Per Year	$49,294.71

McLean & Company Membership Features

	CHRO Counselor Membership	Counselor Membership	Leadership Membership	Advisory Membership	Team Membership	Reference Membership
Service Delivery						
Dedicated Executive Counselor	✓	✓				
Executive Advisor			✓			
Dedicated Account Manager	✓	✓	✓	✓	✓	
Custom Key Initiative Plan	✓	✓	✓	✓	✓	
Advisory Services						
Full-Day Online Counselor Visits	4/year	2/year				
Annual Half-Day Analyst Session	1/year	1/year	1/year			
Personalized Leadership Development Program	✓	✓				
Personal 360 Feedback Results Debrief	✓	✓	✓			
Annual CHRO Roundtable	✓					
HR Technology Contract Review Service	✓	✓	✓			
Unlimited Analyst Calls	✓	✓	✓	✓		
Research & Learning Solutions Content						
Role-Based HR Research	✓	✓	✓	✓	✓	✓
Classroom Training Decks	✓	✓	✓	✓	✓	✓
LMS-Ready Downloads	✓	✓	✓	✓	✓	✓
Tools & Templates Library	✓	✓	✓	✓	✓	✓
Software Selection Content	✓	✓	✓	✓	✓	✓
Info-Tech Research Access	✓	✓				
Diagnostic & Learning Experiences						
McLean Academy Training Platform	✓	✓	✓	✓	✓	✓
Signature Event or Training Program Ticket	2/year	2/year	1/year			
HR Stakeholder Management Diagnostic	✓	✓	✓	✓		
HR Management & Governance Diagnostic	✓	✓	✓	✓		
360 Feedback Platform	✓	✓	✓	✓		
Employee Lifecycle Diagnostics: New Hire, Engagement & Exit*	✓	✓	✓	✓		
McLean Connect Dashboard*	✓	✓	✓	✓		

* Up to 1,000 users only. Custom pricing for larger organizations, where applicable.

McLean & Company Product Offering

Membership Types	
CHRO Counselor Membership	Our highest level of service, this membership includes the features of the Counselor Membership with the addition of an annual CHRO roundtable meeting, 90-day "follow-me" service, and two additional onsite advisory sessions.
Counselor Membership	A high-touchpoint, customized experience to help CHROs develop themselves and their team while increasing personal and functional strategic impact. Receive 1:1 support from a highly experienced HR leader who has faced similar challenges.
Leadership Membership	Executive Advisors provide quarterly strategy planning support calls to members to help curate membership content and ensure they succeed against their initiatives.
Advisory Membership	Leverage unlimited access to our team of advisors, diagnostic suite*, and library of best-practice tools, templates, training materials, and step-by-step methodologies that are proven to accelerate projects and transform HR departments.
Team Seat Access	Full access to McLean & Company's online content and Academy courses. Can only be purchased as an add-on to an Advisory-level and above membership.
Onsite Membership Add-Ons	
+ Workshop	Over 3 to 4 days our facilitators customize our frameworks to your unique situation and develop your team as they work through a critical initiative.
+ Management Fundamentals Cohort	Provide managers with foundational skills for successful people management. Online Delivery – 10 weeks
Leadership Session	This three-hour online session allows managers of Management Fundamentals Online participants to become familiar with key concepts to sustain change. This session cannot be sold separately. Online Delivery.
Quarterly Manager Training	
Online Training Sessions	Develop your managers with our varied, interactive, remote training sessions that are each 2 to 4 hours long. Please note there is a minimum of 5, up to a maximum of 12, participants required. Choose up to four different topics per year, or repeat one session four times or two sessions two times across different groups within your organization. Topics include: Lead Through Change Effectively Manage Remote Teams Build Key Resilience Behaviors Provide Impactful Feedback Learn Effective Feedback Practices Give Effective Feedback & Coaching Build Data Literacy
Full Engagement Workshop Support Full support in communicating results, training managers, and gathering feedback.	
Develop an Organizational Engagement Strategy	McLean & Company guides the Senior Leadership Team in the creation of an organization strategy to define, measure, communicate, and act on employee feedback. Two 4-hour sessions; completed before the launch of an engagement survey
Introduction to Engagement Webinar	This is an introductory webinar on the importance of engagement and how to interpret engagement survey results. 45 minutes; maximum 100 participants
Focus Groups: Gather employee feed-back for action planning	McLean & Company conducts up to three focus groups on the priority engagement drivers selected by senior leadership and compiles the focus group feedback into a comprehensive report. McLean & Company debriefs the HR team during a one-hour phone call. 10-12 hours of focus groups and a 1-hour debrief

* Up to 1,000 users only. Custom pricing for larger organizations, where applicable.

Senior Leader Action Planning: Equip Senior Leaders to Drive Employee Engagement	McLean & Company provides the Senior Leadership Team with simple, yet powerful ways to connect with employees and to help improve the Senior Management Relationships engagement driver measured in the employee engagement survey. Two 4-hour sessions
Senior Leader Action Planning: Equip Managers to Improve Engagement Action Planning	McLean & Company leads a manager group through a session on the importance of engagement, how to interpret their team's engagement survey results, and how to act on survey data to improve engagement. 2-3 hours; maximum 25 participants

Full DEI Strategy Workshop Support

We offer support in building the organization's DEI strategy.

McLean & Company provides the resources and offerings to support the creation of a DEI strategy that will help the organization support a diverse employee base in an equitable and inclusive manner.

Diagnostic Focus Groups

Following the completion of the DEI Survey or DEI Pulse, we will:

- Debrief executive team on the survey results.
- Select categories for action planning.
- Determine makeup of focus groups.
- Facilitate up to four employee focus groups (with 8-10 participants per focus group), each two hours long, and up to two manager focus groups, also each two hours long.
- Compile results of focus groups into comprehensive report, including short-term and long-term recommendations.
- Debrief focus group feedback.
- Review and prioritize employee initiatives.

Create a Diversity, Equity, and Inclusion (DEI) Strategy

In the Online DEI Strategy Workshop we will:

- Gather additional data assessments.
- Conduct a current-state analysis.
- Determine the purpose of DEI.
- Identify key communication messages and timing.
- Select initiatives and plan to launch the strategy.
- Build draft action plans.

DEI Governance Model Development

- Identify the recommended governance model.
- Conduct a stakeholder analysis and identify change agents and champions.
- Identify roles and accountabilities for each component of the governance model.

Action & Communication Planning

- For each milestone, identify action steps that must occur to complete it and indicate who owns the action, which groups are involved, who will perform the action, any risks associated with it, whether communication is required, the start and end dates, and if there are associated prerequisites or dependencies.
- For any milestones that require communication, outline key messaging, communicator, etc.

Employee Lifecycle Analysis

- Analyze the people implications and identify who is part of each stage of the employee lifecycle.
- Analyze the process implication and evaluate the existing processes to identify systemic changes needed to improve DEI at each stage of the lifecycle.
- Analyze the technology implications and assess the technology or other resources used in each stage of the lifecycle for inequities.

McLean & Company's Executive & Leadership Service Levels

CHRO Counselor Membership

Includes all features of the Counselor Membership PLUS:

- 2 additional online analyst days
- Exclusive access to our annual CHRO roundtable
- 90-day "follow-me" service

Counselor Membership

Includes all features of the Leadership Membership PLUS:

- 2 online full-day analyst visits
- Prescheduled and ad hoc calls to move your agenda forward
- Understand and prepare for boardroom-level challenges
- Fully personalized Leadership Development Program
- Access to Info-Tech research
- Additional event ticket: 1 Signature event ticket or 1 training program ticket (transferable)

Leadership Membership

Includes all features of the Advisory Membership PLUS:

- Dedicated Executive Advisor
- Annual online half-day analyst session
- One 360 Feedback personal evaluation and results session
- Contract review for HR technology
- Your choice of 1 Signature event ticket or 1 training program ticket (transferable)

Advisory Membership

- Dedicated Account Manager
- Unlimited advisory assistance
- Access to diagnostics
- Full web content access
- Academy eLearning program

Team Seat

- Role-based access to all research and project methodologies
- Full web content access
- Academy eLearning program

Executive & Leadership Access

Each MLE Account (>1,000 employees) requires 2 Advisory-Level Seats

*CHRO Counselor Memberships are exclusive and only available to the most-senior HR leader.

McLean & Company CHRO Counselor Membership

Highly Personal Service and Peer Networking

Annual CHRO Roundtable
This full-day event will accelerate your personal learning and development. Explore the latest research and best practices and make meaningful connections with CHRO peers.

90-Day "Follow-Me" Service
If you are in a time of transition, McLean & Company will continue to support your personal development for 90 days after you leave your current role as well as support the incoming CHRO.

+ 2 additional full-day online advisory sessions

Also Includes Features From:
- Leadership Membership
- Advisory Membership
- Team Seat

Online Advisory Sessions

This is your time to leverage the experience and knowledge of your Counselor with a full-day online session. Your Counselor will help you untangle your most urgent challenges and take advantage of upcoming opportunities.

Session Ideas:
- Make a strategic HR plan
- 1:1 coaching and development planning
- Explore best practices in HR strategy
- Prepare for an important meeting or pitch

McLean & Company Counselor Membership

Highly Personal Service

Dedicated Counselor Service

Benefit from an experienced HR leader who has walked in your shoes. A dedicated Counselor will provide you with 1:1 coaching to accelerate your personal development and help you tackle professional challenges. Book scheduled meetings to stay on track or call your Counselor whenever you need them. Receive two online full-day sessions throughout the year to work on whatever you'd like.

Boardroom Preparation

Boards and executive teams are seeking more input from HR, which means CHROs need to speak their language. We'll help you understand and prepare for the boardroom-level challenges you're facing and gain buy-in for HR initiatives.

Personal Leadership Development Program

Start with a 360-degree review to get a holistic perspective of your leadership performance. Then, work with your Counselor to review your leadership brand. With this information, set goals for improving your brand and reaching your own development goals.

Access to Info-Tech Research

Like McLean & Company, Info-Tech Research Group offers IT professionals practical research and advice that covers the entire spectrum of IT challenges.

Also Includes Features From:

- Leadership Membership
- Advisory Membership
- Team Seat

McLean & Company Leadership Membership

Develop as an Organizational Leader

Half-Day Online Analyst Sessions*
Discuss and create a high-level action plan for the most-pressing challenge you are facing as an HR leader, with an expert advisor.

Choose one of the following topics:

Talent Strategy Review & Prioritization
Take an in-depth look at your overall talent strategy – or strategies related to the key HR functions, including Talent Acquisition, Talent Management, and Learning & Development.

HR Stakeholder Management Presentation & Action Plan
Follow up on results of the HR Stakeholder Management diagnostic, including stakeholder prioritization of core HR services, overall satisfaction with HR delivery, and trust in HR.

Engagement Results Presentations
Debrief feedback and results from the employee engagement survey, highlighting trends to identify priorities and develop a communication strategy and an action plan.

Equip Senior Leaders to Drive Employee Engagement
Prepare to involve senior leaders in a discussion about their role in driving engagement and provide them with tactics for gaining insight.

HR Metrics & Analytics Foundation Assessment
Become familiar with using data and review the results of the foundation assessment to find areas of improvement and realistic initiatives to address them.

Dedicated Executive Advisor
Elevate your HR department with the help of an experienced Advisor. Receive quarterly calls from your Advisor to keep you accountable for key initiatives and ensure your project is moving forward.

Contract Reviews

Whether you're purchasing or renewing, our analysts will help you optimize all your software purchases:

- Know the right and wrong price for the software you're purchasing.
- Manage future costs.
- Improve your contract negotiation skills.
- Home in on the optimal contract language.

Leadership Development Feedback Tools

McLean Employee Experience Monitor
A high-frequency, low-effort, one-question survey to measure employee engagement on an ongoing basis.

Employee Engagement Program
A comprehensive 81-question engagement survey to measure overall engagement results and help develop and maintain a high-performance culture.

360 Feedback Program
Get a holistic perspective on performance with a comprehensive competency evaluation from subordinates, peers, and managers.

Also Includes Features From:
- Advisory Membership
- Team Seat

*One analyst working with the leadership seat holder or decision maker and up to 2 other HR participants.

McLean & Company Advisory Membership

Systematically Improve HR

Dedicated Account Manager
Work with someone familiar with your role and organization so they can expertly guide you through your biggest challenges and major projects, then direct you to the most-relevant research resources and experiences, ensuring you get the most value from your membership and maximize HR performance.

HR Diagnostics

HR Diagnostics Programs
McLean & Company diagnostics are the simplest way to collect the data you need to develop actionable insights.

- 360 Feedback
- Employee Engagement Program*
- McLean Employee Experience Monitor*
- New Hire Survey*
- Employee Exit Survey*
- HR Management & Governance Diagnostic
- HR Stakeholder Management Survey

*Not included in all Advisory memberships. Refer to your Account Director for included diagnostic programs and users supported.
Additional fees may be required for multilingual surveys.

Also Includes Features From:

- Team Seat

Core HR Processes

Best-Practice Research
A comprehensive, connected methodology for improving core HR processes.

Tools & Templates
Powerful tools and templates to help your team identify what's wrong and take action.

Classroom Training and LMS-Ready Downloads
Access to our ready-to-deliver training modules and materials to develop high-impact leaders.

Expert Advice

Unlimited Advisory Assistance Access
Unlimited phone access to our subject matter experts to guide you through your most-challenging human resources projects.

McLean & Company Team Seat Access

Core Project Research and Thought Leadership

Account Manager

Your Account Manager will ensure you get the most value from your membership by helping you understand your entitlements and the resources you can leverage to help you excel in your role.

HR Practice-Based Research
100+ instructional blueprints for implementing proven methodologies across core HR practices:

- HR Strategy
- Culture
- Talent Management
- Talent Acquisition
- Total Rewards
- Learning & Development
- HR Technology & Operations

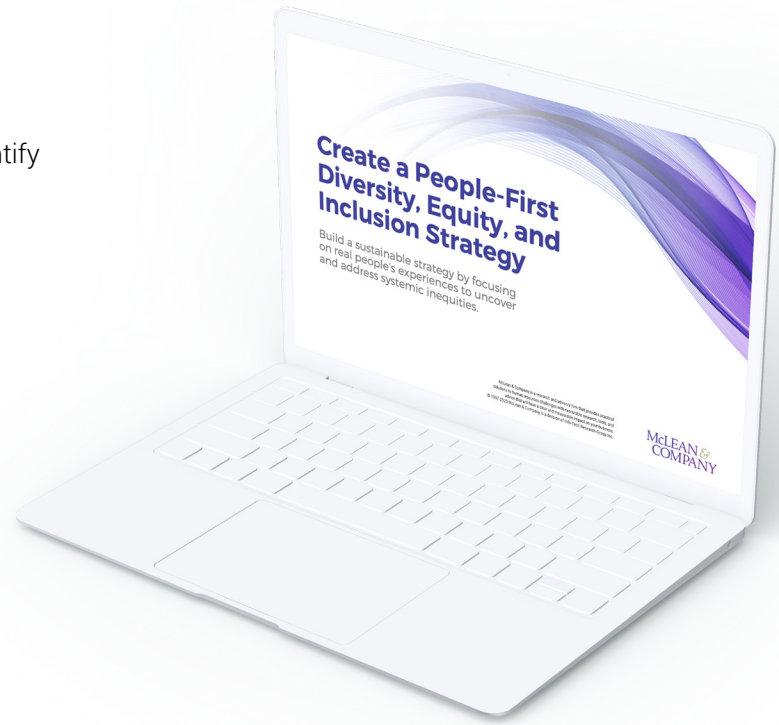
Tools & Templates
Powerful tools and templates to help your team identify issues and take action.

Classroom Training and LMS-Ready Downloads
Access to our ready-to-deliver training modules and materials to develop high-impact leaders.

HR Software Reports by SoftwareReviews
Detailed reviews of enterprise software, collected and analyzed from real users, provide an in-depth view into products and vendors before procurement.

Policy Library
An extensive collection of policy templates to expedite authoring and mitigate risk.

McLean Academy
McLean Academy is a series of online professional development courses built around our HR framework and delivered by subject experts.



McLean & Company Management Fundamentals

Help new people managers quickly excel with this interactive, blended learning experience.

Program Outline

Section 1
Team Management
- Foundations of Successful Management
- Communicate Effectively and Build High-Performing Teams
- Manage Performance
- Give Feedback and Coaching

Section 2
People Development
- Delegate and Distribute Leadership
- Create a Culture of Personal Accountability
- Navigate Difficult Conversations and Conflict
- Provide Meaningful Recognition

Section 3
Personal Leadership Development
- Master the Management Mindset
- Build Key Resiliency Behaviors
- Define a Personal Leadership Brand
- Create an Action Plan

What is it like to participate?

Managers begin this ten-week program with a live, online kick-off meeting hosted by our facilitators. This is the first of several live sessions designed for interaction and peer-to-peer discussion.

Learners have one week to complete each module, which includes a video lecture (25 minutes to one hour), individual activities, and a collaborative learning community activity with other participants.

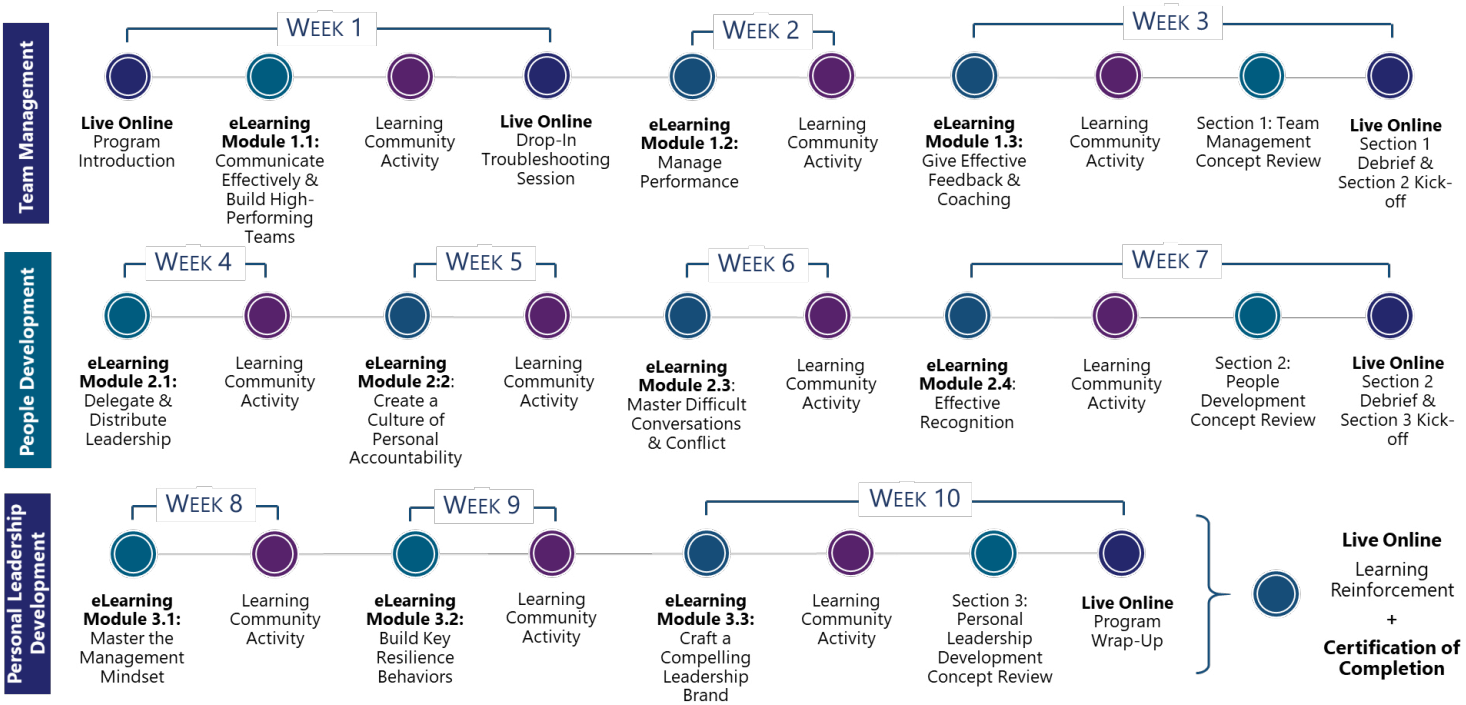
At the end of the program, several reinforcements will be provided to facilitate learning application.

Participants will download and print associated handouts to take notes and complete activities during each module.

Boost performance through training that provides first-time managers with the basics of people management.

McLean & Company Management Fundamentals Online

Program Structure



McLean & Company Elevate HR Online

A training program designed to develop a strategic HR mindset.

Program Outline

Elevate HR Online helps HR professionals focus on:

1. **Team management** to provide value to internal and external stakeholders.
2. **Business acumen and financial literacy** to develop an understanding of the business and industry to inform talent decisions.
3. **Data literacy** to identify, interpret, and tell a story with talent data.
4. **Organizational awareness** to more effectively align HR advice and strategic direction with organizational objectives.
5. **Developing as integrated leaders** to unravel the knotty challenges that today's organizations face.

A multi-month blended learning experience including:

- Self-paced eLearning modules of varying length
- Six live, online sessions to encourage cohort interaction
- Varied activities designed to encourage immediate framework application
- Structured discussion questions to facilitate peer-to-peer discovery and learning
- Supporting McLean resources to reinforce learning and application

You'll also complete the 360 Feedback assessment both before and after the program and multiple post-program learning reinforcements including a final case study.

With this blended learning experience, boost HR skills, develop key leadership capability for the future, and build a world-class professional network.

McLean & Company Full-Service Diagnostic Programs

Improve Employee Experience and HR Processes

New Hire Survey
Ensure recruiting and onboarding programs are effective by surveying new employees.

Employee Engagement
Move beyond measuring job satisfaction with a comprehensive view of engagement.

Pandemic Engagement Pulse Check
Assess the effect of pandemic response plans on employee engagement.

Diversity, Equity, and Inclusion Engagement Pulse
Take a thoughtful approach to mobilize inclusion efforts across your organization.

McLean Employee Experience Monitor
Evolve to leader-driven engagement with a real-time dashboard and results.

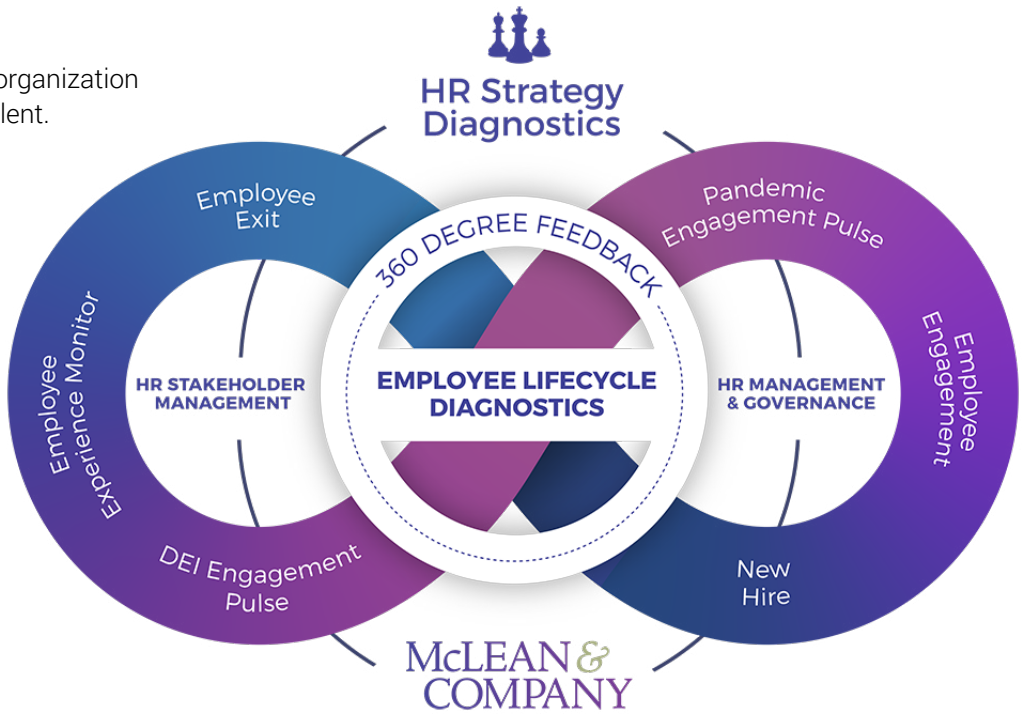
Employee Exit Survey
Understand why people leave the organization in order to proactively retain top talent.

360 Feedback
Empower employees with a holistic view of their performance to prioritize development.

Optimize the HR Department for Success

HR Stakeholder Management Survey
Align HR initiatives with business strategy and stakeholder needs.

HR Management & Governance
Improve HR's core functions and drive project success.



McLean & Company Online Workshops

An innovative approach to consulting.

Your most-pressing HR problems solved in less than one week

Within 3 to 4 days, our expert facilitators help you complete a key initiative, work through critical project deliverables, and engage your team. We use a learning-based approach to implement McLean & Company methodologies tailored to your unique situation.

Example Workshop

Create a Talent Strategy

Day 1

Identify Talent Implications of Organizational Direction

- Review strategic documentation
- Conduct a SWOT analysis
- Debrief HR Stakeholder Management Survey
- Debrief HR Management and Governance Survey
- Prioritize talent implications

Day 2

Determine Strategic Pillars and HR Outcomes

- Create strategic pillars
- Identify metrics to support pillars
- Create HR outcomes

Day 3

Evaluate HR's Ability to Achieve the Outcomes

- Conduct a SWOT for HR
- Identify gaps to deliver HR outcomes
- Create initiatives and a timeline for implementation
- Review existing initiatives for alignment with new talent strategy

McLean & Company GSA Approved Terms of Use

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b. use any Service in any timesharing, service bureau, bulletin board or similar arrangement or public display;
c. post any Service to any other online service (including bulletin boards or the Internet);

d. sublicense, lease, sell, offer for sale or assign the Service; or
e. use "McLean & Company's" name or any excerpts from the Services in the promotion of its products or services.

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"McLean & Company's" research services include the ability for clients to contribute content for publication on "McLean & Company's" websites. If your account is used to submit, post, or add content to "McLean & Company's" websites, (collectively, "User Submissions"), you agree to accept sole responsibility for those User Submissions, including the information, statements, facts, and material contained in any form or medium (e.g., text, audio, video, and photographic) therein.

When you provide any User Submission to us, you grant us, our affiliates, and our partners, a worldwide, irrevocable, royalty-free, nonexclusive, sub-licensable license to use, reproduce, create derivative works of, distribute, publicly perform, publicly display, transfer, transmit, distribute, and publish such User Submission, and subsequent versions thereof. You agree you will not attempt to enforce any so-called "moral rights" in your User Submission against us, our affiliates, and/or our partners. This license will apply to the distribution and the storage of your User Submission in any form, medium, or technology now known or later developed.

By using "McLean & Company's" research services, you agree that none of your User Submissions will:

- infringe on the intellectual property, trade secret, privacy, publicity, or other rights of others;
- contain false statements or misrepresentations that could damage "McLean & Company" or any third party;
- include obscene, libelous, defamatory, threatening, harassing, abusive, hateful, sexually explicit, sexually oriented, profane, or embarrassing material, as determined by "McLean & Company" in its sole discretion;
- be illegal or otherwise objectionable;
- contain the personal information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers, and credit card numbers;
- encourage or facilitate insider trading or anticompetitive behavior;
- include commercial advertisements or solicitations; or
- purport to or actually provide legal or professional advice.

Because "McLean & Company's" Web sites are available to the public, we cannot guarantee that User Submissions on "McLean & Company's" Web sites will remain confidential.

Although you are solely responsible for the content you provide and we do not have a policy of reviewing or monitoring all User Submissions, we reserve the right to pre-screen and/or monitor User Submissions. If we become aware of User Submissions that violate these Terms of Service or that we believe to be otherwise objectionable, we may reject or delete them, or take other action, without notice to you and in our sole discretion.

If you believe that any User Submissions appear to violate these Terms of Service, or if you believe any other user is engaged in illegal, harassing, or objectionable behavior, please contact us.

You acknowledge, consent and agree that "McLean & Company" may access, preserve and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation, or disclosure is reasonably necessary to (i) comply with legal process; (ii) enforce these Terms; (iii) respond to claims that any content violates the rights of third parties; (iv) respond to

your requests for customer service; or (v) protect the rights, property, or personal safety of "McLean & Company", its users and the public.

5. Non-Disclosure of Confidential Information

In consideration of, and reliance upon, the covenants of Company and "McLean & Company" herein contained, the parties have or will disclose to each other certain information (hereinafter referred to as "Confidential Information"), including, without limitation, information concerning future or proposed products, financial performance and projections, customers, employees, contracts, strategic relationships, marketing plans and business plans and other information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"). Information which is disclosed orally shall not be considered Confidential Information unless (i) it is identified as Confidential Information prior to such disclosure, and (ii) it is memorialized in writing within fifteen (15) days following such disclosure by the Disclosing Party. Information which is disclosed visually or in tangible form (whether by document, electronic media or other form) shall not be considered Confidential Information unless it is clearly marked as Confidential Information, whether disclosed orally, visually or in tangible form (whether by document, electronic media or other form). Information shall not be considered Confidential Information if:

- It was in the public domain at the time of communication to the Receiving Party or is later placed in the public domain by the Disclosing Party;
- It entered the public domain through no fault of the Receiving Party subsequent to the time of disclosure hereunder to the Receiving Party;
- It was in the Receiving Party's possession free of any obligation of confidence prior to disclosure hereunder; or
- It was developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information.

Except as provided herein, "Confidential Information" shall include, without limitation, proprietary, technical, marketing, operating, performance, cost, business pricing policies, programs, inventions, discoveries, trade secrets, techniques, processes, source code, unlinked object modules, computer programming techniques, and all record bearing media containing or disclosing such information and techniques disclosed pursuant to this Agreement. Information regarding current products shall be treated as non-"Confidential Information" unless marked "Confidential".

The Receiving Party shall not disclose, publish or communicate the Confidential Information to any third party without the prior written consent of the Disclosing Party. However, the Receiving Party may disclose the Confidential Information to a third party who has a need to know the Confidential Information and (i) is an accountant, attorney, underwriter or advisor under a duty of confidentiality; or (ii) is under a written obligation of confidentiality at least as restrictive as this Agreement.

6. Term

Many of the Services are "subscription" services that have a fixed Term and must be renewed in writing at the end of the term for services to continue. Contractual term of membership is generally one (1) to three (3) years in length and is agreed to by the parties in writing. Workshops purchased as part of membership expire without refund or credit at the end of the membership period covered by the purchase. Workshops purchased outside membership expire without refund or credit one (1) year after purchase. "McLean & Company" may terminate a User's access at any time if the User or the entity paying for the User's access violates the terms of use or subscription or any other agreement with Info-Tech.

7. Cancellation

"McLean & Company" Services cannot be terminated by the User during a contractual term.

8. Changes

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9. Accuracy of Information and Warranty

The information contained in the Services has been obtained from sources believed to be reliable but "McLean & Company" does not warrant the completeness, timeliness or accuracy of any information contained in the Services. The Services are intended to: help identify business risks; provide insights based on industry research; and to help you focus on certain matters which may be affecting your business. "McLean & Company" does not provide legal, accounting or other professional advice, nor should any advice from "McLean & Company" be construed as such. We encourage you to seek professional advice whenever necessary.

"McLean & Company" expressly excludes and disclaims all express or implied conditions, representations and warranties including, without limitation, any implied warranties or conditions of merchantability or fitness for a particular purpose, to the extent allowable by law.

Although "McLean & Company" takes reasonable steps to screen Services for infection by viruses, worms, Trojan horses or other code manifesting contaminating or destructive properties before making the Services available, "McLean & Company" cannot guarantee that any Service will be free of infection.

User assumes sole responsibility for the selection of the Services to achieve its intended results. The opinions expressed in the Services are subject to change without notice.

"McLean & Company" does not endorse third party products or services. "McLean & Company" assesses and analyzes the effectiveness and appropriateness of information technology in the context of a general business environment only unless specifically hired by a User to assess in the context of their own environment.

10. Limitation of Liability

In no event is "McLean & Company" liable for any direct, special, indirect, consequential, incidental, punitive or other damages however caused, whether in contract, tort, negligence, strict liability, operation of law or otherwise, (including without limitation damages for lost profits, business interruption or loss arising out of the use of or inability to use the Services, or any information provided in the Services, or claims attributable to errors, omissions or other inaccuracies in the Service or interpretations thereof), even if "McLean & Company" has been advised of the possibility of such damages. "McLean & Company's" total liability shall in no event exceed the amount paid by the User for the Service in question.

The User acknowledges that "McLean & Company" has set its prices and sold the Services to it in reliance on the limitations of liability and disclaimers of warranties and damages set forth herein, and that the same form a fundamental and essential basis of the bargain between the parties. They shall apply even if the contract between the User and "McLean & Company" is found to have failed in its fundamental or essential purpose or has been fundamentally breached.

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12. Investment Advice

The Services are not intended to be used for the purpose of, or as a basis for, making investment decisions or recommendations with respect to securities of any company or industry and "McLean & Company" assumes no liability for decisions made, in whole or in part, on the basis of any information contained in the Services.

13. Governing Law

This site and agreement is governed by the laws of the Province of Ontario, Canada, excluding any conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. Any legal action against "McLean & Company" shall take place in the courts of the Province of Ontario. The parties attorn to the non-exclusive jurisdiction of the courts of Ontario.

14. Entire Agreement

These standard terms of use, together with any service agreements and statements of work signed by the parties, contains the complete and exclusive statement of agreement between the parties and supersedes all purchase order terms and conditions, understandings, proposals, negotiations, representations or warranties of any kind whether written or oral. These terms and conditions may not be modified except via written agreement signed by both parties.

McLean & Company GSA Approved Privacy Policy

This is the privacy policy of McLean & Company. This document explains McLean & Company's policies for the collection, use and disclosure of personal information.

The Information We Collect

McLean & Company collects information by various methods, including information actively provided by its lead providers and its customers and information arising from customer surveys and general feedback.

The types of personal information we collect include name, contact information, identification information, and credit information. Credit card information is used for billing purposes only. We may record calls to or from our customer service representatives for purposes of accuracy, performance reviews, training and General quality assurance.

How We Use This Information

This information is used to provide our various products, including customer service, accounting, billing, and collections, and in the marketing of other McLean & Company products.

McLean & Company may use aggregate or anonymous information, which will not be linked to identified individuals, for various other uses for itself and third parties. The identity of our corporate clients is not considered personal or confidential information, and we may disclose that information for promotion and marketing purposes.

McLean & Company users may have the option to participate in online discussion communities. Such communities are exclusive communities for certain McLean & Company subscribers and are accessible only by subscribers through their McLean & Company login name and password. Participation in the community is completely voluntary. By opting into the community, subscribers agree to share basic contact information (name, company, address) with their peers in the community.

Who We Share This Information With

McLean & Company does not share personal information with any third parties except as disclosed in this policy. McLean & Company may provide personal information to McLean & Company's consultants, subcontractors, and professional advisors (which shall be bound by privacy obligations) to assist McLean & Company's uses disclosed herein.

Security

Personal information is stored in a combination of paper and electronic files. They are protected by security measures appropriate to the nature of the information.

Accessing Information

Individuals may review their personal information contained in McLean & Company files by contacting the McLean & Company privacy officer. If an individual believes that any of their personal information is inaccurate, we will make appropriate corrections.

Cookies

Cookies are used by McLean & Company for the convenience of our users. They are used to streamline access to the online subscriber service. Cookies automatically authenticate the user. A user can access McLean & Company products with the cookie feature turned off; however, in doing so they may find themselves challenged for username and password information on multiple occasions. McLean & Company also uses cookies to track users' visits and uses that information to improve user experience and track use of our products.

Links

McLean & Company seeks out the best web sources and resources for our advisory services. Many of our pages contain links to information at other websites. When you click on one of these links, you are moving to another website. We encourage you to read the privacy statements of these linked sites, as their privacy policy may differ from ours.

General

Notwithstanding the general terms of this policy, the collection, use, and disclosure of personal information may be made outside of the terms herein to the extent provided for in any applicable privacy or other legislation in effect from time to time.

McLean & Company may disclose personal information to another entity purchasing (including for diligence purposes prior to purchase) the assets of McLean & Company, provided that entity abides by this or a similar privacy policy.

McLean & Company is a division of Info-Tech Research Group Inc. All rights reserved.

Contact Us

For more information on McLean & Company and privacy please contact our Privacy Officer at:

Ryan Huggett
Toll Free: 1-888-670-8889 Ext. 2691

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF THE RENEWAL SUBSCRIPTION AGREEMENT WITH INFO-TECH RESEARCH GROUP FOR A THREE-YEAR TERM NOT TO EXCEED $170,000

Info-Tech Research Group provides Information Technology (IT) and Cybersecurity research, advisory, and consulting services including technology-based business research, industry-specific reporting, best-practice methodologies, benchmarking, and market analysis research. Info-Tech library of research and consulting are needed practice aids for proper Governance of Information and Technology. Without their valuable research, the IT and Cybersecurity divisions would need additional staffing and budget to conduct research ourselves.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore, as follows:

1. The City Manager is authorized to execute the renewal subscription agreement with Info-Tech Research Group, a copy of which is attached as Exhibit A and incorporated by this reference, for a three-year term not to exceed $170,000.

2. The City Manager is authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Tara M. Mazzanti
Tara M. Mazzanti
Assistant City Attorney

Exhibit A - City of Livermore ITRG Member Renewal GSA

City of Livermore

Service Proposal

INFO~TECH
RESEARCH GROUP

Megan Manning
Member Services Director
mmanning@infotech.com
1-888-670-8889 ext.2430
November 30, 2021

Hi Donald,

On behalf of our entire team at Info-Tech Research Group, I am pleased to present this proposal for IT Research and Advisory services to you and your IT department at City of Livermore.

Info-Tech's IT Research and Advisory membership provides you with access to our powerful diagnostic tools and key research to help you systematically improve your IT department's performance.

To help you maximize the impact of your membership, we also provide an unmatched level of member service.

I welcome the opportunity to work with you and your IT executives at City of Livermore. Should you have questions at any time, please contact me directly at your convenience.

Sincerely,

Megan Manning
Member Services Director
mmanning@infotech.com
1-888-670-8889 ext.2430

Info-Tech Research Group

3960 Howard Hughes Parkway
Suite 500, Las Vegas, NV, USA
89169

infotech.com

SERVICE AGREEMENT WITH INFO-TECH RESEARCH GROUP

Service Start Date: February 1, 2022 || Contract Length: 3-year
Contact: Donald Hester

City of Livermore

Product	Bundle Options	Description	Quantity	Subtotal	Discount	Total
Basic Bundle /ML	See below for your selected bundle products	Basic Bundle /ML	1.00	$44,221.67	$4,720.67	$39,501.00
	Leadership Membership	Leadership Membership: Unlimited analyst calls, full diagnostic access, contract reviews, assigned executive advisor, 1 software selection engagement per year	1.00			
	Advisory Membership	Unlimited analyst calls, full diagnostic access, 1 software selection engagement	1.00			
	Online Workshop Membership	Workshop Delivered Online	1.00	$13,898.24	$2,015.24	$11,883.00
	Concierge Services	Over 20 high-impact, single-day consulting engagements designed to be delivered online or onsite	1.00	$18,760.71	$18,760.71	$0.00
	Team Membership	Access to core research content - project blueprints, Info-Tech Academy, online Leadership training, software selection content, tools and templates library	2.00	$5,551.64	$804.98	$4,746.66
Reference Membership		Access to core research content - project blueprints, Info-Tech Academy, software selection content, tools and templates library	2.00	$0.00	$0.00	$0.00
					Total Discounts:	$26,301.60
					Total:	$56,130.66

All items stated on this document are in USD and is subject to applicable taxes.

Federal Supply Service Authorized Federal Supply Schedule Price List (GSA) - GS-35F-298GA
Payment Terms: Prompt payment terms 0%, Net 30 days

Unless otherwise stated, consulting and workshop engagements do not include travel and expenses, which will be charged in addition to the fees listed. Workshops purchased as part of membership expire without refund or credit at the end of the membership period covered by the purchase. Workshops purchased outside membership expire without refund or credit 1-year after purchase. Please work with your member services representative to select and schedule workshops prior to expiration.

Subject to applicable taxes. If your company is tax exempt, please provide a valid tax exemption certificate with the signed proposal. This Service Agreement is subject to the terms of the Federal Supply Schedule for Info-Tech, available online, including s 552.238-114 (Use of Federal Supply Schedule Contracts by Non-Federal Entities) of the GS-35F-298GA Contract Clause Document.

Unless agreed to in writing, any customer terms, including purchase order terms and conditions, are of no force or effect. By signing this Service Agreement, you agree to pay the fees set out herein annually for the term indicated.

This proposal has a definite expiry date of January 31, 2022.

Please return this signed Service Agreement to Info-Tech by DocuSign, email mmanning@infotech.com or fax (1-519-432-2506). Please include PO if required. Thank you for your business!

The signature below affirms your commitment to pay for the services ordered in accordance with the terms of this service agreement and in accordance with the Terms of Use.

If you are tax exempt, please provide tax exemption certificate.

Term Number	Invoice Date	Invoice Amount	Term Start Date	Term End Date	Notes
1	January 17, 2022	$56,130.66	February 1, 2022	February 1, 2023	Year 1 invoice to be sent upon receipt of signed agreement. Payment Due: Net 30 (on or by March 2, 2022)
2	November 1, 2022	$56,130.66	February 1, 2023	February 1, 2024	Payment Due: Net 30 (on or by March 2, 2023)
3	November 1, 2023	$56,130.66	February 1, 2024	February 1, 2025	Payment Due: Net 30 (on or by March 1, 2024)

Name _____ Signature _____

Title _____ Date _____

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.4**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing the appropriation of funding for development of the Vineyard 2.0 affordable housing and community care facilities project and approving funding agreements and related documents between the City of Livermore and Tri Valley BMR, LLC.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Appropriating up to $1,182,772 of City Affordable Housing Trust Funds and $2,457,750 of Housing Successor Agency Funds to Tri Valley BMR, LLC for a development loan for the Vineyard 2.0 project located at 460 North Livermore Avenue; and
2. Appropriating up to $1,620,135 of Human Services Facility Funds to Tri Valley BMR, LLC for a grant to develop community care facilities located at 460 North Livermore Avenue; and
3. Appropriating up to $1,500,000 of Non-Housing Residual Property Taxes (County "Boomerang Funds") to Tri Valley BMR, LLC for a grant to develop of the Vineyard 2.0 project as awarded and directed by the Alameda County Board of Supervisors; and
4. Authorizing the City Manager, or his designee, to execute the Affordable Housing Loan Agreement attached to the Resolution as Exhibit A, Amended and Restated Affordable Housing Regulatory Agreement attached to the Resolution as Exhibit B, Social and Human Services Facility Fee Grant Agreement attached to the Resolution as Exhibit C, Services Facility Regulatory Agreement attached to the Resolution as Exhibit D, between the City of Livermore and Tri Valley BMR, LLC; and all other related documents authorized and described in those agreements; and
5. Authorizing the City Manager to execute a Grant Agreement, attached to the Resolution as Exhibit E, between the City of Livermore and Tri Valley BMR, LLC, that governs the use of the funds awarded to the City from the County of Alameda for Vineyard 2.0, subject to final form approval by the City Attorney; and
6. Authorizing the City Manager, or his designee, to execute a Subordination Agreement with Tri Valley BMR, LLC, the County of Alameda, and JP Morgan Chase Bank, in substantially the form attached to the Resolution as Exhibit F, and subject to final form approval by the City Attorney.

SUMMARY

Housing Consortium of the East Bay (HCEB), the sole managing member of the Tri Valley BMR, LLC, is developing a mixed-use affordable housing project with community-serving facilities known as the Vineyard 2.0 project. Located at 460 North Livermore Avenue, the Vineyard 2.0 project will provide 23 permanent supportive homes for people experiencing homelessness as well as dedicated, permanent infrastructure to address the food and service needs of persons at risk of and experiencing homelessness in Livermore and their nonprofit service providers. HCEB has worked with the City to finalize a financing plan for the project that includes a request to the City for a Development Loan of $3,640,522 in City Housing funds and a Human Services Facility Grant of $1,620,135. In addition, the Alameda County Board of Supervisors awarded the City of Livermore with $1,500,000 in Alameda County Non-Housing Residual Property Taxes ("Boomerang Funds") for the purposes of supporting the development of the Vineyard 2.0 project. If the staff-recommended loan and grant agreements are approved, HCEB will move forward with closing escrow on its construction loan and commence construction.

DISCUSSION

In 2017 and 2018, the Livermore City Council approved funding for Housing Consortium of the East Bay (HCEB), the sole managing member of the Tri Valley BMR, LLC, to finance initial predevelopment and acquisition expenses necessary to acquire the property located at 460 North Livermore Avenue (the "Vineyard Site") and design a mixed-use affordable housing project with community-serving facilities known as the Vineyard 2.0 project (the "Project").

On May 5, 2020, the Livermore Planning Commission approved entitlements for the redevelopment of the Vineyard site with three new buildings containing 23 apartments for extremely low-income households earning between 20 to 30 percent of the Area Median Income (AMI), an onsite manager's apartment, a resource center for the neighborhood and individuals who are homeless, and a food service kitchen operated by the local non-profit Open Heart Kitchen.

The Vineyard 2.0 project is consistent with the City's Housing First Initiative, a comprehensive strategy to reduce homelessness. The project also provides dedicated, permanent infrastructure to address the food and service needs of persons at risk of and experiencing homelessness in Livermore and their nonprofit service providers. All housing units, except for the manager's unit, will be affordable to households earning 20 to 30 percent of Area Median Income (AMI). Since the project will receive funding from Alameda County Measure A1 bonds and the State of California, the project is also subject to regulatory agreements with those entities.

HCEB has engaged with the City, a variety of agencies, civic organizations, and faith-based volunteer groups to seek input on services, identify community partners, design facilities to accommodate the programming, and create a site layout. Future service partners and volunteer groups engaged by HCEB to provide services at the site once developed include: Open Heart Kitchen, CityServe of the Tri-Valley, the Livermore Homeless Refuge, and volunteer programs hosted by the congregations in Livermore that provide showers, washing services, mail, breakfast and clothing programs.

On December 8, 2020, the Alameda County Board of Supervisors awarded the City of Livermore with $1,500,000 in Alameda County Non-Housing Residual Property Taxes ("Boomerang Funds") for the purposes of supporting the development of the Vineyard 2.0 project. On November 19, 2021, the City

requested written concurrence from Alameda County that the Grant Agreement with HCEB attached to this item's Resolution as Exhibit C, and plan for distribution of the funds is consistent with the intent of the Board's action on December 8, 2020. While staff anticipates that the County will concur, such concurrence has not yet been received, and as such, staff requests that the City Council authorize the City Attorney to make and approve final edits to the agreement form if requested by the County in order to prevent a delay of escrow closing for the Vineyard project.

HCEB has worked with the City to finalize a financing plan for the Project that includes the City's existing $2,270,000 Acquisition Loan and $855,000 Predevelopment Loan, as well as a request for additional support for development of the housing and services components. Because of the extremely low rents and nonprofit uses, HCEB cannot afford monthly debt payments on the project and has identified a variety of public funding sources and private donations that will enable them to keep rents affordable for the residential and nonprofit tenants. HCEB's current funding request to the City for a Development Loan of $3,640,522 leverages over $13.7 million in other State, local and private funds to develop the Project. If approved, the City's new Development Loan would be evidenced through the Affordable Housing Loan Agreement, and Promissory Note secured by a Deed of Trust. As a condition of receiving the loan funds, the project developer also agrees to execute a 55-Year Residential Regulatory Agreement to rent-restrict units for extremely low-income households and establish property maintenance and management standards.

In addition to the Development Loan, HCEB also requests a grant of $1,620,135 from the City's Human Services Facility Fund (Fund 333) to construct the Vineyard project's community-serving facilities. Grant funds will be used for costs related to the development of the housing resource center that will offer social services for people experiencing homelessness as well as the commercial kitchen that will be operated by Open Heart Kitchen and expand their meal production capacity. The City will also record a 55 Year Services Facility Regulatory Agreement in order to ensure that the facilities continue to benefit low-income individuals in Livermore and operate in a manner consistent with the Social and Human Services Facility Fee Ordinance.

If the loan and grant agreements are approved, HCEB will move forward with closing escrow on its construction loan by January 31, 2022. Construction is expected to commence within ninety (90) days of the close of escrow and to be completed 24 months after construction begins.

The City's loan and regulatory agreements also allow for subordination to other approved lenders, and staff recommends City Council approve the execution of the Subordination Agreement with JP Morgan Chase Bank and Alameda County, substantially in the form provided and subject to final approval by the City Attorney. The execution of these agreements will establish the priority of liens and regulatory agreements between the lenders. As proposed, the order will not adversely affect the City's financial interest in the property, nor its regulatory interest in restricting the use to affordable housing for people experiencing homelessness.

Staff recommends approval of the Affordable Housing Loan Agreement, Amended and Restated Affordable Housing Regulatory Agreement, Social and Human Services Facility Fee Grant Agreement and Regulatory Agreement, County of Alameda Grant Agreement, and all other related documents authorized and described in those agreements. The coexistence of housing units that support the City's Housing First initiative, along with food and support services for persons experiencing homelessness, exemplifies the comprehensive strategies and partnerships needed to achieve a reduction of homelessness.

FISCAL AND ADMINISTRATIVE IMPACTS

At present there are no appropriations for the Development Loan and Human Services Facilities Grant in the current budget for Fiscal Year 2021-22. The recommended action includes supplemental appropriations of $1,182,772 from the Affordable Housing Trust Fund (Fund 611), $2,457,750 from the Housing Successor Agency Fund (Fund 609), $1,620,135 from the Human Services Facility Fee Fund (Fund 333), and $1,500,000 from the General Fund for a total appropriation of $6,760,657. Appropriations in the General Fund will be offset by the $1,500,000 received by the City for Boomerang Funds awarded by the Alameda County Board of Supervisors for the Vineyard 2.0 project.

Per the terms of the Affordable Housing Loan Agreement, the development loan will accrue three percent (3%) annual interest for a 55-year term and be payable, customary with other City affordable housing loans, from any residual cash generated by the future project once developed after all expenses and debt service obligations have been met.

ATTACHMENTS

1. Resolution
2. Exhibit A - Affordable Housing Loan Agreement
3. Exhibit B - Amended and Restated Regulatory Agreement
4. Exhibit C - Human Services Facility Fee Grant Agreement
5. Exhibit D - Services Facility Regulatory Agreement
6. Exhibit E - Vineyard Alameda County Grant Agreement
7. Exhibit F - Vineyard Subordination Agreement

Prepared by: Grace Streltzov
Management Analyst II

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING APPROPRIATION OF FUNDS FOR DEVELOPMENT OF THE VINEYARD 2.0 AFFORDABLE HOUSING AND COMMUNITY CARE FACILITIES PROJECT AND EXECUTION OF FUNDING AGREEMENTS AND RELATED DOCUMENTS BETWEEN THE CITY OF LIVERMORE AND TRI VALLEY BMR, LLC

On September 24, 2018, the Livermore City Council approved funding for Housing Consortium of the East Bay (HCEB), the sole managing member of the Tri Valley BMR, LLC, to finance initial predevelopment and acquisition expenses necessary to acquire the property located at 460 North Livermore Avenue and design a mixed-use affordable housing project with community care facilities known as the Vineyard 2.0 project (the "Project"). HCEB proposes to develop the Project through a variety of City, County of Alameda, State of California, and private funding sources targeted to support the residential and service components.

On December 8, 2020, the Alameda County Board of Supervisors approved the use of $1,500,000 in one-time funds from Non-Housing Residual Property Taxes (the "Boomerang Funds") to partner with the City of Livermore to support the Project to support housing for vulnerable populations. The City wishes to help the County administer the Boomerang Funds and understands the funds should be given to HCEB for the Project.

Tri Valley BMR has requested a development loan of $3,640,522 from the City to commence construction and complete the Project as well as a grant of $1,620,135 to construct the Project's community-serving facilities.

The City and Tri Valley BMR, LLC now wish to enter into the agreements attached to this Resolution to execute these funding requests.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore:

1. Appropriates up to $1,182,772 of City Affordable Housing Trust Funds (Fund 611) and $2,457,750 of Housing Successor Agency Funds (Fund 609) to Tri Valley BMR, LLC for a development loan for the Vineyard 2.0 project located at 460 North Livermore Avenue;

2. Appropriates up to $1,620,135 of Human Services Facility Funds (Fund 333) to Tri Valley BMR, LLC for a grant to develop community care facilities located at 460 North Livermore Avenue;

3. Appropriates up to $1,500,000 of Non-Housing Residual Property Taxes (the "Boomerang Funds") (Fund 001) to Tri Valley BMR, LLC for a grant to develop the

Vineyard 2.0 project as awarded and directed by the Alameda County Board of Supervisors;

4. Authorizes the City Manager, or his designee, to execute the Affordable Housing Loan Agreement attached hereto as Exhibit A, Amended and Restated Affordable Housing Regulatory Agreement attached hereto as Exhibit B, Social and Human Services Facility Fee Grant Agreement attached hereto as Exhibit C, Services Facility Regulatory Agreement attached hereto as Exhibit D, between the City of Livermore and Tri Valley BMR, LLC; and all other related documents authorized and described in those agreements;

5. Authorizes the City Manager to execute a Grant Agreement, attached hereto as Exhibit E, between the City of Livermore and Tri Valley BMR, LLC, that governs the funds awarded to the City from the County of Alameda for Vineyard 2.0. and subject to final form approval by the City Attorney; and

6. Authorizes the City Manager, or his designee, to execute a Subordination Agreement with Tri Valley BMR, LLC, the County of Alameda, and JP Morgan Chase Bank, in substantially the forms attached hereto as Exhibit F, and subject to final form approval by the City Attorney.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kelly J. Trujillo
Kelly J. Trujillo
Assistant City Attorney

Exhibit A – Affordable Housing Loan Agreement
Exhibit B – Amended and Restated Affordable Housing Regulatory Agreement
Exhibit C – Social and Human Services Facility Fee Agreement
Exhibit D – Services Facility Regulatory Agreement
Exhibit E – Grant Agreement with Tri-Valley BMR, LLC (County of Alameda funds)
Exhibit F – Form of Subordination Agreement

AFFORDABLE HOUSING LOAN AGREEMENT
(Predevelopment and Development)

by and between

THE CITY OF LIVERMORE

and

TRI VALLEY BMR, LLC

Vineyard Affordable Housing Project

_____, 2022

THIS AFFORDABLE HOUSING LOAN AGREEMENT (Predevelopment and Development) (this "**Agreement"**) is entered into effective as of _____, 2022 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri Valley BMR, LLC, a California limited liability company ("**Borrower**"), whose sole member is Housing Consortium of the East Bay, a California not-for-profit corporation ("**HCEB**"). The City and the Borrower are collectively referred to herein as the "Parties."

RECITALS

A. On September 27, 2018, the City entered into an Affordable Housing Loan Agreement with the Borrower (the "**City Acquisition Loan Agreement**") to provide a loan to Borrower in the amount of $2,270,000 (the "**City Acquisition Loan**") to assist in financing acquisition of the property located at 460 North Livermore Avenue, known as Alameda County Assessor Parcel No. 098-0240-001-17, and more particularly described in Exhibit A attached hereto (the "**Property**"). In connection with the City Acquisition Loan, the City and Borrower entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 27, 2018 and recorded October 2, 2018, as Instrument No. 2018191363 in the Official Records of Alameda County (the "**Original Regulatory Agreement**"), that certain Deed of Trust and Assignment of Rents (the "**City Acquisition Deed of Trust**"), dated as of October 2, 2018 and recorded October 2, 2018, as Instrument No. 2018191364 in the Official Records of Alameda County, and that certain Promissory Note dated as of October 2, 2018 (the "**City Acquisition Note**").

B. Pursuant to the City Acquisition Loan Agreement, Borrower will develop, own, and operate an affordable housing development consisting of twenty-four (24) units of permanent, supportive, affordable rental housing for persons who are formerly homeless with related improvements supporting the residences, as well as approximately 9,755 square feet of services space for a variety of community-serving, non-profit programs including but not limited to food, basic needs, shelter, housing referral and counseling, and a commercial kitchen (the "**Project**").

C. On June 30, 2017 the City entered into a Predevelopment Loan Agreement with Borrower to help finance initial predevelopment and acquisition expenses necessary to assess the feasibility of potential development of the Project and to gain entitlements to develop the Property, as subsequently amended by that certain First Amendment to Predevelopment Loan dated June 26, 2018 and that certain Second Amendment to Predevelopment Loan Agreement dated September 25, 2018, each to increase the loan amount to include additional funds for the predevelopment budget (as amended, the "**City Predevelopment Loan Agreement**"). The total amount of the loan under the City Predevelopment Loan Agreement is Eight Hundred Fifty-Five Thousand One Hundred Ten Dollars ($855,110) (the "**City Predevelopment Loan**"). In connection with the City Predevelopment Loan, the City and Borrower entered into that certain Deed of Trust and Assignment of Rents, dated October 2, 2018 and recorded October 2, 2018 as Instrument No. 2018191365 in the Official Records of Alameda County (the "**City Predevelopment Deed of Trust**"), and that certain Second Amended and Restated Promissory Note dated October 2, 2018 (the "**City Predevelopment Note**"). As of the Effective Date, of the total proceeds of the City Predevelopment Loan (the **"City Predevelopment Loan Proceeds"**), $646,238 have been

disbursed and Two Hundred Eight Thousand Eight Hundred Seventy-Two Dollars ($208,872) remain available.

D. The City Predevelopment Loan Agreement has expired and City and Borrower now wish to subsume and the restate the terms of the City Predevelopment Loan Agreement in this Agreement. The City Predevelopment Loan shall be evidenced by the existing City Predevelopment Deed of Trust and by that certain Third Amended and Restated Promissory Note (Predevelopment Loan) from Borrower to City dated as of approximately even date herewith (the "**Third City Predevelopment Note**").

E. Upon the satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the City has agreed to (i) allow for the allocation of the remaining balance of the City Predevelopment Loan to the Project; and (ii) make a development loan to the Borrower in an amount not to exceed Three Million Six Hundred Forty Thousand Five Hundred Twenty Two Dollars (**$3,640,522**) (the "**City Development Loan**") to assist with permanent development financing for of the Project.

F. Concurrently with the execution of this Agreement, Borrower will execute, and deliver to City, and as applicable, cause to be recorded in the Official Records: a City Development Loan Note to evidence Borrower's obligation to repay the City Development Loan ("**City Development Note**"), a deed of trust in the amount of Three Million Six Hundred Forty Thousand Five Hundred Twenty Two Dollars ($3,640,522) that will provide City with a security interest in the Property (the **"City Development Deed of Trust**") to secure the City Development Loan Note, and the Restated Regulatory Agreement (defined below), that will amend and restate the Original Regulatory Agreement and that will restrict eleven (11) units in the Project to be affordable to low-income households, with incomes that do not exceed 30% of the Area Median Income, for a term of not less than fifty-five (55) years.

G. A material inducement to City to enter into this Agreement is the representation by Borrower to develop the Project within the time periods specified in the Schedule of Performance attached as Exhibit I, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Borrower to take such actions and complete such work in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS; EXHIBITS

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

"Affordable Rent" is defined in the Restated Regulatory Agreement.

"Agreement" means this Affordable Housing Agreement.

"Applicable Laws" is defined in Section 5.4.

"**Approved Financing**"_for the project means the sources included in the Approved Development Budget, attached as Exhibit G, or as otherwise modified in accordance with Section 5.8.

"**Approved Senior Loan**" means the loan provided by JPMorgan Chase Bank in the amount of $1,810,032.

"Area Median Income" is defined in the Restated Regulatory Agreement.

"Borrower" means Tri Valley BMR, LLC., a California limited liability company.

"Certificate of Completion" means a final certificate of occupancy or its equivalent.

"City's Authorized Representative" means the City Manager of the City of Livermore.

"City" means the City of Livermore, a municipal corporation.

"**City Acquisition Deed of Trust**" is defined in Recital A.

"City Acquisition Loan" and **"City Acquisition Loan Agreement"** are defined in Recital A.

"City Acquisition Note" is defined in Recital A.

"City Council" means the City Council of the City of Livermore.

"**City Deeds of Trust**" is defined as that City Predevelopment Deed of Trust, City Development Deed of Trust, and City Acquisition Deed of Trust.

"**City Development Deed of Trust**" is defined in Recital F.

"**City Development Loan**" is defined in Recital E.

"**City Development Note**" is defined in Recital F.

"**City Documents**" means collectively, this Agreement, the City Acquisition Loan Agreement, the City Notes, the City Deeds of Trust, and the Restated Regulatory Agreement, as amended.

"City Notes" is defined as that City Predevelopment Note, City Acquisition Note, and City Development Note. [NOTE: definition not used.]

"**City's Permitted Exceptions"** is defined in Section 4.6(f).

"**City Predevelopment Deed of Trust"** is defined in Recital C.

"**City Predevelopment Loan**" is defined in Recital E.

"**City Predevelopment Note**" is defined in Recital C.

"**Claims**" is defined in Section 5.3.

"**Closing Date**" or "**Close of Escrow**" shall be the date that escrow closes for the Loan.

"**Environmental Laws**" is defined in Section 7.1.2.

"Escrow Agent" is defined in Section 3.1.

"Financing Plan" is defined in Section 2.3.

"Force Majeure" is defined in Section 12.1.

"**Hazardous Material**" is defined in Section 7.1.1.

"**HCEB**" means Housing Consortium of the East Bay, a California nonprofit public benefit corporation.

"**Improvements**" is defined in Section 2.2.

"**Indemnitees**" is defined in Section 5.3.

"**Lender's Title Policy"** is defined in Section 4.6(f).

"**Loan"** means collectively the City Predevelopment Loan and the City Development Loan.

"**Development Loan Proceeds"** is defined in Section 4.1.1.

"**Maturity Date**" is defined in Section 4.2.

"**Notes**" is defined in Section 4.6(d).

"**Official Records"** means the Official Records of Alameda County.

"**Prevailing Wage Laws**" is defined in Section 5.3.

"**Project**" is defined in Recital B.

"**Property**" is defined in Recital A.

"**Relocation Laws**" is defined in Section 6.5.

"**Restated Regulatory Agreement**" is defined in Section 4.6(d).

"**Title Company**" is defined in Section 3.1.

"**Transfer**" is defined in Section 8.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of the Property
B Form of Third City Predevelopment Note
C Form of City Development Note
D Form of City Development Deed of Trust
E Form of Restated Regulatory Agreement
F Insurance Requirements
G Approved Development Budget
H Predevelopment Loan Budget
I Schedule of Performance

ARTICLE II

REPRESENTATIONS; PROJECT SCOPE; FINANCING PLAN

2.1 Borrower's Representations. Borrower represents and warrants to City as follows, and Borrower covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Borrower shall immediately give written notice of such fact or condition to City. Borrower acknowledges that City shall rely upon Borrower's representations made herein notwithstanding any investigation made by or on behalf of City.

(a) Organization. Borrower is a limited liability company, duly organized and in good standing under the laws of the State of California and whose sole member is Housing Consortium of the East Bay, a nonprofit public benefit corporation duly organized and in good standing under the laws of the State of California and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Borrower, or to be executed and delivered by Borrower pursuant to, or in connection with, this Agreement, and to perform and observe all terms and provisions of all of the foregoing.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments that have been or that will be executed and delivered by Borrower pursuant to or in connection with this Agreement, have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower,

and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments that have been or that will be executed and delivered by Borrower pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments which have been or that will be executed and delivered by Borrower pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments that have been or that will be executed and delivered by Borrower pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Pending Proceedings. Borrower is not in default under or in violation of any law or regulation or under any order of any court, board, commission or agency whatsoever, and to the current actual knowledge of Borrower's principals, there are no claims, actions, suits or proceedings pending or threatened against or affecting Borrower or the Property, at law or in equity, before or by any court, board, commission or agency. Borrower is not the subject of any bankruptcy or insolvency proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Borrower's assets has been made.

2.2 Project Scope. The Project will include the development of affordable housing and services on the Property, which will include: (i) 24 new construction apartments that will include one (1) manager's residential unit and office/resident community space; and, (ii) approximately 6,000 square feet of services space for the community to be known as the Resource Center (the "Resource Center") that will support and expand existing types of food, basic needs and counseling services that assist persons experiencing homelessness and the low-income community at large, and (iii) a commercial kitchen facility (the "Improvements"). To the extent allowed by law, preference shall be given for marketing to and occupancy by individuals who are homeless as further described in the Restated Regulatory Agreement.

2.3 Financing Plan. Borrower intends to finance the costs of the Project with sources that may include, but are not limited to, the City Loan, Alameda County Measure A1 Affordable Housing bond funds, Community Development Block Grants, State of California No Place Like Home funds, and private lender construction and permanent financing. Borrower shall submit to

City for City's review and approval, Borrower's plan for construction and permanent financing for the Project (the "Financing Plan"). The Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of the Project, including without limitation acquisition costs and hard and soft construction costs (sources and uses). The Financing Plan shall include development and operating pro formas which set out in detail Borrower's plan for financing the costs of acquisition, construction and operation of the Project to include rent rolls, and an ongoing operating budget and cash flow analysis. Borrower's submittal and City's approval of the Financing Plan are conditions to City's obligation to fund the Loan.

ARTICLE III

ESCROW AND CLOSING

3.1 Escrow. City and Borrower shall open escrow at the office of Old Republic Title Company located at 555 12th Street, Suite 2000, Oakland, CA 94607, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the closing of escrow for the transactions contemplated hereby.

3.2 Costs of Closing and Escrow. Borrower shall pay all title insurance premiums for policies Borrower elects to purchase in connection with Borrower's acquisition of the Property. Borrower shall pay, or cause to be paid, all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the acquisition of the Property. Borrower shall pay for the cost of any lender's policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby. City and Borrower shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Borrower may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Borrower, shall serve as escrow instructions for the Closing.

3.3 Closing. The Closing Date shall be a date that is mutually acceptable to the Parties. Prior to the Close of Escrow, Borrower shall deposit into escrow the City Documents to which Borrower is a party, executed and acknowledged as applicable, and Borrower's share of closing costs. Provided that all conditions precedent (Section 4.6) to Close of Escrow have been satisfied or waived, City shall deposit into escrow executed copies of the City Documents to which City is a party. On the Closing Date the Escrow Agent shall cause the City Development Deed of Trust and Restated Regulatory Agreement to be recorded in the Official Records.

ARTICLE IV

CITY FINANCIAL ASSISTANCE

4.1 Predevelopment and Development Loan and Note.

4.1.1 Development Loan. The City will make the City Development Loan to the Borrower in the amount of Three Million Six Hundred Forty Thousand Five Hundred Twenty-Two Dollars ($3,640,522) upon the terms and conditions and for the purposes set forth in this Agreement.

The sources of funds for the City Development Loan consist of Two Million Four Hundred Fifty-Seven Thousand Seven Hundred Fifty Dollars ($2,457,750) in City of Livermore Housing Successor Agency Funds and One Million One Hundred Eighty-Eight Thousand Seven Hundred Seventy-Two Dollars ($1,182,772) in City of Livermore Housing Trust Funds, which collectively make up the City Development Loan. The City Development Loan shall be evidenced by the City Development Note which shall be dated as of the Closing Date and executed by Borrower substantially in the form attached hereto as Exhibit C. Provided that Borrower has complied with all conditions precedent to disbursement of the City Development Loan set forth in Section 4.6, the proceeds of the City Development Loan ("**Development Loan Proceeds**") shall be disbursed pursuant to approved draw requests as described in Section 4.9. The Parties agree that City shall disburse the Development Loan Proceeds only for the purpose of funding Project development costs, and repayments of the City Development Loan, City Predevelopment Loan and City Acquisition Loan shall be made on a pari passu basis until fully repaid.

4.1.1(i) Interest Rate. The principal balance of the City Development Note outstanding will bear interest at the rate of three percent (3%) per annum based on a 365-day year from the date of disbursement. Annual payments shall be due and payable on a residual receipts basis commencing upon City's issuance of a final certificate of occupancy or equivalent for the Project in accordance with the formula set forth herein based on the total loan amounts set forth in the Project's final, approved cost certification.

4.1.2 City Predevelopment Loan. As set forth in the Recitals, the City has provided the City Predevelopment Loan to Borrower using City Low Income Housing Funds to fund certain predevelopment expenses associated with the Project in the amount of Eight Hundred Fifty-Five Thousand One Hundred Ten Dollars ($855,110). The borrower's obligation to repay the City Predevelopment Loan is evidenced by the Third City Predevelopment Note. As of the Effective Date, Six Hundred Forty-Six Thousand Two Hundred Thirty-Eight Dollars ($646,238) of the City Predevelopment Loan Proceeds have been disbursed and Two Hundred Eight Thousand Eight Hundred Seventy-Two Dollars ($208,872) remain available to draw for predevelopment expenses described in the Predevelopment Loan budget (the **"Predevelopment Loan Budget"**) attached as Exhibit H and disbursed in accordance with Section 4.9.

4.2 Payment Dates; Maturity Date. By no later than July 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall pay to City fifty percent (50%) of Surplus Cash (defined below) generated by the Project during the previous calendar year to reduce the indebtedness owed under the Notes, which shall be shared on a proportional basis with other approved public lenders that provide financing with residual payment terms for the Project. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under the Notes become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of the City Development Loan, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date (the "**Maturity Date**") which is the later of (i) the fifty-fifth (55th) anniversary of the date upon which the City issues a final certificate of occupancy or equivalent for the Project, or (ii) the sixtieth (60th) anniversary of the date hereof. Notwithstanding the foregoing, the City shall have the right to accelerate the Maturity Date and declare all sums payable under the Notes immediately

due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Borrower Default.

No later than June 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant in accordance with generally accepted accounting principles. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item. If Borrower and City cannot agree on the amount of Surplus Cash, an independent auditor mutually selected by Borrower and City shall resolve any disputed items. The cost of the auditor shall be shared equally by Borrower and City.

No later than November 1 of each year following issuance of the final certificate of occupancy or equivalent for the Project, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 45 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any changes to the budget for discretionary items that exceed ten percent (10%) of the total budgeted amount applicable shall require City's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, annual increases of 3.5% or less for a budgeted line item shall be deemed approved and shall not require further consent by the City.

4.2.1 "**Surplus Cash**" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

4.2.2 "**Gross Revenue**" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration from the operation and leasing of residential units in the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by residential tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by residential tenants; all cancellation fees, price index adjustments and any other rental adjustments to residential leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loan (provided however, expenditure of such proceeds for repair or restoration of the Project shall be included within Annual Operating Expenses in the year of the expenditure); condemnation awards for a taking of part or all of the Property or Project for a temporary period; and the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the affordable housing component of the Project. Gross Revenue

shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, interest earned on restricted cash, amortization of non-cash revenues (such as grants), insurance proceeds (except for loss of business), capital contributions or similar advances, or any revenue, income, or receipts from the operation and leasing of commercial space in the Project.

4.2.3 "**Annual Operating Expenses**" shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a nonoptional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans from other entities which have been approved in writing by the City and which are secured by a deed of trust senior in priority to any City Deed of Trust for property acquisition of the Project ("**Approved Senior Loan**"); property management fees and reimbursements in amounts in accordance with industry standards for similar projects and paid pursuant to a property management agreement approved by City; resident services and other facility staffing fees which are required by the City's Residential Regulatory Agreements or any other City regulatory agreement or requirement; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount equal to $450 per unit per year or such greater amount as required by Approved Financing sources and/or a physical needs assessment prepared by a third-party selected or approved by City and prepared at Borrower's expense; cash deposits into operating reserves in an amount reasonably approved by the City or required by Approved Financing sources; and other ordinary and reasonable operating expenses approved by City.

4.2.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Project operating or replacement reserves, except as provided in Section 4.2.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to any City Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; distributions to partners. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 4.2.3 above, even if paid to Borrower, an affiliate of Borrower, or a partner of Borrower: fees paid to a property management agent, resident services agent, or social services agent; partnership management fees, asset management fees, deferred developer fee, and subject to Section 4.2.5, repayment of cash advances by Borrower or its partners to cover Project operating expense deficits or emergency cash needs of the Project. Payments to Borrower, its partners or affiliates in excess of the limitations set forth in Section 4.2.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

4.2.5 Excess Proceeds. Within ten (10) days after Borrower's receipt, Borrower shall pay to the City as a reduction of the outstanding principal balance of this Note, a one-time payment in the amount of Excess Proceeds. "Excess Proceeds" shall mean the sum of all sources of financing received by Borrower for acquisition, construction and permanent financing of the Property and the Project, less the sum of actual uses as shown on the final cost certificate for the Project. Prior to calculating Excess Proceeds, the Project operating reserve shall be funded in the amount of three (3) months' projected Project operating expenses (or such greater amounts required by holder of a Senior Approved Loan or other lender in the Borrower's approved operating plan), and any developer fee permitted pursuant to Section 5.9 below shall be paid.

4.3 Security. As security for repayment of the City Development Note, Borrower shall execute the City Development Deed of Trust in favor of City as beneficiary pursuant to which City shall be provided a lien against the Property. The City Development Deed of Trust shall be substantially in the form attached hereto as Exhibit D, and shall be recorded in the Official Records on the Closing Date. The City Development Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Financing Plan as City shall approve in writing.

4.4 Prepayment; Acceleration.

4.4.1 Prepayment. Borrower shall have the right to prepay the Development Loan and Predevelopment Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Borrower's obligations under the Restated Regulatory Agreement which shall survive for the full term of the Restated Regulatory Agreement.

4.4.2 Due On Transfer or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer.

4.4.3 Default. The City shall have the right to accelerate the maturity date and declare all sums payable under the Notes immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Borrower Default.

4.5 Nonrecourse. Except as expressly provided in the Notes, the Notes shall be non-recourse to Borrower.

4.6 Conditions to Closing and Disbursement of Development Loan Proceeds. City's obligation to make the Development Loan is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 4.6 unless any such condition is waived in writing by City acting in the discretion of City's Authorized Representative.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Borrower contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Borrower shall have delivered to City of each of the following: (i) LLC-1 and certificate of good standing for Borrower and certified articles of incorporation and certificate of good standing for the sole member/manager of the LLC, certified by the Secretary of State indicating that the Borrower and the sole member/manager thereof are properly organized and authorized to do business in the State of California, (ii) certified resolutions indicating that Borrower's managing member has authorized the transactions contemplated by this Agreement and that the persons executing this Agreement and the other City Documents on behalf of Borrower have been duly authorized to do so, and (iii) verification of the tax-exempt status of the LLC's sole member/manager.

(d) Execution, Delivery and Recordation of Documents. Borrower shall have executed, acknowledged as applicable, and delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation, the City Predevelopment Note substantially in the form attached hereto as Exhibit B, the City Development Note substantially in the form attached hereto as Exhibit C (the City Predevelopment Note and the City Development Note, collectively, are the **"Notes**"), a deed of trust substantially in the form attached hereto as Exhibit D (the **"City Development Deed of Trust**"), and a First Amended and Restated Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit E (the "**Restated Regulatory Agreement**"). Concurrently with the Closing, the Restated Regulatory Agreement and the City Development Deed of Trust shall be recorded in the Official Records.

(e) Mechanics' Liens. Borrower's delivery to City of evidence reasonably satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Borrower's provision to City of full waivers or releases of lien claims if required by City.

(f) Lender's Title Policy. The Title Company shall, upon payment of the premium therefore, be committed to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of City ("**Lender's Title Policy"**) in the amount of the City Development Loan, insuring that the lien of the Deed of Trust, and the Restated Regulatory Agreement are subject only to title exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may reasonably approve in writing (collectively, "**City's Permitted Exceptions**"), and containing such endorsements as City may reasonably require, with the cost of such Lender's Title Policy to be paid by Borrower.

(g) Insurance; Payment and Performance Bonds. Borrower shall have provided evidence satisfactory to City that Borrower has obtained insurance coverage meeting the requirements set forth in Article XI.

(h) Payment of Fees. Borrower shall have paid when due all customary and reasonable fees and charges in connection with the processing of all applicable City approvals.

4.7 Borrower's Conditions to Closing. Borrower's obligation to proceed with the Closing is subject to the satisfaction or Borrower's waiver of the following conditions:

(a) No Default. City shall not be in default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects;

(b) Execution of Documents. City shall have executed and acknowledged the Restated Regulatory Agreement, and all other City Documents to which the City is a party, and shall have delivered such documents into escrow; and

4.8 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Development Loan Proceeds or City Predevelopment Loan Proceeds following:

(i) the failure of any of Borrower's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;

(ii) the termination of this Agreement by mutual agreement of the Parties;

(iii) the occurrence of an Event of Borrower Default under any City Document which remains uncured beyond any applicable cure period, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Borrower Default under any City Document.

4.9 Process for Disbursement of City Development Loan Proceeds or City Predevelopment Loan Proceeds.

(a) Borrower shall submit one (1) draw request to the City not more frequently than one time each calendar month.

(b) The draw request must be in a form containing sufficient detail and with sufficient supporting documentation to permit the City to confirm that the request is consistent with this Agreement.

(c) The draw request must include a statement of the total costs incurred by Borrower in connection with the Development, the amount of those costs paid by Borrower, the proposed uses of funds consistent with the Approved Development Budget or the Predevelopment Loan Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any costs other than costs associated with the acquisition of the Property or hard cost of the Improvements, such disbursement will be made only on a cost reimbursement basis and the disbursement request must be accompanied by receipts that show the bill or invoice has already been paid by Borrower.

(d) When a disbursement is requested to pay any contractor in connection with the Construction Work, the written request must be accompanied by (i) certification by

Borrower's architect reasonably acceptable to the City that the work for which disbursement is requested has been completed (although the City reserves the right to inspect the Development and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the City. Borrower shall apply the disbursement for the purposes requested.

(e) The City will make good faith efforts to approve Borrower's draw request in approximately thirty (30) days after receipt of a properly completed draw request with all necessary supporting documentation.

(f)Notwithstanding any other provisions of this Agreement, the City shall have no further obligation to approve a draw-down of any portion of the City Development Loan to Borrower following: (i) termination of this Agreement; or (ii) notification by the City to Borrower of a Default under the terms of this Agreement.

ARTICLE V

DEVELOPMENT OF THE PROPERTY

5.1 Project Approvals. Borrower acknowledges that execution of this Agreement by City does not constitute City approval for the purpose of the issuance of building permits, does not limit in any manner the discretion of City in such approval process, and does not relieve Borrower from the obligation to apply for and obtain from City and all other agencies with jurisdiction over the Property, all necessary approvals, entitlements, and permits for the construction of the Project and development of the Property, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the development of the Property (if any) and the approval of the Project in compliance with CEQA (and if applicable, NEPA), nor does it limit in any manner the discretion of the City or any other agency in the approval process. Borrower shall pay when due all customary and reasonable fees and charges in connection with the processing of all applicable permits and approvals. Borrower shall not commence construction work on the Project prior to issuance of building permits required for such work. City staff shall work cooperatively with Borrower to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

5.2 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Borrower shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.3 Prevailing Wage Requirements. If required by applicable federal and state law, Borrower and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 *et seq*. and the regulations adopted pursuant thereto (and if applicable the federal Davis Bacon Act and implementing regulations) (all of the foregoing, "**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Borrower shall submit to City a plan for monitoring payment of prevailing wages and at

Borrower's expense shall implement such plan and comply with all applicable reporting and recordkeeping requirements.

To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold the City and its elected and elected officials, officers, directors, employees, agents, consultants, designated volunteers and contractors (all of the foregoing, collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. The provisions of this Section 5.3 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Occupancy for the Project. Borrower's indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees and are subject to the additional terms set forth in Section 11.2 below.

(a) State Prevailing Wage Compliance Requirements. If the Project is subject to the California Labor Code Section 1720 et seq. requirements applicable to the payment of state prevailing wages, whether due to the City Development Loan, other development financing, a future court decision, or a DIR determination requiring compliance, then in addition to Subsection (a) or (b) above regarding the payment of prevailing wages, Borrower shall:

(1) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of DIR, and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR.

(2) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

(3) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(4) cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5;

(5) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the Construction Work to specify that:

i. no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Construction Work unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

ii. the Construction Work is subject to compliance monitoring and enforcement by the DIR.

(6) provide the City all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (https://www.dir.ca.gov/pwc100ext/);

(7) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(8) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

5.4 Compliance with Laws. Borrower shall carry out and shall cause its contractors and subcontractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations (**"Applicable Laws")** including without limitation, all applicable federal and state labor laws and standards, Section 3 of the Housing and Community Development Act of 1974, as amended (if applicable), applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq*., Government Code Section 4450, *et seq*., Government Code Section 11135, *et seq*., and the Unruh Civil Rights Act, Civil Code Section 51, *et seq*.. To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims to the extent arising in connection with the breach of Borrower's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Borrower's indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Borrower's defense and indemnification obligations set forth in this Section 5.4 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Occupancy for the Project and shall be subject to the additional terms set forth in Section 11.2 below.

5.5 Liens and Stop Notices. Until the latest of the date of reconveyance of the Deed of Trust the expiration of the term of the Restated Regulatory Agreement, Borrower shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Borrower. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property or any part thereof, Borrower shall within thirty

(30) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

5.6 Right of City to Satisfy Liens on the Property. If Borrower fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 5.5 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Borrower's expense and without further notice to Borrower and all sums advanced by City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Borrower shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Borrower to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Borrower. Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

5.7 Insurance Requirements. Borrower shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Exhibit F.

5.8 Approved Development Budget; Revisions to Approved Development Budget.

As of the date of this Agreement, the City has approved the Approved Development Budget set forth in Exhibit G. Borrower shall submit any required amendments to the Approved Development Budget to the City for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the City is required for Borrower to amend the Approved Development Budget. If rejected by the City in whole or in part, Borrower shall submit a revised amendment to the Approved Development Budget within ten (10) days after notification of the City's rejection and the reasons therefor. The City shall then have ten (10) days to review and approve Borrower's revised amendment to the Approved Development Budget. The provisions of this Section relating to time periods for approval, rejection, or resubmission of amendments to the Approved Development Budget shall continue to apply until the amended Approved Development Budget has been approved by the City.

5.9 Developer Fee. The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount approved by the City. The City has approved Nine Hundred Fifty Thousand Dollars ($950,000.00) in developer fee.

5.10 Accessibility.

(a) Borrower shall cause the Improvements to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) In compliance with the Accessibility Requirements and City accessibility objectives: (i) a minimum of five percent, which is one (1) unit in the Development must be constructed to be fully accessible to households with a mobility impaired member and, (ii) an additional two percent, which is 1 (1) unit in the Development must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Borrower shall provide the City with a certification from the Project architect that to the best of the architect's knowledge, the Project complies with all federal and state Accessibility Requirements applicable to the Project. Preference shall be given to households with documented mobility impairments in the leasing of those units.

(c) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Improvements in accordance with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loan and the reconveyance of the Deed of Trust.

5.11 Progress Reports. Until such time as Borrower has received a Certificate of Occupancy (or functional equivalent) from the City for the Project, Borrower shall provide the City with quarterly progress reports photos of work completed regarding the status of the performance of the construction work, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 5.8.

ARTICLE VI

USE OF THE PROPERTY

6.1 Affordable Housing. Borrower covenants and agrees for itself, its successors and assigns that the Property and the Project will be subject to recorded covenants that will restrict use of the Property to development of the Improvements in which the residential units will be rented to Eligible Households (as defined in the Restated Regulatory Agreement) at Affordable Rents in accordance with the terms set forth in the Restated Regulatory Agreement.

6.2 Preference for City of Livermore Residents and Employees. To the extent permitted by all Applicable Laws, Borrower shall comply with the provisions of Section 2.1 and Section 6.5 of the Restated Regulatory Agreement pertaining to applicant screening preferences in the rental of residential units in the Project for Eligible Households as defined in the Restated Regulatory Agreement..

6.3 Relocation. Persons residing on the Property shall not be displaced before suitable replacement housing is available. Borrower shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq*.), all state and local regulations implementing such law, and all other applicable local, state and federal laws, regulations, and policies, including but not limited to the Uniform Relocation Act (42 U.S.C. § 4601 *et seq*.) and implementing regulations (collectively "**Relocation Laws**") relating to the displacement and relocation of eligible persons as defined in such Relocation Laws. All costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to Relocation Laws shall be paid by Borrower, and City shall have no responsibility for payment therefor. Borrower shall be liable for any and all claims for applicable relocation benefits sought by any current, former or future tenant of the Property or the improvements existing or to be constructed on the Property pursuant to the Restated Regulatory Agreement. To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising in connection with the breach of Borrower's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Borrower's indemnification obligations under this Section 6.3 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees and are subject to the additional terms set forth in Section 11.2 below. The provisions of this Section 6.3 shall survive the expiration or earlier termination of this Agreement.

6.4 Taxes and Assessments. Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property or the Improvements, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or Improvements; provided, however, Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Borrower exercises its right to contest any tax, assessment, or charge, the Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

6.5 Obligation to Refrain from Discrimination. Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Improvements, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Borrower covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926,

12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Improvements, or part thereof, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or Improvements, or part thereof. Borrower shall include such provision in all deeds, leases, contracts and other instruments executed by Borrower, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts pertaining to management of the Project made or entered into by Borrower, its successors or assigns, as to any portion of the Property or the Improvements shall contain or be subject to the following nondiscrimination or nonsegregation clauses and/or similar language prohibiting discrimination and segregation:

(a) In Deeds, the following language shall appear:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(b) In Leases, the following language shall appear:

"(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(c) In Contracts pertaining to management the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

6.6 Mandatory Acknowledgment of City as Funder. All projects/programs receiving funding assistance and/or substantial technical assistance from the City are required to indicate such in any advertising, marketing, public presentations, press releases, written materials or project descriptions.

ARTICLE VII

ENVIRONMENTAL MATTERS

7.1 Definitions.

7.1.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", infectious waste", toxic substance", toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

7.1.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq*.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.), the Clean Air Act (42 U.S.C. § 7401 *et seq*.), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq*.), the Oil Pollution Act (33 U.S.C. § 2701 *et seq*.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C.

§ 11001 *et seq*.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq*.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq*.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq*.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq*.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq*.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq*.).

7.2 Borrower's Post-Closing Obligations. Borrower hereby covenants and agrees that:

(1) Borrower shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of properties similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(2) Borrower shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Borrower shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Borrower, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Borrower or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; or (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property. The matters set forth in the foregoing clauses (i) through (iii) are hereinafter referred to as "**Hazardous Materials Claims**"). The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Borrower shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

7.3 Environmental Indemnity. To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on,

under, in or about the Property, or the transportation of any such Hazardous Material to or from, the Property, or (ii) the failure of Borrower, Borrower's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, unless caused by the City's active or passive negligence. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws.

The provisions of this Section 7.3 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether City or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the City Documents or applicable law. Borrower's indemnification obligations set forth in this Section shall survive the expiration of this Agreement, any repayment or discharge of the Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust. Borrower's indemnification obligations pursuant to this Section shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees, and are subject to the additional terms set forth in Section 11.2 below.

7.4 No Limitation. Borrower hereby acknowledges and agrees that Borrower's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Material, whether the City obtained such information from the Borrower or from its own investigations.

ARTICLE VIII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF BORROWER

8.1 Identity of Borrower; Changes Only Pursuant to this Agreement. Borrower and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Borrower and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Borrower. No voluntary or involuntary successor, assignee or transferee of Borrower shall acquire any rights or powers under this Agreement, except as expressly provided herein.

8.2 Prohibition on Transfer. Prior to the expiration of the term of the Restated Regulatory Agreement, Borrower shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole

or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Restated Regulatory Agreement, except as expressly permitted by this Agreement, Borrower shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and/or control of Borrower, taking all transfers into account on a cumulative basis.

8.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Restated Regulatory Agreement; (iv) the lease of the commercial kitchen facility; (v) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or Property and subject to the requirements of Article IX, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (vi) the transfer of the managing partner's interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, or to a limited liability company whose sole member is a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to City.

8.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), and (v) of Section 8.3:

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Borrower under this Agreement.

(ii) The Borrower and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to affect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Borrower under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Borrower arising prior to the effective date of the Transfer (unless Borrower expressly remains responsible for such obligations) and shall agree

to be subject to and assume all of Borrower's obligations pursuant to all conditions and restrictions set forth in the City Documents.

(iv) Except in the case of partnership interest Transfers, the Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer, requested additional information regarding a proposed Transfer, or notified Borrower that City Council approval will be required in writing within ninety (90) days following City's receipt of written request by Borrower, the proposed Transfer shall be deemed approved.

8.5 Effect of Transfer without City Consent.

8.5.1 In the absence of specific written agreement by the City, no Transfer by Borrower shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement.

8.5.2 It shall be an Event of Borrower Default hereunder entitling City to pursue remedies including without limitation, termination of this Agreement and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Borrower assigns or Transfers this Agreement, the Improvements, or the Property in violation of Article VIII.

8.6 Recovery of City Costs. Within ten (10) days following City's delivery to Borrower of an invoice detailing such costs, Borrower shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer of this Agreement, the Property, or the Project, or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

8.7 Covenants Regarding Approved Financing.

(a) Borrower shall promptly pay the principal and interest when due on any Approved Financing in the Approved Development Budget.

(b) Borrower shall promptly notify the City in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and provide the County copies of any notice of default.

(c) Borrower may not amend, modify, supplement, cancel or terminate any documents related to any loan that is part of the Approved Financing without the prior written consent of the City except for amendments solely to effectuate Transfers permitted under Section 8.3 above. Borrower shall provide the City copies of all amendments, modifications, and supplements to any document related to any loan that is part of Approved Financing.

(d) Borrower may not incur any indebtedness of any kind (other than Approved Financing), or encumber the Project with any liens (other than liens for Approved Financing approved by the City) without the prior written consent of the City.

8.8 Section 4.14 Refinance/Resyndication Transaction.

If Borrower is obtaining a new loan or equity as part of a Transfer of partnership interest, resyndication, or refinancing, (collectively, the "Refinance"), and/or desires to withdraw excess proceeds from the Refinance ("Excess Proceeds"), the Refinance and withdrawal of Excess Proceeds is subject to the consent of the City. In approving the Refinance and the withdrawal of Excess Proceeds the City will consider: (i) the effect of the Refinance and the withdrawal of Excess Proceeds on the financial viability and physical needs of the Development; and (ii) current asset management compliance, and may require; (iii) an extension of the term of the Restated Regulatory Agreement; and (iv) sharing the Excess Proceeds with Borrower to partially pay down the City Loan.

ARTICLE IX

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

9.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument may be placed upon the Property with City's consent, which may not be unreasonably withheld, only for the purpose of securing loans for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, and other expenditures reasonably necessary for development of the Project pursuant to this Agreement. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

9.2 Subordination. The City agrees that City will not withhold consent to reasonable requests for subordination of the Deed of Trust to deeds of trust provided for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights and the rights set forth in Section 9.4 below.

Any agreement by the City to subordinate the Deed of Trust to security for the Approved Senior Loan, or any loan obtained by Borrower to refinance an Approved Senior Loan, is subject to the satisfaction of the following conditions:

All of the proceeds of the proposed Senior Loan, less any transaction costs, must be used to provide construction and/or permanent financing for the Project.

The proposed lender of a Senior Loan (each a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

Borrower demonstrates to the City's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate construction and/or permanent financing to ensure the

viability of the Project, including the operation of the Project as affordable housing, as required by the City Documents. **[NOTE: "City Loan Documents" not defined.]** To satisfy this requirement, Borrower must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination.

The subordination of the County Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the County.

Upon a determination by the City Manager, or his designee, that the conditions in this Section have been satisfied, the City Manager will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

9.3 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property or the Improvements, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Borrower extended by an additional sixty (60) days. In the event that possession of the Property or the Improvements (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property or Improvements, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Borrower's obligations to City under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to City that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Borrower under this Agreement.

9.4 City Right to Cure Defaults. In the event of a breach or default by Borrower under a mortgage or deed of trust secured by the Property or the Improvements, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Borrower. In such event, Borrower shall be liable for, and City shall be entitled to reimbursement from Borrower for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the City Deed of Trust.

9.5 Holder to be Notified. Borrower agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the Property or the Improvements.

9.6 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

9.7 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE X

DEFAULTS, REMEDIES AND TERMINATION

10.1 Event of Borrower Default. The following events shall constitute an event of default on the part of Borrower hereunder ("**Event of Borrower Default**"):

(a) Borrower fails to pay when due the principal and interest payable under the Note, and such failure continues for ten (10) days after City notifies Borrower thereof in writing;

(b) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VIII;

(c) Borrower fails to maintain insurance as required pursuant to this Agreement, and Borrower fails to cure such default within five (5) days;

(d) Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Borrower fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement or Borrower's request for the Loan proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(g) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(h) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for Borrower under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Borrower, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(i) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (h) or (i) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(j) The Borrower shall have voluntarily suspended its business or Borrower shall have been dissolved or terminated;

(k) An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

(l) Borrower defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Borrower; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Borrower Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

(m) Failure to Timely Lease. Failure of Borrower to initially lease all of the City-Assisted Units within eighteen (18) months of the Certificate of Occupancy.

10.2 City's Right to Terminate Agreement. If an Event of Borrower Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City

makes such election, City shall give written notice to Borrower and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Borrower under this Agreement, shall expire and terminate.

10.3 City's Remedies and Rights Upon an Event of Borrower Default. Upon the occurrence of an Event of Borrower Default and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the City Documents;

(c) Foreclose on the Property pursuant to the Deed of Trust; and

(d) Terminate this Agreement pursuant to Section 10.3.

10.4 No Default for City. The parties acknowledge the City would not have entered into this Agreement had it been exposed to special or consequential damage claims from Borrower for any breach thereof. As such, the parties agree that in no event, including breach of this Agreement, shall Borrower be entitled to recover any special or consequential damages against the City arising out of actions or failure to act by the City in connection with any of the City Documents.

10.5 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding any contrary provision of this Agreement, a Party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

10.6 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

10.7 Rights of Mortgagees. Any rights of the City under this Article X shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments.

ARTICLE XI

INDEMNITY AND INSURANCE.

11.1 Indemnity. To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims to the extent arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or interest therein, by Borrower or Borrower's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Borrower, or otherwise to the extent arising out of or in connection with Borrower's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the development, operation or management of the Project by Borrower or Borrower's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Borrower. Borrower's indemnification obligations under this Section 11.1 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees and are subject to the additional terms set forth in Section 11.2 below. The provisions of this Section 11.1 shall survive the expiration or earlier termination of this Agreement.

11.2 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 11.2 shall apply to all provisions of this Agreement that pertain to Borrower's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 5.3, 5.4, 6.3, 7.3, 11.1, and 12.1. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Borrower that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

(b) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Borrower, or any other party for payment of all or any part of the Loan; (iv) the accuracy or inaccuracy of any representation and warranty made by Borrower under this Agreement or by Borrower or any other party under any City Document, (v) the release of Borrower or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the Loan; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the Loan.

(c) The obligations of Borrower to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11.3 Insurance. Borrower shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit F against claims that may arise

from or in connection with this Agreement. Upon reasonable written notice, Borrower shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by unrelated third parties concerning or arising out of this Agreement or unseasonable weather conditions ("**Force Majeure"**). An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within ten (10) calendar days from the commencement of the cause.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Borrower and City (acting in the discretion of the City's Authorized Representative unless he or she determines in his or her discretion to refer such matter to the City Council). City and Borrower acknowledge that, notwithstanding any contrary provision of this Agreement, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.2 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other City Document shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

CITY: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

BORROWER: Tri Valley BMR, LLC
c/o Housing Consortium of the East Bay
410 7th Street, Suite 203

Oakland, CA 94607
Attention: Darin Lounds

With a copy to:

Goldfarb & Lipman LLP
1300 Clay Street, Eleventh Floor
Oakland, CA 94612
Attention: Robert C. Mills

12.3 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12.4 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.5 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VIII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

12.6 Survival. All representations made by Borrower hereunder and Borrower's obligations pursuant to Sections 5.3, 5.4, 6.3, 7.3, 11.1, and 12.1 shall survive the expiration or termination of this Agreement.

12.7 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the City Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

12.8 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City's Authorized Representative determines in his or her discretion that such action or approval requires referral to City Council for consideration.

12.9 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control, as determined by the City's Authorized Representative. In the event of a conflict between this Agreement and the other City Documents, the more restrictive requirements shall control, as determined by the City's Authorized Representative. In the event of a conflict between City Documents, the City Documents shall control.

12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.11 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.12 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.13 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Borrower and City is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Borrower (except as expressly provided in this Agreement) or to any third party with respect to the Project or the Loan. Borrower and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Borrower and its employees shall at no time hold themselves out as employees or agents of City. Except as City may specify in writing, Borrower shall not have any authority to act as an agent of City or to bind City to any obligation.

12.14 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of the State of California.

12.15 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

12.16 Inspection of Books and Records. Upon request, Borrower shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Borrower necessary to determine Borrower's compliance with the terms of this Agreement.

12.17 Political Activity. None of the funds, materials, property or services contributed by City to Borrower under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

12.18 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Borrower in the event of any default or breach by the City or for any amount which may become due to the Borrower or its successor or on any obligation under the terms of this Agreement.

12.19 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.,* no person who is a director, officer, partner, trustee or employee or consultant of the Borrower, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Borrower. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government

Code Section 87100 *et seq.,* its implementing regulations manual and codes, and Government Code Section 1090.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have entered into this Affordable Housing Loan Agreement effective as of the date first written above.

CITY:

CITY OF LIVERMORE,
a California municipal corporation

By:

Print Name: __Marc Roberts_____

Title: __City Manager_____

ATTEST:

By: _____

APPROVED AS TO FORM:

_____
City Attorney

BORROWER:

TRI VALLEY BMR, LLC,
a California limited liability corporation

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation
its sole and managing member

By: _____

Print Name: **Darin Lounds**
Title: Executive Director

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

Exhibit B

FORM OF THIRD CITY PREDEVELOPMENT NOTE

(Form of Third City Predevelopment Note Attached)

Exhibit C

FORM OF CITY DEVELOPMENT NOTE
(Form of City Development Note Attached)

Exhibit D

FORM OF CITY DEVELOPMENT DEED OF TRUST

(Form of City Development Deed of Trust Attached)

Exhibit E

FORM OF RESTATED AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF COVENANTS

(Form of Restated Regulatory Agreement Attached)

Exhibit F

INSURANCE REUIREMENTS

(Insurance Requirements Attached)

Exhibit G

APPROVED DEVELOPMENT BUDGET

(Approved Development Budget Attached)

Exhibit H

PREDEVELOPMENT LOAN BUDGET
(Predevelopment Loan Budget Attached)

Exhibit I

SCHEDULE OF PERFORMANCE

(Schedule of Performance Attached)

ORDER NO. : 1117018101

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

All of Lots 3 and 4, the Southwestern 100 feet of Lots 2, 5 and 6, and the Western 50 feet of Lots 9 and 10, Block 26, Maps of the Northern Addition of the Town of Livermore, filed September 20, 1875, Map Book 2, Page 51, Alameda county Records and merged by Certificate of Compliance, described as follows:

Beginning at the Southwest corner of said Block 26; thence from said point of beginning North 20° 30' West, 250.00 feet; thence North 69° 30' East, 100.00 feet; thence South 20° 30' East, 50.00 feet; thence North 69° 30' East 100.00 feet; thence South 20° 30' East 100.00 feet; thence South 69° 30' West, 100.00 feet; thence South 20° 30' West, 100.00 feet to the point of beginning.

APN: 098-0240-001-17

THIRD AMENDED AND RESTATED PROMISSORY NOTE
(Predevelopment Loan)

Dated: _____, 2021

Principal Amount:
$855,110.00

460 North Livermore Avenue
Livermore, California

FOR VALUE RECEIVED, the undersigned, Tri Valley BMR, LLC, a California limited liability company ("Borrower"), whose sole member is Housing Consortium of the East Bay, a California not-for-profit corporation, hereby promises to pay to the order of the City of Livermore, a municipal corporation, 1052 South Livermore Avenue, Livermore, CA 94550 ("Holder"), a principal amount of Eight Hundred Fifty-Five Thousand One Hundred Ten Dollars ($855,110.00), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note ("**Note**") evidences Borrower's obligation to pay Holder the principal amount of Eight Hundred Fifty-Five Thousand One Hundred Ten Dollars ($855,110.00) (the "**Loan**") for the funds loaned to Borrower by Holder to fund certain feasibility studies and other specified predevelopment tasks and activities for the Property located at 460 North Livermore Avenue in Livermore, CA, and amends and restates in part that certain Amended and Restated Promissory Note dated October 2, 2018. On June 30, 2017 the City entered into a Predevelopment Loan Agreement with the Borrower to help finance initial predevelopment and acquisition expenses necessary to assess the feasibility of potential development of the Project and to gain entitlements to develop the Property, as subsequently amended by that certain First Amendment to Predevelopment Loan dated June 26, 2018 and that certain Second Amendment to Predevelopment Loan Agreement dated September 25, 2018, each to increase the loan amount to include additional funds for the predevelopment budget (as amended, the "**City Predevelopment Loan Agreement**"). The Predevelopment Loan Agreement has expired. As of the Effective Date, of the total proceeds of the City Predevelopment Loan (the "City Predevelopment Loan Proceeds"), $646,238 have been disbursed and Two Hundred Eight Thousand Eight Hundred Seventy-Two Dollars ($208,872) remain available. City and Developer now wish to subsume and the restate the terms of the City Predevelopment Loan Agreement in the City Development Loan Agreement dated as of even date herewith (the "**Agreement**"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Agreement.

2. Interest.

(a) The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum, commencing on the date of disbursement of Loan funds by Holder to Borrower.

(b) Provided, however, if an Event of Default occurs, interest on all amounts due under this Note shall begin to accrue, as of the date of the Event of Default and continuing until such time as the Loan funds are repaid in full or the Event of Default is cured, at the Default Rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by

law (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Holder from exercising any of its other rights or remedies.

3. Term and Repayment Requirements. The term of this Note and repayment due under this Note are as set forth in Section 4.2 of the Agreement.

4. No Assumption. Except as may be otherwise set forth in the Agreement, this Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of Holder.

5. Security. This Note is secured by the that certain Deed of Trust and Assignment of Rents dated October 2, 2018 and recorded against the property, in the Official Records of Alameda County on October 2, 2018 as Instrument # 2018191365, wherein the Borrower is the Trustor and the Holder is the Beneficiary (the "Security Instrument"). Holder shall be entitled to the benefits of the Security Instrument and shall have the right to enforce the covenants and agreements contained herein, in Security Instrument, and in the First Amended and Restated Affordable Housing Regulatory Agreement executed by and between Holder and Borrower as a condition of the Agreement. Any restrictive covenants executed by and between Holder and Borrower as a condition of the Agreement shall remain effective for the full duration of those restrictions and shall survive repayment of this Note.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at the Community Development Department, 1052 South Livermore Avenue, Livermore, CA 94550, Attention: Finance Department, or to such other place as the Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to the Holder and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees and other professional service fees and costs of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally

charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Non-Recourse. Except as expressly provided in this Section 7, neither Borrower nor the sole member of Borrower shall have personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of Holder with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by Holder as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall:

(a) impair the enforcement against all such security for the Loan of all the rights and remedies of the Holder under the Security Instrument and any financing statements Holder files in connection with the Loan as each of the foregoing may be amended, modified, or restated from time to time;

(b) impair the right of Holder to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Holder to enforce and realize upon the Security Instrument, the interest in the Project and the Property created thereby and any other collateral given to Holder in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action;

(c) be deemed in any way to impair the right of the Holder to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(d) constitute a waiver of any right which Holder may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to Holder hereunder or to require that the Project and the Property shall continue to secure all of the indebtedness owed to Holder hereunder in accordance with this Note and the Security Instrument; or

(e) limit or restrict the ability of Holder to seek or obtain a judgment against Borrower to enforce against Borrower and its sole member to:

(i) recover under any provision of the Agreement, Security Instrument, First Amended and Restated Affordable Housing Regulatory Agreement, or Note that obligates Borrower to indemnify Holder, or

(ii) recover from Borrower and its sole member's compensatory damages as well as other costs and expenses incurred by Holder (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following:

(a) any fraud or intentional misrepresentation on the part of the Borrower, or its sole member, or any officer, director or authorized representative of Borrower or its sole member in connection with the request for or creation of the Loan, or in any Loan Document, or in connection with any request for any action or consent by Holder in connection with the Loan;

(b) any failure to maintain insurance on the Property and the Project as required pursuant to the Loan Documents;

(c) failure to pay taxes, assessments or other charges which may become liens on the Property or the Project;

(d) the presence of Hazardous Materials on the Property or other violation of the Borrower's obligations under Article 7 of the Agreement, except as limited by the provisions therein;

(e) the occurrence of any act or omission of Borrower that results in waste to or of the Project or the Property and which has a material adverse effect on the value of the Project or the Property;

(f) the material misapplication of the Loan proceeds;

(g) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Security Instrument;

(h) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project or the Property; and

(i) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the Agreement or restrictive covenants subsequently executed by Holder and Borrower as a condition of the Agreement.

8. Event of Default.

(a) Any of the following shall constitute an "Event of Default" under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due within ten (10) days of written notice by the Holder to the Borrower that such payment is due;

(ii) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to any applicable notice and cure period set forth in Article 10 of the Agreement;

(iii) The occurrence of any Event of Default under any of the Loan Documents, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the Holder pursuant to the Agreement or the Security Instrument, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of one or more of the foregoing Events of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Security Instrument shall at the option of the Holder become immediately due and payable upon written notice by the Holder to the Borrower without further demand.

(c) The Holder's failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing Events of Default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Holder, except as and to the extent otherwise provided by law.

9. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time and that the Holder may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of the Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

10. Miscellaneous Provisions.

(a) All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Agreement, or to such addresses as the Holder and the Borrower may therein designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally; if amended, it must be by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

BORROWER:

TRI VALLEY BMR, LLC
a California limited liability company

By: Housing Consortium of the East Bay,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Its: _____

CITY:

CITY OF LIVERMORE,
a California municipal corporation

By:

Print Name: Marc Roberts

Title: City Manager

ATTEST:

By: _____

APPROVED AS TO FORM:

_____
City Attorney

PROMISSORY NOTE
(Development Loan)

Dated: _____, 2021

Principal Amount:
$3,619,018.00

460 North Livermore Avenue
Livermore, California

FOR VALUE RECEIVED, the undersigned, Tri Valley BMR, LLC, a California limited liability company("Borrower"), whose sole member is Housing Consortium of the East Bay, a California not-for-profit corporation, hereby promises to pay to the order of the City of Livermore, a municipal corporation, 1052 South Livermore Avenue, Livermore, CA 94550 ("Holder"), a principal amount of Three Million Six Hundred Nineteen Thousand Eighteen Dollars ($3,619,018), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note ("**Note**") evidences Borrower's obligation to pay Holder the principal amount of Three Million Six Hundred Nineteen Thousand Eighteen Dollars ($3,619,018) (the "**Loan**") for the funds loaned to Borrower by Holder to fund the development of affordable housing on the Property located at 460 North Livermore Avenue in Livermore, CA. pursuant to the Affordable Housing herewith (the "**Development Loan Agreement**) All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Development Loan Agreement.

2. Interest.

(a) The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum, commencing on the date of disbursement of Loan funds by Holder to Borrower.

(b) Provided, however, if an Event of Default occurs, interest on all amounts due under this Note shall begin to accrue, as of the date of the Event of Default and continuing until such time as the Loan funds are repaid in full or the Event of Default is cured, at the Default Rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Holder from exercising any of its other rights or remedies.

3. Term and Repayment Requirements. The term of this Note and payments due under this Note are as set forth in Section 4.2 of the Development Loan Agreement.

4. No Assumption. Except as may be otherwise set forth in the Development Loan Agreement, this Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of Holder.

5. Security. This Note is secured by the Deed of Trust on the Property dated concurrently herewith and recorded against the Property (the "**Deed of Trust**"), wherein the Borrower is the Trustor and the Holder is the Beneficiary. Holder shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the Development Loan Agreement, and the other City Documents, including without limitation, that certain First Amended and Restated Regulatory Agreement ("**Regulatory Agreement**") dated as of the date hereof, executed by and between Holder and Borrower. The rent restrictions and other requirements set forth in the Regulatory Agreement shall remain effective for the full term of the Regulatory Agreement and shall survive the repayment of this Note.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at the Community Development Department, 1052 South Livermore Avenue, Livermore, CA 94550, Attention: Finance Department, or to such other place as the Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to the Holder and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees and other professional service fees and costs of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Non-Recourse. Except as expressly provided in this Section 7, neither Borrower nor the sole member of Borrower shall have personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of Holder with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by Holder as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall:

(a) impair the enforcement against all such security for the Loan of all the rights and remedies of the Holder under the Deed of Trust and any financing statements Holder files in connection with the Loan as each of the foregoing may be amended, modified, or restated from time to time;

(b) impair the right of Holder to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Holder to enforce and realize upon the Deed of Trust, the interest in the Project and the Property created thereby and any other collateral given to Holder in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action;

(c) be deemed in any way to impair the right of the Holder to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(d) constitute a waiver of any right which Holder may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to Holder hereunder or to require that the Project and the Property shall continue to secure all of the indebtedness owed to Holder hereunder in accordance with this Note and the Deed of Trust; or

(e) limit or restrict the ability of Holder to seek or obtain a judgment against Borrower to enforce against Borrower and its sole member to:

(i) recover under any provision of the City Documents that obligates Borrower to indemnify Holder, or

(ii) recover from Borrower and its sole member's compensatory damages as well as other costs and expenses incurred by Holder (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following:

(a) any fraud or intentional misrepresentation on the part of the Borrower, or its sole member, or any officer, director or authorized representative of Borrower or its sole member in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by Holder in connection with the Loan;

(b) any failure to maintain insurance on the Property and the Project as required pursuant to the City Documents;

(c) failure to pay taxes, assessments or other charges which may become liens on the Property or the Project;

(d) the presence of Hazardous Materials on the Property or other violation of the Borrower's obligations under Section 7.1.1 of the Development Loan Agreement, except as limited by the provisions therein;

(e) the occurrence of any act or omission of Borrower that results in waste to or of the Project or the Property and which has a material adverse effect on the value of the Project or the Property;

(f) the material misapplication of the Loan proceeds;

(g) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust;

(h) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project or the Property; and

(i) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the Development Loan Agreement or the Regulatory Agreement.

8. Event of Default.

(a) Any of the following shall constitute an "Event of Default" under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due within ten (10) days of written notice by the Holder to the Borrower that such payment is due;

(ii) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to any applicable notice and cure period set forth in Article 10 of the Development Loan Agreement;

(iii) The occurrence of any Event of Default under any of the City Documents, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the Holder pursuant to the Development Loan Agreement or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of one or more of the foregoing Events of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the Holder become immediately due and payable upon written notice by the Holder to the Borrower without further demand.

(c) The Holder's failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing Events of Default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the Holder

hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Holder, except as and to the extent otherwise provided by law.

9. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time and that the Holder may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of the Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

10. Miscellaneous Provisions.

(a) All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the Development Loan Agreement, or to such addresses as the Holder and the Borrower may therein designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally; if amended, it must be by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

BORROWER:

TRI VALLEY BMR LLC
a California limited liability corporation

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Darin Lounds
Executive Director

1.

EXHIBIT A

RECORDING REQUESTED BY
Old Republic Title Company

AND WHEN RECORDED MAIL TO

City of Livermore
1052 S. Livermore Avenue
Livermore, Ca. 94550-4899

Loan No.:

Space Above This Line for Recorder's Use Only

A.P.N.: [098-0240-001-17]
File No.:

DEED OF TRUST AND ASSIGNMENT OF RENTS
(Short Form)

THIS DEED OF TRUST, made this _____ , 2021 between

TRUSTOR: Tri Valley BMR LLC, a California Limited Liability Company whose address is 410 7th Street, Suite 203, Oakland, CA 94607

TRUSTEE: [ ]

and BENEFICIARY: City of Livermore, a Municipal Corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Livermore, Alameda County, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.
FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of **$3,619,018**, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured
TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page
Alameda	435	684	Imperial	1091	501	Merced	1547	538	San Benito	271	383	Siskiyou	468	181
Alpine	1	250	Inyo	147	598	Modoc	184	851	San Bernadino	5567	61	Solano	1105	182
Amador	104	348	Kern	3427	60	Mono	52	429	San Francisco	A332	905	Sonoma	1851	689
Butte	1145	1	Kings	792	833	Monterey	2194	538	San Joaquin	2470	311	Stanislaus	1715	456
Calaveras	145	152	Lake	362	39	Napa	639	86	San Luis Obispo	1151	12	Sutter	572	297
Colusa	296	617	Lassen	171	471	Nevada	305	320	San Mateo	4078	420	Tehama	401	289
Contra Costa	3978	47	Los Angeles	T2055	899	Orange	5889	611	Santa Barbara	1878	860	Trinity	93	366
Del Norte	78	414	Madera	810	170	Placer	895	301	Santa Clara	5336	01	Tulare	2294	275
El Dorado	568	456	Marin	1508	339	Plumas	151	5	Santa Cruz	1431	494	Tuolumne	135	47
Fresno	4626	572	Mariposa	77	292	Riverside	3005	523	Shasta	684	528	Ventura	2062	386
Glenn	422	184	Mendocino	579	530	Sacramento	4331	62	Sierra	29	335	Yolo	653	245
Humboldt	657	527				San Diego Series 2 Book 1961, Page 183887						Yuba	334	486

3.

which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

FURTHERMORE, in the event of foreclosure or deed in lieu of foreclosure, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate-income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect. Any person (including successors or assigns thereto) receiving title to the Property through a foreclosure or deed in lieu of foreclosure shall receive title to the Property free and clear from such restrictions.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Signature of Trustor(s)

_____

Dated: _____ , _____

_____

Darin Lounds, Executive Director, Housing Consortium of the East Bay, Sole and Managing Member of Tri Valley BMR, LLC.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California }
}ss.
COUNTY OF _____ }

On___, before me, _____, Notary Public, personally appeared____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature of Notary Public

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county In California, as stated in the foregoing Deed of Trust and incorporated by reference In said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire Insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay Immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee is such reconveyance may be described as "the person or persons legally entitled thereto. Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, Issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and In such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any Indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its titJe, estate, rights, powers and duties, must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust Is recorded and the name and address of the new Trustee.

(13) That this Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be party unless brought by Trustee.

----------DO NOT RECORD----------

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: _____, a California Corporation, **Trustee**

Dated: _____ _

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to: _____

_____

_____

_____

_____ By _____

_____ By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.

Short Form
DEED OF TRUST
WITH POWER OF SALE
INDIVIDUAL

_____ **TITLE COMPANY, A CALIFORNIA CORPORATION**

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

[TITLE COMPANY TO ATTACH]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 S Livermore Avenue
Livermore, CA 94550
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

FIRST AMENDED AND RESTATED AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

TRI VALLEY BMR, LLC

_____, 2022

This First Amended and Restated Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2022 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri Valley BMR, LLC, a California limited liability company ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at 460 North Livermore Avenue, known as Alameda County Assessor Parcel No. 098-0240-001-17, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. On September 27, 2018, the City entered into an Affordable Housing Loan Agreement with the Owner (the "**City Acquisition Loan Agreement**") to provide a loan to Owner in the amount of $2,270,000 (the "**City Acquisition Loan**") to assist in financing acquisition of the Property. Pursuant to the City Acquisition Loan Agreement, Owner will develop, own, and operate an affordable housing development consisting of twenty-four (24) units of permanent, supportive, affordable rental housing for persons who are formerly homeless with related improvements supporting the residences, as well as approximately 6,000 square feet of services space for a variety of community-serving, non-profit programs including but not limited to food, basic needs, shelter, housing referral and counseling, and a commercial kitchen (the "**Project**")

Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the Development Loan Agreement.

C. In connection with the City Acquisition Loan, the City and Owner entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 27, 2018 and recorded October 2, 2018, as Instrument No. 2018191363 in the Official Records of Alameda County (the "Original Regulatory Agreement"), that certain Deed of Trust and Assignment of Rents (the "City Acquisition Deed of Trust"), dated as of October 2, 2018 and recorded October 2, 2018, as Instrument No. 2018191364 in the Official Records of Alameda County, and that certain Promissory Note dated as of October 2, 2018 (the "City Acquisition Note"). The purpose of this Agreement is to replace the Original Regulatory Agreement and to amend and restate the terms of restrictions for the Project and the Property. [NOTE: conform recitals to Loan Agreement (as revised)]

D. On June 30, 2017 the City entered into an unrecorded Predevelopment Loan Agreement with the Owner to finance predevelopment expenses necessary to gain entitlements to develop the Project, as subsequently amended by that certain First Amendment to Predevelopment Loan dated June 26, 2018 and that certain Second Amendment to Predevelopment Loan Agreement dated September 25, 2018, each to increase the total Predevelopment Loan amount to Eight Hundred Fifty-Five Thousand One Hundred Ten Dollars ($855,110) (the "**City Predevelopment Loan**"). In connection with the City Predevelopment Loan, the City and Owner entered into that certain Deed of Trust and Assignment of Rents, dated October 02, 2018 and recorded October 02, 2018 as Instrument No. 2018191365 in the Official Records of

Alameda County (the "**City Predevelopment Deed of Trust**"), and that certain Amended and Restated Promissory Note dated October 2, 2018 (the "**City Predevelopment Note**"). The City Predevelopment Loan Agreement has e expired with predevelopment funds remaining to be drawn, and Owner now requires additional funding for permanent financing to construct the Project. Concurrently herewith, City and Owner will enter into a new loan agreement (the "Development Loan Agreement") which will subsume and extend the terms of the City Predevelopment Loan and provide an additional Three Million Six Hundred Forty Thousand Five Hundred Twenty Two Dollars ($3,640,522)=) in loan funds for permanent financing to construct the Project ("City **Development Loan**"). Concurrently with the execution of the City Development Loan Agreement, Owner will execute, and deliver to City, and as applicable, cause to be recorded in the Official Records: a City Development Loan Note to evidence Borrower's obligation to repay the City Development Loan ("City Development Note"), a deed of trust in the amount of Three Million Six Hundred Forty Thousand Five Hundred Twenty Two Dollars ($3,640,522) that will provide City with a security interest in the Property (the "City Development Deed of Trust") to secure the City Development Loan Note. The City Predevelopment Loan shall be evidenced by the existing City Predevelopment Deed of Trust and by that certain Third Amended and Restated Promissory Note (Predevelopment Loan) from Owner to City dated as of approximately even date herewith (the "**Third City Predevelopment Note**").

E. The City recognizes there is a shortage of affordable housing and, in particular, very low-income persons experiencing homelessness in Livermore face barriers which inhibit equal access to housing. Therefore, reserving affordable units for very low income, formerly homeless persons and providing services which allow them to be successful in maintaining housing is needed to offer equal access to housing.

F. The purpose of this Agreement is to satisfy the affordability requirements of the City's affordable housing program and to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants and set forth the use and maintenance of the community buildings. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1.1 Definitions; Exhibits. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits. [NOTE – conform definitions to Loan Agreement, as revised]

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

"**Affordable Rent**" means for units that are restricted for rental to households with incomes of not more than thirty percent (30%) of AMI, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of thirty percent (30%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis which have been approved by the City.

"**Area Median Income" or "AMI**" means the median income for Alameda County, California, adjusted for Actual Household Size, as determined pursuant to California Tax Credit Allocation (**"TCAC"**) regulations.

"City's Authorized Representative" means the City Manager of the City of Livermore or his/her designee.

"City Documents" means collectively, this Agreement, the City Acquisition Loan Agreement, the City Notes, the City Deeds of Trust, and the Restated Regulatory Agreement, as amended.

"**Claims**" is defined in Section 2.10.

"City Development **Deed of Trust"** is defined in Recital E.

"City **Acquisition Deed of Trust**" is defined in Recital C.

"City Acquisition Loan" is defined in Recital B.

"City Acquisition Note" is defined in Recital C.

"**City Deeds of Trust**" is defined as that City Predevelopment Deed of Trust, City Development Deed of Trust, and City Acquisition Deed of Trust.

"City Notes" is defined as the City Third Restated Predevelopment Note, City Acquisition Loan Note, and City Development Loan Note.

"City Development Loan" is defined in Recital D.

"**Eligible Household**" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.3 and Exhibit B.

"**Indemnitees"** is defined in Section 2.10.

"Livermore Homeless Client" is defined as a person/applicant household who has been verified as homeless and is receiving services from City-approved agencies/programs within the incorporated city limits.

"**Marketing and Tenant Selection Plan"** is defined in Section 6.5.

"**City Predevelopment Deed of Trust**" is defined in Recital D.

"**Rent**" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

"**Rent Restricted"** means limited to an Affordable Rent.

"Residential Project" means an affordable housing development on the Property consisting of up to 24 apartments (up to 23 affordable apartments and one unrestricted manager's unit) targeted to persons who are formerly homeless with related improvements supporting the residences.

"**Restricted Unit**" means a dwelling unit that is restricted by the City pursuant to this Agreement pursuant to Section 2.1 and 2.3.

"**Project**" is defined in Recital B.

"**Tenant**" means a household legally occupying a Unit pursuant to a valid lease with Owner.

"**Unit**" means one of the twenty-four (24) units in the Project, including the manager's unit.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of Property

B Number of Restricted Units by Unit Size and Targeted Area Median Income Rent Limits (AMI) by Unit Size.

C Insurance Requirements

D Form of Annual Report

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Residential Project shall be used solely for the operation of a multifamily rental housing development of which eleven (11) units, which is no more than 49% of the total units, shall be Restricted Units. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Livermore Homeless Program Units. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Residential Project, including Alameda County A1 Bond funds, throughout the Term of this Agreement and subject to Section 2.9 herein, Owner agrees to exercise a preference for the Restricted Units which shall first be marketed to and occupied by clients referred through an agency or agencies participating in homeless programs supported and approved by the City (such clients are "Livermore Homeless Clients" and such units are "Homeless Units"). To the extent a Homeless Unit remains unoccupied for a period of thirty (30) days due to the fact that a Livermore Homeless Client tenant has not been identified, then Owner may rent such Homeless Unit to any otherwise qualifying tenant, provided, however, that the next available unit shall be offered to a Livermore Homeless Client and made available as a Homeless Unit. The Livermore Homeless Client referral procedures may be established by separate Memorandum of Understanding approved by the City Manager, and the Homeless Unit selection policies shall be incorporated into the general tenant selection policies described in Section 6.5.

2.2 Supportive Services for Homeless Units. Throughout the Term of this Agreement, Owner agrees to complete a needs assessment and service plan for each Homeless Unit occupant, and to provide onsite access to financial literacy, computer literacy, life-skills development, housing stability support, recreational, educational and community activities, conflict resolution and mediation, substance abuse treatment and health education programs. To the extent the on-site services are insufficient to meet the applicable service plan, then Owner will provide requisite referrals to additional off-site services.

2.3 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below) Owner agrees that (i) this Agreement restricts eleven (11) units, which represents no more than 49% of the total residential units in the Residential Project, as both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is no greater than thirty percent (30%) of AMI, ("Restricted Units"); and, (ii) all other units, except for one (1) of the residential units in the Residential Project which shall be a manager's unit for which rent will not be restricted, may be restricted by other public agency lenders which provide assistance to the Owner in developing the Project. For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in Section 2.3 and Exhibit B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Residential Project to Eligible Household(s) until the required income mix is achieved.

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail, including without limitation, the rent and occupancy requirements imposed in connection with the use of rent subsidies.

2.4 Rents for Restricted Units. For all Restricted Units rents shall be limited to Affordable Rents for households of the applicable income limit and presumed household size in accordance with Section 2.3 and Exhibit B. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed one hundred forty percent (140%) of the applicable income limit.

a) For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regul ations applicable to low-income housing tax credits. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the City shall provide Owner with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

b) Subject to Section 2.3, if, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that a Tenant of a Restricted Unit has an income exceeding the maximum qualifying income for a 30% AMI Household, such Tenant shall be permitted to continue occupying the Restricted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual adjusted income of the Tenant or the current fair market rent for that unit, whichever is less, and Owner shall rent the next available Unit of the appropriate size to a 30% AMI Household at a Rent not exceeding the maximum Rent specified in this Section, or designate another Unit in the Residential Project with a 30% AMI household as a 30% Unit, at a Rent not exceeding the maximum Rent specified in this Section.

c) Initial Rents are subject to City approval. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year. Owner shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant. Owner shall comply with California rent control laws and tenant notification. If there are any overlaps between this Agreement and the law, the more restrictive limits and noticing requirements shall govern.

2.5 Loss of Subsidy. It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the Financing Plan for the Project. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Owner, such that the Rental Subsidy shown on the Finance Plan for the Development approved by the City is no longer available, Owner shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of ninety (90) days, to identify and obtain alternative sources of rental subsidies and shall provide the City progress reports on Owner's efforts to identify and obtain alternative sources of rental subsidies. If at the end of such ninety (90) day period Owner is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.4, Owner may increase the rent on one or more of the City Restricted Units that overlap with a Subsidy

Unit, up to sixty percent (60%) of AMI ("TCAC Maximum Rent Limit"), subject to the following requirements:

a. Any such rent increase must be pursuant to a transition plan approved by the City showing how the rent increase will be implemented, and which Restricted Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program;

b. At the time Owner requests an increase in the Restricted Unit rent, Owner shall provide the City with a copy of the proposed Annual Operating Budget showing the impact of the loss or reduction of the Rental Subsidy;

c. Any subsequent rent increases remain subject to Section 2.4 above; and,

d. The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development.

e. Owner must maintain, at a minimum, the affordability levels required by the density bonus provided under Livermore Development Code section 6.02.030.

f. Upon receipt of any alternative rental subsidies, Owner shall reduce the rents on the Restricted Units back to the Affordable Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Annual Operating Budget.

2.6 Rent Increases on Foreclosure.

Notwithstanding this Section 2.6, in the event that a Senior Lender (as defined in the Loan Agreement) foreclosures on the Project (or receives a deed in lieu of foreclosure), the Rents on one or more of the Restricted Units may be increased up to the TCAC Maximum Rent Limit to maintain the financial feasibility of the Project, subject to the following requirements:

a. Any such rent increase must be pursuant to a transition plan approved by the City showing: (i) how the rent increase will be phased-in; (ii) which Restricted Units will be subject to the increase; and (iii) the operating income and expenses for the Residential Project comparing the current rent structure to the proposed rent structure;

b. The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Development; and

c. The rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a Restricted Unit to a new tenant. Any subsequent rent increases remain subject to Section 2.3 above.

d. Owner must maintain, at a minimum, the affordability levels required by the density bonus provided under Livermore Development Code section 6.02.030.

2.7 Manager's Unit. One (1) dwelling unit in the Residential Project may be used as resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.8 No Condominium Conversion. Owner shall not convert the Residential Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Residential Project or any part thereof during the term of this Agreement.

2.9 Nondiscrimination; Compliance with Fair Housing Laws.

2.9.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.9.2 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Residential Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against

or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) (1) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts pertaining to management of the Residential Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

2.10 Relocation. Notwithstanding eviction, persons residing on the Property shall not be displaced before suitable replacement housing is available. Owner shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled. All costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits

pursuant to any applicable relocation laws shall be paid by Owner, and City shall have no responsibility for payment therefor. Owner shall be liable for any and all claims for applicable relocation benefits sought by any current, former or future tenant of the Residential Project.

To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising from the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Owner's indemnification obligations set forth in this Section (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

2.11 Disabled Persons Occupancy.

a) Owner shall cause the Residential Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Tenant Income Certifications; Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Income Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

(i) The identity of each household member;

(ii) The total gross household income (as determined pursuant to Section 2.3); and

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Residential Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the tenant certification and occupancy information described in this section. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Residential Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Residential Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

(i) A Residential Project income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Residential Project as well as the amount in the Residential Project's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(iv) Information on the status of the waiting list for units, including the number of households on the list and the number of persons qualifying for each of the City's selection preference categories on the list; and

(v) A financial audit of the books and records of the Residential Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

(vi) City may, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Residential Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Residential Project and the Property and to interview tenants and employees of the Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the City's issuance of a final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Project or Owner's fee interest in the Property, or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan, the Note (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this

Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Residential Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Residential Project. Owner shall submit its written management policies with respect to the Residential Project (the "Management Plan") to the City for its review and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

a)A parking management plan which details, among other things, how parking spaces wil l be allocated assigned, and how parking will be managed to encourage tenants, services providers and guests to use parking in accordance with the plan;

b) Procedures for maintenance and management of the Residential Project;

c) Procedures for dealing with tenant or neighborhood issues or concerns;

d)Procedures for maintaining a reserve account, budgeting for maintenance and repair ne eds as well as longterm rehabilitation needs, and handling net cash flow; and

e) Such other requirements and criteria/procedures as City may determine appropriate.

6.2 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Residential Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Housing Consortium of the East Bay, a California nonprofit public benefit corporation, as the initial management entity for the Residential Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Residential Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Project lender and equity investor, to operate the Residential Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative is required to reside on the property. If the on-site property management representative is not also the assigned property management staff for the Residential Project, then the representative shall still be available to address resident issues and to serve as the point of contact for City business and the public after regular business hours at the Property.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Residential Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Residential Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Residential Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Residential Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Residential Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Residential Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general

maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.5 Marketing and Tenant Selection Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for City review and approval, a plan for marketing and tenant selection for the Property ("**Marketing and Tenant Selection Plan**" or "**Plan**"). The Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households, including the preference for Livermore Homeless Clients, in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, City preferences, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall include the proposed form of application, marketing materials and the form of rental agreement that Owner proposes to enter into with Residential Project tenants. Owner shall abide by the terms of the Marketing and Tenant Selection Plan in marketing, and selecting tenants for the Property and the Residential Project, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

(a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.9 above;

(b) Criteria for determining tenant eligibility, including certification of household income and size, disability status of household members or other qualifying criteria, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references and criminal background investigations;

(c) A requirement that eligible tenants be selected based on order of application, selection preference, lottery or other reasonable method approved by City and incorporates a method of prioritizing and establishing a screening order for applications. The preference system shall assign an order to Eligible Households for Restricted Units as follows: first to Livermore Residents; then to other Eligible Households.

(d) A requirement that eligible applicants be notified of eligibility and, when possible, be provided an estimate regarding when a unit may be available;

(e) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(g) Maintenance of a waiting list of eligible applicants, including specific procedures for screening Project Based Section 8 eligible applicants in coordination with the Housing Authority of the City of Livermore;

(h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;

(j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;

(k) Such other requirements and criteria/procedures as City may determine appropriate.

6.6 Residential Lease Provisions. No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed form of residential lease agreement for the City's review and approval. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

a) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Residential Project in accordance with the standards set forth in this Agreement, or (ii) to qualify as a 30% or 50% AMI household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Owner, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Owner and the Tenant. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.4.

c) Include a provision which shall require a Tenant who is residing in a Restricted Unit made accessible pursuant to Section 5.10 of the Loan Agreement and who is not in need of an accessible unit to move to a non-accessible unit when a non-

accessible unit becomes available and another Tenant or prospective Tenant is in need of an accessible unit.

d) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs.5) Any termination of a lease or refusal to renew a lease for a Restricted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Owner specifying the grounds for the action.6) Include a detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;

7) Include a requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry.

6.7 Approval of Amendments. If City has not responded to any submission of the Marketing and Tenant Selection Plan, the proposed management entity, the proposed management agreement, or a proposed amendment the Management Plan, the Resident Services Plan or Resident Service Budget or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.8 Resident Services Plan and Budget.

a) No later than six (6) months prior to the projected date of the completion of the Project, Owner shall submit to the City a plan for providing supportive services to the Tenants (the "Resident Services Plan") and a budget for providing those services (the "Resident Services Budget") for the initial year of operation of the Residential Project. The Resident Services Plan must identify service provider(s) and staffing levels, and describe the services provided. The Resident Services Plan must include copies of contracts and/or memoranda of understanding for the provision of services by service providers, along with any annual compliance certifications. The Resident Services Budget must state the dollar value of the services, and the funding source(s) for the services (cash or in-kind).

b) Upon receipt by the City of the proposed Resident Services Plan and Resident Services Budget, the City shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Resident Services Plan and/or Resident Services Budget are not approved by the City, the City shall set forth in writing and notify Owner of the City's reasons for withholding such approval, which may include a request by the City for a change in the nature or scope of resident services or a change in service provider. Owner shall, within fifteen (15) days thereafter, submit a revised Resident Services Plan and/or Resident Services Budget for City approval in accordance with this subsection. If the City does not approve the revised Resident Service Plan, Owner shall be in Default hereunder.

c) Owner shall thereafter submit to the City annual updates to the Resident Services

Plan and Resident Services Budget by October 1st of each year of operation of the Development, identifying any changes made to the previously approved Resident Services Plan and Resident Services Budget. Any revisions to the Resident Services Plan and Resident Services Budget shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.7.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.10 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit C, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

6.11 Property Damage or Destruction. If any part of the Residential Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition,

prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) the lease of the commercial kitchen facility; (v) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (vi) the transfer of the managing partner's interest in a limited partnership to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), (iii) and (v) of Section 8.2,.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Residential Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to affect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) Except in the case of partnership interest Transfers, the Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(v) Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv) and (v) of Section 8.2., clause (vi) of Section 8.2, provided that the provisions of this Section 8.3 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (v) of Section 8.2.

8.5 Recovery of City Costs. Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof in accordance with Section 9.1 of the Loan Agreement for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon

all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A default arises under the Loan Agreement, the Note, or the Deed of Trust, and remains uncured beyond the expiration of any applicable cure period;

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion, provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(iii) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;

(iv) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 2.10 and 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of

the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust, or limiting the personal liability of Owner, or any other party for payment of all or any part of the indebtedness evidenced by the Note; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the indebtedness evidenced by the Note; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the indebtedness evidenced by the Note.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Tri Valley BMR LLC
c/o Housing Consortium of the East Bay
410 7th Street, Suite 203

Oakland, CA 94607
Attention: Darin Lounds, Executive Director

11.4 Notice of Expiration of Term.

a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the City Manager.

b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the City Manager) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

11.5 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.7 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.8 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.9 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.10 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.12 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, and the Deed of Trust, contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through C, attached hereto are incorporated herein by this reference.

11.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name: Marc Roberts

Title: City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:
TRI VALLEY BMR, LLC,
a California limited liability company

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Darin Lounds
Executive Director

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____, Notary Public_____,
(Name of Notary)

notary public, personally appeared _____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

Exhibit B

Number of Units by Unit Size and Targeted Area Median Income Rent Limits (AMI) by Unit Size

Unit Type	Number of City-Restricted Units by Category		Number of Other Affordable Units by Category		Manager Unit	**Total**	Household Size for Purpose of Establishing Rent Limit	Maximum Household Size
	15%	30%	15%	30%				
Studio		11	6	1	-	**18**	1	2
1-BR			5		-	**5**	2	3
2-BR					1	**1**		
Total		11	11	1	1	**24**		

Exhibit C

Insurance Requirements

(Insurance Requirements Attached)

Exhibit D

Form of Annual Report

(Form of Annual Report Attached)

EXHIBIT F

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $3,000,000 per occurrence/$6,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Builders' Risk (also known as Course of Construction). Limit should be the same as total contract costs, including soft costs and business interruption. The City of Livermore shall be endorsed as Loss Payee.
3. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
4. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
5. Property. Developer is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance policy will also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Developer's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer/Contractor; or automobiles owned, leased, hired, or borrowed by the Developer/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Developer's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Developer's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Developer/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

EXHIBIT G DEVELOPMENT BUDGET

EXHIBIT A

Vineyard			**11/1/21**	
Scenario: New Construction				
Total Units			24	
NPLH Units			11	
Percent Affordable			100%	
PBV			12	
DDA			Yes	
Land Value		10%	$	240,000
Improvements		90%	$	2,160,000
Purchase Price			$	2,400,000
Value Year		10	$	2,400,000
	per unit		$	100,000

Open Heart Kitchen Build-Out, Tenant Improvement		
Source		
Donor		870,000
Dublin CDBG Equipment	$	330,000
Total		**1,200,000**
Kitchen Build Out Cost		**1,200,000**
Surplus (Gap)		

VINEYARD INITIAL FINANCING PLAN

				Size	60%	25%	15%		chk
				Cost	70%	15%	15%	**Construction**	
SOURCES OF FUNDS				**Total**	**Residential**	**HRC**	**Kitchen**		
Livermore Predevelopment			$	855,110	$ 855,110			$ 855,110	$ 855,110
Livermore Acquisition/Predevelopment			$	2,270,000	$ 2,270,000			$ 2,270,000	$ 2,270,000
Alameda County Supervisor's Funding			$	1,500,000			$ 1,500,000	$ 1,500,000	$ 1,500,000
City of Livermore Human Services Facility Fee			$	1,620,135		$ 1,171,327	$ 448,808	$ 1,620,135	$ 1,620,135
Private Donor non OHK			$	1,130,000		$ 800,000	$ 330,000	$ 1,130,000	$ 1,130,000
Dublin CDBG extra $300,000			$	300,000			$ 300,000	$ 300,000	$ 300,000
HCD NPLH 49% of Units			$	2,484,536	$ 2,484,536				$ 2,484,536
Alameda County Measure 1A ($125K retention)			$	6,197,490	$ 6,197,490			$ 6,072,490	$ 6,197,490
City of Livermore HTF			$	3,640,522	$ 2,575,529	$ 1,064,993		$ 3,640,522	$ 3,640,522
Pleasanton CDBG			$	214,012			$ 214,012	$ 214,012	$ 214,012
HCD NPLH COSR			$	1,985,412	$ 1,985,412				$ 1,985,412
TOTAL SOURCES			$	22,197,217	$ 16,368,077	$ 3,036,320	$ 2,792,820	$ 17,602,269	$ 22,197,217
Surplus (Gap)			$	(0)	$ (0)	$ 0	$ 0		$ 0
Estimated Construction Loan			$	1,810,032	16,368,077	3,036,320	2,792,820	$ 1,810,032	$ 22,197,217
City of Livermore Total	$ 9,885,767		$	(0)	$ 0	$ (0)	$ (0)		$ (0)

								Basis Costs	**Construction Period Costs**
ACQUISITION									
Land		10%	$	240,000	144,000	60,000	36,000		240,000
Off Site Improvements and demolition		90%	$	2,160,000	1,296,000	540,000	324,000	0	2,160,000
Legal/Broker Fees/title/holding costs			$	35,000	21,000	8,750	5,250	0	30,000
Existing Improvements Value									
Total Acquisition Cost			**$**	**2,435,000**	**$ 1,461,000**	**$ 608,750**	**$ 365,250**	**0**	**2,430,000**
REHABILITATION									
Kitchen Build Out (separate budget)			$	-			0		
Design/Market Escalation		*0%*	$	-	0	0	0		
Housing Midstate Escalation			$	100,000	70,000	15,000	15,000	0	
Midstate Estimate			$	12,614,260	8,829,982	1,892,139	1,892,139	12,614,260	
General Requirements								0	
Prevailing Wages								0	
ARCHITECTURAL FEES									
Schematic		6%	$	234,490	164,143	35,174	35,174	220,000	
DD-CA			$	867,750	607,425	130,163	130,163	10,000	
Total Architectural Costs		**5%**	**$**	**1,102,240**	771,568	165,336	165,336	**230,000**	**1,102,240**
Survey/Engineering/Special Insp			**$**	**100,000**	70,000	15,000	15,000	**30,000**	**100,000**
CONSTR. INTEREST & FEES					0	0	0		
Const. Loan Interest			$	70,000	49,000	10,500	10,500	0	70,000
County 1% fee					0	0	0	0	0
Origination Fee @ 1%	2%		$	21,000	14,700	3,150	3,150	0	21,000
Bank const inspections, other costs			$	25,000	17,500	3,750	3,750	22,500	25,000
Taxes							0	0	0
Builder's Risk			$	100,000	70,000	15,000	15,000	0	100,000
Title and Recording			$	30,000	30,000			0	30,000
Total Construction Interest and Fees				**246,000**	**181,200**	**32,400**	**32,400**	**22,500**	**246,000**
PERMANENT FINANCING									
County/City Fees			$	35,000	35,000				
(Blank)			$	-					
Total Permanent Financing Costs			**$**	**35,000**	**$ 35,000**	**$ -**	**$ -**		**35,000**
LEGAL FEES									
Sponsor Legal			$	75,000	75,000			0	
Blank			$	-					
Lender Legal								50,000	50,000
Total Attorney Costs			**$**	**75,000**	**$ 75,000**	**$ -**	**$ -**	**50,000**	**75,000**
RESERVES									
Capitalized RR		2,000	$	48,000	48,000				
Operating Reserve			$	75,000	75,000				
NPLH HCD Transition Reserve			$	171,504	171,504				
Operating Reserves (COSR from NPLH)			$	1,985,412	1,985,412				
Total Reserve Costs				**2,279,916**	**2,279,916**	**0**	**0**		

Total Appraisal Costs			**7,000**	**7,000**			**12,000**	**7,000**
Total Construction Contingency Costs		**8.25%**	**$ 1,040,676**	**728,474**	**156,101**	**156,101**	**1,040,676**	**1,040,676**
OTHER								
Property Tax & Maintenance & Insurance			$ 100,000	100,000				100,000
Geotech			$ 18,000	18,000			0	18,000
Development Consulting/CM			$ 120,000	120,000			50,000	120,000
City Permit Fees/Impact Fees per 2_5_21	$ -		$ 613,000	429,100	91,950	91,950	0	613,000
SWPP & Joint Trench			$ 12,000	12,000			10,000	12,000
Soft Cost Contingency			$ 207,625	145,338	31,144	31,144	250,000	207,625
ACM/Lead/Phase 1			$ 6,500	6,500			0	6,500
Blank			$ -	0	0	0		0
Blank			$ -	0	0	0		0
Blank			$ -	0	0	0		0
Utility Hook Ups PG&E, Water, Sewer			$ 190,000	133,000	28,500	28,500	0	190,000
Furniture and Furniture Design			$ 245,000	245,000			0	245,000
Total Other Costs			**1,512,125**	**1,208,938**	**151,594**	**151,594**	**310,000**	**1,512,125**
Total Project Cost			**21,547,217**	**15,718,077**	**3,036,320**	**2,792,820**	**14,309,436**	**19,262,301**
DEVELOPER COSTS								
Developer Overhead/Profit			$ -					
Consultant/Processing Agent			$ -				0	0
Blank								
Sponsor		3.0%	$ 650,000	650,000			650,000	150,000
Sponsor at Risk			$ -					
Total Developer Costs			**650,000**	**650,000**	**0**	**0**	**650,000**	**150,000**
TOTAL PROJECT COST			**22,197,217**	**16,368,077**	**3,036,320**	**2,792,820**	**14,959,436**	**19,412,301**
Syndication Costs								
Legal - Syndication								
Accountant (Cost Cert)								
Consultant - Syndication (+$10k in costs of issuance)								
Total Syndication Costs								
TOTAL PROJECT COSTS INCL. SYNDICATION			**22,197,217**	**16,368,077**	**3,036,320**	**2,792,820**	**14,959,436**	**19,412,301**
per unit			$ 924,884	$ 682,003			**100%**	17,602,269
Construction Loan Amount							**14,959,436**	1,810,032

Vineyard Conversion

Sources	
HCD NPLH 49% of Units	$ 2,484,536
Alameda County Measure 1A ($125K retention)	$ 125,000
Total	**$ 2,609,536**
Uses	
Construction Lender Pay Down	$ 1,815,032
Capitalized RR	$ 48,000
Operating Reserve	$ 75,000
Developer Fee	$ 500,000
Total	**$ 2,438,032**
	$ 171,504

Exhibit H Predevelopment Loan Budget

Vineyard

Predevelopment Uses of Funds

Expense	Updated Budget 7/1/18	Additional Funds	Updated Budget 9/1/18
Architecture & Design Consultants	170,040.00	292,500.00	462,540.00
Acquisition deposit	150,000.00	-	150,000.00
Phase 1 and HazMat Demo Survey	11,300.00	-	11,300.00
Survey	-	-	-
Appraisal	5,500.00	-	5,500.00
Green Building Program Fees	-	-	-
Rent Study - Commercial	-	-	-
Rent Study - Residential	-	-	-
Legal Fees	20,000.00	-	20,000.00
Lender Legal & Processing Fees	-	-	-
Site Maintenance during escrow period	-	50,000.00	50,000.00
Planning Application Fees	35,000.00	-	35,000.00
Developer Fee - Contigency Period	15,000.00	-	15,000.00
Developer Fee - Entitltements	15,000.00	-	15,000.00
Construction Manager	-	-	-
Project Manager	30,000.00	-	30,000.00
	451,840.00		794,340.00
Contingency	23,270.00	37,500.00	60,770.00
Total Predevelopment Costs	475,110.00	380,000.00	855,110.00

Exhibit I

Schedule of Performance

Task/Milestone	Date
Complete Due Diligence	6/30/18
Preliminary Finance Plan to City	6/30/18
Obtain Planning Approvals	06/01/20
Financing Commitments	01/31/22
Submit Final Financing Plan to City	01/31/22
Close of Escrow - Construction Financing	Within 60 days of Obtaining Financing Commitments
Commence Construction	Within 90 days of Close of Escrow Financing
Complete Construction	Within 24 months of commencement of construction

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 S Livermore Avenue
Livermore, CA 94550
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

FIRST AMENDED AND RESTATED AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

TRI VALLEY BMR, LLC

_____, 2022

This First Amended and Restated Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2022 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri Valley BMR, LLC, a California limited liability company ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at 460 North Livermore Avenue, known as Alameda County Assessor Parcel No. 098-0240-001-17, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. On September 27, 2018, the City entered into an Affordable Housing Loan Agreement with the Owner (the "**City Acquisition Loan Agreement**") to provide a loan to Owner in the amount of $2,270,000 (the "**City Acquisition Loan**") to assist in financing acquisition of the Property. Pursuant to the City Acquisition Loan Agreement, Owner will develop, own, and operate an affordable housing development consisting of twenty-four (24) units of permanent, supportive, affordable rental housing for persons who are formerly homeless with related improvements supporting the residences, as well as approximately 6,000 square feet of services space for a variety of community-serving, non-profit programs including but not limited to food, basic needs, shelter, housing referral and counseling, and a commercial kitchen (the "**Project**")

Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the Development Loan Agreement.

C. In connection with the City Acquisition Loan, the City and Owner entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of September 27, 2018 and recorded October 2, 2018, as Instrument No. 2018191363 in the Official Records of Alameda County (the "Original Regulatory Agreement"), that certain Deed of Trust and Assignment of Rents (the "City Acquisition Deed of Trust"), dated as of October 2, 2018 and recorded October 2, 2018, as Instrument No. 2018191364 in the Official Records of Alameda County, and that certain Promissory Note dated as of October 2, 2018 (the "City Acquisition Note"). The purpose of this Agreement is to replace the Original Regulatory Agreement and to amend and restate the terms of restrictions for the Project and the Property.

D. On June 30, 2017 the City entered into an unrecorded Predevelopment Loan Agreement with the Owner to finance predevelopment expenses necessary to gain entitlements to develop the Project, as subsequently amended by that certain First Amendment to Predevelopment Loan dated June 26, 2018 and that certain Second Amendment to Predevelopment Loan Agreement dated September 25, 2018, each to increase the total Predevelopment Loan amount to Eight Hundred Fifty-Five Thousand One Hundred Ten Dollars ($855,110) (the "**City Predevelopment Loan**"). In connection with the City Predevelopment Loan, the City and Owner entered into that certain Deed of Trust and Assignment of Rents, dated October 02, 2018 and recorded October 02, 2018 as Instrument No. 2018191365 in the Official Records of Alameda County (the "**City Predevelopment Deed of Trust**"), and that certain Amended and

Restated Promissory Note dated October 2, 2018 (the "**City Predevelopment Note**"). The City Predevelopment Loan Agreement has e expired with predevelopment funds remaining to be drawn, and Owner now requires additional funding for permanent financing to construct the Project. Concurrently herewith, City and Owner will enter into a new loan agreement (the "Development Loan Agreement") which will subsume and extend the terms of the City Predevelopment Loan and provide an additional Three Million Six Hundred Forty Thousand Five Hundred Twenty Two Dollars ($3,640,522) in loan funds for permanent financing to construct the Project ("City **Development Loan**"). Concurrently with the execution of the City Development Loan Agreement, Owner will execute, and deliver to City, and as applicable, cause to be recorded in the Official Records: a City Development Loan Note to evidence Borrower's obligation to repay the City Development Loan ("City Development Note"), a deed of trust in the amount of Three Million Six Hundred Forty Thousand Five Hundred Twenty Two Dollars ($3,640,522) that will provide City with a security interest in the Property (the "City Development Deed of Trust") to secure the City Development Loan Note. The City Predevelopment Loan shall be evidenced by the existing City Predevelopment Deed of Trust and by that certain Third Amended and Restated Promissory Note (Predevelopment Loan) from Owner to City dated as of approximately even date herewith (the "**Third City Predevelopment Note**").

E. The City recognizes there is a shortage of affordable housing and, in particular, very low-income persons experiencing homelessness in Livermore face barriers which inhibit equal access to housing. Therefore, reserving affordable units for very low income, formerly homeless persons and providing services which allow them to be successful in maintaining housing is needed to offer equal access to housing.

F. The purpose of this Agreement is to satisfy the affordability requirements of the City's affordable housing program and to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants and set forth the use and maintenance of the community buildings. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1.1 Definitions; Exhibits. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

"**Affordable Rent**" means for units that are restricted for rental to households with incomes of not more than thirty percent (30%) of AMI, a monthly rent that does not exceed one-

"**Affordable Rent**" means for units that are restricted for rental to households with incomes of not more than thirty percent (30%) of AMI, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of thirty percent (30%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis which have been approved by the City.

"**Area Median Income" or "AMI**" means the median income for Alameda County, California, adjusted for Actual Household Size, as determined pursuant to California Tax Credit Allocation (**"TCAC"**) regulations.

"City's Authorized Representative" means the City Manager of the City of Livermore or his/her designee.

"City Documents" means collectively, this Agreement, the City Acquisition Loan Agreement, the City Notes, the City Deeds of Trust, and the Restated Regulatory Agreement, as amended.

"**Claims**" is defined in Section 2.10.

"City Development **Deed of Trust"** is defined in Recital E.

"City **Acquisition Deed of Trust**" is defined in Recital C.

"City Acquisition Loan" is defined in Recital B.

"City Acquisition Note" is defined in Recital C.

"**City Deeds of Trust**" is defined as that City Predevelopment Deed of Trust, City Development Deed of Trust, and City Acquisition Deed of Trust.

"City Notes" is defined as the City Third Restated Predevelopment Note, City Acquisition Loan Note, and City Development Loan Note.

"City Development Loan" is defined in Recital D.

"**Eligible Household**" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.3 and Exhibit B.

"**Indemnitees"** is defined in Section 2.10.

"Livermore Homeless Client" is defined as a person/applicant household who has been verified as homeless and is receiving services from City-approved agencies/programs within the incorporated city limits.

"**Marketing and Tenant Selection Plan"** is defined in Section 6.5.

"**City Predevelopment Deed of Trust**" is defined in Recital D.

"**Rent**" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

"**Rent Restricted"** means limited to an Affordable Rent.

"Residential Project" means an affordable housing development on the Property consisting of up to 24 apartments (up to 23 affordable apartments and one unrestricted manager's unit) targeted to persons who are formerly homeless with related improvements supporting the residences.

"**Restricted Unit**" means a dwelling unit that is restricted by the City pursuant to this Agreement pursuant to Section 2.1 and 2.3.

"**Project**" is defined in Recital B.

"**Tenant**" means a household legally occupying a Unit pursuant to a valid lease with Owner.

"**Unit**" means one of the twenty-four (24) units in the Project, including the manager's unit.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of Property

B Number of Restricted Units by Unit Size and Targeted Area Median Income Rent Limits (AMI) by Unit Size.

C Insurance Requirements

D Form of Annual Report

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Residential Project shall be used solely for the operation of a multifamily rental housing development of which eleven (11) units, which is no more than 49% of the total units, shall be Restricted Units. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Livermore Homeless Program Units. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Residential Project, including Alameda County A1 Bond funds, throughout the Term of this Agreement and subject to Section 2.9 herein, Owner agrees to exercise a preference for the Restricted Units which shall first be marketed to and occupied by clients referred through an agency or agencies participating in homeless programs supported and approved by the City (such clients are "Livermore Homeless Clients" and such units are "Homeless Units"). To the extent a Homeless Unit remains unoccupied for a period of thirty (30) days due to the fact that a Livermore Homeless Client tenant has not been identified, then Owner may rent such Homeless Unit to any otherwise qualifying tenant, provided, however, that the next available unit shall be offered to a Livermore Homeless Client and made available as a Homeless Unit. The Livermore Homeless Client referral procedures may be established by separate Memorandum of Understanding approved by the City Manager, and the Homeless Unit selection policies shall be incorporated into the general tenant selection policies described in Section 6.5.

2.2 Supportive Services for Homeless Units. Throughout the Term of this Agreement, Owner agrees to complete a needs assessment and service plan for each Homeless Unit occupant, and to provide onsite access to financial literacy, computer literacy, life-skills development, housing stability support, recreational, educational and community activities, conflict resolution and mediation, substance abuse treatment and health education programs. To the extent the on-site services are insufficient to meet the applicable service plan, then Owner will provide requisite referrals to additional off-site services.

2.3 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below) Owner agrees that (i) this Agreement restricts eleven (11) units, which represents no more than 49% of the total residential units in the Residential Project, as both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is no greater than thirty percent (30%) of AMI, ("Restricted Units"); and, (ii) all other units, except for one (1) of the residential units in the Residential Project which shall be a manager's unit for which rent will not be restricted, may be restricted by other public agency lenders which provide assistance to the Owner in developing the Project. For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in Section 2.3 and Exhibit B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Residential Project to Eligible Household(s) until the required income mix is achieved.

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail, including without limitation, the rent and occupancy requirements imposed in connection with the use of rent subsidies.

2.4 Rents for Restricted Units. For all Restricted Units rents shall be limited to Affordable Rents for households of the applicable income limit and presumed household size in accordance with Section 2.3 and Exhibit B. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed one hundred forty percent (140%) of the applicable income limit.

a) For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regul ations applicable to low-income housing tax credits. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the City shall provide Owner with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

b) Subject to Section 2.3, if, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that a Tenant of a Restricted Unit has an income exceeding the maximum qualifying income for a 30% AMI Household, such Tenant shall be permitted to continue occupying the Restricted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual adjusted income of the Tenant or the current fair market rent for that unit, whichever is less, and Owner shall rent the next available Unit of the appropriate size to a 30% AMI Household at a Rent not exceeding the maximum Rent specified in this Section, or designate another Unit in the Residential Project with a 30% AMI household as a 30% Unit, at a Rent not exceeding the maximum Rent specified in this Section.

c) Initial Rents are subject to City approval. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year. Owner shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant. Owner shall comply with California rent control laws and tenant notification. If there are any overlaps between this Agreement and the law, the more restrictive limits and noticing requirements shall govern.

2.5 Loss of Subsidy. It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the Financing Plan for the Project. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Owner, such that the Rental Subsidy shown on the Finance Plan for the Development approved by the City is no longer available, Owner shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of ninety (90) days, to identify and obtain alternative sources of rental subsidies and shall provide the City progress reports on Owner's efforts to identify and obtain alternative sources of rental subsidies. If at the end of such ninety (90) day period Owner is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.4, Owner may increase the rent on one or more of the City Restricted Units that overlap with a Subsidy

Unit, up to sixty percent (60%) of AMI ("TCAC Maximum Rent Limit"), subject to the following requirements:

a. Any such rent increase must be pursuant to a transition plan approved by the City showing how the rent increase will be implemented, and which Restricted Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program;

b. At the time Owner requests an increase in the Restricted Unit rent, Owner shall provide the City with a copy of the proposed Annual Operating Budget showing the impact of the loss or reduction of the Rental Subsidy;

c. Any subsequent rent increases remain subject to Section 2.4 above; and,

d. The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development.

e. Owner must maintain, at a minimum, the affordability levels required by the density bonus provided under Livermore Development Code section 6.02.030.

f. Upon receipt of any alternative rental subsidies, Owner shall reduce the rents on the Restricted Units back to the Affordable Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Annual Operating Budget.

2.6 Rent Increases on Foreclosure.

Notwithstanding this Section 2.6, in the event that a Senior Lender (as defined in the Loan Agreement) foreclosures on the Project (or receives a deed in lieu of foreclosure), the Rents on one or more of the Restricted Units may be increased up to the TCAC Maximum Rent Limit to maintain the financial feasibility of the Project, subject to the following requirements:

a. Any such rent increase must be pursuant to a transition plan approved by the City showing: (i) how the rent increase will be phased-in; (ii) which Restricted Units will be subject to the increase; and (iii) the operating income and expenses for the Residential Project comparing the current rent structure to the proposed rent structure;

b. The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Development; and

c. The rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a Restricted Unit to a new tenant. Any subsequent rent increases remain subject to Section 2.3 above.

d. Owner must maintain, at a minimum, the affordability levels required by the density bonus provided under Livermore Development Code section 6.02.030.

2.7 Manager's Unit. One (1) dwelling unit in the Residential Project may be used as resident manager's unit, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.8 No Condominium Conversion. Owner shall not convert the Residential Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Residential Project or any part thereof during the term of this Agreement.

2.9 Nondiscrimination; Compliance with Fair Housing Laws.

2.9.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.9.2 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Residential Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against

or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) (1) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts pertaining to management of the Residential Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

2.10 Relocation. Notwithstanding eviction, persons residing on the Property shall not be displaced before suitable replacement housing is available. Owner shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled. All costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits

pursuant to any applicable relocation laws shall be paid by Owner, and City shall have no responsibility for payment therefor. Owner shall be liable for any and all claims for applicable relocation benefits sought by any current, former or future tenant of the Residential Project.

To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising from the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Owner's indemnification obligations set forth in this Section (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

2.11 Disabled Persons Occupancy.

a) Owner shall cause the Residential Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Tenant Income Certifications; Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Income Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

(i) The identity of each household member;

(ii) The total gross household income (as determined pursuant to Section 2.3); and

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Residential Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the tenant certification and occupancy information described in this section. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Residential Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Residential Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

(i) A Residential Project income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Residential Project as well as the amount in the Residential Project's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(iv) Information on the status of the waiting list for units, including the number of households on the list and the number of persons qualifying for each of the City's selection preference categories on the list; and

(v) A financial audit of the books and records of the Residential Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

(vi) City may, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Residential Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Residential Project and the Property and to interview tenants and employees of the Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the City's issuance of a final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Project or Owner's fee interest in the Property, or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan, the Note (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this

Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Residential Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Residential Project. Owner shall submit its written management policies with respect to the Residential Project (the "Management Plan") to the City for its review and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

a)A parking management plan which details, among other things, how parking spaces wil l be allocated assigned, and how parking will be managed to encourage tenants, services providers and guests to use parking in accordance with the plan;

b) Procedures for maintenance and management of the Residential Project;

c) Procedures for dealing with tenant or neighborhood issues or concerns;

d)Procedures for maintaining a reserve account, budgeting for maintenance and repair ne eds as well as longterm rehabilitation needs, and handling net cash flow; and

e) Such other requirements and criteria/procedures as City may determine appropriate.

6.2 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Residential Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Housing Consortium of the East Bay, a California nonprofit public benefit corporation, as the initial management entity for the Residential Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Residential Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Project lender and equity investor, to operate the Residential Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative is required to reside on the property. If the on-site property management representative is not also the assigned property management staff for the Residential Project, then the representative shall still be available to address resident issues and to serve as the point of contact for City business and the public after regular business hours at the Property.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Residential Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Residential Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Residential Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Residential Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Residential Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Residential Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general

maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.5 Marketing and Tenant Selection Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for City review and approval, a plan for marketing and tenant selection for the Property ("**Marketing and Tenant Selection Plan**" or "**Plan**"). The Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households, including the preference for Livermore Homeless Clients, in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, City preferences, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall include the proposed form of application, marketing materials and the form of rental agreement that Owner proposes to enter into with Residential Project tenants. Owner shall abide by the terms of the Marketing and Tenant Selection Plan in marketing, and selecting tenants for the Property and the Residential Project, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

(a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.9 above;

(b) Criteria for determining tenant eligibility, including certification of household income and size, disability status of household members or other qualifying criteria, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references and criminal background investigations;

(c) A requirement that eligible tenants be selected based on order of application, selection preference, lottery or other reasonable method approved by City and incorporates a method of prioritizing and establishing a screening order for applications. The preference system shall assign an order to Eligible Households for Restricted Units as follows: first to Livermore Residents; then to other Eligible Households.

(d) A requirement that eligible applicants be notified of eligibility and, when possible, be provided an estimate regarding when a unit may be available;

(e) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(g) Maintenance of a waiting list of eligible applicants, including specific procedures for screening Project Based Section 8 eligible applicants in coordination with the Housing Authority of the City of Livermore;

(h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;

(j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;

(k) Such other requirements and criteria/procedures as City may determine appropriate.

6.6 Residential Lease Provisions. No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed form of residential lease agreement for the City's review and approval. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

a) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Residential Project in accordance with the standards set forth in this Agreement, or (ii) to qualify as a 30% or 50% AMI household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Owner, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Owner and the Tenant. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.4.

c) Include a provision which shall require a Tenant who is residing in a Restricted Unit made accessible pursuant to Section 5.10 of the Loan Agreement and who is not in need of an accessible unit to move to a non-accessible unit when a non-

accessible unit becomes available and another Tenant or prospective Tenant is in need of an accessible unit.

d) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs.5) Any termination of a lease or refusal to renew a lease for a Restricted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Owner specifying the grounds for the action.6) Include a detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;

7) Include a requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry.

6.7 Approval of Amendments. If City has not responded to any submission of the Marketing and Tenant Selection Plan, the proposed management entity, the proposed management agreement, or a proposed amendment the Management Plan, the Resident Services Plan or Resident Service Budget or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.8 Resident Services Plan and Budget.

a) No later than six (6) months prior to the projected date of the completion of the Project, Owner shall submit to the City a plan for providing supportive services to the Tenants (the "Resident Services Plan") and a budget for providing those services (the "Resident Services Budget") for the initial year of operation of the Residential Project. The Resident Services Plan must identify service provider(s) and staffing levels, and describe the services provided. The Resident Services Plan must include copies of contracts and/or memoranda of understanding for the provision of services by service providers, along with any annual compliance certifications. The Resident Services Budget must state the dollar value of the services, and the funding source(s) for the services (cash or in-kind).

b) Upon receipt by the City of the proposed Resident Services Plan and Resident Services Budget, the City shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Resident Services Plan and/or Resident Services Budget are not approved by the City, the City shall set forth in writing and notify Owner of the City's reasons for withholding such approval, which may include a request by the City for a change in the nature or scope of resident services or a change in service provider. Owner shall, within fifteen (15) days thereafter, submit a revised Resident Services Plan and/or Resident Services Budget for City approval in accordance with this subsection. If the City does not approve the revised Resident Service Plan, Owner shall be in Default hereunder.

c) Owner shall thereafter submit to the City annual updates to the Resident Services

Plan and Resident Services Budget by October 1st of each year of operation of the Development, identifying any changes made to the previously approved Resident Services Plan and Resident Services Budget. Any revisions to the Resident Services Plan and Resident Services Budget shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.7.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.10 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit C, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

6.11 Property Damage or Destruction. If any part of the Residential Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition,

prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) the lease of the commercial kitchen facility; (v) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (vi) the transfer of the managing partner's interest in a limited partnership to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), (iii) and (v) of Section 8.2,.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Residential Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to affect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) Except in the case of partnership interest Transfers, the Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(v) Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv) and (v) of Section 8.2., clause (vi) of Section 8.2, provided that the provisions of this Section 8.3 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (v) of Section 8.2.

8.5 Recovery of City Costs. Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof in accordance with Section 9.1 of the Loan Agreement for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon

all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A default arises under the Loan Agreement, the Note, or the Deed of Trust, and remains uncured beyond the expiration of any applicable cure period;

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion, provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(iii) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;

(iv) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 2.10 and 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of

the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust, or limiting the personal liability of Owner, or any other party for payment of all or any part of the indebtedness evidenced by the Note; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the indebtedness evidenced by the Note; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the indebtedness evidenced by the Note.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Tri Valley BMR LLC
c/o Housing Consortium of the East Bay
410 7th Street, Suite 203

Oakland, CA 94607
Attention: Darin Lounds, Executive Director

11.4 Notice of Expiration of Term.

a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the City Manager.

b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the City Manager) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

11.5 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.7 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.8 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.9 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.10 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.12 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, and the Deed of Trust, contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through C, attached hereto are incorporated herein by this reference.

11.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name: Marc Roberts

Title: City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:
TRI VALLEY BMR, LLC,
a California limited liability company

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Darin Lounds
Executive Director

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____, Notary Public_____,
(Name of Notary)

notary public, personally appeared _____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

ORDER NO. : 1117018101

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

All of Lots 3 and 4, the Southwestern 100 feet of Lots 2, 5 and 6, and the Western 50 feet of Lots 9 and 10, Block 26, Maps of the Northern Addition of the Town of Livermore, filed September 20, 1875, Map Book 2, Page 51, Alameda county Records and merged by Certificate of Compliance, described as follows:

Beginning at the Southwest corner of said Block 26; thence from said point of beginning North 20° 30' West, 250.00 feet; thence North 69° 30' East, 100.00 feet; thence South 20° 30' East, 50.00 feet; thence North 69° 30' East 100.00 feet; thence South 20° 30' East 100.00 feet; thence South 69° 30' West, 100.00 feet; thence South 20° 30' West, 100.00 feet to the point of beginning.

APN: 098-0240-001-17

Exhibit B

Number of Units by Unit Size and Targeted Area Median Income Rent Limits (AMI) by Unit Size

Unit Type	Number of City-Restricted Units by Category		Number of Other Affordable Units by Category		Manager Unit	**Total**	Household Size for Purpose of Establishing Rent Limit	Maximum Household Size
	15%	30%	15%	30%				
Studio		11	6	1	-	**18**	1	2
1-BR			5		-	**5**	2	3
2-BR					1	**1**		
Total		11	11	1	1	**24**		

Exhibit C

Insurance Requirements

(Insurance Requirements Attached)

EXHIBIT C

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $3,000,000 per occurrence/$6,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Builders' Risk (also known as Course of Construction). Limit should be the same as total contract costs, including soft costs and business interruption. The City of Livermore shall be endorsed as Loss Payee.
3. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
4. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
5. Property. Developer is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance policy will also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Developer's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer/Contractor; or automobiles owned, leased, hired, or borrowed by the Developer/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Developer's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Developer's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Developer/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

Exhibit D

Form of Annual Report

(Form of Annual Report Attached)

EXHIBIT D

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Property Conditions

Property Name & Address	
Person Completing Report	
Date	
Report Period	

List any physical defects or major repair work undertaken within the reporting period:
Comments on any general management/performance issues within the reporting period:

Compliance with Required Number of Restricted Units

Total number of Restricted Units which are currently occupied (or reserved and available for occupancy):	
Number of vacant Restricted Units at the time of this report:	
I hereby certify that these units in the quantity listed above have been continuously designated as units for occupancy by Eligible Households during the reporting period:	
Name of Project Owner or Authorized Agent	Title

Compliance with Rent Limits

List below the current monthly rents of the Restricted Units as well as the prior rents (if increases were made during the report period). Complete attached Restricted Unit occupancy table.

Plan	Number of Bedrooms	Current Rent	Prior Rent	% Increase	Additional Fees Charged	Utility Allowance (if applicable) or Amount of Tenant Paid Utilities

I hereby certify that the rents for all Restricted Units did not exceed the levels authorized under the Regulatory Agreement/restrictive covenants with the City of Livermore during the reporting period:	
Name of Project Owner or Authorized Agent	Title

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Restricted Unit Occupancy Information

Unit #	Bdrms	Unit Income Level	Tenant Last Name/Identifier	Move-In Date	# in Household	Reported Annual Income	Effective Date of Current Rent	Tenant Paid Rent	Section 8? (Y/N)	Homeless Unit? (Y/N)

AGREEMENT BETWEEN CITY OF LIVERMORE AND TRI VALLEY BMR, LLC FOR FISCAL YEAR 2021-22 SOCIAL AND HUMAN SERVICE FACILITY FEE (Capital)

THIS AGREEMENT, entered into this ____ day of _____, 2021 (the "**Effective Date**"), between the City of Livermore, a municipal corporation ("City"), and Tri Valley BMR, LLC, a California limited liability company ("Recipient"), whose sole member is Housing Consortium of the East Bay, a California nonprofit public benefit corporation.

RECITALS

City has assessed the social and human service network in the City of Livermore and collects human service facility fees pursuant to Chapter 12.70 *Social and Human Service Facility Fee* of the Livermore Municipal Code. These fees are deposited in a Human Service Facility Fee Fund and are to be used consistent with Section 12.70.060 of the Livermore Municipal Code to provide additional facilities to mitigate the increased need for social and human service facilities.

Recipient is the owner of the property located at 460 North Livermore Avenue (the "Property"). The Property will be developed by the Recipient for a project that will: (1) provide services and 23 affordable housing units to serve extremely low-income households experiencing or at risk of experiencing homelessness in Livermore, plus one onsite manager's unit; (2) a resource center (including a multi-purpose assembly space that will also serve as a dining space) that will serve low-income individuals and people experiencing or at risk of experiencing homelessness; , and (3) a commercial kitchen that will serve low-income individuals and people experiencing or at risk of experiencing homelessness (collectively, the "Project") ; each of the foregoing to be funded through a variety of City, County of Alameda, State of California, and private funding sources targeted to support the residential and commercial components. The commercial component consists of the resource center (including a multi-purpose assembly space that will also serve as a dining space) and the commercial kitchen (the "Services Project").

City wishes to engage Recipient in utilizing a portion of the Social and Human Service Facility Fee funds in the amount of $ $1,620,135 (the "Funds") to provide services to Livermore residents that meet the requirements described in section 12.70.060 of the Livermore Municipal Code.

City and Recipient understand that the Funds awarded from the City shall satisfy the Social and Human Service Facility Fee objectives described in the City's ordinances.

In accordance with the National Environmental Policy Act of 1969, as amended (42 USC 4321-4347) ("NEPA"), the City of Livermore has completed and approved all applicable environmental review for the activities proposed to be undertaken under this Agreement.

Concurrently with the execution of this Agreement, Recipient will execute, and deliver to City, and as applicable, cause to be recorded in the Official Records a Services Facility

Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") that will regulate and restrict the Services Project for the benefit of low-income community members in a manner that meets the requirements described in section 3.26.060 of the Livermore Municipal Code and set forth the use and maintenance of the resource center, food service kitchen and community dining space for a term of not less than fifty-five (55) years. The Regulatory Agreement is attached as Exhibit A.

A Notice of Exemption finding that the Project is Categorically Exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") per CEQA Guidelines Section 15332 was filed with the Alameda County Clerk on May 12, 2020.

AGREEMENT

NOW THEREFORE, City and Recipient hereby agree that the aforementioned recitals are true and correct, and in recognition of the mutual consideration provided herein, further agree as follows:

1. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Recipient and its employees are not City officers or employees. Recipient is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the performance of the Activities contemplated by this Agreement.

2. Scope of Service.

A. Activities. Recipient is responsible for administering the Funds awarded in a manner satisfactory to City as outlined in this Scope of Service. Recipient shall also be responsible for the supplemental terms and conditions contained in Exhibit "B" Scope of Work.

i. *Project Overview*: Develop a Project at the Property providing housing and services for people experiencing homelessness in Livermore.

ii. *Service Objective.* Construct the Services Project (the "Activities").

iii. *General Administration*. The Funds for the Activities are to be administered under the direction of the Recipient.

B. Budget. City will grant, and Recipient will use, the Funds awarded under the budget terms set forth in Exhibit "B-1", to perform the Activities consistent with the terms and conditions of this Agreement and any conditions imposed upon the Project.

C. Performance Monitoring - City will monitor Recipient's performance against the objective outlined in Section 2A(ii). Substandard performance as determined by the City will constitute non-compliance with this agreement.

3. Time for Performance. Recipient shall draw funds for eligible Activities during a period commencing on the Effective Date, and continuing through December 31, 2024.

4. Time for Restricted Use. Recipient shall restrict the use of the Property as described in Exhibit A until 55 years after the issuance of a final Certificate of Occupancy by the City for the Project.

5. Payment. It is expressly agreed and understood that the total amount available from City to Recipient for the Activities under this Agreement shall not exceed the amount of $1,620,135 under the budget terms set forth in Exhibit "B-1". Recipient shall only be entitled to draw that portion of the Funds commensurate with the Activities provided, and only for payment of eligible expenses which have been properly documented by Recipient and approved by City. City shall only make payments for those Activities that comply with the terms and conditions of this Agreement.

Payments of eligible expenses shall be made from the Funds and in accordance with the terms and conditions of this Agreement. City shall pay to Recipient Funds available under this Agreement based upon information submitted by Recipient, and consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by Recipient.

6. Administrative, Documentation and Recordkeeping Requirements.

A. Records to be Maintained - Recipient shall maintain records pertinent to the Activities as required under the Regulatory Agreement.

B. Retention - Recipient shall retain all records pertinent to expenditures incurred in the performance of the Activities under this Agreement, including records for non-expendable property acquired with funds and records for any displaced person, for a period of 5 years after the City's issuance of a Certificate of Occupancy for the Project.

C. Financial Management. Recipient shall adhere to the generally accepted accounting principles, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

D. Audits and Inspections - All Recipient records with respect to any matters covered by this Agreement shall be made available to City, grantor agency, or their designees at any time during normal business hours with 48-hours' notice, as often as City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

Any deficiencies noted in audit reports must be corrected by Recipient within 30 days after receipt of notice of deficiency to Recipient, or if the nature of any such deficiency is such that it cannot be cured within thirty (30) days. Recipient's failure to commence to cure the deficiency within thirty (30) days and thereafter prosecute the curing of such deficiency with due diligence and in good faith to completion, provided that Recipient's due diligence and good faith shall be

determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of deficiency, but in no event longer than 180 days from receipt of the notice of deficiency. Failure of Recipient to comply with the above audit requirements will constitute a violation of this Agreement and constitute cause for termination pursuant to Section 11A *Termination for Cause*.

7. Suspension, Termination, Return of Funds.

A. Termination for Cause. City may suspend or terminate this Agreement if Recipient fails to comply with any term or condition of this Agreement following written notice from the City to Recipient an opportunity to cure as provided in this Section 7, including but not limited to, the following:

I. Failure to comply with any of the rules, regulations or provision referred to herein, or such statutes, regulations, policies or directives as may become applicable at any time;

II. Failure, for any reason within the control of Recipient, of Recipient to fulfill in a timely and proper manner its obligation under this Agreement;

III. Failure, for any reason within the control of Recipient, of Recipient to operate the Services Project as required in the Services Facility Regulatory Agreement.

IV. Improper use of the Funds provided; or

V. Submission by Recipient to City reports that are incorrect or incomplete in any material respect.

City shall give Recipient written notice of any failure to comply with the Agreement. Recipient shall have thirty (30) calendar days from such notice to correct any specified deficiency in the records, or, if more than thirty (30) days shall be reasonably necessary to correct the deficiency, Recipient's will commence to cure the deficiency within thirty (30) days and thereafter prosecute the curing of such deficiency with due diligence and in good faith to completion, provided that Recipient's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of deficiency, but in no event longer than 180 days from receipt of the notice of deficiency. If Recipient does not remedy, or diligently pursue remedy of, the non-compliance as reasonably determined by the City, City may exercise any of the remedies available under law and equity including those set forth in this Section 7 of this Agreement.

Pending correction of the non-compliance, City shall withhold funds requested for any payment identified in the notice of non-compliance, until such time as Recipient corrects the non-compliance or is otherwise found to be in compliance by City.

8. Reversion of Assets.

A. Recipient shall transfer to City any funds on hand and any account receivable each in a the portion attributable to the use of the Funds at the time of termination of this Agreement for cause pursuant to Section 7 above;

B. Real property under Recipient's control that was acquired or improved in whole or in part with City funds shall be used according to the restrictions outlined in the Regulatory Agreement until 55 years after the issuance of a final Certificate of Occupancy for the Project. If Recipient fails to use the real property in a manner consistent with the Regulatory Agreement for the prescribed period of time, Recipient shall pay City an amount equal to the fair market value of the property as of the Effective Date less any portion of the values attributable to the expenditure of funds other than the Funds for the construction of, or improvement to, the property. This provision shall continue until the end of the Time for Restricted Use described in Section 4 of this Agreement.

C. In all cases in which equipment or real property acquired, in whole or in part, with the funds is later sold, the proceeds shall be returned to the City (prorated to reflect the amount of the Funds that were used to acquire the equipment or real property). Equipment and real property acquired with the Funds, but not required by Recipient for Activities under this Agreement shall be (1) transferred to City or (2) retained after compensating City in an amount equal to the current fair market value of the equipment less the percentage of funds other than the Funds used to acquire the equipment or real property.

9. Remedies. If Recipient materially fails to comply with the terms and conditions of this Agreement, subject to Section 7, above, the City may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the Recipient as more particularly described in Section 7.

2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the current award, as more particularly described in Section 7.

4. Withhold further new or uncommitted awards for the Project or Recipient.

5. Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Prevailing Wage. If applicable, Recipient shall ensure that all work for compensation is

taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Recipient shall comply with all prevailing wage laws, such as section 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Recipient shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement.

11. Federal Wage Requirements. If Federal wage requirements from the Davis-Bacon Act apply to the project, the Recipient shall include the federal wage checklist and wage determination as an exhibit to the Recipient's contract with the general contractor that is hired to perform the work. Recipient shall confirm with City staff regarding the actual federal wage decision applicable to Recipient's project prior to starting the bid advertisement process for the project.

12. Hold Harmless and Indemnity. Recipient shall defend, indemnify and hold City, its elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, claims, and lawsuits including but not limited to reasonable attorney, consultant and expert fees, and court costs, arising out of or in connection with this Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, agents, and designated volunteers.

13. Insurance. Recipient shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "C" against claims that may arise from or in connection with this Agreement and performance of the Activities. Upon reasonable written notice, Recipient shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by the City's Risk Manager.

14. Copyright and Right of Use. All items created by Recipient under this Agreement are works made for hire, and Recipient shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered by Recipient as part of the Activities.

15. Notices. Any notice required or permitted under the terms of this Agreement shall be effective upon receipt in writing either by personal service upon the authorized agent for the party, or by mailing the notice via U.S. Mail to the party as follows:

City: City of Livermore
Attn: Human Services Program Manager
1052 S. Livermore Avenue
Livermore, California 94550

Recipient: Tri Valley BMR, LLC
c/o Housing Consortium of the East Bay
Attn: Darin Lounds

410 7th Street
Oakland, CA 94607

16. Environmental Review. Recipient understands that if applicable the City Council does not officially allocate funding until the Environmental Review (ER) is completed by City Staff and a finding of no significant impact ("FONSI") is issued. Recipient shall not commence work on the proposed project until the environmental review has been completed. A copy of the Environmental Review is contained within the Environmental Review file and is made a part of this contract by reference. The Project is Categorically Exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") per CEQA Guidelines Section 15332.

17. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

18. Waiver. City's failure to act with respect to a breach by Recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

19. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. This Agreement is comprised of the following documents: this Agreement, including but not limited to: Exhibit A *Services Facility Regulatory Agreement and Declaration of Restrictive Covenants,* Exhibit B *Scope of Work, Exhibit B-1 Financing Plan* and Exhibit C *Insurance Coverage, Amounts and Terms*. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto or document incorporated by reference, the language in the body of the Agreement controls.

20. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Activities. Any modification to this Agreement must be in writing and signed by both parties. No amendment may invalidate this Agreement or relieve or release City or Recipient from its obligations under this Agreement. City may, in its discretion, amend this Agreement in writing to conform with Federal, State, or local laws, regulations, guidelines, or policies related to the use of the Funds for the Activities. However, if such amendments result in a change in the funding, the scope of services, or the Activities, such modifications shall be incorporated only by written amendment signed by both City and Recipient. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City may be used in place of the original for all purposes with the same effect as if it was the original.

******************SIGNATURES AND ATTACHMENT LIST ON NEXT PAGE******************

IN WITNESS THEREOF, the Recipient and City have executed this Agreement as of the date first written above.

RECIPIENT **DATED**: _____
"Recipient"

TRI VALLEY BMR, LLC a California limited liability company

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole manager and member

By: _____
Darin Lounds
Executive Director

Data Universal Numbering System (DUNS) No.

_____

Central Contractors Registration No.

_____

CITY OF LIVERMORE **DATED:** _____
a Municipal Corporation
"City"

BY: _____
Marc Roberts
City Manager

APPROVED AS TO FORM:

_____
ASSISTANT/CITY ATTORNEY

Attachments:

Exhibit A Services Facility Regulatory Agreement and Declaration of Restrictive Covenants

Exhibit B Scope of Work
Exhibit B-1 Financing Plan
Exhibit C Insurance Requirements

EXHIBIT A

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Livermore 1052 S Livermore Avenue Livermore, CA 94550 Attention: City Clerk EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

Space above this line for Recorder's use.

SERVICES FACILITY REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

TRI VALLEY BMR, LLC

_____, 2021

This Services Facility Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2021 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri Valley BMR, LLC, a California limited liability company ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at 460 North Livermore Avenue, known as Alameda County Assessor Parcel No. 098-0240-001-17, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. The Property will be developed by the Owner for a project that will provide services and affordable housing units to serve households experiencing or at risk of experiencing homelessness in Livermore (the "**Project**"). The Project will consist of three new buildings containing 23 apartments for extremely low-income households, an onsite manager's apartment, a resource center for the neighborhood and individuals who are homeless, and a commercial food service kitchen and assembly space. .

C. City and Owner have entered into an unrecorded Social and Human Service Facility Fee Grant Agreement (the "**Grant Agreement**"), dated as of _____, pursuant to which the City agreed to provide a grant utilizing a portion of the City of Livermore Social and Human Service Facility Fee to Owner in the amount of One Million Six Hundred Twenty Thousand One Hundred Thirty Five Dollars ($1,620,135) (the **"Grant")** to develop, own, and operate or lease on the Property, a resource center including a multi-purpose assembly space that will also serve as a dining space, and a food services facility with a commercial kitchen, each serving low-income individuals and people experiencing or at risk of experiencing homelessness (the "**Services Project**").

D. City and Owner have entered into an unrecorded agreement, dated as of _____, engaging the Owner to assist City in utilizing $1,500,000 in Alameda County Non-Housing Residual Property Taxes (Boomerang Funds) awarded by the Alameda County Board of Supervisors to support the Project.

E. The purpose of this Agreement is to regulate and restrict the Services project for the benefit of low-income individuals and people experiencing homelessness or are at risk of experiencing homelessness and as a social and human services facility for community care consistent with section 12.70.060 of the Livermore Municipal Code and set forth the use and maintenance of the resource center and food services facility. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1.1 Definitions; Exhibits. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"City's Authorized Representative" means the City Manager of the City of Livermore or his/her designee.

"City Documents" means collectively this Agreement and the Grant Agreement.

"**Claims**" is defined in Section 10.

"Grant" is defined in Recital C.

"Grant Agreement" is defined in Recital C.

"Food Services Facility" is defined as a commercial kitchen located on the Property and serving low-income individuals and people experiencing homelessness.

"**Indemnitees"** is defined in Section 10.

"**Management Plan"** is defined in Section 6.2.

"Project" is defined in Recital B.

"Resource Center" is defined as space on the Property serving low-income individuals and people experiencing homelessness through programs including but not limited to housing referral and counseling services and basic needs, and including offices, meeting rooms, and a multi-purpose assembly space that will also serve as a dining space.

"Services Project" is defined in Recital C.

"Tenant" is defined as organizations leasing space in the Services Project to provide services and/or programs to low-income individuals and people experiencing homelessness.

"**User**" is defined as an organization utilizing space (other than under a lease) in the Services Project to provide services and/or programs to low-income individuals and people experiencing homelessness.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of Property

B Insurance Requirements

2. Use Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Property shall be used solely for the development and operation of the Project, including the Services Project. The Services Project shall be developed and operated in compliance with the Grant Agreement, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would

restrict or compromise its ability to comply with the restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Services Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) (1) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use,

occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts pertaining to management of the Services Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

2.2 Restrictions on religious activities. Organizations providing services on the Property shall not discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. If an organization using the Property engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities offered on the Project and participation must be voluntary for the beneficiaries of the Services Project programs or activities. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

2.3 Disabled Persons Occupancy.

a) Owner shall cause the Services Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's

failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Reporting Requirements; Access to Information; Inspections.

3.1 Annual Report; Inspections. Following completion of construction of the Services Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Services Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the Tenant and User information described in this section. The Annual Report shall, at a minimum, include the following information for the Services Project: (i) total number of Tenants and Users; (ii) name of each Tenant and User; and (iii) total number of clients served by Tenants and Users of the resource center and food services facility, disaggregated by service type, income category, gender, race and ethnicity, and housing status.

Owner shall include with the Annual Report, a copy of each new or amended commercial lease entered into during the reporting period and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format approved by City.

The Annual Report shall conform to the format requested by City. In addition to the information described above, the Annual Report shall include the following:

(i) A Services Project income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Services Project and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(iv) A financial audit of the books and records of the Services Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

(v) City may, from time-to-time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.2. Maintenance of Records.

3.2.1 Owner shall maintain all records regarding the construction of the Services Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases and other matters related to the leasing and use of the Services Project for a period of five (5) years after the final date of occupancy by the tenant. 3.2.2 Shall maintain all records supporting the information reported in Annual Reports for a period of five (5) years after the Annual Report submission.

3.2.2 Shall maintain all records supporting the information reported in Annual Reports for a period of five (5) years after the Annual Report submission.

3.2.3 Records must be kept accurate and up to date. City shall notify Owner of any records it deems insufficient. Owner shall have thirty (30) calendar days from such notice to correct any specified deficiency in the records, or, if more than thirty (30) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within thirty (30) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.3 Access to Records; Inspections.

3.3.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Services Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.3.2 With 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Services Project and the Property and to interview Tenants, Users, and employees of the Services Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the City's issuance of a final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Project or Owner's fee interest in the Property, or any part thereof or interest therein.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects

its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Services Project, including without limitation the selection of Tenants and Users, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Services Project.

6.2 Management Plan and Operating Budget

6.2.1 Owner shall submit its written management policies with respect to the Services Project (the "Management Plan") to the City for its review and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

a)A parking management plan which details, among other things, how parking sp aces wil be allocated assigned, and how parking will be managed to encourage Te nants, Users, services providers and guests to use parking in accordance with the plan;

b)Procedures for maintenance and management of the Services Project;

c)Procedures for dealing with tenant or neighborhood issues or concerns;

d)Procedures for maintaining a reserve account, budgeting for maintenance and re pair needs as well as long term rehabilitation needs, determining rents, and handling net cash flow; and

e) Description of services to be provided at the Services Project and staffing levels

f) Procedures for selecting Services Project Tenants and Users

g)Such other requirements and criteria/procedures as City may determine appropriate.

Any revisions to the Management Plan shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.8.

6.2.2 No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City for the City's review and approval the proposed operating budget for the Services Project which sets forth Owner's estimate of operating income, operating expenses and debt service for the project, and amounts payable to reserves.

6.3 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Services Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Housing Consortium of the East Bay, a California nonprofit public benefit corporation, as the initial management entity for the Services Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Services Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Services Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Services Project lender, to operate the Services Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative shall be available to address issues and to serve as the point of contact for Tenants and the public during regular business hours at the Services Project.

6.4 Resource Center Staffing: In addition to the on-site property management representative, a representative of the management entity is required to work on the Property and serve as the point of contact for clients, Users, and Tenants of the Services Project during business hours at the Services Project. This representative may be employed by the management entity or a non-profit organization providing services on the Property.

6.5 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Services Project in good physical

condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Services Project and the Property (including without limitation, the food services facility, resource center, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Services Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Services Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Services Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.5.1 Additional Requirements. All construction work and professional services for the Services Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. Owner shall ensure that all work for compensation is taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Owner's Contractor shall comply with all prevailing wage laws, such as sections 1773,1773.8,1775,1776.1777.5,1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with the Agreement is deemed to have occurred by any court or administrative authority, Owner shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.6 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.7 Approval of Leases.

6.7.1 No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed forms of commercial lease agreement and facility use agreement for the City's review and approval. The form of lease must comply with all requirements of the City Documents and must include including the non-discrimination requirements described in Section 2.2 of this Agreement.

6.7.2 No later than thirty (30) days prior to entering into a commercial lease agreement, Owner shall submit to the City the proposed tenant and use of the space for the City's review and approval.

6.8 Approval of Amendments. If City has not responded to any submission of the Management Plan, the proposed management entity, the proposed management agreement, proposed forms of commercial lease and facility use agreements, a proposed amendment to the Management Plan, or change to any of the foregoing to the City's Authorized Representative within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Services Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.10 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.11 Property Damage or Destruction. If any part of the Services Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include

reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Grant Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Services Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Grant Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Grant Agreement; (iii) the lease of non-residential space to non-profit services agencies for use in accordance with this Agreement; (iv) the lease of the commercial kitchen; and (v) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Grant Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), and (iii) of Section 8.2.)

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and

obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall entitle City to pursue remedies including without limitation, termination of the Grant Agreement and/or return of Grant Funds if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), and (iv) of Section 8.2.

8.5 Recovery of City Costs. Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to terminate the grant award and demand return of Services Project funds as described in Section 12 of the Grant Agreement; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Services Project as a facility providing social and housing services to low-income individuals and low-income Livermore residents subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A breach arises under the Grant Agreement and remains uncured beyond the expiration of any applicable cure period;

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default..

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation

beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Wholly or partly suspend or terminate the current award and the return of Services Project funds as described in Section 12 of the Grant Agreement;

(iii) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Services Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation Section 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document; and (iv) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document.

(c) The obligations of Owner to indemnify the Indemnitees shall survive the termination of the Grant Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Tri Valley BMR LLC
c/o Housing Consortium of the East Bay
410 7th Street, Suite 203
Oakland, CA 94607
Attention: Darin Lounds, Executive Director

11.5 11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be

construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Services Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Grant Agreement, contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through

B, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name:__Marc Roberts

Title:_City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:
TRI VALLEY BMR, LLC a California limited liability company

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole manager and member

By: _____
Darin Lounds
Executive Director

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____, Notary Public_____,
(Name of Notary)

notary public, personally appeared _____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

EXHIBIT C

ORDER NO. : 1117018101

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

All of Lots 3 and 4, the Southwestern 100 feet of Lots 2, 5 and 6, and the Western 50 feet of Lots 9 and 10, Block 26, Maps of the Northern Addition of the Town of Livermore, filed September 20, 1875, Map Book 2, Page 51, Alameda county Records and merged by Certificate of Compliance, described as follows:

Beginning at the Southwest corner of said Block 26; thence from said point of beginning North 20° 30' West, 250.00 feet; thence North 69° 30' East, 100.00 feet; thence South 20° 30' East, 50.00 feet; thence North 69° 30' East 100.00 feet; thence South 20° 30' East 100.00 feet; thence South 69° 30' West, 100.00 feet; thence South 20° 30' West, 100.00 feet to the point of beginning.

APN: 098-0240-001-17

Exhibit B
Insurance Requirements

(Insurance Requirements Attached)

EXHIBIT B
Scope of Work

Project Description:

The redevelopment, as approved by Livermore Planning Commission Resolution 20-45, of the approximately 0.8-acre site located at 460 North Livermore Avenue in with two new buildings containing:

- Housing Resource Center: Approximately 6,355 square feet of new space that includes offices, meeting rooms, and a multi-purpose assembly space that will also serve as a dining space, as well as a laundry room and showers; and
- Food Service Facility: a commercial kitchen operated by Open Heart Kitchen under a lease from Subrecipient, preparing hot and cold meals for low-income individuals and people experiencing or at risk of experiencing homelessness, served on-site as well as off-site.

Development Schedule:

Task/Milestone	Target Date
Obtain Entitlements	May 2020
Financing Commitments	1/31/2022
Submit Final Financing Plan to the City	1/31/2022
Close of Escrow – Construction Financing	3/31/2022
Commence Construction	Within 90 days of close of escrow
Complete Construction	Within 24 months of construction commencement

Eligible Costs:

Project can draw against all legal, architectural, construction, project management, and financing costs, as well as permit and utility hook up fees, furniture expenses, organizational developer fees, and engineering and design fees associated with building the Housing Resource Center and Food Service Facility as described in the Financing Plan attached as Exhibit B-1.

EXHIBIT B-1 DEVELOPMENT BUDGET

EXHIBIT C

Vineyard			**11/1/21**	
Scenario: New Construction				
Total Units			24	
NPLH Units			11	
Percent Affordable			100%	
PBV			12	
DDA			Yes	
Land Value		10%	$ 240,000	
Improvements		90%	$ 2,160,000	
Purchase Price			$ 2,400,000	
Value Year		10	$ 2,400,000	
	per unit		$ 100,000	

Open Heart Kitchen Build-Out, Tenant Improvement

Source	
Donor	870,000
Dublin CDBG Equipment	$ 330,000
Total	**1,200,000**
Kitchen Build Out Cost	**1,200,000**
Surplus (Gap)	

VINEYARD INITIAL FINANCING PLAN

			Size	60%	25%	15%		chk
			Cost	70%	15%	15%	**Construction**	
SOURCES OF FUNDS			**Total**	**Residential**	**HRC**	**Kitchen**		
Livermore Predevelopment			$ 855,110	$ 855,110			$ 855,110	$ 855,110
Livermore Acquisition/Predevelopment			$ 2,270,000	$ 2,270,000			$ 2,270,000	$ 2,270,000
Alameda County Supervisor's Funding			$ 1,500,000			$ 1,500,000	$ 1,500,000	$ 1,500,000
City of Livermore Human Services Facility Fee			$ 1,620,135		$ 1,171,327	$ 448,808	$ 1,620,135	$ 1,620,135
Private Donor non OHK			$ 1,130,000		$ 800,000	$ 330,000	$ 1,130,000	$ 1,130,000
Dublin CDBG extra $300,000			$ 300,000			$ 300,000	$ 300,000	$ 300,000
HCD NPLH 49% of Units			$ 2,484,536	$ 2,484,536				$ 2,484,536
Alameda County Measure 1A ($125K retention)			$ 6,197,490	$ 6,197,490			$ 6,072,490	$ 6,197,490
City of Livermore HTF			$ 3,640,522	$ 2,575,529	$ 1,064,993		$ 3,640,522	$ 3,640,522
Pleasanton CDBG			$ 214,012			$ 214,012	$ 214,012	$ 214,012
HCD NPLH COSR			$ 1,985,412	$ 1,985,412				$ 1,985,412
TOTAL SOURCES			$ 22,197,217	$ 16,368,077	$ 3,036,320	$ 2,792,820	$ 17,602,269	$ 22,197,217
Surplus (Gap)			$ (0)	$ (0)	$ 0	$ 0		$ 0
Estimated Construction Loan			$ 1,810,032	16,368,077	3,036,320	2,792,820	$ 1,810,032	$ 22,197,217
City of Livermore Total	$ 9,885,767		$ (0)	$ 0	$ (0)	$ (0)		$ (0)

							Basis Costs	**Construction Period Costs**
ACQUISITION								
Land		10%	$ 240,000	144,000	60,000	36,000		240,000
Off Site Improvements and demolition		90%	$ 2,160,000	1,296,000	540,000	324,000	0	2,160,000
Legal/Broker Fees/title/holding costs			$ 35,000	21,000	8,750	5,250	0	30,000
Existing Improvements Value								
Total Acquisition Cost			**$ 2,435,000**	**$ 1,461,000**	**$ 608,750**	**$ 365,250**	**0**	**2,430,000**
REHABILITATION								
Kitchen Build Out (separate budget)			$ -			0		
Design/Market Escalation		*0%*	$ -	0	0	0		
Housing Midstate Escalation			$ 100,000	70,000	15,000	15,000	0	
Midstate Estimate			$ 12,614,260	8,829,982	1,892,139	1,892,139	12,614,260	
General Requirements							0	
Prevailing Wages							0	
ARCHITECTURAL FEES								
Schematic		6%	$ 234,490	164,143	35,174	35,174	220,000	
DD-CA			$ 867,750	607,425	130,163	130,163	10,000	
Total Architectural Costs		**5%**	**$ 1,102,240**	771,568	165,336	165,336	**230,000**	**1,102,240**
Survey/Engineering/Special Insp			**$ 100,000**	70,000	15,000	15,000	**30,000**	**100,000**
CONSTR. INTEREST & FEES				0	0	0		
Const. Loan Interest			$ 70,000	49,000	10,500	10,500	0	70,000
County 1% fee				0	0	0	0	0
Origination Fee @ 1%	2%		$ 21,000	14,700	3,150	3,150	0	21,000
Bank const inspections, other costs			$ 25,000	17,500	3,750	3,750	22,500	25,000
Taxes						0	0	0
Builder's Risk			$ 100,000	70,000	15,000	15,000	0	100,000
Title and Recording			$ 30,000	30,000			0	30,000
Total Construction Interest and Fees			**246,000**	**181,200**	**32,400**	**32,400**	**22,500**	**246,000**
PERMANENT FINANCING								
County/City Fees			$ 35,000	35,000				
(Blank)			$ -					
Total Permanent Financing Costs			**$ 35,000**	**$ 35,000**	**$ -**	**$ -**		**35,000**
LEGAL FEES								
Sponsor Legal			$ 75,000	75,000			0	
Blank			$ -					
Lender Legal							50,000	50,000
Total Attorney Costs			**$ 75,000**	**$ 75,000**	**$ -**	**$ -**	**50,000**	**75,000**
RESERVES								
Capitalized RR		2,000	$ 48,000	48,000				
Operating Reserve			$ 75,000	75,000				
NPLH HCD Transition Reserve			$ 171,504	171,504				
Operating Reserves (COSR from NPLH)			$ 1,985,412	1,985,412				
Total Reserve Costs			**2,279,916**	**2,279,916**	**0**	**0**		

Total Appraisal Costs			**7,000**	**7,000**			**12,000**	**7,000**
Total Construction Contingency Costs	**8.25%**	**$**	**1,040,676**	**728,474**	**156,101**	**156,101**	**1,040,676**	**1,040,676**
OTHER								
Property Tax & Maintenance & Insurance		$	100,000	100,000				100,000
Geotech		$	18,000	18,000			0	18,000
Development Consulting/CM		$	120,000	120,000			50,000	120,000
City Permit Fees/Impact Fees per 2_5_21	$ -	$	613,000	429,100	91,950	91,950	0	613,000
SWPP & Joint Trench		$	12,000	12,000			10,000	12,000
Soft Cost Contingency		$	207,625	145,338	31,144	31,144	250,000	207,625
ACM/Lead/Phase 1		$	6,500	6,500			0	6,500
Blank		$	-	0	0	0		0
Blank		$	-	0	0	0		0
Blank		$	-	0	0	0		0
Utility Hook Ups PG&E, Water, Sewer		$	190,000	133,000	28,500	28,500	0	190,000
Furniture and Furniture Design		$	245,000	245,000			0	245,000
Total Other Costs			**1,512,125**	**1,208,938**	**151,594**	**151,594**	**310,000**	**1,512,125**
Total Project Cost			**21,547,217**	**15,718,077**	**3,036,320**	**2,792,820**	**14,309,436**	**19,262,301**
DEVELOPER COSTS								
Developer Overhead/Profit		$	-					
Consultant/Processing Agent		$	-				0	0
Blank								
Sponsor	3.0%	$	650,000	650,000			650,000	150,000
Sponsor at Risk		$	-					
Total Developer Costs			**650,000**	**650,000**	**0**	**0**	**650,000**	**150,000**
TOTAL PROJECT COST			**22,197,217**	**16,368,077**	**3,036,320**	**2,792,820**	**14,959,436**	**19,412,301**
Syndication Costs								
Legal - Syndication								
Accountant (Cost Cert)								
Consultant - Syndication (+$10k in costs of issuance)								
Total Syndication Costs								
TOTAL PROJECT COSTS INCL. SYNDICATION			**22,197,217**	**16,368,077**	**3,036,320**	**2,792,820**	**14,959,436**	**19,412,301**
per unit		$	924,884	$ 682,003			**100%**	17,602,269
Construction Loan Amount							**14,959,436**	1,810,032

Vineyard Conversion

Sources		
HCD NPLH 49% of Units	$	2,484,536
Alameda County Measure 1A ($125K retention)	$	125,000
Total	**$**	**2,609,536**
Uses		
Construction Lender Pay Down	$	1,815,032
Capitalized RR	$	48,000
Operating Reserve	$	75,000
Developer Fee	$	500,000
Total	**$**	**2,438,032**
	$	171,504

EXHIBIT C

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $3,000,000 per occurrence/$6,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Builders' Risk (also known as Course of Construction). Limit should be the same as total contract costs, including soft costs and business interruption. The City of Livermore shall be endorsed as Loss Payee.
3. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
4. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
5. Property. Developer is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance policy will also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Developer's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer/Contractor; or automobiles owned, leased, hired, or borrowed by the Developer/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Developer's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Developer's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Developer/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 S Livermore Avenue
Livermore, CA 94550
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

SERVICES FACILITY REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

TRI VALLEY BMR, LLC

_____, 2021

This Services Facility Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2021 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri Valley BMR, LLC, a California limited liability company ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at 460 North Livermore Avenue, known as Alameda County Assessor Parcel No. 098-0240-001-17, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. The Property will be developed by the Owner for a project that will provide services and affordable housing units to serve households experiencing or at risk of experiencing homelessness in Livermore (the "**Project**"). The Project will consist of three new buildings containing 23 apartments for extremely low-income households, an onsite manager's apartment, a resource center for the neighborhood and individuals who are homeless, and a commercial food service kitchen and assembly space. .

C. City and Owner have entered into an unrecorded Social and Human Service Facility Fee Grant Agreement (the "**Grant Agreement**"), dated as of _____, pursuant to which the City agreed to provide a grant utilizing a portion of the City of Livermore Social and Human Service Facility Fee to Owner in the amount of One Million Six Hundred Twenty Thousand One Hundred Thirty Five Dollars ($1,620,135) (the **"Grant")** to develop, own, and operate or lease on the Property, a resource center including a multi-purpose assembly space that will also serve as a dining space, and a food services facility with a commercial kitchen, each serving low-income individuals and people experiencing or at risk of experiencing homelessness (the "**Services Project**").

D. City and Owner have entered into an unrecorded agreement, dated as of _____, engaging the Owner to assist City in utilizing $1,500,000 in Alameda County Non-Housing Residual Property Taxes (Boomerang Funds) awarded by the Alameda County Board of Supervisors to support the Project.

E. The purpose of this Agreement is to regulate and restrict the Services project for the benefit of low-income individuals and people experiencing homelessness or are at risk of experiencing homelessness and as a social and human services facility for community care consistent with section 12.70.060 of the Livermore Municipal Code and set forth the use and maintenance of the resource center and food services facility. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1.1 Definitions; Exhibits. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"City's Authorized Representative" means the City Manager of the City of Livermore or his/her designee.

"City Documents" means collectively this Agreement and the Grant Agreement.

"**Claims**" is defined in Section 10.

"Grant" is defined in Recital C.

"Grant Agreement" is defined in Recital C.

"Food Services Facility" is defined as a commercial kitchen located on the Property and serving low-income individuals and people experiencing homelessness.

"**Indemnitees"** is defined in Section 10.

"**Management Plan"** is defined in Section 6.2.

"Project" is defined in Recital B.

"Resource Center" is defined as space on the Property serving low-income individuals and people experiencing homelessness through programs including but not limited to housing referral and counseling services and basic needs, and including offices, meeting rooms, and a multi-purpose assembly space that will also serve as a dining space.

"Services Project" is defined in Recital C.

"Tenant" is defined as organizations leasing space in the Services Project to provide services and/or programs to low-income individuals and people experiencing homelessness.

"**User**" is defined as an organization utilizing space (other than under a lease) in the Services Project to provide services and/or programs to low-income individuals and people experiencing homelessness.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of Property

B Insurance Requirements

2. Use Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Property shall be used solely for the development and operation of the Project, including the Services Project. The Services Project shall be developed and operated in compliance with the Grant Agreement, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would

restrict or compromise its ability to comply with the restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Services Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) (1) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use,

occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts pertaining to management of the Services Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

2.2 Restrictions on religious activities. Organizations providing services on the Property shall not discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. If an organization using the Property engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities offered on the Project and participation must be voluntary for the beneficiaries of the Services Project programs or activities. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

2.3 Disabled Persons Occupancy.

a) Owner shall cause the Services Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's

failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Reporting Requirements; Access to Information; Inspections.

3.1 Annual Report; Inspections. Following completion of construction of the Services Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Services Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the Tenant and User information described in this section. The Annual Report shall, at a minimum, include the following information for the Services Project: (i) total number of Tenants and Users; (ii) name of each Tenant and User; and (iii) total number of clients served by Tenants and Users of the resource center and food services facility, disaggregated by service type, income category, gender, race and ethnicity, and housing status.

Owner shall include with the Annual Report, a copy of each new or amended commercial lease entered into during the reporting period and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format approved by City.

The Annual Report shall conform to the format requested by City. In addition to the information described above, the Annual Report shall include the following:

(i) A Services Project income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Services Project and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(iv) A financial audit of the books and records of the Services Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

(v) City may, from time-to-time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.2. Maintenance of Records.

3.2.1 Owner shall maintain all records regarding the construction of the Services Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases and other matters related to the leasing and use of the Services Project for a period of five (5) years after the final date of occupancy by the tenant. 3.2.2 Shall maintain all records supporting the information reported in Annual Reports for a period of five (5) years after the Annual Report submission.

3.2.2 Shall maintain all records supporting the information reported in Annual Reports for a period of five (5) years after the Annual Report submission.

3.2.3 Records must be kept accurate and up to date. City shall notify Owner of any records it deems insufficient. Owner shall have thirty (30) calendar days from such notice to correct any specified deficiency in the records, or, if more than thirty (30) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within thirty (30) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.3 Access to Records; Inspections.

3.3.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Services Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.3.2 With 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Services Project and the Property and to interview Tenants, Users, and employees of the Services Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the City's issuance of a final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Project or Owner's fee interest in the Property, or any part thereof or interest therein.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects

its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Services Project, including without limitation the selection of Tenants and Users, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Services Project.

6.2 Management Plan and Operating Budget

6.2.1 Owner shall submit its written management policies with respect to the Services Project (the "Management Plan") to the City for its review and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

a)A parking management plan which details, among other things, how parking sp aces wil be allocated assigned, and how parking will be managed to encourage Te nants, Users, services providers and guests to use parking in accordance with the plan;

b)Procedures for maintenance and management of the Services Project;

c)Procedures for dealing with tenant or neighborhood issues or concerns;

d)Procedures for maintaining a reserve account, budgeting for maintenance and re pair needs as well as long term rehabilitation needs, determining rents, and handling net cash flow; and

e) Description of services to be provided at the Services Project and staffing levels

f) Procedures for selecting Services Project Tenants and Users

g)Such other requirements and criteria/procedures as City may determine appropriate.

Any revisions to the Management Plan shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.8.

6.2.2 No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City for the City's review and approval the proposed operating budget for the Services Project which sets forth Owner's estimate of operating income, operating expenses and debt service for the project, and amounts payable to reserves.

6.3 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Services Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Housing Consortium of the East Bay, a California nonprofit public benefit corporation, as the initial management entity for the Services Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Services Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Services Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Services Project lender, to operate the Services Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative shall be available to address issues and to serve as the point of contact for Tenants and the public during regular business hours at the Services Project.

6.4 Resource Center Staffing: In addition to the on-site property management representative, a representative of the management entity is required to work on the Property and serve as the point of contact for clients, Users, and Tenants of the Services Project during business hours at the Services Project. This representative may be employed by the management entity or a non-profit organization providing services on the Property.

6.5 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Services Project in good physical

condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Services Project and the Property (including without limitation, the food services facility, resource center, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Services Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Services Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Services Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.5.1 Additional Requirements. All construction work and professional services for the Services Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. Owner shall ensure that all work for compensation is taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Owner's Contractor shall comply with all prevailing wage laws, such as sections 1773,1773.8,1775,1776.1777.5,1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with the Agreement is deemed to have occurred by any court or administrative authority, Owner shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.6 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.7 Approval of Leases.

6.7.1 No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed forms of commercial lease agreement and facility use agreement for the City's review and approval. The form of lease must comply with all requirements of the City Documents and must include including the non-discrimination requirements described in Section 2.2 of this Agreement.

6.7.2 No later than thirty (30) days prior to entering into a commercial lease agreement, Owner shall submit to the City the proposed tenant and use of the space for the City's review and approval.

6.8 Approval of Amendments. If City has not responded to any submission of the Management Plan, the proposed management entity, the proposed management agreement, proposed forms of commercial lease and facility use agreements, a proposed amendment to the Management Plan, or change to any of the foregoing to the City's Authorized Representative within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Services Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.10 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.11 Property Damage or Destruction. If any part of the Services Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include

reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Grant Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Services Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Grant Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Grant Agreement; (iii) the lease of non-residential space to non-profit services agencies for use in accordance with this Agreement; (iv) the lease of the commercial kitchen; and (v) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Grant Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), and (iii) of Section 8.2.)

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and

obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall entitle City to pursue remedies including without limitation, termination of the Grant Agreement and/or return of Grant Funds if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), and (iv) of Section 8.2.

8.5 Recovery of City Costs. Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to terminate the grant award and demand return of Services Project funds as described in Section 12 of the Grant Agreement; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Services Project as a facility providing social and housing services to low-income individuals and low-income Livermore residents subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A breach arises under the Grant Agreement and remains uncured beyond the expiration of any applicable cure period;

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default..

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation

beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Wholly or partly suspend or terminate the current award and the return of Services Project funds as described in Section 12 of the Grant Agreement;

(iii) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Services Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation Section 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document; and (iv) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document.

(c) The obligations of Owner to indemnify the Indemnitees shall survive the termination of the Grant Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Tri Valley BMR LLC
c/o Housing Consortium of the East Bay
410 7th Street, Suite 203
Oakland, CA 94607
Attention: Darin Lounds, Executive Director

11.5 11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be

construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Services Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Grant Agreement, contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through

B, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name:__Marc Roberts

Title:_City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:
TRI VALLEY BMR, LLC a California limited liability company

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole manager and member

By: _____
Darin Lounds
Executive Director

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____, Notary Public_____,
(Name of Notary)

notary public, personally appeared _____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

EXHIBIT D

ORDER NO. : 1117018101

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

All of Lots 3 and 4, the Southwestern 100 feet of Lots 2, 5 and 6, and the Western 50 feet of Lots 9 and 10, Block 26, Maps of the Northern Addition of the Town of Livermore, filed September 20, 1875, Map Book 2, Page 51, Alameda county Records and merged by Certificate of Compliance, described as follows:

Beginning at the Southwest corner of said Block 26; thence from said point of beginning North 20° 30' West, 250.00 feet; thence North 69° 30' East, 100.00 feet; thence South 20° 30' East, 50.00 feet; thence North 69° 30' East 100.00 feet; thence South 20° 30' East 100.00 feet; thence South 69° 30' West, 100.00 feet; thence South 20° 30' West, 100.00 feet to the point of beginning.

APN: 098-0240-001-17

Exhibit B

Insurance Requirements

(Insurance Requirements Attached)

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $3,000,000 per occurrence/$6,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Builders' Risk (also known as Course of Construction). Limit should be the same as total contract costs, including soft costs and business interruption. The City of Livermore shall be endorsed as Loss Payee.
3. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
4. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
5. Property. Developer is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance policy will also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Developer's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer/Contractor; or automobiles owned, leased, hired, or borrowed by the Developer/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Developer's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Developer's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Developer/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

AGREEMENT BETWEEN CITY OF LIVERMORE AND TRI VALLEY BMR, LLC ($1,500,000 from County of Alameda)

THIS AGREEMENT, entered into this ____ day of _____, 2021 (the "Effective Date"), between the City of Livermore, a municipal corporation ("City"), and Tri Valley BMR, LLC, a California limited liability company ("Subrecipient"), whose sole member is Housing Consortium of the East Bay, a California nonprofit public benefit corporation .

RECITALS

Subrecipient is the owner of the property located at 460 North Livermore Avenue (the "Property"). The Property will be developed by the Subrecipient for a project, commonly known as Vineyard, that will: (1) provide services and 23 affordable housing units to serve extremely low-income households, with a preference in a portion of the units for persons experiencing or at risk of experiencing homelessness, plus one onsite manager's unit; (2) a resource center (including a multi-purpose assembly space that will also serve as a dining space) that will serve low-income individuals and people experiencing or at risk of experiencing homelessness; and (3) a commercial kitchen that will serve low-income individuals and people experiencing or at risk of experiencing homelessness (collectively, the "Project")

On May 5, 2020, the Livermore Planning Commission adopted Resolution 20-45 approving project entitlements for the development of the Project .

On December 8, 2020, the Alameda County Board of Supervisors approved the use of $1,500,000 in use of one-time funds from Non-Housing Residual Property Taxes (the "Funds") to partner with the City of Livermore to support the Project to support housing for vulnerable populations. Attached hereto as Exhibit A is the Board Action and Minute Order of Approval.

The Subrecipient proposes to develop the Project through a variety of City, County of Alameda, State of California, and private funding sources targeted to support the residential and service components.

City wishes to engage Subrecipient to assist City in utilizing the Funds. City and Subrecipient understand that the Funds awarded shall be administered consistent with the purpose of Alameda County Non-Housing Residual Property Taxes (Boomerang Funds). This Agreement captures the obligations related to the expenditures of the Funds as provided herein.

The parties understand and agree that this Agreement is contingent on the City's receipt of $1,500,000 from Alameda County.

AGREEMENT

NOW THEREFORE, in recognition of the mutual consideration provided herein, City and Subrecipient hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. Relationship of Parties (Independent Contractors). The relationship of the parties shall be that of independent contractors. Subrecipient and its employees are not City officers or employees. Subrecipient is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the performance of the Activities contemplated by this Agreement.

2. Scope of Service.

A. Activities. Subrecipient is responsible for administering the Funds awarded in a manner satisfactory to City as outlined in this Scope of Service and the supplemental terms and conditions contained in Exhibit "B" Scope of Work.

i) *Project Overview*: Develop the Project at the Property providing housing and services for people experiencing or at risk of experiencing homelessness in Livermore.

ii) *Service Objective*. Construct the Project (the "Activities").

iii) *General Administration*. The Funds awarded for the Activities are to be administered under the direction of the Subrecipient.

B. Budget. City will grant, and Subrecipient will use, the Funds awarded pursuant to this Agreement and under the budget terms set forth in Exhibit "B-1" to perform the Activities consistent with the terms and conditions of this Agreement, the Project, and any conditions imposed upon the Project.

C. Performance Monitoring. City will monitor Subrecipient's performance against the objective outlined in Section 2A(ii). Substandard performance as determined by the City will constitute non-compliance with this Agreement and will jeopardize Subrecipient's ability to obtain the funds.

3. Time for Performance. Subrecipient shall draw funds for reimbursement of eligible Activities during a period commencing on the Effective Date, and continuing through December 31, 2024.

4. Payment. It is expressly agreed and understood that the total amount available from City to Subrecipient for the Activities under this Agreement shall not exceed the amount of $1,500,000 under the budget terms set forth in Exhibit "B-1". Subrecipient shall only be entitled to draw that portion of the Funds commensurate with the Activities provided, and only for payment of eligible expenses which have been properly documented by Subrecipient and approved by City. City shall only make payments for those Activities that comply with the terms and conditions of this Agreement.

5. Prevailing Wage. If applicable, Subrecipient shall ensure that all work for compensation is taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Subrecipient shall comply with all prevailing wage laws, such as section 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Subrecipient shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement.

6. Hold Harmless and Indemnity. Subrecipient shall defend, indemnify and hold City and the County of Alameda, and their elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including but not limited to, reasonable attorney, consultant and expert fees, and court costs arising out of or in connection with this Agreement, except for the gross negligence and willful misconduct of City or the County of Alameda, and their elected officials, officers, directors, employees, agents, and designated volunteers.

7. Insurance. Subrecipient shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "C" against claims that may arise from or in connection with this Agreement and performance of the Activities. Upon reasonable written notice, Subrecipient shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by the City's Risk Manager.

8. Copyright and Right of Use. All items created by Subrecipient under this Agreement are works made for hire, and Subrecipient shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered by Subrecipient as part of the Activities.

9. Notices. Any notice required or permitted under the terms of this Agreement shall be effective upon receipt in writing either by personal service upon the authorized agent for the party, or by mailing the notice via U.S. Mail to the party as follows:

City: City of Livermore
Attn: Fran Reisner, Housing Program Manager
1052 Livermore Avenue
Livermore, California 94550

Subrecipient: Tri Valley BMR, LLC
Attn: Darin Lounds
410 7th Street, Suite 203
Oakland, CA 94607

10. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

11. Waiver. City's failure to act with respect to a breach by Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

12. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto or document incorporated by reference, the language in the body of the Agreement controls.

13. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Activities. Any modification to this Agreement must be in writing and signed by both parties. No amendment may invalidate this Agreement, or relieve or release City or Subrecipient from its obligations under this Agreement. City may, in its discretion, amend this Agreement in writing to conform with Federal, State, or local laws, regulations, guidelines, or policies related to the use of the Funds for the Activities. However, if such amendments result in a change in the funding, the scope of services, or the Activities, such modifications shall be incorporated only by written amendment signed by both City and Subrecipient. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City may be used in place of the original for all purposes with the same effect as if it was the original.

****

Signatures and Attachment List on the Next Page

IN WITNESS THEREOF, the Subrecipient and City have executed this Agreement as of the date first written above.

TRI-VALLEY BMR, LLC
"Subrecipient"

By: Housing Consortium of the East Bay
a California nonprofit public benefit corporation,
its sole manager and member

By: _____
Darin Lounds
Executive Director

CITY OF LIVERMORE
a Municipal Corporation
"City"

BY: _____ **DATED:** _____
Marc Roberts
City Manager

APPROVED AS TO FORM:

_____
ASSISTANT/CITY ATTORNEY

Attachments:

Exhibit A	Alameda County Board of Supervisors Resolution 30433
Exhibit B	Scope of Work
Exhibit B-1	Financing Plan
Exhibit C	Insurance Requirements

EXHIBIT A
AC APPROVAL
BOARD OF SUPERVISORS
GRANT AGREEMENT

Agenda ___ December 08, 2020

EXHIBIT E

BOARD OF SUPERVISORS

SCOTT HAGGERTY
SUPERVISOR, FIRST DISTRICT

Honorable Board of Supervisors
Alameda County Administration Building
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE THE USE OF ONE-TIME RESIDUAL PROPERTY TAXES ("BOOMERANG FUNDS") TO THE CITY OF LIVERMORE, QUEST SCIENCE CENTER, AND THE VINEYARD PROJECT

RECOMMENDATION:

A. Approve the use of one-time funds from non-housing residual property taxes ("boomerang funds") to support the following organizations:

   i. $1,250,000 to support the City of Livermore provide housing for homeless individuals;

   ii. $450,000 to support Quest Science Center (Principal: Alan Burnham; Location: Livermore) to provide funding for science and technology for children of all ages;

   iii. $1,500,000 to support the City of Livermore's Vineyard Project to support housing for vulnerable populations; and

B. Authorize the Auditor-Controller to make the related budget adjustments.

DISCUSSION/SUMMARY:

In 2020, I hired a part time staff member with the sole responsibility of assisting the cities within District 1 in solving, reducing, and managing their respective homelessness issues. In each of the cities within District 1 we have made strong progress, and with this funding the City of Livermore can embark upon the first steps of developing a "tiny homes" community.

In 2017, a group of Lawrence Livermore Lab retirees and community leaders decided to share their love of science and technology and 'pay it forward' by leading an effort to create a science center in downtown Livermore. They envisioned a place where everyone – at any age – would have engaging experiences and understand the impact science can have on our society. Quest Science Center is committed to fostering inclusion and to creating an

experience, so people of all ages and backgrounds feel a sense of belonging and excitement for the field and exploration of science.

The City of Livermore's 2019 Economic Development Survey identified affordable housing as a priority for the community. The Vineyard Project specifically helps address Objective 2 of the City's Economic Development Strategic Plan, "to ensure Livermore remains a place where people of all backgrounds and skill levels can live and work." Affordable Housing is one the main goals of the San Francisco Comprehensive Economic Development Strategy, and the Vineyard Project contributes to Objective 3.2, "work toward providing enough housing to meet the affordability needs at wage and salary levels that exist in the Bay Area's current and future population."

FINANCING:

Funding for these projects is being provided from the July 29, 2014 Board of Supervisors allocation of $9.6 million in one-time, non-housing residual property taxes ("boomerang funds") to District 1 for a County capital project or investment. There will be no increase in net County cost.

VISION 2026:

Supporting these projects aligns with our 10x goal of **Accessible Infrastructure** and supports our shared vision of a **Thriving and Resilient Population.**

Respectfully,

Scott Haggerty

Scott Haggerty, District 1
Alameda County Board of Supervisors

FINANCIAL RECOMMENDATION FORM

#140100-35 Rev 5/21/14

AGENDA DATE: 12/8/2020

BOARD LETTER SUBJECT: APPROVE THE USE OF ONE-TIME RESIDUAL PROPERTY TAXES ("BOOMERANG FUNDS") TO THE CITY OF LIVERMORE, QUEST SCIENCE CENTER, AND THE VINEYARD PROJECT

BUDGET YEAR: 2021 **FUND:** 10000

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT
Non-Housing Residual Property Taxes (Boomerang Funds)		$3,200,000

The increase (decrease) in anticipated revenue, as follows:

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
			ORG TOTAL	$0

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
			ORG TOTAL	

GRAND TOTAL ANTICIPATED REVENUE $0

The increase (decrease) in appropriations, as follows:

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
100100	640061	00000		$3,200,000
			ORG TOTAL	$3,200,000

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
			ORG TOTAL	$0

GRAND TOTAL APPROPRIATION $3,200,000

nassetty

EXHIBIT E

FINANCIAL RESOLUTION R-2020-506

PAGE: 1 OF 2
FILE NUMBER: 30433
MEETING DATE: 12/8/2020
ITEM NUMBER: 13.1

BY: 2021 **FUND:** 10000

The increase (decrease) in anticipated revenue, as follows:

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
			ORG TOTAL	$0

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
			ORG TOTAL	$0

GRAND TOTAL ANTICIPATED REVENUE $0

The increase (decrease) in appropriations, as follows:

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
100000	640000	00000		$3,200,000
			ORG TOTAL	$3,200,000

ORG	ACCT	PROG	PROJ/GR (Informational)	AMOUNT
			ORG TOTAL	$0

GRAND TOTAL APPROPRIATION $3,200,000

THE FOREGOING was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this **8th** day of **December, 2020**, to wit:

AYES: Supervisors Carson, Chan, Haggerty, Miley & President Valle – **5**

NOES: None

EXCUSED: None

PRESIDENT, BOARD OF SUPERVISORS

File No: **30433**
Agenda No: **13.1**
Document No: **R-2020-506F**

I certify that the foregoing is a correct copy of a Resolution adopted by the Board of Supervisors, Alameda County, State of California

ATTEST:
Clerk, Board of Supervisors

By: _____
Deputy

v:\agenda\forms\resobak.doc

EXHIBIT B
Scope of Work

Project Description:

The redevelopment, as approved by Livermore Planning Commission Resolution 20-45, of the approximately 0.8-acre site located at 460 North Livermore Avenue in with three new buildings containing:

- Affordable Housing: Twenty-three (23) apartments for extremely low-income households with a preference in a portion of the units for persons experiencing or at risk of experiencing homelessness, plus an on-site manager's apartment; and
- Housing Resource Center: Approximately 6,355 square feet of new space that includes offices, meeting rooms, and a multi-purpose assembly space that will also serve as a dining space, as well as a laundry room and showers; and
- Food Service Facility: a commercial kitchen operated by Open Heart Kitchen under a lease from Subrecipient, preparing hot and cold meals for low-income individuals and people experiencing or at risk of experiencing homelessness, served on-site as well as off-site.

Development Schedule:

Task/Milestone	Target Date
Obtain Entitlements	May 2020
Financing Commitments	1/31/2022
Submit Final Financing Plan to the City	1/31/2022
Close of Escrow – Construction Financing	3/31/2022
Commence Construction	Within 90 days of close of escrow
Complete Construction	Within 24 months of construction commencement

Eligible Expenses:

Project can draw grant funds for all legal, architectural, construction, project management, and financing costs, as well as permit and utility hookup fees, furniture expenses for the affordable apartments or housing resource center, developer fees for organizations providing development services to the Project, and engineering and design fees associated with building the Affordable Housing, the Housing Resource Center, and the Food Service Facility as described in the Financing Plan attached as Exhibit B-1.

Grant funds shall not be used for Subrecipient's operational expenses.

EXHIBIT B-1
VINEYARD FINANCING PLAN

EXHIBIT E

Vineyard				**11/1/21**
Scenario: New Construction				
Total Units				24
NPLH Units				11
Percent Affordable				100%
PBV				12
DDA				Yes
Land Value		10%	$	240,000
Improvements		90%	$	2,160,000
Purchase Price			$	2,400,000
Value Year		**10**	$	2,400,000
	per unit		$	100,000

Open Heart Kitchen Build-Out, Tenant Improvement

Source		
Donor		870,000
Dublin CDBG Equipment	$	330,000
Total		**1,200,000**
Kitchen Build Out Cost		**1,200,000**
Surplus (Gap)		

VINEYARD INITIAL FINANCING PLAN

				Size Cost Total	60% 70% Residential	25% 15% HRC	15% 15% Kitchen	Construction	chk
SOURCES OF FUNDS									
Livermore Predevelopment			$	855,110	$ 855,110			$ 855,110	$ 855,110
Livermore Acquisition/Predevelopment			$	2,270,000	$ 2,270,000			$ 2,270,000	$ 2,270,000
Alameda County Supervisor's Funding			$	1,500,000			$ 1,500,000	$ 1,500,000	$ 1,500,000
City of Livermore Human Services Facility Fee			$	1,620,135		$ 1,171,327	$ 448,808	$ 1,620,135	$ 1,620,135
Private Donor non OHK			$	1,130,000		$ 800,000	$ 330,000	$ 1,130,000	$ 1,130,000
Dublin CDBG extra $300,000			$	300,000			$ 300,000	$ 300,000	$ 300,000
HCD NPLH 49% of Units			$	2,484,536	$ 2,484,536				$ 2,484,536
Alameda County Measure 1A ($125K retention)			$	6,197,490	$ 6,197,490			$ 6,072,490	$ 6,197,490
City of Livermore HTF			$	3,640,522	$ 2,575,529	$ 1,064,993		$ 3,640,522	$ 3,640,522
Pleasanton CDBG			$	214,012			$ 214,012	$ 214,012	$ 214,012
HCD NPLH COSR			$	1,985,412	$ 1,985,412				$ 1,985,412
TOTAL SOURCES			$	22,197,217	$ 16,368,077	$ 3,036,320	$ 2,792,820	$ 17,602,269	$ 22,197,217
Surplus (Gap)			$	(0)	$ (0)	$ 0	$ 0		$ 0
Estimated Construction Loan			$	1,810,032	16,368,077	3,036,320	2,792,820	$ 1,810,032	$ 22,197,217
City of Livermore Total	$ 9,885,767		$	(0)	$ 0	$ (0)	$ (0)		$ (0)

								Basis Costs	Construction Period Costs
ACQUISITION									
Land		10%	$	240,000	144,000	60,000	36,000		240,000
Off Site Improvements and demolition		90%	$	2,160,000	1,296,000	540,000	324,000	0	2,160,000
Legal/Broker Fees/title/holding costs			$	35,000	21,000	8,750	5,250	0	30,000
Existing Improvements Value									
Total Acquisition Cost			**$**	**2,435,000**	**$ 1,461,000**	**$ 608,750**	**$ 365,250**	**0**	**2,430,000**
REHABILITATION									
Kitchen Build Out (separate budget)			$	-			0		
Design/Market Escalation		*0%*	$	-	0	0	0		
Housing Midstate Escalation			$	100,000	70,000	15,000	15,000	0	
Midstate Estimate			$	12,614,260	8,829,982	1,892,139	1,892,139	12,614,260	
General Requirements								0	
Prevailing Wages								0	
ARCHITECTURAL FEES									
Schematic		6%	$	234,490	164,143	35,174	35,174	220,000	
DD-CA			$	867,750	607,425	130,163	130,163	10,000	
Total Architectural Costs		**5%**	**$**	**1,102,240**	771,568	165,336	165,336	**230,000**	**1,102,240**
Survey/Engineering/Special Insp			**$**	**100,000**	70,000	15,000	15,000	**30,000**	**100,000**
CONSTR. INTEREST & FEES					0	0	0		
Const. Loan Interest			$	70,000	49,000	10,500	10,500	0	70,000
County 1% fee					0	0	0	0	0
Origination Fee @ 1%	2%		$	21,000	14,700	3,150	3,150	0	21,000
Bank const inspections, other costs			$	25,000	17,500	3,750	3,750	22,500	25,000
Taxes							0	0	0
Builder's Risk			$	100,000	70,000	15,000	15,000	0	100,000
Title and Recording			$	30,000	30,000			0	30,000
Total Construction Interest and Fees				**246,000**	**181,200**	**32,400**	**32,400**	**22,500**	**246,000**
PERMANENT FINANCING									
County/City Fees			$	35,000	35,000				
(Blank)			$	-					
Total Permanent Financing Costs			**$**	**35,000**	**$ 35,000**	**$ -**	**$ -**		**35,000**
LEGAL FEES									
Sponsor Legal			$	75,000	75,000			0	
Blank			$	-					
Lender Legal								50,000	50,000
Total Attorney Costs			**$**	**75,000**	**$ 75,000**	**$ -**	**$ -**	**50,000**	**75,000**
RESERVES									
Capitalized RR		2,000	$	48,000	48,000				
Operating Reserve			$	75,000	75,000				
NPLH HCD Transition Reserve			$	171,504	171,504				
Operating Reserves (COSR from NPLH)			$	1,985,412	1,985,412				
Total Reserve Costs				**2,279,916**	**2,279,916**	**0**	**0**		

EXHIBIT B-1
VINEYARD FINANCING PLAN

EXHIBIT E

Total Appraisal Costs				**7,000**	**7,000**			**12,000**	**7,000**
Total Construction Contingency Costs		**8.25%**	**$**	**1,040,676**	**728,474**	**156,101**	**156,101**	**1,040,676**	**1,040,676**
OTHER									
Property Tax & Maintenance & Insurance			$	100,000	100,000				100,000
Geotech			$	18,000	18,000			0	18,000
Development Consulting/CM			$	120,000	120,000			50,000	120,000
City Permit Fees/Impact Fees per 2_5_21	$	-	$	613,000	429,100	91,950	91,950	0	613,000
SWPP & Joint Trench			$	12,000	12,000			10,000	12,000
Soft Cost Contingency			$	207,625	145,338	31,144	31,144	250,000	207,625
ACM/Lead/Phase 1			$	6,500	6,500			0	6,500
Blank			$	-	0	0	0		0
Blank			$	-	0	0	0		0
Blank			$	-	0	0	0		0
Utility Hook Ups PG&E, Water, Sewer			$	190,000	133,000	28,500	28,500	0	190,000
Furniture and Furniture Design			$	245,000	245,000			0	245,000
Total Other Costs				**1,512,125**	**1,208,938**	**151,594**	**151,594**	**310,000**	**1,512,125**
Total Project Cost				**21,547,217**	**15,718,077**	**3,036,320**	**2,792,820**	**14,309,436**	**19,262,301**
DEVELOPER COSTS									
Developer Overhead/Profit			$	-					
Consultant/Processing Agent			$	-				0	0
Blank									
Sponsor		3.0%	$	650,000	650,000			650,000	150,000
Sponsor at Risk			$	-					
Total Developer Costs				**650,000**	**650,000**	**0**	**0**	**650,000**	**150,000**
TOTAL PROJECT COST				**22,197,217**	**16,368,077**	**3,036,320**	**2,792,820**	**14,959,436**	**19,412,301**
Syndication Costs									
Legal - Syndication									
Accountant (Cost Cert)									
Consultant - Syndication (+$10k in costs of issuance)									
Total Syndication Costs									
TOTAL PROJECT COSTS INCL. SYNDICATION				**22,197,217**	**16,368,077**	**3,036,320**	**2,792,820**	**14,959,436**	**19,412,301**
per unit			$	924,884	$ 682,003			**100%**	17,602,269
Construction Loan Amount								**14,959,436**	1,810,032

Vineyard Conversion

Sources		
HCD NPLH 49% of Units	$	2,484,536
Alameda County Measure 1A ($125K retention)	$	125,000
Total	**$**	**2,609,536**
Uses		
Construction Lender Pay Down	$	1,815,032
Capitalized RR	$	48,000
Operating Reserve	$	75,000
Developer Fee	$	500,000
Total	**$**	**2,438,032**
	$	171,504

EXHIBIT B-1
VINEYARD FINANCING PLAN

EXHIBIT E

RENTS
Vineyard
24 Units

Lease Charges	-
Voucher Increment	
15% Rents	305

INCOME Unit Size	**# of Units**	**Monthly Net Rent**	**Total Monthly**	**15% Rents Net Max**	**HERA Net Max TCAC**	**Utility Allowance**	**TCAC Net Rents**	**HERA Net Rents**	**Tenant Portion Increment**
0 BR (NPLH 15%)	6	305	1,831	21,967	0	0	305	-	21,967
1 BR (NPLH 15%)	5	327	1,635	19,620	0	0	327	-	19,620
0 BR (PBV 30%)	12	1,518	18,216	218,592	0	0	1,518	-	47,088
Totals	23		21,682	260,179	0			Tenant Portion	**88,675**
Section 8 Overhang								Annual Subsidy	**171,504**

EXHIBIT C
INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $5,000,000 per occurrence/$10,000,000 aggregate for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Builders' Risk (also known as Course of Construction). Limit should be the same as total contract costs, including soft costs and business interruption. The City of Livermore shall be endorsed as Loss Payee.
3. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
4. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
5. Property. Developer is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis. The City must be named as a Loss Payee by endorsement such as 438 BFU NS or similar.
6. Pollution Liability:
   $10,000,000 per occurrence

Deductibles and Seif-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability

arising out of activities performed by or on behalf of the Developer/Contractor; or automobiles owned, leased, hired or borrowed by the Developer/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Developer's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Developer's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Developer/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

EXHIBIT F

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

FisherBroyles, LLP
3777 Long Beach Blvd. Suite 280
Long Beach, CA 90807

THIS SPACE FOR RECORDER'S USE ONLY

FORM OF SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

This Subordination Agreement ("Agreement") is entered into as of _____1, 2021 by and among **TRI VALLEY BMR, LLC**, a California limited liability company ("Borrower"), the **COUNTY OF ALAMEDA**, a political subdivision of the State of California (the "County"), the **CITY OF LIVERMORE**, a municipal corporation (the "City and together with the County, the "Junior Lender"), and **JPMORGAN CHASE BANK, N.A.**, a national banking association ("Chase"). The parties to this Agreement are referred to as the "Parties." Chase, the County and the City are referred to as the "Lenders."

RECITALS

A. Substantially concurrently herewith, Borrower is obtaining from Chase a loan ("Chase Loan") evidenced by certain Promissory Note dated as of __, 2021 in the amount of $_____ (the "Note"). The Chase Loan is secured by a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Chase Deed of Trust") for the benefit of Chase, to secure the Note. The Chase Deed of Trust encumbers, among other things, the real property more particularly described in Exhibit A attached to this Agreement (the "Land") and is to be recorded concurrently herewith in the Official Records of Alameda County, California (the "Official Records"). The Land, together with all improvements now or hereafter located on the Land and all fixtures and personal property located on the Land and encumbered by any of the Recorded Items (as defined below) are referred to, collectively, as the "Property."

B. Substantially concurrently herewith, Borrower is obtaining from City a loan (the "City Loan") pursuant to that certain Affordable Housing Loan Agreement executed by the City and the Borrower, dated as of _____ (the "City Loan Agreement"), evidenced by a promissory note from the Sponsor to the City in the amount of $3,619,018 dated ___, 2021 and a promissory note from the Borrower to the City in the amount of $855,110 (collectively, the "City Note"), and secured by a Deed of Trust and Assignment of Rents (the "City Deed of Trust") executed by Borrower, dated as of __, 2021. In connection with the City Loan, Borrower and the City also executed a First Amended and Restated Affordable Housing Regulatory Agreement dated as of _____, 2021, (the "City Housing Regulatory Agreement") and a Commercial Regulatory Agreement and Declaration of Restrictive Covenants dated as of _____, 2021 ("City Commercial Regulatory Agreement", and together with the City Housing Regulatory Agreement, the "City Regulatory Agreement", and together with the City Loan Agreement, the City Note, the City Deed of Trust, and any other documents executed in connection with the City Loan, the "City Loan Documents.

C. The County is making a loan to Borrower in the maximum principal amount of $_____ (the "County Loan") pursuant to certain County Development Loan Agreement dated as of _____ 2021 by and between Borrower and the County to be recorded substantially concurrently herewith in the Official Records (the "County Loan Agreement"), evidenced by that certain promissory note dated as of _____, 2021 (the "County Note") and secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower for the benefit of the County (the "County Deed of Trust"). In connection with the County Loan, Borrower and the County are entering into that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of ___, 2021 (the "County Regulatory Agreement" and together with the County Loan Agreement, the County Note, the County Deed of Trust, and any other documents executed in connection with the County Loan, the "County Loan Documents").

D. The Chase Deed of Trust, the City Deed of Trust and the County Deed of Trust, shall be referred to collectively as the "Deeds of Trust," and the City Regulatory Agreement and County Regulatory Agreements are referred to as the "Senior Restrictions" and the Chase Loan, the City Loan and the County Loan are referred to as "Loan" or "Loans."

E. The Chase Deed of Trust, a UCC – 1 Financing Statement, the City Regulatory Agreement, the City Deed of Trust, the County Regulatory Agreement, the County Deed of Trust, are referred to as the "Recorded Items."

F. It is the intent of the Parties that the order of priority of the Recorded Items as liens on or charges against the Property be as follows:

1. City Housing Regulatory Agreement
2. County Regulatory Agreement
3. City Commercial Regulatory Agreement

4. Chase Deed of Trust
5. Chase UCC-1 Financing Statement
6. City Deed of Trust
7. County Deed of Trust

G. It is a condition precedent to the respective obligations of each Party under the Recorded Items to which it is a party that such Recorded Item unconditionally be and remain at all times a lien or charge on the Property, having priority with respect to the other Recorded Items in the order set forth above, and that each Party specifically and unconditionally subordinate the lien or charge of each of the Recorded Items to which it is a party as necessary in order that the Recorded Items have the relative priority set forth above.

In consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce each Party to enter the Recorded Items to which it is a party, the Parties agree as follows:

AGREEMENT

1. **Priority and Subordination**.

(a) Each Recorded Item, and any and all renewals and extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property, having the relative priority with respect to the other Recorded Items as set forth above. Each Party intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Recorded Items to which it is a party in favor of the lien or charge upon the Property of the other Recorded Items to the extent necessary so that the Recorded Items shall have the relative priority set forth above.

(b) Each Party acknowledges that it has been offered a satisfactory opportunity to review each of the Recorded Items and related documents to the extent that it wishes to review them.

(c) Each Party acknowledges that its payment interests pursuant to the Deeds of Trust and any related documents shall have the relative priority with respect to payment interests pursuant to the other Deeds of Trust as set forth above. In addition, each Lender agrees that repayment of the indebtedness secured by each such Lender's Deed of Trust is and shall be subordinated to repayment in full of the indebtedness secured by each Lender's Deed of Trust in a superior lien position; provided, however, that all Lenders may accept regularly scheduled payments due under its loan documents so long as no default has occurred and is continuing under a more senior Lender's loan documents. Each Lender agrees that from and after such time as it has received from a more senior Lender written notice that a default then exists under such Lender's loan documents (which has not been expressly waived in writing by such Lender) or otherwise has actual knowledge of such a

default, the more junior Lender shall not accept payments under its Loan. If (i) the junior Lender receives any payment, property, or asset of any kind or in any form on account of such Lender's Loan after a default under the more senior Loan of which such junior Lender has actual knowledge or has been given notice of, or (ii) such junior Lender receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any bankruptcy proceeding, such payment, property, or asset will be received and held in trust for such senior Lender. Each junior Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to such senior Lender to applied to such senior Lender's Loan

(d) Without the prior written consent of any Lender with a Deed of Trust senior to such Lender, no Lender shall not pursue any remedy including, without limitation, the acceleration and/or demand of all or any part of the obligations secured by such Lender's loan documents, any foreclosure proceeding, exercise of power of sale, exercise of any rights as a secured party under the Uniform Commercial Code, any other public or private sale, acceptance of a tender of title to all or any portion of the Property in full or partial satisfaction of such junior Loan, obtaining of a receiver, obtaining of a restraining order, protective order or injunction, seeking of default interest, taking possession or control of all or any portion of the Property, applying any funds pledged to Junior Lender or to any other obligation, exercising of any right of setoff against Borrower, initiating or voluntarily participating in any action or proceeding against Borrower or any of Borrower's assets, to enforce collection or payment of all or any portion of the obligations to such junior Lender or to enforce rights against all or any portion of the Property. Notwithstanding the foregoing, the Parties acknowledge and agree that this Section 1(e) shall not prohibit the Junior Lender from bringing a suit for specific performance, injunctive relief, or other action against Borrower to enforce the non-monetary provisions of the Senior Restrictions.

(e) The most senior Lender shall have all approval, consent and oversight rights in connection with any insurance claims relating to the Property, any decisions regarding the use of insurance proceeds after a casualty loss or condemnation awards, the hiring or firing of property managers, or otherwise related in any way to the Property, and Junior Lender shall have no right to object to any such action or approval taken by such Lender and shall consent thereto and be bound thereby.

2. **Reliance**. The Parties would not enter into the Recorded Items to which they are parties without this Agreement.

3. **Recording**. Each Party consents to the recording of each of the Recorded Items and this Agreement.

4. **No Obligation**. No Lender is under any obligation to any other Lender to, nor has any Lender represented that it will, see to the application of any proceeds of any loan secured by any

of the Recorded Items except as may otherwise be set forth in a written agreement (other than this Agreement) executed by the Lender sought to be charged with such an obligation.

5. **Notice of Default; Opportunity to Cure**.

(a) Each Party shall give each of the other Parties notice of default under each Recorded Item in favor of such Party prior to enforcing remedies for such default against Borrower or the Property and each of the other Parties shall have the right to cure such default at any time that Borrower would have a right to cure it.

(b) If, prior to a foreclosure sale under a Recorded Item, a Lender or an entity wholly owned by a Lender takes title to the Property and cures the default on that Recorded Item, the beneficiary of that Recorded Item will not exercise any right it may have to accelerate the indebtedness secured by that Recorded Item solely by reason of that transfer (or will accept reinstatement if acceleration has already occurred).

(c) In the event a Lender acquires title to the Property, that Lender shall have the right to assume and succeed to Borrower's obligations under that Recorded Item and the documents secured by that Recorded Item, under the terms and conditions existing prior to the default, upon compliance with the reasonable requirements of the Lender which is the beneficiary of that Recorded Item as to assumptions.

6. **Certain Waivers**. Without the consent of or notice to any other Lender, any Lender may enter into amendments of such Lender's documents and obligations secured thereby in any manner, may release any or all persons or entities liable for any obligation secured by such documents, and may release any or all security for the obligations secured by such documents, all without affecting the subordination under this Agreement, provided that the consent of all Lenders shall be required for any amendments or modifications which (i) increase or decrease the amount of the Lender's Loan (other than permitted protective advances), (ii) increase the interest rate charged by such Loan, or (ii) decrease the term of the Loan, which consent shall not be unreasonably withheld, delayed or conditioned. Any Lender may release any or all persons or entities liable for any obligation secured by the deed of trust in its favor and the documents secured thereby without the consent of or notice to any other Lender, all without affecting the subordination under this Agreement. Each Party waives any right to require marshaling of assets or to require a Lender to proceed against or exhaust any specific security for the obligations secured by any of such Lender's Loan Documents, and waives any and all defenses arising out of the loss or impairment of any right of subrogation to the lien of any of such loan documents.

7. **Conflicts between SeniorRestrictions**. It is the intention of the parties that Borrower shall comply with the affordable housing covenants and agreements which impose the greatest

restriction on the Property to the extent such covenants and agreement remain an encumbrance on the Property, therefore if there is a conflict now or in the future between any of the Junior Restrictions and other regulatory agreements or affordable housing covenants or agreements binding on the Property, the more restrictive provisions in such agreements shall be followed by Borrower and Borrower shall not be in default of its obligations under such covenants and agreements if Borrower follows the more restrictive covenants or agreements.

8. **Cash Flow Distribution**. Borrower will allocate (i) __% of its residual receipts to make payments under the City Loan and (ii) ___% of its residual receipts to make payments under the City Loan and County Loan.

9. **Miscellaneous**.

(a) **Entire Agreement**. This Agreement constitutes the entire agreement among the Parties with respect to the priority of the lien and charge of the Recorded Items against the Property and all prior understandings and agreements on that subject, if any, are superseded and replaced by this Agreement.

(b) **Applicable Law**. This Agreement shall be governed by and construed in accordance with the laws of the state where the Land is located.

(c) **Successors; Assignment**. This Agreement is for the benefit of the Lenders and their respective successors and assigns, and any provision hereof may be waived or modified by agreement of Lenders without the consent of Borrower, and without affecting the priority of the liens and charges of the Recorded Items as provided in this Agreement. The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of such Party's interest in the Property.

(d) **Notices**. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered, or two business days after deposit in the U.S. mail, postage prepaid, to the Parties at the addresses set forth below, or to such other place as a Party may from time to time designate for itself by notice to the other Parties. No successor or assign of a Party shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

(e) **Amendment**. This Agreement may be amended only by a writing signed by the Parties, but this clause shall not impair the validity of any further agreements among fewer than all of the Parties as among themselves.

(f) **Legal Costs**. In the event of any litigation, arbitration or other legal proceeding in which any Party seeks to enforce its rights under this Agreement or to recover damages for the breach thereof, the prevailing Party or Parties shall be entitled to recover its legal costs and expenses, including but not limited to attorneys' fees, from the non-prevailing Party or Parties, whether such costs and expenses are incurred in connection with trial court proceedings, on appeal, in bankruptcy or other insolvency proceedings, in post-judgment collection proceedings, or otherwise.

(g) **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(h) **Completion of Recording Information**. If this Agreement is signed without completion of certain recording information called for above, any Party or any escrow agent or title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

(Remainder of page intentionally left blank)

EXHIBIT F

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

BORROWER:

TRI VALLEY BMR, LLC,
a California limited liability company

By: Housing Consortium of the East Bay, Inc.,
a California nonprofit public benefit corporation
Its Sole Member

By: _____

Address:

Tri Valley BMR, LLC
410 7th Street
Oakland, CA 94607

4814-3886-5151, v. 2

EXHIBIT F

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

CHASE:

JPMORGAN CHASE BANK, N.A.
a national banking association

By: _____
James Vossoughi
Authorized Officer

Address:

JPMorgan Chase Bank, N.A.
Community Development Banking
560 Mission St, Suite 300
San Francisco, California 94105
Attention: James Vossoughi

With a copy to:

JPMorgan Chase Bank, N.A.
4 New York Plaza, 19th Floor
Mail Code: NY1-E092
Attn: CDRE Counsel
New York, NY 10004

EXHIBIT F

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

CITY:

CITY OF LIVERMORE,
a municipal corporation

By: _____
Name: _____
Its: _____

Address:

City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager_

4814-3886-5151, v. 2

EXHIBIT F

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

COUNTY:

COUNTY OF ALAMEDA,
a political subdivision of the State of California

By: _____
Name: _____
Its: _____

Address:

County of Alameda
Housing and Community Development Department
224 W. Winton Avenue, Room 108
Hayward, CA 94544
Attention: Housing Director

4814-3886-5151, v. 2

EXHIBIT F

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a notary public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT F

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a notary public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT F

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a notary public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT F

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a notary public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

(To be attached)

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.5**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing submission of a joint grant application to the State of California Housing and Community Development Department Homekey Program for the Project Reclamation Program in a total not-to-exceed amount of $20,000,000

RECOMMENDED ACTION

Staff recommend the City Council adopt a resolution:

1. Authorizing and directing the submission of a joint Application with Bay Area Community Services (BACS) and other jurisdictions within Alameda County to the State of California Housing and Community Development Department in response to the Homekey NOFA, and to apply for Homekey grant funds in a total amount not to exceed $20,000,000; and
2. Authorizing, entering into, executing, and delivering a Standard Agreement related to acquired properties that are located in the City of Livermore, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds for properties acquired in the City of Livermore, from the Department and to participate in the Homekey Program, and all amendments thereto (collectively, the Homekey Documents); and
3. Acknowledging and agreeing that the City shall be subject to the terms and conditions specified in the Standard Agreement, and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof; that any and all activities, expenditures, information, and timelines represented in the Application are enforceable through the Standard Agreement; and, that funds are to be used for the allowable expenditures and activities identified in the Standard Agreement; and
4. Authorizing the City Manager, or his designee, to approve the final joint Application to the State and execute the Application and the Homekey Documents on behalf of the City of Livermore (Co-Applicant) for participation in the Homekey Program; and
5. The City Manager, or his designee, to negotiate and develop an agreement with the Lead Applicant and Bay Area Community Services outlining the roles and responsibilities of each entity if the Application is approved, subject to the review and approvals as to form by the City Attorney.

SUMMARY

The State of California's Homekey 2.0 Program NOFA provides $2.75 billion to acquire, rehabilitate, or master lease a variety of housing types, including hotels, motels, and other buildings, for the purpose of providing interim or permanent housing options for persons experiencing homelessness. On August 11, 2021, the City released a Request for Information (RFI) seeking potential partners and projects for future funding applications for the State of California Housing and Community Development (State HCD) Homekey program.

Bay Area Community Services (BACS) submitted a proposal to expand its Project Reclamation Program and create a regional supportive shared housing program that acquires homes in jurisdictions throughout Alameda County for people experiencing homelessness. As proposed, BACS will submit a joint application in the amount of up to $20,000,000 to the State of California, with Livermore and other Alameda County cities participating as co-applicants. Properties acquired in Livermore for the program would have a preference for Livermore community members as well as numerous supports for residents. Staff recommends City Council authorize submittal of a joint application to the State Homekey Program as it addresses the City Council's goals and priorities for Affordable Housing and Homelessness.

DISCUSSION

In 2020, the State of California created the Homekey Program, which provides funding to local agencies and jurisdictions to acquire, rehabilitate, or master lease a variety of housing types, including hotels, motels, and other buildings, for the purpose of providing interim or permanent housing options for persons experiencing homelessness.
Administered by the California Department of Housing and Community Development (HCD), the program's first award cycle made $600 million in grant funding available to local public entities, including cities, counties, or other local public entities within California to purchase and rehabilitate a variety of housing types in order to serve people experiencing homelessness or at risk of serious illness from COVID-19. The first funding cycle in 2020 provided $75 million to projects in Alameda County, including the acquisition of hotels participating in the Project Roomkey Program, the rehabilitation of a former student dormitory into a shelter and permanent supportive housing, and the acquisition of single family homes to provide shared housing.

The State of California's 2021/2022 budget provides at least $2.75 billion in acquisition and rehabilitation funds, as well as $1 billion in funds for operating expenses. These funding amounts represent the State's largest investment in housing for the homeless. The goal of the next Homekey funding cycle, which is referred to as Homekey Round 2, is to house tens of thousands of individuals experiencing homelessness. The State has also established priorities for project readiness, team experience, racial equity, and community impact.

Applications for Homekey Round 2 funds will be available on a continuous basis until May 2, 2022; however, the deadline to access a geographic set-aside for Bay Area jurisdictions, as well as a bonus award, is January 31, 2022. Awarded projects will receive grants of up to $200,000 per housing unit in capital funds for acquiring and rehabilitating the sites, depending on the size of the unit and the sub-population served. No local match is required for projects under this threshold, and projects with local match may be eligible for an additional $100,000 per housing unit. Operating subsidy ranging from $1,000-$1,400 per unit, per month is also available for units assisted with Homekey funds for two to three years, depending on the amount of local operating match provided. Program requirements for grantees include completing the project within twelve months of receiving the award, applying the core components of Housing First approach to addressing homelessness, and using local Coordinated Entry

System (CES) prioritization protocols.

On August 11, 2021, the City released a Request for Information (RFI) seeking potential partners and projects for the submittal of future funding applications for the State of California Housing and Community Development (State HCD) Homekey program. One of the responses received was from Bay Area Community Services (BACS) to acquire homes in Livermore and convert them to supportive shared housing for people experiencing homelessness. Other responses to the RFI are currently being evaluated by staff and additional project applications may be recommended for City Council's consideration at a future date.

Since 1973, BACS has successfully operated Supported Independent Living homes in Alameda County and Contra Costa County, including Livermore. Under this highly cost-effective program model, BACS acquires, owns, operates, and property manages small-site, scattered residential properties for individuals with special needs, including those experiencing homelessness. Each resident is paired with a Care Coordinator who helps them build independent living skills through job support, benefits assistance, mental health support, financial assistance, group activities, and money management. Residents learn skills by sharing responsibilities for cleaning, paying bills, and running their household.

In 2020, BACS and the City of Oakland were awarded Homekey funds for this model and successfully acquired 15 homes and provided rooms for 129 people experiencing homelessness. BACS proposes replicating Project Reclamation by creating a regional supportive shared housing program that can leverage the operational efficiencies of a single operator. Cities throughout the County have expressed interest in participating in a regional program, including Hayward and Union City. Under this model, participating jurisdictions would submit a joint application to the State of California, with Livermore participating as a co-applicant. The City of Hayward has offered to serve as the lead applicant for the program and assume the primary administrative responsibilities of managing the Homekey grant in coordination with BACS. The current project application budget anticipates acquiring 11 homes, three of which would be in Livermore, with a capital award of $12.4 million dollars. If additional jurisdictions participate in the program, the funding request will be increased accordingly, not to exceed a total request of $20,000,000.

The proposed Application will not require matching funds from the City. BACS and the co-applicant cities would instead request operating funding from the Alameda County HOME Consortium, which would fulfill the State's operating match requirements. If the project is awarded funds and BACS acquires a property in Livermore, the City will record a 55-year regulatory agreement against the project property restricting the rents to extremely low-income households and establishing property maintenance and management standards. As proposed, if BACS were able to secure a residential property in Livermore through the program, that site would have a preference for Livermore community members.

If approved, staff will work with BACS and the other participating cities to refine the program goals, secure match funding from Alameda County HOME Consortium, develop an agreement with the other participating jurisdictions that outlines the roles and responsibilities of each entity, and submit the application prior to the January 31, 2022 deadline for regional priority consideration. Awards are made on a continuous basis from the State until all funding has been exhausted.

FISCAL AND ADMINISTRATIVE IMPACTS

If the proposed projects are funded, Homekey grant funds will pay the capital costs required to acquire

and rehabilitate the units, as well as up to three years of funding to subsidize the project operations. Depending on the number of properties acquired in Livermore, staff anticipate $1,200,000 to $3,800,000 in grant funds to benefit Livermore community members. No additional City funds are anticipated for the Project Reclamation project. If operating funding from the Alameda County HOME Consortium is not secured, staff will request appropriation of Affordable Housing Trust Funds to meet operating match obligations. By partnering with the City of Hayward and BACS as a co-applicant, the amount of City staff time administering the grant will be significantly reduced, and no appropriation for the grant funds by the City Council will be required.

ATTACHMENTS

1. Resolution

Prepared by: Grace Streltzov
Management Analyst II

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING SUBMISSION OF A JOINT APPLICATION TO THE STATE OF CALIFORNIA HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT HOMEKEY PROGRAM FOR THE PROJECT RECLAMATION PROGRAM IN A TOTAL NOT-TO-EXCEED AMOUNT OF $20,000,000

The State of California Department of Housing and Community Development ("Department") has issued a Notice of Funding Availability, dated September 9, 2021 ("NOFA"), for the Homekey Program ("Homekey" or "Program"). The Department has issued the NOFA for Homekey grant funds pursuant to Health and Safety Code section 50675.1.3 (Assembly Bill No. 140 (2021-2022 Reg. Sess.), section 20).

In response to the "Request for Information for Projects and Properties to House People Experiencing Homelessness Through the Homekey Program" released by the City of Livermore on August 11, 2021, Bay Area Community Services submitted a proposal for the Project Reclamation supportive shared housing program.

The City of Livermore (the "Co-Applicant") desires to jointly apply for Homekey grant funds with City of Hayward (the "Lead Applicant"). Therefore, Co-Applicant is joining the Lead Applicant in the submittal of an application for Homekey funds ("Application") to the Department for review and consideration. As it pertains to the City of Livermore, the application proposes acquiring a maximum of three properties in Livermore.

The Department is authorized to administer Homekey pursuant to the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Homekey funding allocations are subject to the terms and conditions of the NOFA, the Application, the Department-approved STD 213, Standard Agreement ("Standard Agreement"), and all other legal requirements of the Homekey Program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore:

1. Co-Applicant is hereby authorized and directed to submit a joint Application to the Department in response to the NOFA, and to jointly apply for Homekey grant funds in a total amount not to exceed $20,000,000.

2. If the Application is approved, and funds are awarded to acquire properties located in Livermore, Co-Applicant is hereby authorized to enter into, execute, and deliver a Standard Agreement related to acquired properties that are located in the City of Livermore, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds for properties acquired in the City of Livermore, from the

Department and to participate in the Homekey Program, and all amendments thereto (collectively, the “Homekey Documents”).

3. Co-Applicant acknowledges and agrees that it shall be subject to the terms and conditions specified in the Standard Agreement and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof. Any and all activities, expenditures, information, and timelines represented in the Application are enforceable through the Standard Agreement. Funds are to be used for the allowable expenditures and activities identified in the Standard Agreement.

4. The City Manager, or his designee, is authorized to execute the Application and the Homekey Documents on behalf of the Co-Applicant for participation in the Homekey Program.

BE IT FURTHER RESOLVED the City Council of the City of Livermore authorizes the City Manager, or his designee, to negotiate and develop an agreement with the Lead Applicant and Bay Area Community Services outlining the roles and responsibilities of each entity if the Application is approved, subject to the review and approval as to form by the City Attorney.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kelly J. Trujillo
Kelly J. Trujillo
Assistant City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.6**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing submission of a US Fish and Wildlife Service Cooperative Endangered Species Conservation Fund - Habitat Conservation Plan Planning Assistance grant application

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Authorizing staff to prepare and submit a US Fish and Wildlife Service Cooperative Endangered Species Conservation Fund - Habitat Conservation Plan Planning Assistance grant application; and
2. Authorizing the City Manager or designee to sign all documents related to the grant and the Habitat Conservation Plan.

SUMMARY

A Habitat Conservation Plan (HCP) is a federal permitting document that defines a comprehensive approach to endangered species permitting. Developing an HCP will provide multiple benefits to the City, including comprehensive habitat conservation planning, streamlined permitting for maintenance and capital improvement program (CIP) projects, and potential reduced costs for federal endangered species regulatory compliance and mitigations.

The Habitat Conservation Planning Assistance Program is a US Fish and Wildlife Service (USFWS) grant program that provides federal financial support for the development and implementation of conservation programs for federally endangered or threatened species on non-federal lands. The HCP Planning Assistance grant is awarded to the California Department of Fish and Wildlife (CDFW), who then administers those funds to HCP applicants. The grant is a competitive grant.

The estimated cost to prepare the HCP is approximately $1,333,000 (staff time and consultant). Staff is proposing to apply for $1,000,000 (maximum allowed) in federal grant funds and provide the 25% required match funds ($333,000) in staff support over 3 years. If the City Council authorizes staff to

prepare and submit the HCP Grant application, staff will prepare the necessary documents after the Call for Projects is released and submit the application to CDFW and USFWS.

DISCUSSION

Environmental Setting and Challenges:
The Livermore area supports many known occurrences of state and federally listed endangered species, such as the Vernal Pool Fairy Shrimp, the California Red-Legged Frog, and the California Tiger Salamander, within its urban growth boundary. The proximity of open space, natural streams, and preserves to urban development in Livermore creates a challenge for the City to obtain necessary permits for the construction of capital improvement and maintenance projects within environmentally sensitive areas. These permitting challenges result in project delays, higher project costs, and complex mitigation requirements, making it more difficult for the City to maintain its infrastructure and implement capital improvement projects in a timely and efficient manner.

Regulatory Process and Mitigation Approach:
The City currently approaches regulatory permitting and mitigation on a project-by-project basis. Recent changes to federal regulations have made federal permitting more challenging, especially for upland habitats prevalent in north Livermore. The proposed HCP application submittal and subsequent grant award would allow the City to prepare a programmatic HCP and obtain federal permitting coverage. Once approved, an HCP will typically provide permitting coverage for federally listed species for 30 years, and allow the City to implement the types of projects and activities identified in the HCP with mitigation incorporated based on the approved plan. It would also give the City increased local control over mitigation, allowing the City to put project mitigation dollars towards local habitat conservation priorities, in alignment with the Open Space Element of the General Plan, and ensure the comprehensive and long-range preservation and management of open space land.

A programmatic HCP would provide permitting coverage for federally listed species. However, the following State and regional project specific permits (with the exceptions of maintenance projects covered under the City's Stream Maintenance Program), may still be required, depending on the project:

- California Department of Fish and Wildlife (CDFW) - 1600 Lake and Streambed Alteration Agreement
- CDFW - California Endangered Species Act (CESA) - Incidental Take Permit
- Regional Water Quality Control Board (RWQCB) - 401 Water Quality Certification and Wetlands Program (Dredge & Fill Agreement)
- USACE - 404 Certification under the Clean Water Act

ENVIRONMENTAL DETERMINATION
Authorization for staff to apply for the HCP grant funds and authorization of the City Manager or designee to sign all documents related to the grant and the HCP is not a project under CEQA pursuant to the Public Resources Code, Chapter 2.5, section 21065. The grant application process will not cause a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment. No lease, permit, certificate, or entitlement is being issued at this time.

Programmatic Environmental compliance review pursuant to California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) will

be performed in the HCP development phase.

FISCAL AND ADMINSTRATIVE IMPACTS

The estimated cost to prepare the HCP is approximately $1,333,000 (staff time and consultant). The maximum federal grant amount is $1,000,000, and requires a minimum non-federal cost share of 25% of the total cost, which can be met by cash or in-kind contributions. Staff is proposing to apply for $1,000,000 (maximum allowed) in federal grant funds and provide the 25% required match funds ($333,000) in staff support. The matching funds of $333,000 in staff time would be distributed over FY 2022-23, FY 2023-24, and FY 2024-25. Once the grant is approved, staff will return to Council for supplemental budget appropriation to prepare the Habitat Conservation Plan.

The call for grants is typically released in December and the grant application is typically due within three months of release. Notification of grant award to successful applicants will be released in July 2022. The grant period typically begins in October 2022 and will span approximately three years.

In addition, federal grants have additional audit and compliance requirements. The estimated cost for the grant compliance requirements will be approximately $35,000- $50,000 over the grant period of three years.

The cost to prepare the HCP application is approximately $10,000 (staff time and consultant) and it is included in the current fiscal year operating budget. Once the grant is approved, staff will return to Council for supplemental budget appropriation to prepare the Habitat Conservation Plan.

ATTACHMENTS

1. Resolution

Prepared by: Mallika Ramachandran
Assistant City Engineer

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

RESOLUTION OF THE CITY OF LIVERMORE APPROVING APPLICATION FOR THE US FISH AND WILDLIFE SERVICE COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND - HABITAT CONSERVATION PLAN (HCP) PLANNING ASSISTANCE

The Habitat Conservation Planning Assistance Program is a US Fish and Wildlife Service (USFWS) grant program that provides federal financial support for the development and implementation of conservation programs for federally endangered or threatened species on non-federal lands.

The HCP Planning Assistance grant is awarded to the California Department of Fish and Wildlife (CDFW), who then administers those funds to Habitat Conservation Plan (HCP) applicants.

An HCP would substantially streamline the federal species permitting process and allow the City to take a programmatic approach to permitting and mitigation for the type of projects and activities identified in the HCP.

An HCP would typically provide permitting coverage for federally listed species for 30 years and give the City increased local control over mitigations and habitat conservation, in alignment with the Open Space Element of the General Plan, and ensure the comprehensive and long-range preservation and management of open space land.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore hereby:

1. Authorizes staff to prepare and submit the US Fish and Wildlife Service (USFWS) Cooperative Endangered Species Conservation Fund - Habitat Conservation Plan (HCP) Planning Assistance grant application; and

2. Authorizes the City Manager or designee to sign all documents related to the grant and the Habitat Conservation Plan.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Tara M. Mazzanti
Tara M. Mazzanti
Assistant City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.7**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Resolution of a continued local emergency and reauthorizing remote teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361

RECOMMENDED ACTION

Staff recommends City Council adopt a resolution of a continued local emergency and reauthorizing remote teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

SUMMARY

On March 16, 2020, the City Council adopted a resolution ratifying the Proclamation of the Director of Emergency Services concerning the existence of a local emergency (Resolution No. 2020-033). On June 8, July 27, September 14, November 9, December 14, 2020 and February 8, March 22, May 10, June 28, July 26, September 13, October 25, November 22, and December 13, 2021, the City Council adopted resolutions of Continued Local Emergency. California Government Code section 8630 directs the City Council to review the need for continuing the local emergency at least once every 60 days.

On September 16, 2021, the Governor signed Assembly Bill 361 (“AB 361”) into law, allowing the City’s legislative bodies to continue to meet via teleconference during proclaimed states of emergency under modified Brown Act requirements when a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558. AB 361 further requires that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees. AB 361 requires reauthorization every 30 days.

DISCUSSION

An outbreak of coronavirus disease 2019 (COVID-19) caused by the 2019 novel coronavirus (SARS-CoV-2) began in Wuhan, Hubei Province, China in December 2019, and has now spread throughout the world.

On March 1, 2020, the Health Officer of Alameda County declared a public health emergency throughout the County of Alameda.

On March 4, 2020, the Governor of California proclaimed a state of emergency exists in California after making determinations that:

1. The conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and,
2. Local authority is inadequate to cope with the threat posed by COVID-19.

On March 12, 2020, the Alameda County Department of Public Health confirmed evidence of community-acquired transmission.

On March 13, 2020, the President of the United States of America declared a National state of emergency in response to the spread of COVID-19 within the United States of America.

On March 13, 2020, the City Manager declared a Local Emergency. The declaration was based upon the Alameda County Department of Health confirming evidence of community-acquired transmission within Alameda County and the President of the United States declaring a National state of emergency.

On March 16, 2020, the City Council adopted a resolution ratifying the declaration of local emergency (Resolution No. 2020-033).

On June 8, July 27, September 14, November 9, December 14, 2020 and February 8, March 22, May 10, and June 28, July 26, September 13, October 25, November 22, and December 13, 2021, the City Council adopted resolutions of continued local emergency (Resolution Nos. 2020-78, 2020-133, 2020-166, 2020-207, 2020-235, 2021-018, 2021-037, 2021-063, 2021-112, 2021-140, 2021-155, 2021-179, 2021-195, and 2021-217, respectively).

The State continues to monitor COVID-19 case rates and hospitalizations, as well as variants such as Delta and Omicron, and has reinstated face covering requirements in many indoor settings due to a significant increase in case rates over the last few weeks. Additionally, local provisions granted under the emergency proclamation such as outdoor dining and eligibility for funding reimbursement remain in effect as the City continues to recover. Therefore, the emergency conditions identified by the proclamation of local emergency still exist.

Staff recommends the City Council continue the proclamation of emergency services ratified on March 16, 2020 and continued June 8, July 27, September 14, November 9, December 14, 2020, and February 8, March 22, May 10, June 28, July 26, September 13, October 25, November 22, and December 13, 2021, and continue to authorize teleconference meetings of the City's legislative bodies in accordance with AB 361.

FISCAL AND ADMINISTRATIVE IMPACTS

The continuance of a Local Emergency allows the City to access federal, state and county resources, including potential financial reimbursements.

ATTACHMENTS

1. Resolution

Prepared by: Christine Martin
Assistant City Manager

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION OF CONTINUED LOCAL EMERGENCY AND REAUTHORIZING REMOTE TELECONFERENCE MEETINGS FOR THE CITY OF LIVERMORE'S LEGISLATIVE BODIES IN ACCORDANCE WITH ASSEMBLY BILL 361

On March 4, 2020, the Governor of the State of California (the "Governor") proclaimed a statewide state of emergency due to COVID-19.

On March 1 and 5, 2020, the Alameda County Health Officer (the "Health Officer") declared a Local Health Emergency due to COVID-19.

On March 16, 2020, the City Council adopted a resolution, *Ratifying the Proclamation of the Director of Emergency Services Concerning the Existence of a Local Emergency* (Resolution No. 2020-033). The local emergency proclamation concerned conditions of extreme peril to the safety of persons and property, which have arisen within the city of Livermore due the COVID-19 pandemic.

All meetings of the City of Livermore's legislative bodies are open and public, as required by the Brown Act (Cal. Gov. Code sections 54950 et seq.), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business.

The City Council has regularly adopted resolutions determining the need for continuing the local emergency pursuant to California Government Code section 8630 (Resolution Nos. 2020-078, 2020-133, 2020-166, 2020-207, 2020-235, 2021-018, 2021-037, 2021-063, 2021-112, 2021-140, 2021-155, 2021-179, 2021-195, and 2021-217).

On December 13, 2021, the City Council adopted Resolution 2021-217 reaffirming that a local emergency still exists, and that in-person meetings of the City's legislative bodies would present imminent risks to the health or safety of attendees and authorized the City's legislative bodies to continue to meet via teleconferencing under modified Brown Act requirements.

The public health officers for the State of California and the County of Alameda continue to monitor transmission, case rates, and hospitalizations of COVID-19 and associated variants (including Delta and Omicron), and continue to require face coverings in certain indoor settings and recommend vaccination, boosters, and social distancing.

Due to these conditions, City staff reported that the emergency conditions identified by the previous emergency proclamation still exist today. Staff also recommended the City Council continue to authorize teleconference meetings of the City's legislative bodies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it has reviewed the March 13, 2020 proclamation of local emergency ratified on March 16, 2020 by Resolution No. 2020-033, and hereby finds that conditions

warrant continued maintenance of that proclamation of local emergency due to the COVID-19 pandemic.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that:

1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

2. The City Council has reviewed the March 13, 2020 proclamation of local emergency that the City Council ratified on March 16, 2020 (Resolution No. 2020-033) and finds that conditions warrant continued maintenance of that proclamation of local emergency due to the COVID-19 pandemic.

3. The City Council has reconsidered the circumstances of the state of emergency and has determined that the state of emergency continues to impact the ability of members of the City's legislative bodies to meet safely in person. In-person meetings of the City's legislative bodies would present imminent risks to the health or safety of attendees. The City continues to impose measures to promote social distancing in City-owned and operated facilities.

4. The staff and legislative bodies of the City of Livermore are hereby reauthorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953 (e) and other applicable provisions of the Brown Act.

5. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of February 10, 2022, or such time the City Council makes subsequent findings in accordance with Government Code section 54953 (e)(3) to extend the time during which the legislative bodies of the City of Livermore may continue to teleconference without compliance with Government Code section 54953(b)(3).

6. If any section, subsection, clause, or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The City Council would have passed this Resolution and each section, subsection, sentence, clause, or phrases thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases thereof be held invalid.

On motion of Council Member _____, seconded by Council Member_____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 6.1**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT:
Hearing to consider approving an Amended and Restated Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC to develop a four-story hotel on the southeast corner of Railroad Avenue and South Livermore Avenue, which includes a site acquisition loan for 2205 Railroad Avenue LLC to develop a parking facility on 2080 Railroad Avenue; to declare that the parcels to be transferred from the City to 2205 Railroad Avenue LLC are identified for disposition for the development of a hotel in the Livermore Successor Agency's Long Range Property Management Plan and are exempt surplus land; and authorizing a supplemental appropriation of $1,923,750 from the General Fund for the site acquisition loan.

RECOMMENDED ACTION

Staff recommends the City Council adopt two resolutions and direct the following:

1. Declaring that Parcel A and Subsurface Parcel C of Parcel Map 9999 are exempt surplus land as defined in Government Code Section 54221; and
2. Finding the Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC is consistent with, and analyzed by, the addendums to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that were adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, and the 2004 Downtown Specific Plan Environmental Impact Report, and authorizing the City Manager to execute the DDLA, including the $1,923,750 Predevelopment Loan, and all documents necessary to effectuate the actions described in the DDLA;
3. Authorizing the City Manager to execute on behalf of the City the amended and Restated Disposition and Development and Loan Agreement with 2205 Railroad Avenue LLC; and
4. Supplemental appropriation of $1,923,750 from the General fund to be directed to the Site Acquisition Loan described in the DDLA.

SUMMARY

The proposed DDLA establishes the terms of the sale of the City-owned hotel site to 2205 Railroad Avenue, LLC (Presidio), and terms for a loan to acquire an approximately 0.77-acre property to develop a parking facility. Presidio is proposing to develop a 125-135-room hotel and related amenities consistent with the City Council's approved plan for Downtown.

The Disposition and Development Agreement approved by the City Council in 2018 includes commencement of construction in June 2020 and opening of the hotel in December 2021. However, the 2018 Referendum challenging the Council's approval of a Specific Plan Amendment to allow a four-story hotel, the 2019 Referendum challenging the Council's approval of a Development Agreement for the hotel, and the 2019 Central Park Plan Initiative to change the land uses across the City's Downtown Core Site caused significant delay to the hotel project. Increasing construction costs over the course of the delay led to a determination that an underground parking garage was no longer feasible. Initially included in the 2019 Specific Plan Amendments adopted in response to the 2018 Referendum, the proposed DDLA now includes acquisition of an additional property nearby to construct, operate, and maintain a surface parking facility rather than construct an underground parking garage.

The DDLA secures additional public benefits and improvements including contributing to the maintenance of Stockmen's Park, allowing public access to the roof-top deck, providing public valet parking, developing and operating a private joint solid waste facility for the Livermore Valley Center, and constructing sidewalk and median improvements along South Livermore Avenue.

This staff report outlines the main deal points for the DDLA. Staff anticipates Planning Commission and City Council review of the Downtown Design Review application for the hotel and site design in Spring of 2022. The proposed hotel and parking uses are consistent with the Downtown Core Plan approved by the City Council in 2018. The proposed hotel will complete development of the Livermore Valley Center and stimulate new investment in the Downtown.

DISCUSSION

Background

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement (ENRA) with Presidio to establish procedures and standards for the negotiation of a Purchase and Sale Agreement for disposition and development of a downtown hotel. The City Council extended the ENRA with Presidio throughout the public engagement and plan development process for the new Downtown Core plan. On February 26, 2018, the City Council adopted Resolution 2018-024 authorizing the execution of a Hotel Term Sheet with Presidio for the preparation of a Disposition and Development agreement for a downtown hotel.

On September 10, 2018, the City Council adopted Resolution 2018-154 approving Specific Plan Amendment 18-001 (the "September 2018 Amendments") to facilitate the phased implementation of the approved Downtown Plan and provisions to allow up to a four-story hotel. At this same meeting, the City Council adopted Resolution 2018-155 approving Downtown Design Review for a four-story, 133-room hotel on the southeast corner of Railroad and South Livermore Avenue.

On October 11, 2018, the City received a referendum petition entitled "Referendum Against Portions of a

Resolution Passed by the City Council Resolution No. 2018-154" (hereinafter "Referendum"). The Referendum challenged three portions of the September 2018 Amendments, specifically the amendments to Chapter 5 (Development Standards –Core), Chapter 7 (Circulation and Transportation), and Chapter 8 (Parking Standards).

On November 26, 2018, the City Council adopted Resolution 2018-200 accepting certification by the City Clerk as to the sufficiency of signatures on the Referendum. The Council's successive adoption of Resolution 2018-201 repealed the Specific Plan Amendments listed in the referendum petition (Chapters 5,7 and 8) and confirmed that the remaining amendments to the Downtown Specific Plan approved by Resolution No. 2018-154 remain in effect.

Specifically, the Council's adoption of Resolution 2018-201 repealed the three challenged portions of the September 2018 Amendments, reverting the following chapters to the versions that existed before the September 2018 Amendments:

Chapter 5 – Development Standards – Core
Chapter 7 – Circulation and Transportation
Chapter 8 – Parking Standards

The Council's adoption of Resolution 2018-201 also confirmed that the September 2018 Amendments to the following chapters, not having been protested by the Referendum, remain effective, valid, and enforceable:

Chapter 1 – Orientation
Chapter 2 – Existing Conditions
Chapter 3 – Revitalization Strategy
Chapter 4 – Land Use and Development Policies
Chapter 10 – Implementation
Chapter 11 – Financing

The repeal of the September 2018 Amendments to Chapters 5, 7, and 8 necessitated several adjustments to the Downtown Plan. The adjustments included reduced building heights for the hotel and the L Street parking structure, requiring two-story buildings adjacent to Blacksmith Square, and an adjustment to the land use standards to accommodate additional surface parking. The remaining components of the Downtown Plan were consistent with the Specific Plan that existed before the September 2018 Amendments.

California Elections Code section 9241 provided that, until November 27, 2019 (one year from the repeal), the City could not readopt the same amendments to Chapters 5, 7, and 8 that were challenged by the Referendum. However, the City could consider amendments to the same chapters within the one-year repeal period, provided the amendments were different from the previous amendments and avoid the objections made to the previous amendments. On May 13, 2019, within the one-year time frame, the City Council readopted amendments to Specific Plan Chapters 5, 7, and 8, that were outside the Referendum's issues of concern, including provision of additional parking and the removal of the regional theater from the Downtown Specific Plan. Due to rising construction costs during the delay caused by the 2018 Referendum, the provision of between 70 to 150 parking spaces in a new public or private parking facility accessed from K Street was included in the project at that time as an alternative to an underground parking garage. Removal of the regional theater language was also included in the

amendments to the Specific Plan that were not challenged.

On July 29, 2019, the City Council adopted Resolution 2019-137 accepting the City Clerk's certification that the petition entitled "Citizen's Initiative Changing Development Regulations in Downtown Livermore and Amending Regulations to Allow Housing at the Civic Center" contained the sufficient number of signatures required to qualify it for the ballot. On August 26, 2019, the City Council adopted Resolution 2019-142 calling for and giving notice of the holding of a general election for the submittal of an initiative petition entitled: "Citizen's Initiative Changing Development Regulations in Downtown Livermore and amending regulations to allow housing at the Civic Center" to the voters of the City of Livermore and consolidating that election with the general municipal election to be held Tuesday, November 3, 2020.

On July 22, 2019, the City Council introduced an ordinance approving a development agreement with 2205 Railroad Avenue LLC for the Wine Country Hotel at the Bankhead project (Development Agreement 19-001). The ordinance was adopted as Ordinance No. 2089 on second reading by the City Council on July 29, 2019.

On August 28, 2019, a referendum petition entitled "Referendum Against Ordinance No. 2089 Passed by the City Council (Development Agreement 19-001)" was filed with the City Clerk, seeking to repeal the ordinance.

On September 20, 2019, the Alameda County Registrar of Voters certified the sufficiency of the signatures for that referendum.

On October 14, 2019, the City Council adopted Resolution No. 2019-162, calling for and giving notice of holding a special municipal election to be held on March 3, 2020, for the purpose of submitting Ordinance No. 2089, approving a development agreement for the Wine Country Hotel at the Bankhead project (Development Agreement 19-001), to the voters for approval. That ballot measure was designated Measure P on the ballot for the March 3, 2020 election.

On March 3, 2020, Livermore voters passed Measure P by over a 2/3 majority vote in favor - approving the development agreement between the City and Presidio to build the downtown hotel. On May 11, 2020, the City Council readopted the Specific Plan Amendments to Chapters 5, 7, and 8 that were challenged by the Referendum, with the exception of the amendments related to the boutique hotel site at the southeast corner of Railroad Avenue and South Livermore Avenue. At the same meeting, City Council directed staff to return with another Specific Plan Amendment to reintroduce the hotel amendments.

On October 26, 2020, the City Council adopted Resolution 2020-179 approving another Downtown Specific Plan Amendment to reestablish the four-story height limit for the hotel and enable implementation of the approved boutique hotel consistent with the approved Downtown Plan.

<u>Disposition, Development and Loan Agreement</u>

The proposed DDLA establishes the terms of the sale of the City-owned hotel site to Presidio. The City will sell the property to Presidio at a price of $71,521 to develop a hotel with a quality that meets or exceeds the quality of Marriot AC, Marriot Autograph Collection, Hilton Canopy, and the Curio Collection by Hilton. Hotel quality would be subject to evaluation by a hotel consultant to confirm the proposed hotel meets or exceeds the quality of the above listed hotel brands. The hotel will include between 125-135

rooms, with an approximately 3,300 square foot bar/lounge, 1,500-2,000 square foot meeting space, rooftop deck, fitness center, outdoor pool, and an open courtyard and patio.

The DDLA adds a number of conditions to the development of the hotel project and in return recognizes the effect the cost of these restrictions have on the value of the land along with the fees applied to the project. Among these conditions is the requirement that Presidio participate in a Community Facility Maintenance District for Downtown Improvements (CFMD), which will help to fund the ongoing maintenance of Stockmen's Park. Starting one year after the hotel begins operation, Presidio will contribute to the Community Facilities Maintenance District for Stockmen's Park at an initial rate of $30,000 annually, escalating at CPI plus one percent.

Additional provisions in the DDLA that are recognized in the cost of property purchase and hotel development include the following conditions:

- Construction of the public road way and parking spaces on the hotel site, including public Americans with Disabilities Act (ADA) accessible spaces,
- Removal of the existing temporary solid waste compactor facility, and construction, operation and management of a joint solid waste facility that will serve the uses in the Livermore Valley Center including the Bankhead Theater and Plaza, First Street & Railroad Mixed Use Projects, and Livermore Cinema,
- Lease of the hotel site and off-site parcel for public parking until the hotel commences construction, and
- Public access to the rooftop deck.

The previously approved hotel project included a public underground parking garage with 120-spaces. The underground garage is no longer feasible due to the increase in construction, operation and maintenance costs during the delay in constructing the project. Presidio has entered into a purchase and sale agreement with the owner of 2080 Railroad Avenue, formerly occupied by Valley Pool Center. Presidio will be obligated to acquire this property and construct a parking facility that will ultimately serve the hotel and be available for public valet parking. If additional parking is required, the DDLA obligates the City to provide up to 30 parking spaces for valet use in other city parking facilities. The City would lease the 2080 Railroad property for public parking until the hotel opens. The DDLA includes a loan secured by the property to Presidio for $1,923,750 to cover approximately 94 percent of the purchase price for this property. Presidio will pay off the loan with a lump sum payment, plus interest, when the hotel opens. Staff is recommending a supplemental appropriation in the amount of $1,923,750 to be directed to the Site Acquisition Loan described in the DDLA for Presidio to acquire 2080 Railroad Avenue.

The DDLA establishes a new timeline for the hotel project. Planning Commission and City Council review of the site plan and hotel design will occur in March and April, 2022, respectively. Transfer of the property from the City to Presidio will occur in April, 2022. The performance schedule allows up to 16 months from property transfer to submittal of building permits. Construction commences no later than second quarter (May) 2024, and the hotel opening would be no later than the fourth quarter (December) 2025. Required building permit review/issuance, construction, and hotel opening milestones are outside dates for completion. Achievement of these milestones is likely to occur before these outside dates.

The sales price of $71,521 and some fee credits reflect the cost of Presidio's participation in the CFMD,

the provision of public roadway and parking facilities, construction and management of a joint solid waste facility, publicly accessible rooftop deck facilities, restrictions on quality and design, and the schedule of performance for completion of construction.

The approval of this DDLA will allow the downtown hotel identified in the approved Downtown Plan to move forward and be developed in a manner that is consistent and compatible with the Livermore Valley Center. Together with the Bankhead Theater, First Street/Railroad Avenue Commercial Projects, Livermore Cinema, Plaza, and parking garage, the hotel will contribute to successful Downtown revitalization.

Surplus Land Act

The Surplus Land Act under Government Code 54221(b)(2) and Surplus Land Act Guidelines dated April 2021 (Guidelines), Section 103 identify conditions under which disposition of publicly-owned land is exempt from the Surplus Land Act. Generally, land designated in a long-range property management plan is not subject to the requirements of the Guidelines if a legally binding agreement for disposition of the property is entered into not later than December 31, 2020, and disposition is completed by December 31, 2022.

Staff has determined that the sale of the hotel parcels to 2205 Railroad Avenue LLC is exempt from the Surplus Land Act based upon the following circumstances:

- The Livermore Successor Agency's Long Range Property Management Plan identifies this property for use as a hotel.
- The initial DDA was approved before December 31, 2020.
- Disposition of the property will be complete by April, 2022.

On December 21, 2021, staff notified the California Department of Housing and Community Development ("HCD") that it determined the hotel parcels were exempt from the Surplus Land Act.

Environmental Determination

The hotel project was included in the scope of the the addendums to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that were adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, and the 2004 Downtown Specific Plan Environmental Impact Report. No new or more severe significant impacts were identified for the project that were not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR.

FISCAL AND ADMINISTRATIVE IMPACTS

Staff is requesting a supplemental appropriation from the General Fund in the amount of $1,923,750 to be directed to the Site Acquisition Loan described in the DDLA. The term of the loan will start on the date of loan dispersal, anticipated to be no later than February 15, 2022, and terminate no later than

December 31, 2025. The loan will carry an annual simple interest rate of 3.5%. The principal and interest accrued on the loan will be paid back to the City in a lump sum payment within three months of the completion of hotel construction, as determined by the issuance of the certificate of occupancy, or by December 31, 2025, whichever is sooner.

Implementing the terms of the Disposition and Development Agreement outlined above will enable development of the downtown hotel site, contributing to the economic vitality of Downtown Livermore. The proposed project will pay $71,521 for the land and approximately $3.7 million in development impact fees to offset the additional costs of development impacts.

Presidio will also contribute $30,000 annually to the Stockmen's Park Community Facility Maintenance District. This contribution will adjust annually consistent with CPI plus one percent. The development will generate revenue from property tax, sales tax, and transient occupancy tax that will further offset related municipal services.

The $71,521 purchase price paid to the City for acquisition of property at 2205 Railroad Avenue will be sent to the County for remittance to the affected taxing entities. The City will receive approximately $12,558 (or 17.56% of the total proceeds).

ATTACHMENTS

1. Resolution
2. Exhibit A - Plat & Legal Description Hotel Parcel
3. Exhibit B - City Council Resolution 2018-155
4. Exhibit C - City Council Resolution 2018-156
5. Resolution
6. Exhibit A - Amended and Restated Disposition, Development and Loan Agreement

Prepared by: Steve Stewart
Planning Manager

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION DECLARING THAT TWO CITY-OWNED PARCELS ARE EXEMPT SURPLUS LAND PURSUANT TO GOVERNMENT CODE SECTION 54221

The City of Livermore is the owner in fee simple of two parcels of land; Parcel A (hereinafter "Parcel A") and Subsurface Parcel C (hereinafter "Parcel C") of Parcel Map 9999 both as more particularly described in Exhibit A, and formerly known as APN 098-0407-029-02 and APN 09800407-013-00) (collectively "Hotel Properties").

On September 23, 2013, the Livermore Successor Agency adopted Resolution No. 2013-02 approving the Long Range Property Management Plan ("LRPMP").

On September 25, 2013, the Oversight Board to the Livermore Successor Agency approved the LRPMP.

Upon request of the Department of Finance, minor amendments were made to the LRPMP and approved by the Oversight Board on December 3, 2014 (Oversight Board Resolution No. OB-021), June 17, 2015 (Oversight Board Resolution No. OB-029), and December 16, 2015 (Oversight Board Resolution No. OB-033). The Department of Finance approved the LRPMP on December 28, 2015.

Concurrent with the approval of the LRPMP, the Oversight Board also approved the transfer of the Hotel Properties on June 17, 2015 (Oversight Board Resolution No. OB-030) and again on December 16, 2015 (Oversight Board Resolution No. OB-034).

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement with PresidioCo Holdings LLC to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of the Hotel Properties for the purpose of building a boutique hotel. The Exclusive Negotiating Rights Agreement was extended by Council on January 23, 2017, May 22, 2017, and November 13, 2017.

On January 29, 2018, the City Council approved a plan for the Downtown Core, which included a boutique hotel with 125-135 rooms on the southeast corner of Railroad Avenue and South Livermore Avenue.

On February 26, 2018, the City Council authorized the execution of a Hotel Term Sheet with PresidioCo Holdings LLC to lay out the terms that would be included in the Disposition and Development Agreement for the development of the Hotel Properties.

On August 7, 2018, the Livermore Planning Commission considered the disposition of approximately 3.8 acres of real property located generally between North L Street, Railroad Avenue, First Street, and the Bankhead Theater, known as the Downtown Core Catalyst site for the purposes of implementing the Downtown Core Concept to be consistent with the General Plan in accordance with Government Code section 65402.

On September 10, 2018, the City Council adopted Resolution No. 2018-156 authorizing the execution of a Disposition and Development Agreement with 2205 Railroad Avenue LLC, which was formed and controlled by PresidioCo Holdings LLC, for the disposition of the Hotel Properties for the development of a boutique hotel. At this same meeting, the City Council adopted Resolution No. 2018-155 to approve the Downtown Design Review No. 18-015 for the site design and architecture for the boutique hotel, including a public underground parking garage.

On October 3, 2018, the City of Livermore recorded Parcel Map No. 9999 creating Parcel A and Parcel C from the Hotel Properties.

The City Council has determined that Parcel A and Parcel C are not necessary for City use as set forth in Resolution No. 2018-155 approving Downtown Design Review for a four-story,133-room hotel on the southeast corner of Railroad and South Livermore Avenue, attached hereto as Exhibit B, and as set forth in Resolution No. 2018-156 authorizing execution of a Disposition and Development Agreement between the City of Livermore and 2205 Railroad Avenue LLC for the conveyance of City-owned Parcels A and C to 2205 Railroad Avenue LLC for the development of a boutique hotel attached hereto as Exhibit C.

The Hotel Properties are designated in the LRPMP for the development of a hotel, and for disposition to the City to in turn dispose of them to a developer. The LRPMP was approved by both the Oversight Board and the Department of Finance. The surplus property legislation provides that its requirements do not apply to former redevelopment property designated in a Long Range Property Management Plan when an agreement for the property's disposition was executed before either September 30, 2019, or December 31, 2020, and the final disposition is completed before December 31, 2022. Here, the agreements between the City, PresidioCo Holdings LLC, and 2205 Railroad Avenue LLC were entered into prior to those dates, and the disposition is scheduled to be completed before December 31, 2022.

The Amended and Restated Disposition, Development and Loan Agreement amends and restates the 2018 Disposition and Development Agreement so that the conveyance of Hotel Properties can be completed. For the reasons stated above, the conveyance of Hotel Properties is exempt from the Surplus Land Act in accordance with Government Code section 54221.

On December 21, 2021, staff notified the California Department of Housing and Community Development ("HCD") that it determined that Parcel A and Parcel C were exempt from the Surplus Land Act and supported such determination with written findings.

Staff recommends that the City Council declare that the Hotel Properties are exempt surplus land pursuant to Government Code section 54221.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. The conveyance of the Hotel Properties, consisting of Parcel A and Parcel C of Parcel Map 9999, from the City to 2205 Railroad Avenue LLC were analyzed by, and the project is consistent with, the August 2, 2018 Addendum to the Downtown Specific Plan 2009 Supplemental Environmental Impact Report and Downtown Specific Plan Environmental Impact Report dated February 9, 2004, adopted by the City Council on September 10, 2018, by Resolution No. 2018-153.

No new or more severe significant impacts were identified for the project that was not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR.

2. The following two parcels identified herein as the Hotel Properties, consisting of Parcel A and Parcel C of Parcel Map 9999, and as more particularly described in Exhibit A, are exempt surplus land as defined in Government Code section 54221.

a. Real property situated in the City of Livermore, County of Alameda, State of California, and more particularly described as follows: Being all of Parcel A and Subsurface Parcel C, of Parcel Map No. 9999, recorded October 3, 2018, in book 340 of Maps at Pages 86-89, Alameda County Records. Parcel A containing 53,126 square feet of land more or less and Subsurface Parcel C containing 50, 963 square feet of land more or less.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED AS TO FORM:

_____

Marie Weber
City Clerk

/s/ Jason R. Alcala

Jason R. Alcala
City Attorney

Exhibit A – Plat and Legal Description of Parcels A and C
Exhibit B – Resolution No. 2018-155
Exhibit C – Resolution No. 2018-156

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

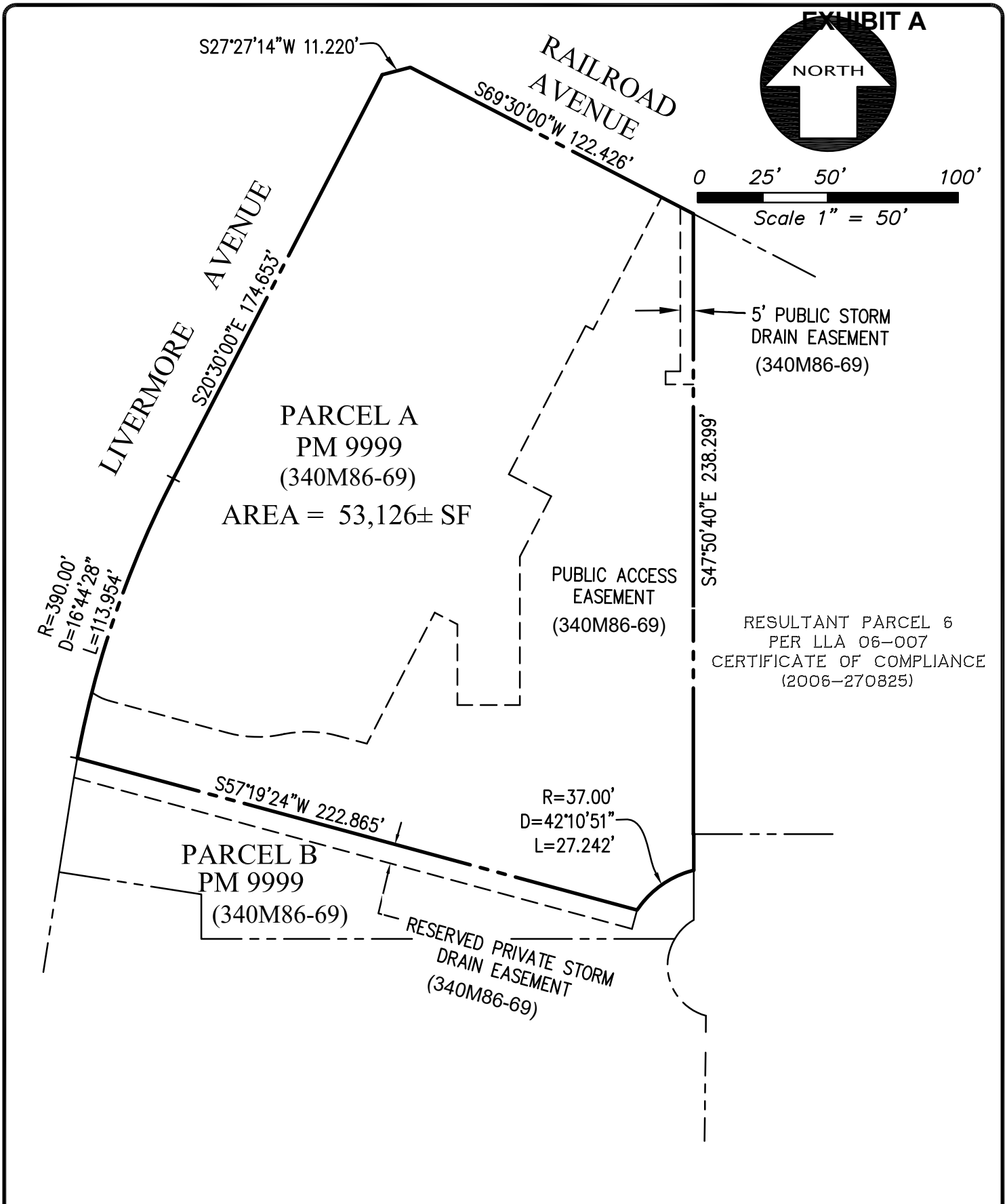
REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A



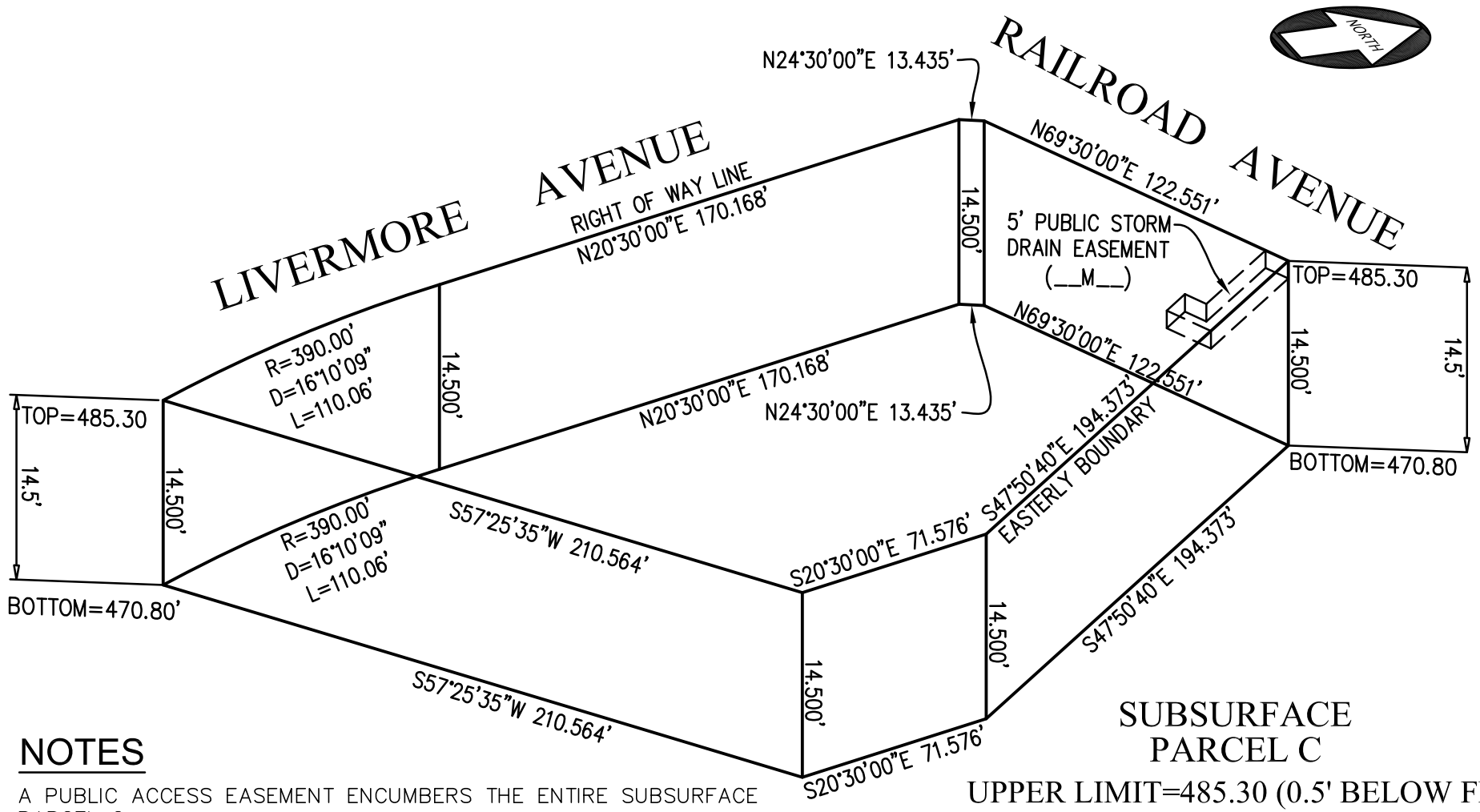
KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A-1

SHEET 2 OF 3



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

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Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C

PARCEL MAP 9999

LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING DOWNTOWN DESIGN REVIEW 18-015

An application for Downtown Design Review ("DDR") 18-015 was initiated by Presidio Companies to develop a four-story, 133-room hotel on the southeast corner of Railroad Avenue and South Livermore Avenue (the "Project"). The Project also includes a public underground parking garage, new street frontage and median improvements, a new public street, public surface parking with public ADA accessible stalls, storm water treatments, and landscaping.

The Planning Commission reviewed the Project and determined it is consistent with the Livermore General Plan and related policies. After their review on August 7, 2018, the Planning Commission, by its Resolution No. 30-18, attached hereto as Exhibit A, recommended approval of the Project.

This Council held a public hearing on September 10, 2018, and considered the recommendations of the Planning Commission, together with pertinent drawings, documents, Conditions of Approval, and testimony.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore hereby finds, on the basis of the whole record before it evaluating the environmental impacts of the Project, that the Project is consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report, approved by City Council on September 10, 2018 and City staff is directed to prepare and file a Notice of Determination with the Alameda County Clerk within five days of the adoption of this resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore:

1. Finds the Project consistent with the General Plan.

2. Is satisfied with the decision and record of the Planning Commission and adopts by reference the findings contained in Planning Commission Resolution No. 30-18, attached hereto as Exhibit A, and approves the Project subject to the Conditions of Approval, attached hereto as Exhibit B.

The documents that constitute the record of proceedings upon which this decision is based can be found in the City Clerk's office, 1052 S. Livermore Avenue, in Livermore California.

On motion of Council Member Spedowfski, seconded by Council Member Carling, the foregoing Resolution was passed and adopted on September 10, 2018, by the following vote:

AYES: Council Members Carling, Coomber, Spedowfski, Vice Mayor Woerner, Mayor Marchand
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Sarah Bunting
City Clerk

APPROVED AS TO FORM:

Catrina Fobian
Assistant City Attorney

Date: September 11, 2018

Exhibit A - Planning Commission Resolution 30-18
Exhibit B - Conditions of Approval

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVAL OF

Downtown Design Review (DDR) 18-015

A request to develop a four-story, 133-room hotel on the southeast corner of Railroad Avenue and South Livermore Avenue. The project also includes a public underground parking garage, new street frontage and median improvements, a new public street, public surface parking with public ADA accessible stalls, storm water treatments, and landscaping.

Location: 2205 Railroad Avenue

The City received an application for Downtown Design Review (DDR) 18-015.

A courtesy mailing was mailed to neighboring property owners and published in a newspaper of local circulation.

The Planning Commission held a meeting on August 7, 2018, considered the staff recommendation for approval subject to conditions, and heard public testimony.

NOW, THEREFORE, BE IT RESOLVED that, based on the whole record before it, the Planning Commission of the City of Livermore recommends the City Council find the environmental impacts of Downtown Design Review (DDR) 18-015 were analyzed by and are consistent with the 2018 Addendum to the Downtown Specific Plan 2009 Supplemental Environmental Impact Report.

BE IT FURTHER RESOLVED that the Planning Commission finds the following based upon the information presented for Downtown Design Review (DDR) 18-015:

The project is in conformance with the Specific Plan's standards and guidelines; or project-specific mitigation measures or conditions of approval have been incorporated into the project to ensure it is in conformance.

Finding: Based on the design review of the project, as documented in the Planning Commission staff report, the proposed project conforms to the applicable standards and guidelines for commercial buildings in the Downtown Specific Plan (DSP). The architectural quality of the structure and site plan reflect the intent of the DSP Design Standards and Guidelines to create a high quality and active urban fabric in Downtown Livermore.

BE IT FURTHER RESOLVED by the Planning Commission of the City of Livermore that, based on the above finding, Downtown Design Review (DDR) 18-015 is recommended to the City Council for approval, subject to the Conditions of Approval dated August 7, 2018, which are necessary to protect the public health, safety, and general welfare.

The documents that constitute the record of proceedings upon which this decision is based can be found in the Community Development Department, 1052 S. Livermore Avenue, in Livermore, California.

On the motion by Commissioner Pann, seconded by Planning Commissioner Bonanno, the foregoing Resolution was adopted at the Planning Commission meeting of August 7, 2018, by the following vote:

AYES: BONANNO, BJORKLUND, KASKEY, AND PANN.
NOES: NONE.
ABSENT: NONE.
RECUSED: FAGUNDES.

Erik Bjorklund, Chairperson

by Steve Stewart, Planning Manager
Secretary to the Planning Commission

CONDITIONS OF APPROVAL

Downtown Design Review (DDR) 18-015

A request to develop a four-story, 133-room hotel on the southeast corner of Railroad Avenue and South Livermore Avenue. The project also includes a public underground parking garage, new street frontage and median improvements, a new public street, public surface parking with public ADA accessible stalls, storm water treatments, and landscaping.

Location: 2205 Railroad Avenue

Recommended for Approval by Planning Commission: August 7, 2018
Approved by the City Council: September 10, 2018

A. PROJECT AUTHORIZATION

1. The project shall be in conformance with all City Ordinances, rules, regulations, and policies. The conditions listed below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

2. The Downtown Design Review permit shall expire upon the expiration or termination of Development Agreement 18-003, unless an extension is submitted and approved prior to the expiration of the Development Agreement.

B. PROJECT SPECIFIC CONDITIONS

The applicant shall respond in writing to all conditions contained in this document and its attachments. Responses shall describe how the condition has been met and shall, where applicable, direct the plan checker to the page and/or drawing detail that demonstrates compliance with the condition. A copy of these responses shall be provided with each set of improvement plans.

1. Provide a photometric plan for review and approval by the Community Development Department that shows lighting will minimize off-site glare and meet the illumination requirements of the Security Ordinance (Municipal Code, Chapter 15.18).

2. This Downtown Design Review approval does not include the approval of the signs shown on the development plans. All signs are subject to review and approval by the Community Development Department of a separate Downtown Design Review application.

3. The design and location of 30 bicycle parking stalls are subject to review and approval by the Community Development Department prior to submittal for building permits. The stalls may be dispersed among the underground garage, new road, I Street parking facility.

4. Assess the health of the existing street trees along South Livermore and replace them if found to be in poor health, and/or likely to experience stress during hotel construction.

5. Provide trees, landscaping and furnishings that are consistent with the palette for the Downtown Plan Concept Plan Landscape Design Guidelines reviewed by the Planning Commission on August 21, 2018. The City Council will review these Guidelines on September 24, 2018.

6. Coordinate the street tree planting, paving, and landscape improvements along both sides of South Livermore Avenue (along the hotel frontage and Stockmen's Park/Blacksmith Square frontage) to provide a unified and aesthetic entry into the Downtown Core.

7. Include irrigation and planters that are consistent with the City's current standards and specifications.

8. Exterior backflow preventers shall be screened from public view with landscape.

9. Livermore Municipal Code section 12.51 establishes a public art requirement for all projects. For this project, the developer has elected to provide public art on-site. The applicant shall comply with the following conditions regarding public art:

    a. The proposed art is subject to review and approval by the Commission for the Arts prior to receiving a building permit.
    b. A certificate of occupancy shall not be issued until the approved work(s) of art has been installed.
    c. The developer or owner shall execute a restrictive covenant, which shall be recorded against the project site and shall run with the land for a period of 30 years from the installation date.
    d. In the event the public art is stolen, destroyed or vandalized within the 30-year period, the developer or owner must replace or repair the public art pursuant to the Livermore Municipal Code.

10. Prior to occupancy, the applicant shall demonstrate compliance with Municipal Code Section 13.25.060 (Landscape Installation Certification Package).

11. The project is subject to applicable mitigation measures of the 2018 Addendum to the Downtown Specific Plan Amendment 2009 Supplemental Environmental Impact Report.

C. GENERAL CONDITIONS OF APPROVAL

1. Development shall conform to the map designated by the City as Exhibit B-1. Exhibit B-1 plans shall include but are not limited to subdivision, landscape, and architectural plans reviewed and approved by the Planning Commission and City Council and amended by the applicant to reflect any changes indicated above in the Project Specific Conditions or required by the City in the approval process.

2. For all proposed projects, Bay Area Air Quality Management District (BAAQMD; "Air District") recommends requiring the implementation of all Basic Construction Mitigation Measures, listed in Table 8-1 of the BAAQMD CEQA Guidelines, whether or not construction-related emissions exceed applicable Thresholds of Significance. These basic construction stage recommendations are incorporated below into these Conditions of Approval as project requirements.

    a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
    b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
    c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
    d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
    e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
    f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
    g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
    h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

3. Any awnings over windows shall be maintained as an integral architectural feature, in an attractive, serviceable state throughout the life of the project.

4. The development impact fees (e.g., traffic impact, housing in-lieu, park dedication in-lieu,) and project processing fees due in connection with this permit shall be based upon the fees in effect at the time the fee is paid.

5. The Community Development Department may approve minor amendments to the permit, provided that the permit is still in substantial conformance with the original approval.

6. Prior to receiving a building permit for excavation, grading or construction on development site, the applicant shall contact the Alameda County Vector Control Services District to determine if any pre-baiting requirements are necessary to control migration of vermin to adjacent property.

7. To the extent permitted by law, the project applicant shall defend, indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorney's fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

8. Approval of the Downtown Design Review permit is not an authorization to commence construction. Building construction, alterations, repairs, sign erection, or occupancy shall not be permitted without prior approval of the Building Division through issuance of any required permits.

9. Several bioretention areas designed to facilitate stormwater infiltration and treatment are an integral part of the site's utility functioning and any proposed changes to physical design or function shall be subject to prior review and approval by the City Engineer.

D. ENGINEERING DIVISION

1. Development shall conform to the attached Engineering Considerations, dated July 25, 2018.

E. BUILDING DIVISION

1. The project shall comply with currently adopted California Building Standards Code - including Part 11 - the Green Building Standards Code.

F. MAINTENANCE DIVISION

1. All landscaping shall be privately owned, irrigated, and maintained.

2. All proposed sidewalk, pedestrian curb ramps, and driveways shall be installed in accordance with current ADA Access Board Guidelines and City of Livermore Standards.

3. Applicant shall review all sidewalk and pedestrian ramps adjacent to the property for compliance with ADA standards. Any deficiencies shall be corrected prior to issuance of a Certificate of Occupancy.

4. All existing trees along Livermore Avenue and Railroad Avenue that are to remain will need to be inspected by a qualified Arborist through the Contractor. If trees are deemed structurally deficient and/or unhealthy, the existing trees need to be removed and replaced with a more suitable tree species.

G. WATER RESOURCES DIVISION

The Water Resources Division has the following comments regarding this project:

1. All restaurants/food service facilities incorporated within this project shall comply with Livermore Municipal Code 13.32.330, which states the following: "Food Preparation Facilities. All facilities where food is prepared or served shall be equipped with an oil and grease interceptor with a minimum size capacity of 750-gallons. The interceptor shall be connected to the sanitary sewer, and all kitchen generated wastewater with the exception of dishwasher and garbage disposal drainage, shall discharge through the interceptor."

2. Swimming Pool: A drain to the sanitary sewer shall be provided which allows for the proper discharge of draining the pool and/or back-flushing of pool filter equipment to the sanitary sewer.

H. FIRE DEPARTMENT

1. On sheet C5.0, revise plan to show a two 2 ½ inch hose connections, piped off of the sprinkler system, on the east side of the building at a location to be approved by the LPFD.

2. Consult with the LPFD concerning the placement of ground ladder pads.

I. POLICE DEPARTMENT

1. The project shall be required to conform to the provisions of the security section of the Livermore City Code.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LIVERMORE AND 2205 RAILROAD AVENUE LLC FOR THE DISPOSITION OF CITY OWNED PARCELS AND DEVELOPMENT OF A BOUTIQUE HOTEL

(APN'S 098-0407-029-02, 098-0289-013-11, 098-0407-013-00)

On January 29, 2018, the City Council approved a plan for the Downtown Core, which includes a boutique hotel with 125-135 rooms on the southeast corner of Railroad Avenue and South Livermore Avenue.

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement with PresidioCo Holdings LLC to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of certain property for the purpose of building a boutique hotel. The Exclusive Negotiating Rights Agreement was extended by Council on January 23, 2017, May 22, 2017 and November 13, 2017.

On February 26, 2018, City Council authorized the execution of a Hotel Term Sheet with PresidioCo Holdings LLC to lay out the terms that would be included in the Disposition and Development Agreement. (Resolution No. 2018-024)

The City and 2205 Railroad Avenue LLC, a company formed and controlled by PresidioCo Holdings LLC, desire to enter into an agreement to sell the City-owned property to 2205 Railroad Avenue LLC for the construction of a 133-room hotel with an approximately 3,300 square foot bar/lounge, a 1,500 square foot meeting space, fitness center, outdoor pool, open courtyard, patio, and underground parking garage with approximately 120 parking spaces.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore finds that the Disposition and Development Agreement is consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report approved by City Council on September 10, 2018.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore authorizes the City Manager to execute the Disposition and Development Agreement with 2205 Railroad Avenue LLC attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore authorizes the City Manager to execute any documents, with prior approval as to form by the City Attorney, required to effectuate the purpose of the Disposition and Development Agreement, including but not limited to, the parcel map, minor revisions to the schedule of performance, agreements contemplated by the material terms attached as exhibits to the Disposition and Development Agreement, and grant deeds.

On motion of Council Member Spedowfski, seconded by Council Member Carling, the foregoing Resolution was passed and adopted on September 10, 2018, by the following vote:

AYES:	Council Members Carling, Coomber, Spedowfski, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

Sarah Bunting
City Clerk

APPROVED AS TO FORM:

Gabrielle Janssens
Assistant City Attorney

Date: September 11, 2018

Exhibit A – Disposition and Development Agreement

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT THAT INCLUDES A SITE ACQUISITION LOAN IN THE AMOUNT OF $1,923,750 FOR THE ACQUISITION OF 2080 RAILROAD AVENUE, WITH 2205 RAILROAD AVENUE LLC FOR DEVELOPMENT OF A BOUTIQUE HOTEL AND PARKING FACILITY; AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF $ 1,923,750 FROM THE GENERAL FUND TO BE DIRECTED TO THE SITE ACQUISITION LOAN DESCRIBED IN THE DDLA

(APNs 098-0407-031-00, 098-0407-033-00, 098-0282-009-00)

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement with PresidioCo Holdings LLC to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of certain property for the purpose of building a boutique hotel. The Exclusive Negotiating Rights Agreement was extended by Council on January 23, 2017, May 22, 2017, and November 13, 2017.

On January 29, 2018, the City Council approved a plan for the Downtown Core, which includes a boutique hotel with 125-135 rooms on the southeast corner of Railroad Avenue and South Livermore Avenue.

On February 26, 2018, City Council authorized the execution of a Hotel Term Sheet with PresidioCo Holdings LLC to lay out the terms that would be included in the Disposition and Development Agreement.

On or about September 5, 2018, PresidioCo Holdings LLC, formed 2205 Railroad Avenue LLC, which is under the control of PresidioCo Holdings LLC.

On September 10, 2018, the City Council authorized the execution of a Disposition and Development Agreement with 2205 Railroad Avenue LLC for the disposition of City-owned parcels and development of a boutique hotel. At this same meeting, the City Council approved Downtown Design Review No. 18-015 for the site design and architecture for the boutique hotel, including a public underground parking garage.

The City and 2205 Railroad Avenue LLC, a company formed and controlled by PresidioCo Holdings LLC, desire to enter into an amended agreement to sell the City-owned property to 2205 Railroad Avenue LLC for the construction of a 125-135-room hotel and related amenities, a joint solid waste facility, and include a short-term site acquisition loan to acquire an off-site private property to develop a parking facility.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore finds that the Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC is consistent with, and analyzed by, the addendums to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that were adopted by City Council on September 10, 2018, by Resolution No. 2018-153, May 13,

2019, by Resolution No. 2019-064, and October 26, 2020, by Resolution No. 2020-178, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, and the 2004 Downtown Specific Plan Environmental Impact Report.

No new or more severe significant impacts were identified for the project that was not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR. The City Council of the City of Livermore directs the City Clerk to file a Notice of Determination with the Alameda County Clerk

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that:

1. The City Manager is authorized to execute on behalf of the City of Livermore the Amended and Restated Disposition, Development and Loan Agreement that includes a site acquisition loan in the amount of $1,923,750, with 2205 Railroad Avenue LLC for development of the Downtown boutique hotel and parking facility, attached hereto as Exhibit A.

2. The amount of $1,923,750 is hereby appropriated from the City of Livermore's General Fund to be directed to the Site Acquisition Loan described in the Amended and Restated Disposition, Development and Loan Agreement.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Amended and Restated Disposition, Development and Loan Agreement

AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

by and between

CITY OF LIVERMORE

and

2205 RAILROAD AVENUE LLC

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS. 8
Section 1.1 Definitions. 8
Section 1.2 Exhibits. 14
ARTICLE 2. PREDISPOSITION REQUIREMENTS. 15
Section 2.1 City's Conditions Precedent to Close of Escrow 15
Section 2.2 Developer's Conditions Precedent to Close of Escrow. 16
Section 2.3 Access for Investigations 17
ARTICLE 3. DISPOSITION OF THE PROPERTY AND CONSTRUCTION OF JOINT SOLID WASTE FACILITY. 18
Section 3.1 Purchase and Sale. 18
Section 3.2 Purchase Price 18
Section 3.3 Opening Escrow; Costs of Escrow 18
Section 3.4 Closing and Closing Deliverables 18
Section 3.5 Close of Escrow 19
Section 3.6 Additional Escrow Instructions 20
Section 3.7 Condition of the Property. 20
Section 3.8 Real Estate Commissions 22
Section 3.9 Joint Solid Waste Facility. 22
Section 3.10 Challenge to this Agreement or the Entitlements. 23
Section 3.11 Revival of 2018 Disposition and Development Agreement 23
ARTICLE 4. DESIGN REQUIREMENTS. 24
Section 4.1 Design in Conformance with Project Documents 24
Section 4.2 Additional Permits and Approvals. 24
Section 4.3 City Review 24
ARTICLE 5. PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION. 24
Section 5.1 Conditions Precedent to Commencement of Construction 24
Section 5.2 City Fees 24
Section 5.3 Execution and Recordation of Pre-Construction Documents 24
Section 5.4 Joint Solid Waste Facility Agreement 25
Section 5.5 Building Permits 25

Section 5.6 Updates to Title Policy 25
Section 5.7 Hotel Standard Approval. 26
ARTICLE 6. CONSTRUCTION OF THE IMPROVEMENTS AND PUBLIC IMPROVEMENTS. 26
Section 6.1 Commencement of Construction 26
Section 6.2 Completion of Construction 26
Section 6.3 Construction of Public Improvements 26
Section 6.4 Construction Pursuant to Scope and Plans. 26
Section 6.5 Mechanics' Liens 27
Section 6.6 Compliance with Applicable Law 27
Section 6.7 Progress Reports 27
Section 6.8 Entry by City 28
Section 6.9 Non-Discrimination During Construction; Equal Opportunity 28
ARTICLE 7. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION. 29
Section 7.1 Hotel Use 29
Section 7.2 Community Facility Maintenance District for Downtown Core Improvements 29
Section 7.3 Maintenance 29
Section 7.4 Developer to Indemnify City. 29
Section 7.5 Hazardous Materials. 30
Section 7.6 No Liability for Breaches of Security 32
Section 7.7 Non-Discrimination. 32
Section 7.8 CFMD Assessment. 32
Section 7.9 Hotel Parking Requirements 32
ARTICLE 8. ASSIGNMENT AND TRANSFERS. 33
Section 8.1 Definitions 33
Section 8.2 Purpose of Restrictions on Transfer 33
Section 8.3 Prohibited Transfers 33
Section 8.4 Permitted Transfers 33
Section 8.5 Effectuation of Permitted Transfers. 36
ARTICLE 9. SECURITY FINANCING AND RIGHTS OF HOLDERS. 36
Section 9.1 Encumbrances 36

Section 9.2 Holder Not Obligated to Construct 37
Section 9.3 Notice of Default and Right to Cure. 37
Section 9.4 Cure of Developer Defaults 38
Section 9.5 Failure of Holder to Complete Improvements or Public Improvements 39
Section 9.6 Right of City to Cure 39
Section 9.7 Right of City to Satisfy Other Liens 39
Section 9.8 Holder to be Notified 39
Section 9.9 Modifications 40
Section 9.10 Estoppel Certificates 40
Section 9.11 Participation in Insurance and Condemnation Proceedings 40
Section 9.12 Multiple Encumbrance Holders 40
ARTICLE 10. DEFAULT AND REMEDIES. 41
Section 10.1 Application of Remedies 41
Section 10.2 Fault of City. 41
Section 10.3 Fault of Developer. 41
Section 10.4 Right of Reverter. 42
Section 10.5 Rights and Remedies Cumulative 44
Section 10.6 Survival 44
ARTICLE 11. GENERAL PROVISIONS. 44
Section 11.1 Identity of Developer 44
Section 11.2 Notices, Demands and Communications 45
Section 11.3 Non-Liability of Officials, Employees and Agents 45
Section 11.4 Enforced Delay. 46
Section 11.5 Delegation of Authority 46
Section 11.6 Submittals and Approvals 46
Section 11.7 Inspection of Books and Records 46
Section 11.8 Title of Parts and Sections 47
Section 11.9 Applicable Law 47
Section 11.10 Severability. 47
Section 11.11 Legal Actions. 47
Section 11.12 Binding Upon Successors; Covenants to Run with Land 47
Section 11.13 Parties Not Co-Venturers 47

Section 11.14 Entire Understanding of the Parties 48
Section 11.15 Counterparts 48
Section 11.16 Amendments 48
Section 11.17 Recordation of Memorandum of DDLA 48
Section 11.18 Standard of Approval 48
Section 11.19 Effectiveness of Agreement 48
Section 11.20 Interpretation. 48
Section 11.21 No Gift or Dedication 48
ARTICLE 12. SITE ACQUISITION LOAN. 48
Section 12.1 Loan amount 48
Section 12.2 Use of Loan Funds 48
Section 12.3 Loan term 49
Section 12.4 Interest 49
Section 12.5 Default Interest Rate 49
Section 12.6 Loan conditions to Disbursement 49
Section 12.7 Security 49
Section 12.8 Use of the Parking Parcel 49
Section 12.9 Requirements 49
Section 12.10 Disbursement 50
Section 12.11 Loan repayment 50
Section 12.12 Maintenance and Damage; Hazardous Materials 50
Section 12.13 Event of Default – Site Acquisition Loan 51
Section 12.14 Notice and Cure Procedure 52
Section 12.15 Specific Remedies for Site Acquisition Loan Event of Default 53
Section 12.16 City Right's Upon Default 53
Section 12.17 Non-Recourse 54
Section 12.18 Affiliate Assignment and Assumption 54
Section 12.19 Survival 55

AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (this "Agreement") is made as of ____, 2022, by and between the City of Livermore, a municipal corporation (the "City"), and 2205 Railroad Avenue LLC, a Delaware limited liability company (the "Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. The City is the owner of the City-owned parcels located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (APNs: 098-0407-031-00; 098-0407-033-00 (hereinafter "Hotel Parcel")). Developer desires to purchase the Hotel Parcel from the City. The Hotel Parcel includes Parcel A and Parcel C on Parcel Map 9999 as more particularly described in Exhibit A. Prior to the Close of Escrow, an updated Parcel Map will be recorded for the Hotel Parcel to eliminate Parcel C and to include a deed restriction for a rooftop public open space on the Hotel and a right of way easement for a public roadway.

C. The Developer desires to construct on the Hotel Parcel a four story approximately 65,000-75,000 square foot Hotel, constructed to a standard comparable to one of the Brands identified in the Hotel Standards and containing between 125-135 hotel rooms, approximately 1,400-2,000 square feet of economically viable meeting space, a roof-top deck, and related hotel amenities and improvements.

D. No later than the Close of Escrow, the Hotel Parcel will be burdened by a deed restriction for a rooftop public open space and a reservation of right of way easement over the Hotel Parcel for Public Improvements including but not limited to a roadway, sidewalks, stormwater improvements, landscaping, and public parking.

E. Prior to the Close of Escrow, the Developer shall enter into a Temporary Parking Lease for the Hotel Parcel with the City wherein the Hotel Parcel will be used for public parking until the commencement of construction on the Hotel Parcel.

F. The Developer shall design, construct and own a Joint Solid Waste Facility that will provide garbage, organics, and recyclable services for the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema. The Joint Solid Waste Facility shall replace the temporary solid waste facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West). The Developer shall be responsible for developing a solid waste disposal plan to govern the service, operation, repair, maintenance, replacement and insurance of the Joint Solid Waste

Facility. Such plan shall be embodied in a Joint Solid Waste Facility Agreement to be entered into prior to commencement of construction of the Project.

G. Upon satisfaction of specified predisposition conditions set forth in Article 2 of this Agreement, the City will convey its fee estate in the Property and Appurtenances to the Developer, subject to the permitted exceptions, for the consideration and upon the terms set forth in this Agreement, and the Developer shall, subject to this Agreement, construct and cause the Project to be operated in the manner specified in this Agreement.

H. The City has concluded that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

I. The City and Developer's Affiliate, PresidioCo Holdings LLC, a Delaware limited liability company, previously entered into that certain Exclusive Negotiating Rights Agreement dated as of July 27, 2016, as amended, and that certain Hotel Term Sheet dated as of March 2, 2018, which contemplated the negotiation and consummation of the Disposition and Development that was entered into by the parties on October 1, 2018 (the "2018 Disposition and Development Agreement"). On and effective as of the Effective Date, this Agreement supersedes the 2018 Disposition and Development Agreement, except as provided for in Section 3.11.

J. The Developer is in contract to purchase the parcel located on the northwest corner of Railroad Avenue and North K Street in downtown Livermore and commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) (hereinafter "Parking Parcel."). Developer intends to use the Parking Parcel as a valet parking lot to meet the City's parking requirements for the Hotel.

K. The City desires to provide a short-term Site Acquisition Loan to the Developer to assist in financing the Developer's acquisition of the Parking Parcel. The City expects Developer to pay the principal and interest due on the loan the earlier of the date that the Developer converts predevelopment costs or construction costs into permanent financing for the Project, or December 31, 2025, whichever occurs first.

L. As soon as practicable after Developer obtains title to the Parking Parcel, the Developer and the City shall enter into a Lease and Operating Agreement for the Parking Parcel. Pursuant to the terms of Lease and Operating Agreement for the Parking Parcel, the City may use the Parking Parcel for public parking for a period of up to three years from the Effective Date of the Lease Agreement or until construction of the Hotel is at least 40% complete, whichever is earlier. However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024.

M. Pursuant to CEQA, the City (in its capacity as "lead agency") has approved on, September 2018, an Addendum to the 2009 Subsequent Environmental Impact Report, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, Subsequent Environmental Impact Report dated March 2009, and Downtown Specific Plan Environmental Impact Report dated February 9, 2004.

NOW, THEREFORE, the City and the Developer agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" means any Person which directly or indirectly through one or more intermediaries, (i) Controls, or (ii) is Controlled by, or (iii) is under common Control with, Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition, Development and Loan Agreement.

(c) "Appurtenances" shall mean all rights, privileges and easements appurtenant to the Property, including, without limitation (to the extent in existence), all minerals, oil, gas, and other hydrocarbon substances on or under the Property, as well as development rights, air rights, riparian rights and water rights which the City may own and which relate to the Property and any rights-of-way or other appurtenances affecting the Property.

(d) "Building Permit" shall mean an excavation, foundation or other building permit issued by the City in connection with the construction of the Improvements.

(e) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.

(f) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Hotel.

(g) "City" shall mean the City of Livermore.

(h) "City Event of Default" shall mean any default by the City as set forth in Section 10.2.

(i) "City Fees" shall mean the estimated fees listed in Exhibit B, which fees are estimates only and will be finally determined at the issuance of the Building Permit.

(j) “Close of Escrow” shall have the meaning ser forth in Section 3.5.

(k) "Community Facility Maintenance District for the Downtown Core Improvements” (hereinafter “CFMD”) shall mean the maintenance district or districts created to fund the maintenance of the Stockmen’s Park and other designated downtown public facilities, in accordance with Section 7.2.

(l) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(m) “Deed of Trust” shall mean the Deed of Trust executed by the Developer to secure its obligation to repay the Site Acquisition Loan for the Parking Parcel. A form of the Deed of Trust is attached to this Agreement as Exhibit C.

(n) "Developer" shall mean 2205 Railroad Avenue LLC, a Delaware limited liability company, or any transferee of the Developer in accordance with Section 8.4.

(o) "Developer Event of Default" shall mean any default by the Developer as set forth in Section 10.3, subject to any applicable notice and cure rights set forth therein.

(p) "Effective Date" shall mean the date which is the later of (i) the date this Agreement is executed by the Developer and (ii) the date this Agreement is approved and executed by the City.

(q) “Entitlements" shall mean, collectively, zoning approvals, conditional use permit and any other discretionary approvals required for construction of the Project. For purposes of this Agreement, "Entitlements" do not include demolition, grading, building or other ministerial permits or approvals.

(r) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 3.

(s) "Escrow Holder" shall mean the Developer’s title company or other mutually agreed upon title company.

(t) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City for the construction of the Improvements and final drawings for the construction the Public Improvements required under this Agreement.

(u) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Property and Appurtenances to the Developer. The Grant Deed shall include a deed restriction for a rooftop public open space on the Hotel and a reservation of right of way easement for a public roadway on the Property. A form of the Grant Deed is attached to this Agreement as Exhibit D.

(v) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials;

(4) Any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Property, as heretofore or hereafter amended; and

(5) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term “Hazardous Materials” shall not include: construction materials, gardening materials, household products, office supply products or equipment, food service or preparation equipment or materials or janitorial supply products or equipment customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a hotel and its supporting parking structure, to the extent which the same are used and stored in accordance with all applicable environmental ordinances and regulations.

(w) "Hazardous Materials Laws" shall mean environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(x) “Hotel" shall mean a four story approximately 65,000-75,000 square foot hotel containing between one hundred twenty-five (125) to one hundred thirty-five (135) hotel rooms, approximately 1,400 - 2,000 square feet of economically viable meeting space, a roof-top deck, and related hotel amenities and improvements on the Hotel Parcel.

(y) "Hotel Parcel" shall mean that certain parcel shown on Parcel Map 9999 as Parcel A and Parcel C as more particularly described in Exhibit A. Prior to the Close of Escrow, an updated Parcel Map will be recorded for the Hotel Parcel which will eliminate Parcel C and include a deed restriction for a rooftop public open space on the Hotel and a right of way easement for a public roadway.

(z) "Hotel Standard" shall mean a boutique hotel that meets or exceeds the standard of “Upscale” or "Upper Upscale" under the STR, Inc. Chain Scales Rating system or similar industry recognized rating system as more particularly described in Exhibit E.

(aa) "Improvements" shall mean collectively the Parking Parcel, the Joint Solid Waste Facility, the Hotel, and all other improvements on the Hotel Parcel, except for the On-site Public Roadway.

(bb) "Joint Solid Waste Facility" shall mean a trash facility located in close proximity to the Hotel sized to serve the solid waste produced by the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema.

(cc) "Joint Solid Waste Facility Agreement" shall mean a solid waste disposal agreement, reasonably acceptable to Developer, as may be amended by agreement of the parties thereto, among the Developer, the City, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema, that will include a solid waste disposal plan, performance obligations of the parties, and a license or lease from the City to allow the performance of the obligations under the agreement, substantially in conformance with the Material Terms contained in Exhibit F.

(dd) “Lease and Operating Agreement for the Parking Parcel” shall mean the agreement between the City and the Developer for the lease, operation, and maintenance of the Parking Parcel, in substantial conformance with the Lease and Operating Agreement attached as Exhibit G.

(ee) “Loan Documents” shall mean this Agreement, the Promissory Note, the Deed of Trust, and any other document or agreement evidencing the Site Acquisition Loan for the Parking Parcel.

(ff) "Memorandum of DDLA" shall mean the memorandum of this Agreement, substantially in the form of Exhibit H.

(gg) "Official Records" shall mean the Official Records of Alameda County.

(hh) "Outside Date" shall mean the last date for the commencement of construction as set forth in the Schedule of Performance.

(ii) "Parcel B" shall mean the parcel designated as Parcel B on the Parcel Map 9999 recorded October 3, 2018, recorded series 2018192226.

(jj) "Parcel Map" shall mean Parcel Map No. 9999, attached as Exhibit I. Prior to the Close of Escrow, an updated Parcel Map will be recorded for the Hotel Parcel which shall include a deed restriction for a public open space on the Hotel and a right of way easement for a public roadway.

(kk) "Parking Parcel" shall mean the parcel located on the northwest corner of Railroad Avenue and North K Street in downtown Livermore and commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) that Developer will purchase and use as a valet parking lot to meet the hotel's parking requirement, which is more particularly described in Exhibit J attached to this Agreement.

(ll) "Parties" shall mean the City and the Developer.

(mm) "Party" shall mean either the City or the Developer depending on the context.

(nn) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

(1) the lien of any non-delinquent property taxes and assessments;

(2) all existing easements over, under and across the Property for ingress and egress and public utilities, which do not preclude Developer's intended use of the Property;

(3) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Property;

(4) applicable building and zoning laws and regulations;

(5) the provisions of this Agreement;

(6) a deed restriction for a rooftop public open space on the Hotel and a reservation of right of way easement for the public roadway on the Property;

(7) the Temporary Parking Lease;

(8) other matters created by, through or under Developer; and

(9) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(oo) "Person" or "Persons" shall mean any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(pp) "Pre-Construction Documents" shall mean collectively the final, fully executed forms of the Public Improvement Agreement, the Irrevocable Offer of Dedication for the Public Roadway, and the Joint Solid Waste Facility Agreement.

(qq) "Pro Forma" shall mean the preliminary sources and uses for the development of the Project delivered by the Developer under separate confidential cover.

(rr) "Project" shall mean (i) the Property and (ii) collectively, the Improvements, and the Public Improvements, as more fully set forth in the Scope of Development.

(ss) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements, together with and all conditions of approval associated with the Entitlements.

(tt) "Promissory Note" shall mean the Promissory Note executed by the Developer to satisfy the Site Acquisition Loan for the Parking Parcel under the terms set forth in this Agreement. A form of the Promissory Note is attached to this Agreement as Exhibit K.

(uu) "Property" shall mean the City-owned Hotel Parcel located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore, as more particularly described as Parcel A and Parcel C in Exhibit A attached to this Agreement. "Property" and "Hotel Parcel" shall be used interchangeably throughout this Agreement.

(vv) "Public Improvements" shall collectively mean the Roadway and Frontage Improvements to S. Livermore Avenue, the On-site Public Roadway, and the Railroad Avenue Improvements as more particularly described in Exhibit L.

(ww) "Public Improvement Agreement" shall be the agreement between the City and the Developer in which the City requires as a condition precedent to the construction of the Project, the dedication of streets and public ways on the Hotel Parcel and the construction of certain on-site and off-site public improvements, substantially in conformance with the form attached as Exhibit M.

(xx) "Purchase Price" shall have the meaning set forth in Section 3.2.

(yy) "Schedule of Performance" shall mean the schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Property to the Developer and the construction of the Project, as the same or components of the same may be extended pursuant to this Agreement. The Schedule of Performance is attached to this Agreement as Exhibit N.

(zz) "Scope of Development" shall mean the description of the Project contained in the approved Entitlements and all conditions of approvals associated with the Entitlements. The Scope of Development is attached to this Agreement as Exhibit O.

(aaa) "Security Financing Interests" shall have the meaning set forth in Section 9.1.

(bbb) “Site Acquisition Loan” shall have the meaning set forth in Article 12.

(ccc) "Temporary Parking Lease" shall mean that certain Lease for Temporary Parking for the Hotel Parcel between the City of Livermore and Developer in substantial conformance with the Temporary Parking Lease Agreement attached as Exhibit P.

(ddd) "Title Company" shall mean the title company agreed to by the Parties.

(eee) "Title Policy" has the meaning set forth in Section 2.2(i).

(fff) "Transaction Documents" shall mean, collectively, the Parcel Map, the Lease and Operating Agreement for the Parking Parcel, the Grant Deed, the Memorandum of DDLA, the Public Improvement Agreement, and the Temporary Parking Lease for the Hotel Parcel.

(ggg) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Section 8.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A.	Legal Description and Plat of the Hotel Parcel
Exhibit B.	City Fees
Exhibit C.	Deed of Trust
Exhibit D.	Grant Deed
Exhibit E.	Hotel Standard
Exhibit F.	Joint Solid Waste Facility Agreement Material Terms
Exhibit G.	Lease and Operating Agreement for the Parking Parcel
Exhibit H.	Memorandum of DDLA
Exhibit I.	Parcel Map
Exhibit J.	Parking Parcel
Exhibit K.	Promissory Note

Exhibit L. Public Improvements

Exhibit M. Public Improvement Agreement

Exhibit N. Schedule of Performance

Exhibit O. Scope of Development

Exhibit P. Temporary Parking Lease for the Hotel Parcel

Exhibit Q. Terms and Conditions of the Deed Restriction

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.1 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions depends on performance by the Developer. Only the City can waive satisfaction of the conditions in this Section 2.1.

(a) The Developer has provided the City with the preliminary development Pro Forma setting forth the Developer's current estimate of sources and uses of funds for development of the Improvements. The Pro Forma is intended to serve as a guide for the review of the Developer's financing commitments. The Pro Forma and the information contained therein are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. No later than the time specified in the Schedule of Performance, the Developer has submitted a true copy of each letter of interest or letter of intent, which may be binding or non-binding, from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary, together with the funds of Developer, to fully finance the projected costs of development of the Improvements.

(b) The Developer and the City have entered into a Lease and Operating Agreement for the Parking Parcel, in accordance with Section 12.6 of this Agreement and in substantial conformance with the Lease and Operating Agreement attached as Exhibit G.

(c) The City and Developer have entered into a Temporary Parking Lease for the Hotel Parcel wherein the Hotel Parcel will be available for public parking until the commencement of construction of the Project, in substantial conformance with the Temporary Parking Lease Agreement attached as Exhibit P."

(d) The Developer has obtained all Entitlements.

(e) No later than the time specified in the Schedule of Performance, the Developer has obtained written approval from the City for the Draft Hotel Interior Design Proposal demonstrating comparable quality to the brands identified in the Hotel Standard.

(f) The Developer has deposited an executed counterpart of the Lease and Operating Agreement for the Parking Parcel with the Escrow Holder.

(g) The Developer has deposited an executed counterpart of the Temporary Parking Lease Agreement for the Hotel Parcel with Escrow Holder.

(h) The Developer has submitted the Developer's organizational documents to the City and the City has approved Developer's organizational structure.

(i) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Project.

(j) There shall exist no condition, event or act which would constitute a Developer Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Developer Event of Default.

Section 2.2 Developer's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.2 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions in Sections 2.2(e) and 2.2(f) depends on performance by the City. Only the Developer can waive satisfaction of the conditions contained in this Section 2.2.

(a) The Developer and the City have entered into a Lease and Operating Agreement for the Parking Parcel in accordance with Section 12.6 of this Agreement and in substantial conformance with the form attached as Exhibit G.

(b) The City and Developer have entered into a Temporary Parking Lease for the Hotel Parcel, in substantial conformance with Exhibit P wherein the Hotel Parcel will be available for public parking until the commencement of construction of the Project.

(c) The Developer has obtained all Entitlements.

(d) The Developer has obtained written approval from the City for the Draft Hotel Interior Design Proposal demonstrating comparable quality to the brands identified in the Hotel Standard.

(e) The City has deposited an executed counterpart of the Lease and Operating Agreement for the Parking Parcel with the Escrow Holder.

(f) The City has deposited an executed counterpart of the Temporary Parking Lease Agreement for the Hotel Parcel with the Escrow Holder.

(g) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Project.

(h) There shall exist no condition, event or act which would constitute a City Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a City Event of Default.

(i) The Title Company is irrevocably and unconditionally committed to issue to Developer the Title Policy, free and clear of all liens, and subject only to the Permitted Encumbrances, within thirty (30) days of Close of Escrow. As used in this Agreement, the term "Title Policy" shall mean an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring fee simple title to the Property, subject only to the Permitted Encumbrances.

Section 2.3 Access for Investigations. Prior to Close of Escrow and subject to the rights of any tenants occupying the Property including, the City grants to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting geotechnical and environmental studies and investigations. Such entry shall be made only during regular business hours and upon not less than five (5) business days' advance telephonic, email, or written facsimile notice to the City's Community Development Director. Prior to exercise of the right of entry, the Developer shall provide the City with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies in a manner acceptable to the City in its reasonable discretion. The Developer shall indemnify and defend the City of Livermore and its council members, officers, employees, and agents (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges to the extent such arise out of or are in any way directly related to any entry by the Developer or the Developer's agents upon the Property, but only to the extent such matters do not arise from the gross negligence or willful misconduct of the City or other Indemnified Party, from pre-existing conditions of the Property, or from Developer's discovery of any information potentially having a negative impact on the Property. The foregoing obligation of the Developer shall survive the expiration or termination of this Agreement. The City shall cooperate with the Developer in obtaining, for the benefit of the Developer, reliance letters from the appropriate parties with respect to any third-party reports or studies commissioned or obtained by the City with respect to the Property.

ARTICLE 3.
DISPOSITION OF THE PROPERTY AND CONSTRUCTION OF JOINT SOLID WASTE FACILITY

Section 3.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 2 and the additional closing conditions set forth in Section 3.4 have been satisfied or waived, the City shall sell to the Developer, and the Developer shall purchase from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 Purchase Price. The purchase price for the Property shall be $71,521. The Developer shall pay a ten (10) percent deposit at the Close of Escrow and the remainder shall be paid no later than December 31, 2025.

Section 3.3 Opening Escrow; Costs of Escrow. To accomplish the transfer and conveyance of the Property from the City to the Developer, by the date specified in the Schedule of Performance, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement. The City shall pay or cause to be paid (i) one half (½) of any escrow fee charged by the Escrow Holder and (ii) any and all City and County real estate documentary transfer taxes. The Developer shall pay (a) one half (½) of any escrow fee charged by the Escrow Holder, (b) all costs of the Title Policy (and any endorsements) issued based thereon, and (c) any recording fees. Each Party shall be responsible for the payment of its own attorney's fees, copying expenses and other costs incurred in connection with the negotiation of this Agreement and the consummation of the transaction contemplated hereunder. Any other closing costs and all prorations (if any) shall be split and accounted for as customary in Alameda County, California, for commercial real estate transactions.

Section 3.4 Closing and Closing Deliverables. Subject to the satisfaction or waiver of the closing conditions and predisposition conditions to the Close of Escrow set forth in Section 2.1 and Section 2.2, the Close of Escrow shall occur and the City shall convey, and the Developer shall accept conveyance of, fee simple title to the Property and Appurtenances, subject only to permitted exceptions, pursuant to the Grant Deed. At or before Close of Escrow, the City and the Developer, as applicable, shall deliver to the Title Company and Escrow Holder the following:

(a) The Developer shall deposit: (i) the Purchase Price, (ii) originals of each of the Transaction Documents executed and acknowledged (as applicable) by the Developer, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

(b) The City shall deposit: (i) originals of each of the Transaction Documents executed and acknowledged (as applicable), (ii) a FIRPTA Certificate, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in

Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

Section 3.5 Close of Escrow. Subject to the satisfaction or waiver of the closing conditions and predisposition conditions to the Close of Escrow set forth in Sections 2.1 and 2.2 and provided that all of the documents and other items set forth in Section 3.4 have been deposited with Escrow Holder, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Transaction Documents, including the effective dates thereof;

(b) Attach to all applicable Transaction Documents final and accurate legal descriptions consistent with the Title Policy;

(c) Deliver copies of fully executed originals of the Transaction Documents to the appropriate parties, including certified copies of the recordable Transaction Documents showing recording information; and

(d) Cause to be recorded or distributed (as set forth below) the following documents:

(1) Record in the Official Records the Grant Deed conveying the Property to the Developer with a deed restriction for a rooftop public open space on the Hotel and a reservation of right of way easement for a public roadway. The terms and conditions of the deed restriction shall be in substantial conformance with those set forth in Exhibit Q.

(2) Record in the Official Records the Memorandum of DDLA;

(3) Record in the Official Records the Offsite Hotel Stormwater Improvement Easement;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Deliver the FIRPTA Certificate, if any, to the Developer;

(6) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date and information endorsed thereon to the extent applicable;

(7) Issue the Title Policy to Developer or irrevocably and unconditionally commit to issue the Title Policy to the Developer within thirty (30) days of Close of Escrow; and

(8) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder completes the recordation of all of the recordable documents listed in this Section 3.5 shall be the "Close of Escrow".

Section 3.6 Additional Escrow Instructions. The Parties shall execute such further or additional escrow instructions as Escrow Holder may require or that any such Party desires. Such further or additional escrow instructions shall not require the imposition of any additional obligations or liabilities on a Party, unless agreed to by the Party, and shall not modify the provisions of this Agreement (unless the Parties otherwise expressly provide for such modification in such further or additional escrow instructions).

Section 3.7 Condition of the Property.

(a) "As Is" Conveyance.

(1) **THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) EXPRESS OR IMPLIED, FROM CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR THEIR OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND**

MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of City. Except with respect to the obligations of the City under this Agreement, the Transaction Documents and the Pre-Construction Documents, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or their suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. The release set forth in Section 3.7(a)(2) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to such causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Developer's Initials: _____

(b) Survival. The provisions of this section shall survive the termination of this Agreement.

Section 3.8 Real Estate Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement other than what is contemplated in the Term Sheet for the Marketing and Sale of Property; Exclusive Authorization to Sell executed by the City, Colliers International, and DTZ, and dated June 22, 2015. The Developer represents that it has not obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

Section 3.9 Joint Solid Waste Facility.

(a) The Developer shall be responsible for the design, construction and ownership of the Joint Solid Waste Facility that will provide garbage, organics and recyclable services for the Hotel, Bankhead Theater, First Street Mixed Use Commercial Projects (East and West), Livermore Valley City Center Plaza, and the Livermore Cinema. Developer shall be responsible for all service, maintenance, operation, repair, replacement and insurance of the Joint Solid Waste Facility. Developer shall be responsible for all coordination efforts with the participating property owners for the development of a solid waste disposal plan for the Joint Solid Waste Facility. The solid waste disposal plan shall be subject to approval by the City's Community Development Director.

(b) Developer is responsible for securing the participation of the users stated above in subparagraph (a) to join the Joint Solid Waste Facility Agreement to satisfy their individual solid waste disposal needs consistent with state, county and local requirements. If after reasonable due diligence, the Developer is unable to secure all users agreement for the Joint Solid Waste Facility, the Developer shall be responsible to ensure that the Joint Solid Waste Facility provides waste disposal for all users stated above in subparagraph (a), including any users that are not parties to the Joint Solid Waste Facility Agreement, and that it is properly serviced, maintained, operated, repaired and replaced, as necessary.

(c) The Joint Solid Waste Facility shall replace the temporary facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West). The Developer shall maintain access to the temporary solid waste facility during the construction of the Project until such time as the Joint Solid Waste Facility is completed and operational. Once

the Joint Solid Waste Facility is operational, the Developer shall remove the temporary solid waste facility and install new landscape and irrigation connected to the City's irrigation system at the location of the former temporary solid waste facility.

Section 3.10 Challenge to this Agreement or the Entitlements.

(a) Stay of Schedule of Performance. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing any entitlements for the Project, the Schedule of Performance set forth in Exhibit N shall be stayed for the duration of litigation, as set forth in Section 11.4 or by mutual agreement of the Parties, or by other provisions in this Agreement.

(b) Election Not to Proceed. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing the Entitlements for the Project, which claim proves successful, or in the event a referendum is initiated with respect to the validity of this Agreement or to the City's action in issuing the Entitlements for the Project, which referendum proves successful, upon sixty (60) days prior written notice the Developer may elect to not proceed with the Project. If Developer elects not to proceed with the Project pursuant to the preceding sentence, promptly following delivery of such written notice Developer will convey the Property to the City and the City will reacquire the Property and acquire the Developer's interest in Project related work product by paying the Purchase Price and Project-related development costs and expenses incurred and reasonably documented by or on behalf of the Developer up to a maximum amount of Three Hundred Thousand Dollars ($300,000). Upon the required payment by the City, the Developer will assign its interest in the plans and specifications for the Improvements and all engineering and architect contracts to the City, without representation or warranty.

Section 3.11 Revival of 2018 Disposition and Development Agreement. The Property is identified and approved for disposition pursuant to the Long Range Property Management Plan approved by the Oversight Board for the former Redevelopment Agency of the City of Livermore, and approved by the California Department of Finance, that approved the disposition of the Property for a hotel. This Agreement is intended to fulfill and complete the agreements executed by the parties prior to September 30, 2019, and to complete disposition of the Property before December 31, 2022. In the event that a court of competent jurisdiction determines that the exceptions in Government Code section 54234(a) do not apply to this Agreement, or determines that a decision by the California Department of Housing and Community Development should be upheld to prevent the transfer of the Property pursuant to this Agreement, the Parties hereby express intent that either of those decisions will work to automatically revive the 2018 Disposition and Development Agreement that this Agreement intended to amend and restate. The Parties expressly state the intent of this Agreement relative to the Property is to amend and restate the 2018 Disposition and Development Agreement so that the transaction can b44e completed.

ARTICLE 4.
DESIGN REQUIREMENTS

Section 4.1 Design in Conformance with Project Documents. In designing and constructing the Project, the Developer shall cause all subsequent design documents prepared by the Developer to be substantially consistent with the Scope of Development attached as Exhibit O and the Project Documents. The Scope of Development and the Project Documents shall establish the baseline design standards from which the Developer shall prepare the Final Construction Drawings.

Section 4.2 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties or by other provisions of this Agreement), Developer shall obtain all permits and approvals necessary to construct the Improvements and Public Improvements. All applications for such permits and approvals shall be consistent with the approved Project Documents. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process. The City shall provide reasonable assistance to the Developer in securing such permits and approvals.

Section 4.3 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Improvements and Public Improvements, including, but not limited to, the design of the Improvements and Public Improvements, the quality and suitability of the Project Documents related to the Improvements and Public Improvements, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City under this Agreement, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements or Public Improvements.

ARTICLE 5.
PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION

Section 5.1 Conditions Precedent to Commencement of Construction. As conditions precedent to the commencement of construction for the Project, the conditions set forth in this Article must first be satisfied. Satisfaction of these conditions depends on the performance by the Developer. Only the City can waive satisfaction of the conditions in this Article.

Section 5.2 City Fees. All applicable City Fees have been paid.

Section 5.3 Execution and Recordation of Pre-Construction Documents. As a condition to commencement of construction of the Project, each Pre-Construction Document shall have been agreed to by all applicable parties, and executed, acknowledged (as applicable) and delivered by all applicable parties, and recorded (as applicable) in the Official Records. The

City and Developer shall, as of the date or dates set forth in the Schedule of Performance, cooperate in good faith to agree upon, execute, acknowledge (as applicable), deliver, and record (as applicable) each Pre-Construction Document. The Parties acknowledge and agree that, except with respect to the Joint Solid Waste Facility Agreement, the material terms of each Pre-Construction Document are set forth in the applicable Exhibits to this Agreement, and that the Parties shall not deviate from such material terms in connection with the completion of the final forms of such Pre-Construction Documents. In the event that, through no fault of Developer, any Pre-Construction Document is not agreed upon, executed, acknowledged (as applicable), delivered, and recorded (as applicable) by date or dates set forth in the Schedule of Performance, all subsequent dates in the Schedule of Performance shall be extended, day-for-day until such Pre-Construction Document is agreed upon, executed, acknowledged (as applicable), delivered, and recorded (as applicable).

(a) Public Improvement Agreement. Prior to the commencement of construction of the Project, Developer and City shall enter into a Public Improvement Agreement for the dedication of streets and public ways on the Hotel Parcel and for the construction of on-site and off-site public improvements in substantial conformance with the Public Improvement Agreement attached as Exhibit M. A fully executed Public Improvement Agreement shall be recorded in the Official Records prior to the commencement of construction of the Project.

(b) Irrevocable Offer of Dedication for Public Roadway. Developer shall grant City an irrevocable offer of dedication of a right of way easement for the public roadway generally shown on Exhibit I. An executed Irrevocable Offer of Dedication for Public Roadway, including the updated Parcel Map, shall be recorded in the Official Records prior to the commencement of construction of the Project.

Section 5.4 Joint Solid Waste Facility Agreement. Prior to commencement of construction of the Project, Developer shall provide City with a fully executed Joint Solid Waste Facility Agreement. The Joint Solid Waste Facility Agreement shall include, but not be limited to, the solid waste disposal plan, performance obligations of the parties to the agreement, and a license or lease agreement from the City allowing access to the Joint Solid Waste Facility.

Section 5.5 Building Permits. Building Permits to enable the Project to be constructed have been issued by the City or are ready to issue.

Section 5.6 Updates to Title Policy. It is anticipated that, prior to commencing construction of the Project, Developer will obtain updates to the Title Policy necessary to reflect Security Financing Instruments and other encumbrances contemplated by this Agreement, placed in connection with the construction of the Improvements and Public Improvements. The City shall cooperate with Developer in connection with such updates to the Title Policy and any such title policies for Encumbrance Holders, including, without limitation, delivering such documents as may be reasonably requested by the Title Company with respect to the same.

Section 5.7 Hotel Standard Approval.

(a) As a condition to commencement of construction of the Project, the Developer shall provide to the City Final Hotel Interior Design Proposal, demonstrating compliance with the Hotel Standard requirements of this Agreement, meaning that the hotel meets or exceeds the standard of "Upscale" or "Upper Upscale" under the STR, Inc. Chain Scales Rating system or similar industry recognized rating system as more particularly described in Exhibit E.

(b) The City shall retain a hotel consultant to provide a written recommendation to the City on Developer's compliance with the Hotel Standard requirements under this Agreement to ensure that the interior design quality of the Hotel shall meet or exceed the quality of the Hotel Brands identified in Exhibit E. The Developer shall be solely responsible for any and all costs associated with the hotel consultant, including but not limited to, retention of the consultant, any coordination with the City and the Developer, and any written documentation provided by the hotel consultant.

ARTICLE 6.
CONSTRUCTION OF THE IMPROVEMENTS AND PUBLIC IMPROVEMENTS

Section 6.1 Commencement of Construction. The Developer shall commence construction of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on the date physical work on the Property starts pursuant to a valid Building Permit from the City.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of the Improvements, and shall complete construction of the Improvements within the time set forth in the Schedule of Performance. The Developer shall be solely responsible for the construction of the Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.3 Construction of Public Improvements. The Developer shall diligently prosecute to completion the construction of the Public Improvements, as more particularly described in Exhibit L and shall complete construction of the Public Improvements within the time set forth in the Schedule of Performance. Developer shall be solely responsible for the construction of the Public Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.4 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements and Public Improvements in accordance with the Scope of Development, the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for the City approval any proposed change in the Final Construction Drawings which materially changes the size,

location, or elevations of the Improvements or the Public Improvements, including the landscape and/or hardscape, or signage of the Improvements or the Public Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements or Public Improvements, or which would require an amendment to any Entitlements prior to making such change. The City shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City for any changes which are eligible for staff level approval. Any changes requiring Planning Commission or City Council review and approval will be subject to the City's standard public hearing process. If the City rejects the proposed material change and upon the Developer's request, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.5 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements, or the Public Improvements, by the Developer. This indemnity obligation shall survive the issuance of a Certificate of Occupancy by the City and the termination of this Agreement.

Section 6.6 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements and Public Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in the work of constructing the Improvements and Public Improvements.

Section 6.7 Progress Reports. Until a Certificate of Occupancy has been issued by the City, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

While the Public Improvements are being constructed, the Developer shall hold regular coordination meetings with the City.

Section 6.8 Entry by City. Until a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice, through its officers, agents, or employees, to enter the Property during normal business hours to inspect the work of construction to determine that such work is in substantial conformity with the Scope of Development and the approved Final Construction Drawings or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section 6.8 are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 6.9 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 6.9, the term "Developer" shall include Developer's contractors), for itself, its successors and assigns, and transferees agrees that in the construction of the Project provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, actual and perceived, medical condition, age, marital status, sex, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS), actual or perceived, or retaliation for having filed a discrimination complaint ("Nondiscrimination Factors"). The Developer will take affirmative steps to ensure that applicants are employed by the Developer or its applicable contractor or Hotel operator, and that its employees are treated without regard to the Nondiscrimination Factors during employment including, but not limited to, activities of: upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer or its applicable contractor or Hotel operator shall post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) The Developer will ensure that its or its applicable contractor's or Hotel operator's solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors.

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ARTICLE 7.
OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 7.1 Hotel Use. The Developer covenants to use the Hotel Parcel only for the operation of a hotel and related amenities meeting the Hotel Standard for a term of not less than thirty (30) years following the date of the issuance of the Certificate of Occupancy without the prior written approval of the City, which shall not be unreasonably withheld or delayed.

Section 7.2 Community Facility Maintenance District for Downtown Core Improvements. The Developer agrees to participate in a maintenance district or districts created to fund the maintenance of Stockmen's Park and other designated downtown public facilities. The Community Facility Maintenance District for Downtown Core Improvements shall be placed onto the Hotel Parcel no earlier than one (1) year following commencement of business operations of the Hotel, and shall be placed on the annual tax bill of the Hotel Parcel in the initial amount of $30,000 increasing annually at the percent year-over-year change in the Consumer Price Index for All Urban Consumers – San Francisco Area plus one percent (1%).

Section 7.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements and the Public Improvements, the Improvements and the Public Improvements shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Hotel is completed, the Improvements and the Public Improvements shall be maintained in accordance with industry standards as to both external and internal appearance of the buildings, and common areas. The Developer shall maintain or cause to be maintained the Hotel and Onsite and Offsite Hotel Stormwater Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways and landscaping, reasonable wear and tear excepted, and from time to time make all necessary and proper repairs, renewals, and replacements. The Developer shall not be responsible for the maintenance or replacement of the Public Improvements after permanent acceptance of the Public Improvements by the City, except as required under the conditions of approval associated with the Entitlements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 7.4 Developer to Indemnify City.

(a) The Developer shall indemnify, defend (with counsel approved by the City) and hold harmless the City and its officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines,

orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) approval of this Agreement and/or the Improvements or the Public Improvements prior to the City's acceptance for permanent maintenance; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the development, operation, maintenance or management of the Improvements or Public Improvements prior to the City's acceptance for permanent maintenance, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City.

(b) The Developer shall pay immediately upon the Indemnitees' demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees or, at the Indemnitees' choosing, to pay the Indemnitees' costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements. The Indemnitees shall have reasonable approval rights regarding decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement. Notwithstanding the foregoing, Developer's indemnification obligations set forth in this Section 7.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees, or any Claims arising from the activities of any Indemnitee on the Property, or any Claims arising from the breach by the City of any of its obligations under this Agreement, the Transaction Documents or the Pre-Construction Documents.

Section 7.5 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Property, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Property and Improvements or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property in violation of any applicable law;

(2) The Developer shall keep and maintain the Property and Improvements and each portion thereof in compliance with, and shall not cause or permit the Property and Improvements or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Property and Improvements pursuant to any applicable Hazardous Materials

Laws; (B) any and all claims made or threatened by any third party against the Developer or the Property and Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property and Improvements or Public Improvements or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property Improvements and Public Improvements under any Hazardous Materials Laws.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.4, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its board members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Property and Improvements at any time following the Close of Escrow or the Public Improvements prior to the City's acceptance for permanent maintenance; (2) the presence in, on or under the Property, Improvements, and Public Improvements prior to the City's acceptance for permanent maintenance, of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property; or (3) any activity carried on or undertaken on or off the Property and Improvements, subsequent to the Close of Escrow, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, Developer's indemnity under this Section 7.5(b) shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the City, its board members, officers, employees, or contractors.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 7.5(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Project and/or the presence within the Project of

any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 7.6 No Liability for Breaches of Security. The foregoing and anything to the contrary contained in this Agreement notwithstanding, the City and Developer shall have no liability to the other Party, or any obligation to indemnify the other Party for any third party claims, for any injury to person or property caused by the acts of third persons in connection with any alleged breach of or failure to provide reasonable security, including criminal acts or other losses, nor shall this Agreement establish any duty owed in tort to, or standard of care in tort as to, either Party or any third party.

Section 7.7 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Hotel Parcel or any part thereof, that there shall be no discrimination against or segregation of any person or persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Hotel Parcel shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Section 7.8 CFMD Assessment. Nothing in this Agreement is intended to prevent the Developer from passing-through all or a portion of any CFMD assessment applicable to the Property to guests or other patrons of the Hotel.

Section 7.9 Hotel Parking Requirements. The Developer's parking requirement will be satisfied through any combination of on-site parking and off-site valet parking at the parking parcel or other offsite parcels, consistent with the City's parking requirements and as approved through the City's entitlement process. If requested by Developer, the City will provide up to 30 parking spaces for use by the Hotel's valet parking service in other city parking facilities, provided the valet service is available for use by the general public and is not limited to hotel guests. The City may require Developer to include additional parking spaces in their valet service to meet the demands of the general public. If the Developer meets the City's parking requirements for the Hotel in accordance with the Downtown Specific Plan, through on-site parking, parking on the Parking Parcel, or off-site parking at other off-site parcels, Developer may propose an alternative use or development for the Parking Parcel. Any alternative use shall only be considered if the Parking Parcel is not needed to satisfy the parking requirements set

forth in Sections 12.6 and12.8 of this Agreement. Any alternative use or development of the Parking Parcel shall be subject to all City laws, regulations, plans or policies, including but not limited to, the Downtown Specific Plan and the City's entitlement process as they exist at the time a completed application for the alternative use or development is filed with the City.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article 8, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Property, or any part thereof or any interest therein or of the Project constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than a fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements and Public Improvements on the Property and its subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 8 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 8.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers. Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 8.5),

so long as such Transfer is permitted under, and accomplished in accordance with this Agreement:

(a) Any Transfer creating a Security Financing Interest (defined in Section 9.1).

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer resulting directly from the death or mental incapacity of an individual.

(d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Project.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer.

(g) Any Transfer contemplated by or permitted pursuant to any other provision of this Agreement,

(h) The lease of any space within the Hotel to a third-party operator of food or beverage services or of a gift or sundry shop.

(i) Any Transfer resulting in up to ninety percent (90%) in the aggregate of the direct or indirect ownership or beneficial interests in Developer, provided that, following such Transfer, PresidioCo Holdings LLC, a Delaware limited liability company (or any Affiliate of such entity, "Presidio") (which is the sole member of Developer as of the Effective Date of this Agreement) remains in Control of Developer.

(j) A Transfer otherwise approved by the City. Developer acknowledges that the City has selected Developer to develop the Hotel Parcel based on: (1) Developer's experience, skill and reputation in the hotel industry, at all times in keeping with applicable law, regulations and best practices; and (2) Developer's financial resources on a local and/or corporate level to maintain the Hotel Standard and to support its indemnity provisions under this Agreement. Any transfer under this subsection (j) shall also comply with the following:

(1) Developer shall not enter into negotiations to assign it rights or delegate, subcontract or otherwise transfer any of Developer's obligations under this Agreement to any other person or entity for a period of three (3) years from the Effective Date of this Agreement without the consent of the City. Developer shall not assign its rights, nor delegate, subcontract or otherwise transfer any of Developer's obligations under this Agreement to any other person or entity without the prior consent of the City Council.

(2) Developer shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed transfer, and to review and finalize any documentation required as a condition for approving such transfer. An advance payment of one hundred thousand dollars ($100,000) towards expenses shall be paid to City prior to City consideration of any transfer request and Developer shall be responsible for paying all costs incurred by City in considering a request for transfer, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the transfer.

(3) Developer shall furnish City with audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.

(4) Developer shall furnish City with proof satisfactory to City: (i) that the proposed transferee has at least ten (10) years of hotel management experience on a scale equal to or exceeding the scale of operations conducted by Developer; (ii) that in the last five (5) years, the proposed transferee has not suffered any significant citations or other violations or censure from any federal, state or local agency having jurisdiction over hotel operations due to any significant failure to comply with state, federal or local applicable law and that the transferee has provided the City with a complete list of all citations, violations or censures; (iii) that the proposed transferee has conducted all hotel operations in accordance with sound management practices in full compliance with all federal, state, and local laws and (iv) that the proposed transferee's financial resources are sufficient to ensure its ability to meet all of Developer's obligations under this Agreement in a timely and effective manner.

(5) Developer shall provide the City with any and all additional information, records, and/or documentation which, in the City Manager's sole determination, would facilitate the review of the proposed transfer.

Under no circumstances shall City be obliged to consider any proposed transfer if Developer is in default at any time during the period of consideration. If, in the City Manager's sole discretion, there is any doubt regarding the compliance of the Developer with the Agreement, City may require an audit of the Developer's compliance and the costs of such audit shall be paid by the Developer, in advance of the performance of said audit.

The City may, in its sole discretion, waive one (1) or more of the above requirements. Should the City consent to any transfer request, such transfer shall not take effect until all conditions relating to the City's approval have been met.

As a condition of the City approval of a Transfer described in Section 8.4(f) and 8.4(g) above, the transferee must concurrently assume the obligations of the Developer under this Agreement. As a condition of the City's approval of a Transfer described in Section 8.4(f) above, the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is an Affiliate of the Developer. As a condition of the City's approval of a Transfer described in Section 8.4(i) above, the City must review and approve Developer's organizational documents for the purposes of determining that Presidio remains in Control.

Section 8.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 8.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Subject to the provisions of Section 11.6 of this Agreement, failure by the City to approve or disapprove the proposed Transfer within sixty (60) days after receipt of the Developer's written request shall be deemed to be approval of the proposed Transfer by the City.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not the City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Property and Improvements, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee; however, in the event of such an assumption of the indemnification obligation, Developer shall be released from all liability under such indemnity obligations.

ARTICLE 9.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 Encumbrances. Mortgages, deeds of trust, assignment of rents and security agreements, and other real and personal property security instruments to secure the funds necessary for acquisition of the Property, the construction and permanent financing of the Property, Improvements, and Public Improvements, and any other expenditures incurred in connection with the design, construction and operation of the Property, Improvements, and Public Improvements are permitted to be placed upon the Property or any personal property thereon or therein or the limited liability company interests in Developer. Such permitted security instruments and related interests shall be referred to as "Security Financing Interests". The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's fee simple interest in the Property or the limited liability company interests in Developer. The foregoing notwithstanding, until the Developer is entitled to issuance of a Certificate of Occupancy, the Developer may place Security Financing

Interests only for the purpose of securing acquisition of the fee interest and for development, construction and permanent financing. As used herein: (a) "Encumbrance Holder" shall mean the holder of record of any Security Financing Interest; (b) "Foreclosure Transfer" shall mean any transfer of all or a portion of the Property or of any associated personal property or limited liability company interests in Developer pursuant to any judicial or non-judicial foreclosure or other enforcement of remedies under or with respect to a Security Financing Interest, or by voluntary deed or assignment or other transfer in lieu thereof; and "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title in the Property or interest therein or of any associated personal property or of the limited liability company interests in Developer pursuant to a Foreclosure Transfer.

Section 9.2 Holder Not Obligated to Construct. No Encumbrance Holder or Foreclosure Transferee is obligated to construct or complete any Improvements or Public Improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such Encumbrance Holder or Foreclosure Transferee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. A Developer Event of Default or other breach will not defeat or render invalid any Security Financing Interest. No Encumbrance Holder or Foreclosure Transferee of any Security Financing Interest shall be personally liable for the performance or observance of any covenants or conditions to be performed by the Developer under this Agreement, any Transaction Document or any Pre-Construction Document unless and until such Encumbrance Holder or Foreclosure Transferee acquires the Developer's interest in the Property and at the election of Encumbrance Holder or Foreclosure Transferee enters into a new agreement with the City. The City agrees that such Encumbrance Holder or Foreclosure Transferee may sell, assign, or otherwise dispose of any interest to which it has so succeeded or which it has so acquired. Upon such sale, assignment or disposition, such Encumbrance Holder or Foreclosure Transferee shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement, any Transaction Document or any Pre-Construction Document from and after the date of such sale, assignment or disposition.

Section 9.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 10 delivers any notice to the Developer of the occurrence of a Developer Event of Default or any other matter which may give rise to a right of termination or other claim (a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) a Cure Notice describing the is provided to each and every then-existing Encumbrance Holder that has notified the City in writing of (i) its interest in receiving such a notice, and (ii) its address for the receipt of such notice; and (b) such Developer Event of Default remains uncured after the expiration of the applicable cure period set forth in Section 9.4. The Cure Notice shall be sent simultaneously with any similar notice or notices of a Developer Event of Default that the City may be required to provide to Developer pursuant to Article 10. An Encumbrance Holder shall have the right and the power to cure any Developer Event of Default specified in a Cure Notice within the cure periods set forth in Section 9.4 below, and, if such Developer Event of Default is so cured, this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to permit or authorize any Encumbrance Holder or Foreclosure Transferee to undertake or continue the

construction or completion of the Improvements or Public Improvements or any other work (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City under this Agreement. The Encumbrance Holder in that event must agree to complete, in the manner provided in this Agreement, the construction of the Improvements and the Public Improvements. Any such Encumbrance Holder properly completing construction of the Improvements and the Public Improvements pursuant to this Section 9.3 shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

Section 9.4 Cure of Developer Defaults. Developer Events of Default may be cured by any Encumbrance Holder in the following manner within the following time frames:

(a) For all Developer Events of Default, an Encumbrance Holder shall have (a) sixty (60) days after the later of (i) its receipt of the earliest Cure Notice issued by the City to such Encumbrance Holder setting forth such Developer Event of Default, or (ii) expiration of the applicable Cure Period set forth in Section 10.3(b) to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such sixty (60)-day period; or (b) if an Encumbrance Holder has promptly commenced to cure such Developer Event of Default within such applicable period and has been diligently prosecuting the same, but such Developer Event of Default cannot reasonably be cured by such Encumbrance Holder within such applicable period, then such Encumbrance Holder shall be provided with such additional time as is necessary to complete the cure, provided such Encumbrance Holder continues to diligently pursue such cure to completion.

(b) If a Developer Event of Default cannot practicably be cured by an Encumbrance Holder without the need for such Encumbrance Holder to obtain possession of the Property or any portion thereof or to obtain control of the Developer, or if a Developer Event of Default cannot be cured by an Encumbrance Holder (for example, the insolvency of Developer), then, in each case, if at least one Encumbrance Holder has delivered to the City within sixty (60) days after its receipt of a Cure Notice a written undertaking wherein such Encumbrance Holder agrees (1) that it will commence foreclosure proceedings forthwith, and (2) will cure or obtain an agreement from the Foreclosure Transferee that such Foreclosure Transferee will cure such Developer Event of Default (to the extent that it can be cured) upon completion of the foreclosure and the resultant Foreclosure Transfer, and if thereafter any such Encumbrance Holder actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, then the cure period shall not commence until completion of such foreclosure proceedings and the resultant Foreclosure Transfer; provided, that if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, then the cure period shall not commence until such stay, order, judgment or decree is released or reversed, and such foreclosure proceedings and the resultant Foreclosure Transfer are thereafter actually commenced and prosecuted thereafter with due diligence to completion. Upon completion of any such Foreclosure Transfer, the Foreclosure Transferee (whether such Foreclosure Transferee is the Encumbrance Holder or another party) shall have until the

expiration of the applicable cure periods set forth in this Section 9.4 to cure the Developer Event of Default giving rise to such Foreclosure Transfer, to the extent curable by such Foreclosure Transferee (unless such Developer Event of Default has already been cured), and any other Developer Events of Default that may then exist and be curable by such Foreclosure Transferee. The Encumbrance Holder shall have the right to terminate its foreclosure proceedings hereunder in the event of a cure of a Developer Event of Default giving rise to such foreclosure proceedings. If an Encumbrance Holder or a Foreclosure Transferee obtains possession through foreclosure proceedings and assumes obligations to construct Improvements, the Schedule of Performance will be extended as needed to account for the time expended by such Encumbrance Holder or Foreclosure Transferee to commence and then complete such foreclosure proceedings. Upon the curing of any Developer Event of Default by an Encumbrance Holder or Foreclosure Transferee within the time provided in this Section 9.4, the City's right to pursue any remedies for the cured Developer Event of Default shall terminate.

Section 9.5 Failure of Holder to Complete Improvements or Public Improvements. Subject to Section 10.3(b), in any case where after a default by the Developer in completion of construction of the Improvements or Public Improvements, under this Agreement, the Encumbrance Holder or Foreclosure Transferee, having first exercised its option to construct and also obtained possession of the Property or control of Developer, has not proceeded diligently with construction within six (6) months after obtaining possession of the Property, the City shall be afforded those rights against such Encumbrance Holder or Foreclosure Transferee it would otherwise have against the Developer under this Agreement.

Section 9.6 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of construction of the Improvements or Public Improvements, and if the Encumbrance Holder or Foreclosure Transferee has not exercised its option to complete the construction of the Improvements or the Public Improvements, the City may cure such default, provided that Developer is given ten (10) days prior notice of the City's intention to cure such default and does not thereafter immediately commence and continue with due diligence to complete to cure such default, and provided that City's right to cure shall be coterminous with the Developer's cure rights under the Security Financing Interest. In such event the City shall be entitled to reimbursement from the Developer of all reasonable costs and expenses incurred by the City in curing the default.

Section 9.7 Right of City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, which is not permitted under this Agreement, and has failed to do so, in whole or in part, the City shall, upon at least ten (10) days' prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall use good faith efforts to insert each applicable term contained in this Article 9

related to Security Financing Interest or the rights of Encumbrance Holders into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Encumbrance Holder prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.9 Modifications. If an Encumbrance Holder should, as a condition of providing financing or funding for development of all or a portion of the Improvements, Public Improvements, or other portions of the Project, request any modification of this Agreement, the Transaction Documents or any Pre-Construction Agreement in order to protect its interests in the Project, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement. In addition, the City agrees to cooperate reasonably with each Encumbrance Holder or prospective Encumbrance Holder in confirming or verifying the rights and obligations of each Encumbrance Holder under this Agreement, the Transaction Documents or the Pre-Construction Documents.

Section 9.10 Estoppel Certificates. Either Party, at any time and from time to time following Close of Escrow, within fifteen (15) days of receipt of a written request from the other Party, shall execute and deliver to such Party a written statement that, to the knowledge of the certifying Party (i) this Agreement, the Transactions Documents and the Pre-Construction Documents are in full force and effect and binding obligation of the Parties, (ii) this Agreement, Transaction Documents and the Pre-construction Documents have not been amended or modified, or if so amended or modified, identifying the amendments or modifications, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

Section 9.11 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any other provision of this Agreement to the contrary, that, at all times while a Security Financing Interests remains in effect, all policies of insurance required to be maintained by Developer under this Agreement or otherwise in effect for the Project contain a standard mortgagee protection endorsement, and the Encumbrance Holder shall be entitled to hold the originals of all such policies. The Encumbrance Holder shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Encumbrance Holder. In addition, at all times while a Security Financing Interests remains in effect, the Encumbrance Holder shall be entitled to participate in any settlement of or any stipulation of judgment with respect to any condemnation proceeds affected all or any portion of the Property or any agreement to sell all or any portion of the Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the specific consent in writing of such Encumbrance Holder.

Section 9.12 Multiple Encumbrance Holders. If at any time there is more than one Security Financing Interest constituting a lien on the Project or any interest therein, the lien of the Encumbrance Holder prior in time to all others shall be vested with the rights under this Article 9 to the exclusion of the holder of any other Security Financing Interest; provided, however, that if the holder of a senior Security Financing Interest fails to exercise the rights set forth in this Article 9, each holder of a junior Security Financing Interest shall succeed to the

rights set forth in this Article 9 only if the holders of all Security Financing Interests senior to it have failed to exercise the rights set forth in this Article 9.

ARTICLE 10.
DEFAULT AND REMEDIES

Section 10.1 Application of Remedies. The provisions of this Article 10 shall govern the Parties' remedies for breach of this Agreement.

Section 10.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in Section 10.2(b) below, each of the following events constitutes a "City Event of Default" and a basis for the Developer to take action against the City:

(1) The City fails to convey the Property as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages), including, without limitation, an action for specific performance.

Section 10.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in Section 10.3(b) below, each of the following events individually constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer does not attempt diligently and in good faith to cause satisfaction of the conditions in Article 2 benefiting the Developer within the reasonable control of the Developer by the time set forth in the Schedule of Performance.

(2) The Developer fails to construct the Improvements and Public Improvements, in accordance with Article 6 within the time set forth in the Schedule of

Performance, as set forth in Exhibit N, as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties.

(3) The Developer has breached its obligations under Section 7.1.

(4) Prior to the issuance of a Certificate of Occupancy for the Hotel, the Developer attempts or completes a Transfer except as permitted under Article 8.

(5) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency as evidenced by an entered decree by a court of competent jurisdiction; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) Following the Close of Escrow and prior to the issuance of a Certificate of Occupancy for the Hotel, the Developer defaults under any Security Financing Interest, has not cured such default within the applicable cure period contained in such agreement evidencing such Security Financing Interest and the applicable Encumbrance Holder has elected in writing to accelerate the debt secured by such Security Financing Interest.

(7) The Developer breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (excluding specific performance, punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 10.4 Right of Reverter. Following the Close of Escrow, if the Developer fails to commence the construction of the Improvements or Public Improvements by the Outside Date (as the Outside Date may be extended pursuant to Section 11.4 or other provisions of this Agreement), then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Property with all improvements on the Property, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Property subject

to the provisions set forth below. The City's rights under this Section 10.4 shall terminate and be of no further force and effect once the Developer commences construction of the Improvements.

The interest created pursuant to this Section 10.4 shall be a "Power of Termination" as defined in California Civil Code Section 885.010. The City's Power of Termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any Security Financing Instrument with respect to the Property; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

(c) Any leases affecting the Property as of the date of such termination.

Upon revesting in the City of title to the Property as provided in this Section 10.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law, to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing such improvements as are acceptable to the City in accordance with the uses specified for the Property and in a manner satisfactory to the City. Upon such resale of the Property the proceeds thereof shall be applied as follows:

(1) First to reimburse the City on its own behalf for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Property (but less any income derived by the City from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Property was not so exempt); any payments made or necessarily to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred with respect to the making or completion of the Property or any part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Purchase Price for the Property, plus the fair market value of the improvements the Developer has placed on the Property, less any funds paid by the City to remove any encumbrances or liens and gains or income withdrawn or made by the Developer from the Property, or the Improvements or Public Improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (2) shall not exceed the fair market value of the Property together with the Improvements and Public Improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the right of reverter.

(3) Third, any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 10.4 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 10.5 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 10.6 Survival. Upon termination of this Agreement under this Article 10, the following provisions of this Agreement shall survive: Section 2.3, Section 3.7, Section 3.8, Section 3.9, Section 6.5, Section 7.4, Section 7.5, Section 8.5, and Article 12. This Section 10.6 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 11.
GENERAL PROVISIONS

Section 11.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the Effective Date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to all applicable bankruptcy laws and laws affecting the rights of creditors generally.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. To the Developer's actual knowledge, there is no pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Property that would, if adversely determined, materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the Effective Date.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by Developer under any agreement materially related to the development or operation of the Property, Improvements, or Public Improvements, including but not limited any other partnership agreement, joint venture agreement, or loan agreement.

Until the Close of Escrow, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 11.1 not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 11.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City: City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attn: City Manager

Developer 2205 Railroad Avenue LLC
262 Glorietta Blvd.
Orinda, CA 94563
Attn: Rikesh Patel

With a copy to: Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850
Sacramento, CA 95814
Attn: Vincent Wong , Esq.

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 11.3 Non-Liability of Officials, Employees and Agents. No member, partner, beneficial interest holder, official, employee, officer, consultant, counsel, or agent of a Party

shall be personally liable to the other Party, or any successor in interest to the other Party, in the event of any default or breach or for any amount or on any obligation under the terms of this Agreement.

Section 11.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement or the Schedule of Performance shall be extended, where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics or pandemics, including the Covid-19 pandemic; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); litigation; unusually severe weather; inability to secure necessary labor, materials or tools; or acts or the failure to act of the City or any other public or governmental agency or entity including breaches by the City under this Agreement, any Transaction Document or Pre-Construction Agreement; or any other cause beyond the affected Party's reasonable control (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project) ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 11.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay.

Section 11.5 Delegation of Authority. Upon approval of this Agreement by the City Council, the City Manager is authorized to execute any and all Pre-Construction Documents and Transaction Documents on behalf of the City, including but not limited to the updated Parcel Map.

Section 11.6 Submittals and Approvals. Various submittals are required by the Developer pursuant to this Agreement. As expressly provided by this Agreement, the City shall approve or disapprove certain submittals from Developer within specified timeframes or else such submittal shall be deemed approved by the City. Notwithstanding the provisions for deemed approval, no submittal or matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION __ OF THE DDLA THAT FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN __ DAYS SHALL BE DEEMED AN APPROVAL.

Section 11.7 Inspection of Books and Records. The City has the right at all reasonable times and upon five (5) business days prior written notice to inspect the books, records and all

other documentation of the Developer pertaining to its obligations under this Agreement. Such books, records and documentation are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations, and other proprietary non-public information.

Section 11.8 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision. References to "Articles" and "Sections" are to sections of this Agreement, unless otherwise specifically provided.

Section 11.9 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.10 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 11.12 Binding Upon Successors; Covenants to Run with Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in under the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Property, or the applicable portion of the Property, from the requirements of this Agreement.

Section 11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.14 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 11.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 11.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 11.17 Recordation of Memorandum of DDLA. The Parties consents to the recordation of the Memorandum of DDLA in the Official Records against the Developer's interest in the Property.

Section 11.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 11.19 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 11.20 Interpretation. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto.

Section 11.21 No Gift or Dedication. Except as otherwise specified in the Parcel Map or deed restriction requiring a rooftop public open space on the Hotel, this Agreement shall not be deemed to be a gift or dedication of any portion of the Property to the general public, for the general public, or for any public use or purpose whatsoever. Except as otherwise specified above, Developer shall have the right to prevent or prohibit the use of or access to any portion of the Hotel by any member of the general public.

ARTICLE 12.
SITE ACQUISITION LOAN

Section 12.1 Loan amount. The City shall make a loan to the Developer in the principal amount of $1,923,750 ("Site Acquisition Loan"). The Site Acquisition Loan shall be evidenced by the Promissory Note and a Deed of Trust, in the forms attached as Exhibit K and Exhibit C.

Section 12.2 Use of Loan Funds. The Developer is assuming the Site Acquisition Loan to fund the acquisition of the Parking Parcel to help satisfy a portion of the parking requirements in the conditions of approval for the Hotel. All loan funds transferred or provided for the Site Acquisition Loan shall be used exclusively for Developer to acquire the Parking Parcel. The

Developer understands that any other use of the Site Acquisition Loan funds shall be deemed an Event of Default under Section 12.13 of this Agreement and subjects the Developer to all legal remedies.

Section 12.3 Loan term. The term of the loan shall start on the date of loan dispersal and terminate no later than December 31, 2025.

Section 12.4 Interest. The Site Acquisition Loan shall bear annual simple interest at rate of 3.5%, except that the Default Interest rate shall be the amount set forth in Section 12.5 shall apply in a Loan Event of Default defined in Section 12.13.

Section 12.5 Default Interest Rate. In the event of a Loan Event of Default as set forth in Section 12.13, the principal balance of the Site Acquisition Loan will bear interest at the default interest rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law as set forth in the Promissory Note (the "Default Interest Rate").

Section 12.6 Loan conditions to Disbursement. Developer agrees to lease the Parking Parcel to the City at no cost for use as a temporary overflow public parking lot for a period of up to three years from the execution of the Lease and Operating Agreement for the Parking Parcel, or until construction of the Hotel is at least 40 percent complete, whichever is earlier. However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024. The City may relinquish its use of the Parking Parcel prior to this time if it is no longer needed for temporary overflow parking. Once the City's right to use the property has lapsed, Developer may at any time submit a written notice to the City that the lease will be terminated within 30 days to allow Developer to begin construction of permanent parking improvements.

Section 12.7 Security. The Developer shall secure its obligation to repay the Site Acquisition Loan, as evidenced by the Promissory Note, by executing the Deed of Trust and recording it as a lien against the Parking Parcel.

Section 12.8 Use of the Parking Parcel. The Developer agrees to use the Parking Parcel to satisfy a portion of the parking requirements identified in the conditions of approval for the Hotel.

Section 12.9 Requirements. The Deed of Trust shall be recorded against the Parking Parcel in the Official Records of Alameda County once this Agreement is executed and when all of the condition precedents are satisfied:

(a) There exists no act, failure, omission or condition that would constitute an event of default under this Agreement;

(b) Requested information has been furnished by the Developer to the City prior to the date of this Agreement;

(c) The Developer has executed and delivered to the City all other documents, instruments, and policies required under the Agreement;

(d) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing a 2017 ALTA Lender's Policy of insurance ensuring the priority of the Deed of Trust in the amount of the Site Acquisition Loan on the Parking Parcel subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require; and

(e) The undisbursed proceeds of the Site Acquisition Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the acquisition of the Parking Parcel, are not less than the amount that City determines is necessary to acquire the Parking Parcel.

Section 12.10 Disbursement. As instructed by the Developer, the City shall disburse the principal amount of the Site Acquisition Loan to help facilitate the Developer's acquisition of the Parking Parcel.

Section 12.11 Loan repayment. The Site Acquisition Loan shall be repaid as follows:

(a) Payments. Payments shall be in lawful money of the United States of America and delivered to the City at 1052 South Livermore Avenue, Livermore, California 94550, Attn: Community Development Director, or such other address and/or designee as the City may provide in writing. Any payments made by the Developer pursuant to this Section shall be applied first to pay current interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Site Acquisition Loan.

(b) Payment Schedule. Developer shall make a lump sum payment of all principal and interest accrued within three months of the completion of Hotel construction, as determined by issuance of the certificate of occupancy, or by December 31, 2025, whichever is sooner.

(c) Prepayment. No prepayment penalty shall be charged to the Developer for payment of all or any portion of the Site Acquisition Loan amount prior to the end of the Term.

(d) Payment in Full. The Developer shall pay the entire outstanding principal balance of the Site Acquisition Loan, together with interest accrued thereon and all other sums accrued, no later than the Maturity Date defined in the Promissory Note. The City shall have the right to accelerate the Maturity Date and declare all sums payable under the Promissory Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of a Loan Event of Default defined in Section 12.13. All principal and accrued interest on the Site Acquisition Loan is due in full on the earlier to occur of (i) the date of any Transfer, as defined in Section 8.1, not authorized by City, (ii) the date of any default, or (iii) the expiration of the loan term.

Section 12.12 Maintenance and Damage; Hazardous Materials. During the term of the Site Acquisition Loan, and prior to its full repayment, the Developer shall maintain the Parking Parcel in good repair and in a neat, clean, and orderly condition. If there arises a condition in contravention of this requirement that has not been cured after notice from the City, then in addition to any other rights available to the City, the City shall have the right to perform all acts

necessary to cure such condition at the Developer's expense, and to establish or enforce a lien or other encumbrance against the Parking Parcel. The Developer's covenants and agreements for hazardous materials for the Property in Section 7.5 of this Agreement shall also apply to the Parking Parcel, and the Developer hereby makes those same covenants and agreements for the Parking Parcel.

Section 12.13 Event of Default – Site Acquisition Loan. In addition to the defaults and remedies in Article 10 of this Agreement for an event of default, the following events shall constitute an event of default under the Site Acquisition Loan or any Loan Documents (a "Loan Event of Default"):

(a) The Developer fails to pay when due the principal and interest payable under the Promissory Note, and such failure continues for ten (10) days after the City notifies the Developer thereof in writing;

(b) A transfer occurs in violation of Article 8;

(c) RESERVED;

(d) The Developer fails to pay prior to delinquency taxes or assessments due on the Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Developer fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially averse to the City;

(g) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), the Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(h) A court of competent jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent, (ii) approving as properly filed a

petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(i) The Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (g) or (h) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(j) The Developer shall have voluntarily suspended its business or the Developer shall have been dissolved or terminated;

(k) An event of default arises under any Loan Document and remains uncured beyond any applicable cure period.

(1) The Developer fails to make any payment required for the Site Acquisition Loan within ten (10) days after the date when due as set forth in section 12.11.

(2) Any representation or warranty made by the Developer in any document for the Site Acquisition Loan proves to have been incorrect in any material respect when made.

(3) Without the City's prior written consent, the Developer transfers, or authorizes the transfer of, funds in any account required or authorized by this Agreement.

(4) Either the Deed of Trust for the Site Acquisition Loan ceases to constitute a valid and indefeasible perfected lien on the Parking Parcel, or the Agreement ceases to constitute a valid and indefeasible perfected lien on the Property, subject only to permitted exceptions to title for the Parking Parcel and Permitted Exceptions for the Property.

Section 12.14 Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the remedies set forth in Sections 12.15 and 12.16.

Section 12.15 Specific Remedies for Site Acquisition Loan Event of Default. During the pendency of an uncured Event of Default for a Loan Document, the City may exercise any right or remedy available under this Agreement or any other Loan Document or at law or in equity, including taking possession of the Parking Parcel. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Promissory Note, together with default interest as provided in the Promissory Note and any other charges due under the Promissory Note and the other Loan Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Developer expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements or to release the Parking Parcel from the Deed of Trust, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Parking Parcel from the Deed of Trust upon terms and conditions satisfactory to the City in its sole discretion.

(c) The City may perform any of Developer's obligations in any manner, in the City's reasonable discretion.

(d) The City, either directly or through an agent or court-appointed receiver, may take possession of the Parking Parcel and enter into contracts and take any other action the City deems appropriate.

(e) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Developer's noncompliance with this Agreement for the Site Acquisition Loan for the Parking Parcel.

(f) Upon the occurrence of an Event of Default, the unpaid principal balance of the Promissory Note, together with default interest as provided in the Promissory Note and any other charges due under the Promissory Note and the other Loan Documents will become due and payable automatically.

(g) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Parking Parcel will be deemed to constitute a portion of the principal balance of the Promissory Note, even if it causes the principal balance to exceed the face amount of the Promissory Note, unless Developer reimburses the City within ten (10) days of the City's demand for reimbursement.

Section 12.16 City Right's Upon Default. If, in the City's sole discretion, the Developer fails to observe or perform any condition contained in Article 12, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default under the Site Acquisition Loan and the City shall be entitled, and in addition to all other

remedies provided by law or in equity, to compel specific performance by the Developer of its obligations under the Site Acquisition Loan, including taking possession of the Parking Parcel. Any investor limited partner of the Developer or Developer's assignee shall have the same notice and cure rights granted to the Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

Section 12.17 Non-Recourse. Except as provided in this subsection, neither the Developer, nor any director or indirect member or interest holder of or in the Developer, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Site Acquisition Loan. Following recordation of the Deed of Trust, the sole recourse of the City with respect to the principal of, and interest on, the Promissory Note and defaults by the Developer for the use of the Parking Parcel shall be to the Parking Parcel described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the City against Developer thereunder, or (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Promissory Note as demand for money against Developer within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note and the performance of the Developer's obligations under the Deed of Trust for the Parking Parcel, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its obligation to indemnify the City under any article or section of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Parking Parcel that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Parking Parcel.

Section 12.18 Affiliate Assignment and Assumption. The Developer's rights and obligations in this Agreement related to the Site Acquisition Loan, the acquisition of the Parking Parcel, and for the Lease and Operating Agreement for the Parking Parcel may be collectively assigned to and assumed by an Affiliate provided that: (i) the Affiliate is also an Affiliate of PresidioCo Holdings LLC; (ii) the Affiliate acquires the Parking Parcel and becomes its owner of record; and (iii) the City Manager provides prior written approval for the Developer's assignment and the Affiliate's' assumption. In the event such assignment and assumption is approved in writing by the City Manager, then the identity of the Affiliate will be inserted in place of the Developer in the Deed of Trust, the Lease and Operating Agreement for the Parking Parcel, and the Promissory Note attached respectively as Exhibits C, G, and K to this Agreement. Even if an assignment and assumption is approved in writing by the City Manager, the Developer shall remain fully responsible for compliance by its Affiliate with all the terms of this Agreement including those related to the Site Acquisition Loan, Lease and Operating Agreement for the Parking Parcel, the Deed of Trust, and the Promissory Note, regardless of the terms of any agreement between Developer and its Affiliate.

Section 12.19 Survival. The foregoing obligations in this Article 12 shall survive the expiration or termination of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:
City of Livermore, a municipal corporation

Date: _____

By: _____
Marc Roberts
Its: City Manager

APPROVED AS TO FORM

By: _____
Sr. Assistant/City Attorney

Developer:
2205 Railroad Avenue LLC,
a Delaware limited liability company

By: PresidioCo Holdings LLC,
a Delaware limited liability company,
its manager

Date: January 6, 2022

By: _____

Name: Rikesh Patel

Title: Authorized Party

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

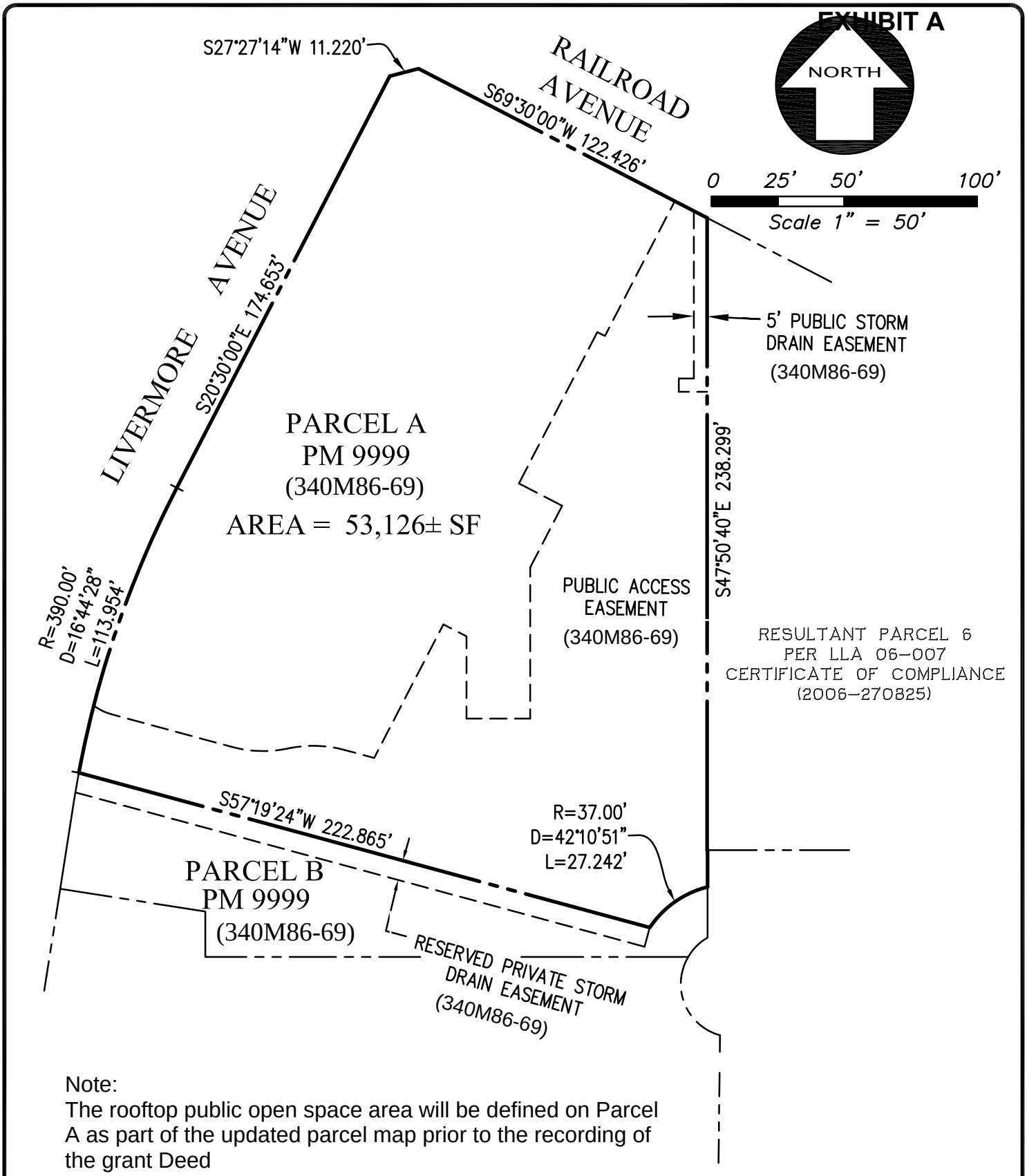
REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A

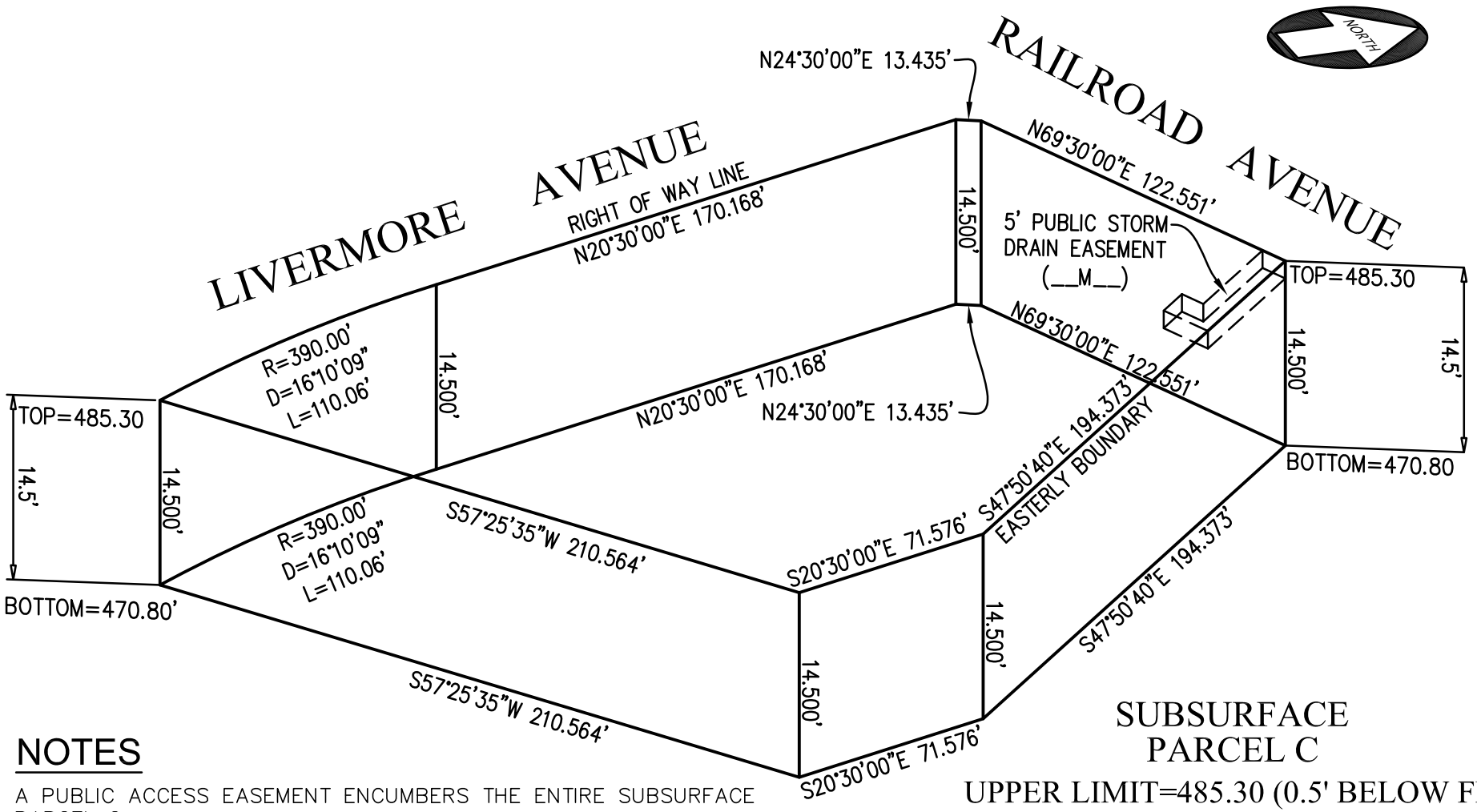


Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C

PARCEL MAP 9999

LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A

City Fees

Eastside Hotel Site

Thursday, December 2, 2021

Fee Estimate Only- Final fees to be determined at permit issuance

LOCATION: **Southeast Corner of South Livermore Ave and Railroad Avenue**
BUSINESS NAME: **Presidio Hotel Development**
APPLICANT: **City of Livermore**

PROJECT ASSUMPTIONS:

1. City fees based upon adopted Development Fees tables effective JULY 1, 2021
   Non-City fees based upon adopted Zone 7 fee tables effective January 1, 2021 and TVTD fees effective July 1, 2021
2. Estimated new impervious surface for entire site: 43,724 sf (stormwater plan submitted 7-19-2019)
3. New proposed Hotel 125-135 Rooms with 1,400-2,000 SF meeting space, roof top deck and other hotel amenities (65,000 SF - 75,000 SF) (used 72,000 SF for this estimate)
4. Not Used
5. Sanitary Sewer Fee is based upon the "Mixed Use Rate" because it is within Downtown Core Area
6. Water Service:
   a. 2205 Railroad Avenue has : 2 - 5/8" WM
7. Estimate does not include Cal Water connection and meter fees
8. Estimated credits based on existing uses.
9. TVTD fees based upon other use peak hour trips
   a. Per 9th Edition ITE Manual the average am/pm weekday peak hour trips is (.53 am + .60 pm = 1.13 total /2 = 0.565)
   b. total peak hour trips is (.565 avg am/pm peak hr trips/room x 135 rooms) = 76.275 avg am/pm peak hour trips
10. Social and Human Services Facility Fee based upon "other non-residential" use rate per 1,000 s.f. (KSF)
11. Estimate does not include Planning Entitlement and Processing Fees

PROJECT INFORMATION

a Final fee to be determined at Building Permit
b Downtown Revitalization Fee credit will be given for the agreed upon cost of First Street Improvements
Currently $777,000 Downtown Revitalization Fee credits available on a first come first serve basis

Credits may no longer be available at the time of Building Permit
c Based on meters shown on current plan set. Final WM fees to be determinded at building permit
d Based on SF for Mixed Use, Residential and Garage shown on plans
e Final fee to be determined at final map
f Assumed Building Construction type "VA" - Estimated Building Valuation - $14,146,122.00

East Side Hotel Site Development Impact Fee Estimate

	ITEM		Unit	Rate ($/unit)	Quantity	Fee ($)	*Credits ($)*	Net Fees
1	Storm Drain (City)	2	SF	$0.49	43,724	$21,424.76	*$18,874.31*	$2,550.45
2	Storm Drain (County)	2	SF	$1.00	43,724	$43,724.00	*$38,519.00*	$5,205.00
3	Sanitary Sewer Connection - 135 room Hotel	5	SF	$4.01	72,000	$288,720.00	*$16,978.34*	$271,741.66
3a	Not Used							
4	Park Facilities Fee - 133 Room Hotel		SF	$2.682	72,000	$193,104.00	*$11,355.59*	$181,748.41
5	City Water Connection	7				**CAL WATER**		
6a	ACWFC Zone 7 Connection - 2" - Displacement (80gpm restriction)	6	EA	$235,520.00	1	$235,520.00	*$58,880.00*	$176,640.00
6b	ACWFC Zone 7 Connection - 1" Irrigation		EA	$73,600.00	1	$73,600.00		$73,600.00
7	Traffic Impact Fee - 135 room hotel	8	room	$8,268.00	135	$1,116,180.00	*$54,906.51*	$1,061,273.49
8	Tri Valley Transportation Development	9	Trips	$5,620.00	76.275	$428,665.50	*$15,835.16*	$412,830.34
9	Low Income Housing Impact Fee - 135 room hotel		room	$949.00	135	$128,115.00	*$2,488.41*	$125,626.59
10	Social and Human Services Facility Fee	10	KSF	$5.00	72.00	$360.00	*$21.17*	$338.83
11	City Wide General Plan - Cost Recovery Fee	3	SF	$0.39	72,000	$28,080.00	*$1,651.26*	$26,428.74
12	Downtown Specific Plan	3	SF	$0.31	72,000	$22,320.00	*$1,312.54*	$21,007.46
13	Downtown Revitalization Fee - Retail	b	SF	$18.02	72,000	$1,297,440.00		$1,297,440.00
16b	School Fees - Hotel/Motel	3	SF	$0.316	72,000	$22,752.00	*$2,642.02*	$20,109.98
					Subtotal	**$3,900,005.26**	**$223,464.31**	**$3,676,540.95**

Building Permit Fees

17	Art in Public Places Fee	a	EA	$0.003	$ 14,126,122.00	$46,616.20		$46,616.20
18	Building Permit (Including BASRF)	a	LS	$44,215.000	1	$44,215.00		$44,215.00
19	Fire Sprinkler Inspection Fee	a	LS	$0.000	1	$0.00		$0.00
					Subtotal	**$90,831.20**	**$0.00**	**$90,831.20**

Engineering Map and Plan Check Fees

20	Parcel Map Check Fee		LS	$6,099.000	1	$6,099.00		$6,099.00
21	Improvement Plan Check Fee	e	LS	$0.000		$0.00		$0.00
22	Inspection Fee for off-site improvements	e	LS	$0.000		$0.00		$0.00
23	Encroachment Permit Processing Fee	e	LS	$0.000		$0.00		$0.00
					Subtotal	**$6,099.00**	**$0.00**	$6,099.00

Estimated Total Development Fees **$3,773,471.16**

	Available	Used	Remaining
Stormwater Credits			
	$ 18,874.31	$18,874.31	$ -
	$ 38,519.00	$38,519.00	$ -
Sewer Credits			
	$ 16,978.34	$16,978.34	$ -
Park Credits			
	$ 11,355.59	$11,355.59	$ -
Zone 7 Water Credits			
	$ 58,880.00	$58,880.00	$ -
Traffic Credits			
	$ 54,906.51	$54,906.51	$ -
TVTD Credits			
	$ 15,835.16	$15,835.16	$ -
Low Income Housing Credit			
	$ 2,488.41	$2,488.41	$ -
Social and Human Services Credits			
	$ 21.17	$21.17	$ -
Cost Recovery Credits			
	$ 1,651.26	$1,651.26	$ -
Downtown SP Credits			
	$ 1,312.54	$1,312.54	$ -
School Fee Credits			
	$ 2,642.02	$2,642.02	$ -

EXHIBIT B

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO

City of Livermore
1052 S. Livermore Avenue
Livermore, Ca. 94550-4899

Loan No.:

Space Above This Line for Recorder's Use Only

A.P.N.: 098-0282-009-00

DEED OF TRUST AND ASSIGNMENT OF RENTS
(Short Form)

THIS DEED OF TRUST, made this _____ , 2022 between

TRUSTOR: PresidioCo Holdings LLC, a Delaware limited liability company on behalf of 2205 Railroad Avenue LLC, a Delaware Limited Liability Company whose address is 262 Glorietta Boulevard, Orinda, California 94563

TRUSTEE:

and BENEFICIARY: City of Livermore, a Municipal Corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Livermore, Alameda County, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of ONE MILLION NINE HUNDRED AND TWENTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY Dollars ($1,923,750), executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page
Alameda	435	684	Imperial	1091	501	Merced	1547	538	San Benito	271	383	Siskiyou	468	181
Alpine	1	250	Inyo	147	598	Modoc	184	851	San Bernadino	5567	61	Solano	1105	182
Amador	104	348	Kern	3427	60	Mono	52	429	San Francisco	A332	905	Sonoma	1851	689
Butte	1145	1	Kings	792	833	Monterey	2194	538	San Joaquin	2470	311	Stanislaus	1715	456
Calaveras	145	152	Lake	362	39	Napa	639	86	San Luis Obispo	1151	12	Sutter	572	297
Colusa	296	617	Lassen	171	471	Nevada	305	320	San Mateo	4078	420	Tehama	401	289
Contra Costa	3978	47	Los Angeles	T2055	899	Orange	5889	611	Santa Barbara	1878	860	Trinity	93	366
Del Norte	78	414	Madera	810	170	Placer	895	301	Santa Clara	5336	01	Tulare	2294	275
El Dorado	568	456	Marin	1508	339	Plumas	151	5	Santa Cruz	1431	494	Tuolumne	135	47
Fresno	4626	572	Mariposa	77	292	Riverside	3005	523	Shasta	684	528	Venutra	2062	386
Glenn	422	184	Mendocino	579	530	Sacramento	4331	62	Sierra	29	335	Yolo	653	245
Humboldt	657	527				San Diego Series 2 Book 1961, Page 183887						Yuba	334	486

which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

FURTHERMORE, in the event of foreclosure or deed in lieu of foreclosure, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate-income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect. Any person (including successors or assigns thereto) receiving title to the Property through a foreclosure or deed in lieu of foreclosure shall receive title to the Property free and clear from such restrictions.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Signature of Trustor(s)

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By: PresidioCo Holdings LLC,
a Delaware limited liability
company,
its manager

Dated: _____, 2022

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county In California, as stated in the foregoing Deed of Trust and incorporated by reference In said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire Insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay Immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee is such reconveyance may be described as "the person or persons legally entitled thereto. Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, Issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and In such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any Indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its titJe, estate, rights, powers and duties, must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust Is recorded and the name and address of the new Trustee.

(13) That this Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be party unless brought by Trustee.

----------DO NOT RECORD----------

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: _____, a California Corporation, **Trustee**

Dated: _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to: _____

_____

_____

_____

_____

_____ By _____

_____ By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.

Short Form
DEED OF TRUST
WITH POWER OF SALE
INDIVIDUAL

_____ **TITLE COMPANY, A CALIFORNIA CORPORATION**

APN: 098-0282-009-00

EXHIBIT A

Parking Parcel Description

(Legal Description of Parking Parcel to be provided by Developer upon purchase of property)

APN: 098-0282-009-00

EXHIBIT A

RECORDING REQUESTED BY:
Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $ Government Agency
DOCUMENTARY TRANSFER TAX $ Acquiring Title
SURVEY MONUMENT FEE $ Tax Code §§ 11922
Computed on the consideration or value of property conveyed; OR
Computed on the consideration or value less liens or encumbrances remaining at time of sale.

APN 098-0407-031-00 & 098-0407-033-00

Exempt from filing fees per Government Code Section §§ 27383 & 6103

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a Municipal Corporation ("Grantor")

hereby Grant(s) in fee to
2205 Railroad Avenue LLC ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described in Exhibit A with the following restriction:

Grantee shall hereby grant to the City of Livermore (Grantor), public access and use to over and on said rooftop public open space described in Exhibit A. The rooftop public open space area shall include a minimum of 3,500 square feet of publicly accessible rooftop space with seating for at least 15 people. The rooftop public open space area shall be located on the southern side of the rooftop area and it shall be available for public use at least 6 days each week of the year from 11 a.m. to 8 p.m. In addition, public use of the rooftop open space shall be available each year from 9:00 a.m. to 10:00 p.m. on the Fourth of July, from 9:00 a.m. to 9:00 p.m. for the winter Holiday Parade event and the Rodeo Parade, and from 11 a.m. to 8 p.m. on all other holidays.

FOR LEGAL DESCRIPTION
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

City of Livermore, a municipal corporation

_____
Signature:

_____
Name: Title:

_____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

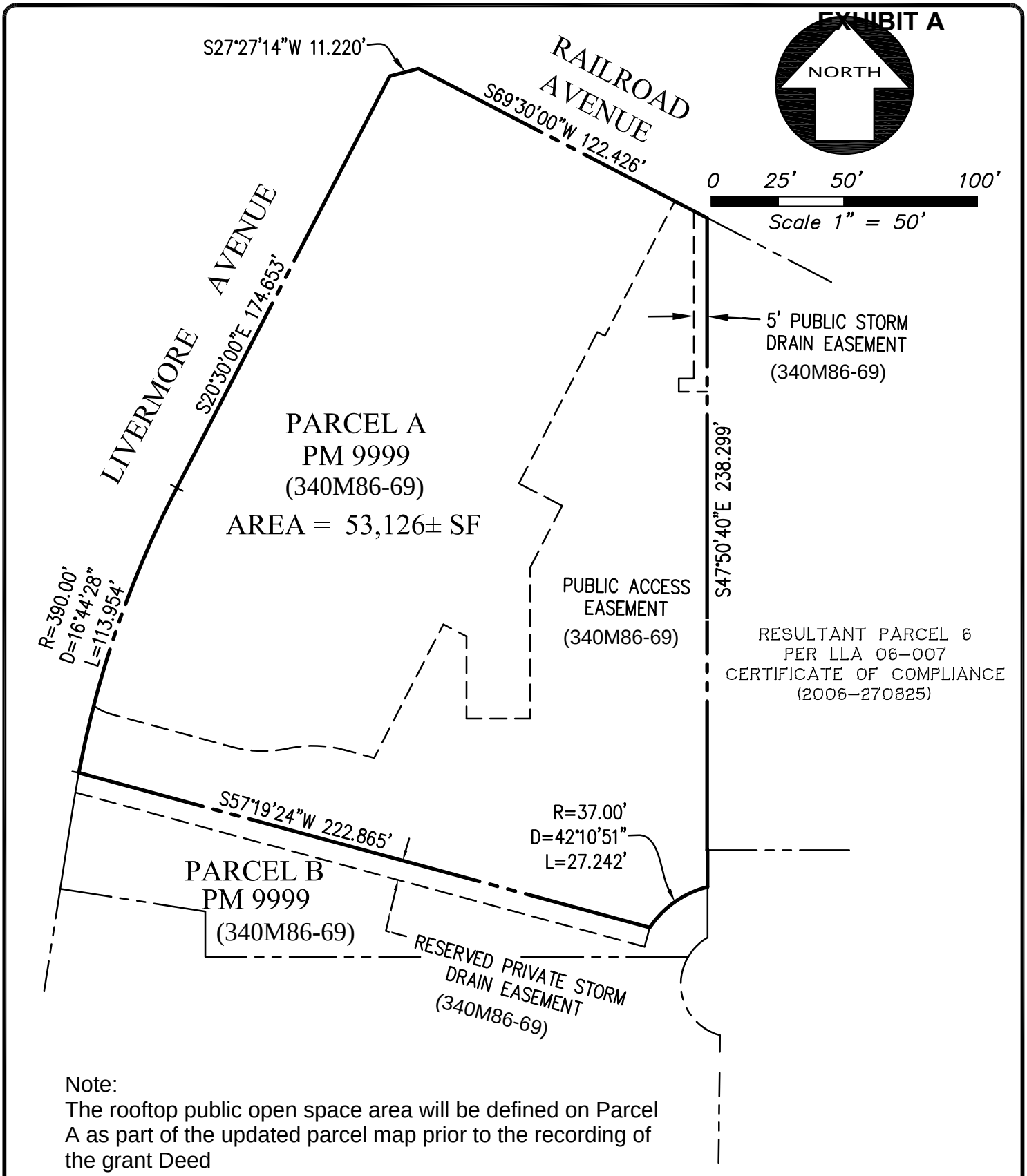
REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A

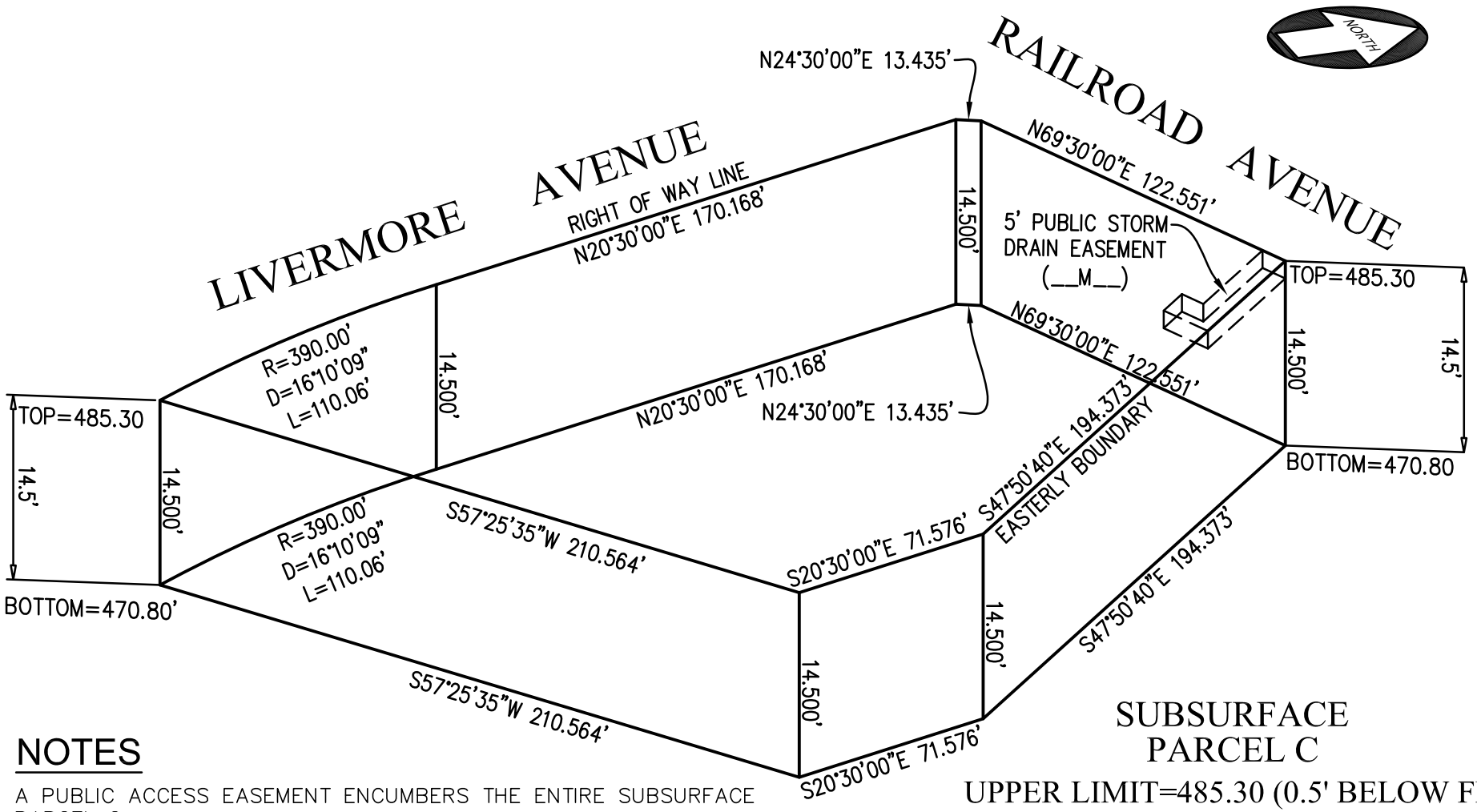


Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

Hotel Standard

Developer shall develop a boutique hotel that meets or exceeds the standard of “Upscale” or "Upper Upscale" under the STR, Inc. Chain Scales Rating system or similar industry-recognized rating system. The Hotel is not required to be a branded hotel associated with a national chain and may instead be an independent hotel with a unique name and identity.

If the developer chooses to utilize a Brand for this Hotel, the choice of Brand is limited to those identified below, unless an alternative Brand is proposed in writing by the Developer and approved by the Livermore City Manager.

Hotel Brands

AC Hotels (Marriott)

Autograph Collection (Marriott)

Hilton Canopy

Curio Collection (Hilton)

Required Amenities

The amenities provided as part of the Hotel shall include a meeting room, roof-top open space/lounge area, swimming pool and interior bar/lounge, consistent with the entitlement approvals for this Project.

Interior Design Quality

The quality of the interior design of the hotel, including but not limited to the furnishings, beds, lighting, floor coverings, built in fixtures, linens, restrooms, bathtubs, showers, front desk, art, bar, other amenities and related components of the Hotel shall meet or exceed the quality and components provided by the Hotel Brands listed above as of the date of execution of this Agreement.

Required Review and Approval

Developer shall submit to the City a draft proposal demonstrating the quality of the interior design components proposed for the Hotel, no later than the date identified in the Schedule of Performance. This submittal shall include examples of the types of materials and components proposed for the Hotel interior and shall be comprised of a written description and photographic examples.

Prior to construction of the Hotel, and no later than the date specified in the Schedule of Performance, Developer shall submit to the City a Final Hotel Standards Proposal. This proposal shall provide detailed descriptions and photographic examples of the interior components of the Hotel, including but not limited to the furnishings, beds, lighting, floor

coverings, built in fixtures, linens, restrooms, bathtubs, showers, front desk, art, bar, other amenities and related components of the Hotel and shall demonstrate that they meet or exceed the quality demonstrated by the Hotel Brands listed above as of the date of the execution of this Agreement.

City shall select and contract with a Hotel consultant, whose fees shall be paid by Developer, to evaluate the components of the Final Hotel Standard Proposal and provide a finding as to whether the proposed Hotel components meet or exceed the standard of quality identified above. The consultant shall further provide recommendations on any changes that are needed to comply with these requirements.

If necessary, Developer shall revise and provide additional submittals until the City has determined, based on the recommendation of the Hotel consultant, that the Final Hotel Standards Proposal meets or exceeds the standard of quality identified above, demonstrated by the listed Hotel Brands as of the date of the execution of this Agreement. The Developer shall not begin construction of the Hotel until this condition has been satisfied.

JOINT SOLID WASTE FACILITY AGREEMENT MATERIAL TERMS

1. Parties may include the following: 2205 Railroad Avenue LLC ("Developer"), Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley City Center Plaza, the Livermore Cinema, and the City of Livermore ("City").

2. Developer Responsibilities.

(a) The Developer shall be responsible for the design, construction, and ownership of the Joint Solid Waste Facility that will provide garbage, organics, and recyclable services for the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley City Center Plaza, and the Livermore Cinema.

(b) Developer shall be responsible for all service, maintenance, operation, repair, replacement, and insurance of the Joint Solid Waste Facility.

(c) Developer shall be responsible for all coordination efforts with the participating property owners for the development of a solid waste disposal plan for the Joint Solid Waste Facility. The solid waste disposal plan shall be subject to approval by the City's Community Development Director.

(d) Developer is responsible for securing the participation of the users stated above in subparagraph (a) to join the Joint Solid Waste Facility Agreement to satisfy their individual solid waste disposal needs consistent with state, county, and local requirements. If after reasonable due diligence, the Developer is unable to secure all users agreement for the Joint Solid Waste Facility, the Developer shall be responsible to ensure that the Joint Solid Waste Facility provides waste disposal for all users stated above in subparagraph (a), including any users that are not parties to the Joint Solid Waste Facility Agreement, and that it is properly serviced, maintained, operated, repaired, and replaced, as necessary.

(e) The Joint Solid Waste Facility shall replace the temporary facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West).

(f) The Developer shall maintain access to the temporary solid waste facility during the construction of the Project until such time as the Joint Solid Waste Facility is completed and operational. Once the Joint Solid Waste Facility is operational, the Developer shall remove the temporary solid waste facility and install new landscape and irrigation connected to the City's irrigation system at the location of the former temporary solid waste facility.

3. Term of Agreement. The term of the Joint Solid Facility Agreement ("Agreement") will commence prior to construction of the Hotel and shall run with the land.

4. Use of Facility. The Facility will be available to provide garbage, organics, and recyclables service for the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema.

LEASE AND OPERATING AGREEMENT
2080 RAILROAD AVENUE

(The Parking Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, is made and entered into by and between 2205 Railroad Avenue LLC, a Delaware Limited Liability Company ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. Lessor desires to construct a four story approximately 65,000-75,000 square foot hotel, containing between 125-135 hotel rooms on City-owned parcels located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (hereinafter "Hotel"). As part of the conditions of approval for the Hotel, Lessor is required to comply with the City's parking requirements for the Downtown Specific Plan.

B. Lessor owns that particular piece of real property located on the northwest corner of Railroad Avenue and North K Street in downtown Livermore commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) as more particularly described in Exhibit A, attached hereto and incorporated herein. At the time construction of the Hotel is complete, Lessor intends to use the property as a valet parking lot to satisfy a portion of the City's parking requirements for the Hotel (hereinafter "Parking Parcel").

C. On_____, the City and Lessor entered into a Disposition, Development and Loan Agreement (the "DDLA") wherein the City made a loan to Developer to fund the acquisition of the Parking Parcel. Lessor has agreed to lease the Parking Parcel to City at no cost for use as a temporary surface public parking lot or public valet parking lot for a period of three years from the effective date of this Lease Agreement or the date when construction of the Hotel is at least 40 percent complete, whichever is earlier. However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024. Upon satisfaction of these requirements, Lessor may terminate this Lease Agreement to allow Lessor to begin the construction of permanent parking improvements on the Parking Parcel.

D. Prior to the construction of permanent parking improvements on the Parking Parcel for the Hotel, City desires to lease from Lessor and Lessor desires to lease the Parking Parcel (hereinafter "Parking Parcel" or "Leased Premises") as more particularly shown as cross hatched on Exhibit A attached hereto and incorporated herein. The Leased Premises is approximately 33,695 square feet of vacant and undeveloped land.

E. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Leased Premises. Lessor leases to City and City leases from Lessor, the Leased Premises which consists of approximately 33,695 square feet of vacant and undeveloped land, as indicated on Exhibit A.

2. Possession; Delay in Delivery of Possession.

(a) Except as otherwise provided in this Lease, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Parking Parcel and/or the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the commencement date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. Rent. As a condition of the loan from City to Lessor to purchase the Parking Parcel**,** Lessor agrees to lease the Leased Premises to the City at no cost for use as a temporary surface public parking lot and/or public valet parking lot. The no cost lease is a condition of the loan the City has provided to Lessor for the purchase of the Parking Parcel through the DDLA. City shall be responsible for all costs associated with the City's construction and maintenance of the minor improvements on the Leased Premises as set forth in Sections 6 and 7 of this Lease Agreement.

4. Term. This Lease Agreement shall commence on [date], 2022 ("Commencement Date") and terminate three years from the effective date of this Lease Agreement or the date when construction of the Hotel is at least 40% complete, whichever is earlier ("Term"). However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024. Upon satisfaction of these requirements, Lessor may terminate this Lease Agreement to allow Lessor to begin construction of permanent parking improvements on the Leased Premises. This Lease Agreement shall supersede and replace any other lease between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Leased Premises.

5. City's Use of Leased Premises.

(a) Use of Leased Premises. City shall only use the Leased Premises for the purpose of a temporary surface public parking lot, a public valet parking lot, or both.

(b) Rules Regarding Use. City shall observe and comply with the rules and regulations annexed to this Lease Agreement and, after notice of these rules, City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Parking Parcel or Leased Premises.

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) **Hazardous Materials.** City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Parking Parcel or Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Premises, of

any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

6. Minor Improvements. City may construct minor improvements on the Leased Premises which may include, but are not limited to, minor grading, installation of gravel or other suitable parking surface, driveway improvements, signage, and lighting necessary to provide a temporary surface public parking lot and/or public valet parking lot (the "Minor Improvements").

7. City Obligations.

(a) Services and Utilities. City shall provide basic electricity and power for the Leased Premises.

(b) Maintenance. Except as otherwise provided herein, City shall at its own cost and expense, maintain the Leased Premises and every part thereof, in good and sanitary order, condition, and repair. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

8. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary surface public parking lot and/or public valet parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

9. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Parking Parcel, and City will keep the Parking Parcel free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Parking Parcel, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, except for those set forth in Sections 6 and 7 above, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event

that Lessor provides City with written consent, City shall at its own cost comply with any and all Federal, State, or local laws and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

10. Destruction. If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood, earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

11. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, surface public parking lot and/or public valet parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

12. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for the temporary surface public parking lot and/or public valet parking lot. City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for Minor Improvements, construction and or repair work outside of the Lessor's obligations.

13. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Property or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

14. Taxes. Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Parking Parcel the Minor Improvements located on the Parking Parcel, personal property located on or in the Parking Parcel or Minor Improvements, and the leasehold interest created by this Lease Agreement.

15. Lessor Refinancing. City is aware that Lessor is leasing its interest in the Leased Premises to City and that Lessor's leasehold interest in the Leased Premises is related to an outstanding lease financing. City agrees that it will use best efforts to cooperate with Lessor in connection with a refinancing of the outstanding lease financing, including executing any estoppel, consent, and other similar documents requested by the Lessor.

16. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, the City's installation and maintenance of Minor Improvements on the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

17. Insurance. For the duration of this Lease Agreement, City shall procure and maintain, at its own cost, insurance in the amounts and under the terms set forth in Exhibit B attached hereto against claims for injuries to persons or damages to property which may arise from or in connection with this Lease Agreement.

18. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Parking Parcel, or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Parking Parcel and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

19. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

20. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

21. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease Agreement, except as to the payment of rent accepted.

22. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations, improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

23. Entry by Lessor. City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants; (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; and (x) responding to an emergency.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises

obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement**.**

24. Notices. Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

Lessor: 2205 Railroad Avenue LLC
A Delaware limited liability company

Attn:
262 Glorietta Boulevard
Orinda, California, 9456

25. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

26. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

27. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) **California Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) **Review of Lease.** Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) **Performance Excused.** The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) **Mutual Termination.** This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) **Headings.** The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) **Waiver.** A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) **Attachments.** All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) **Attorney's Fees and Costs.** If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

************Signatures and Attachment List On Next Page************

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

2205 Railroad Avenue LLC
A Delaware limited liability company

By: PresidioCo Holdings LLC
A Delaware limited liability company
its manager

Lessor Dated: _____
By: _____
[Signer's Name]
[Signer's Title]

City or Lessee

City of Livermore
A Municipal Corporation

By: _____ Dated:_____
Marc Roberts
City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

Attachments:
Exhibit A – Real Property Site Plan – Parking Parcel
Exhibit B – Insurance Requirements

EXHIBIT A

REAL PROPERTY SITE PLAN - PARKING PARCEL

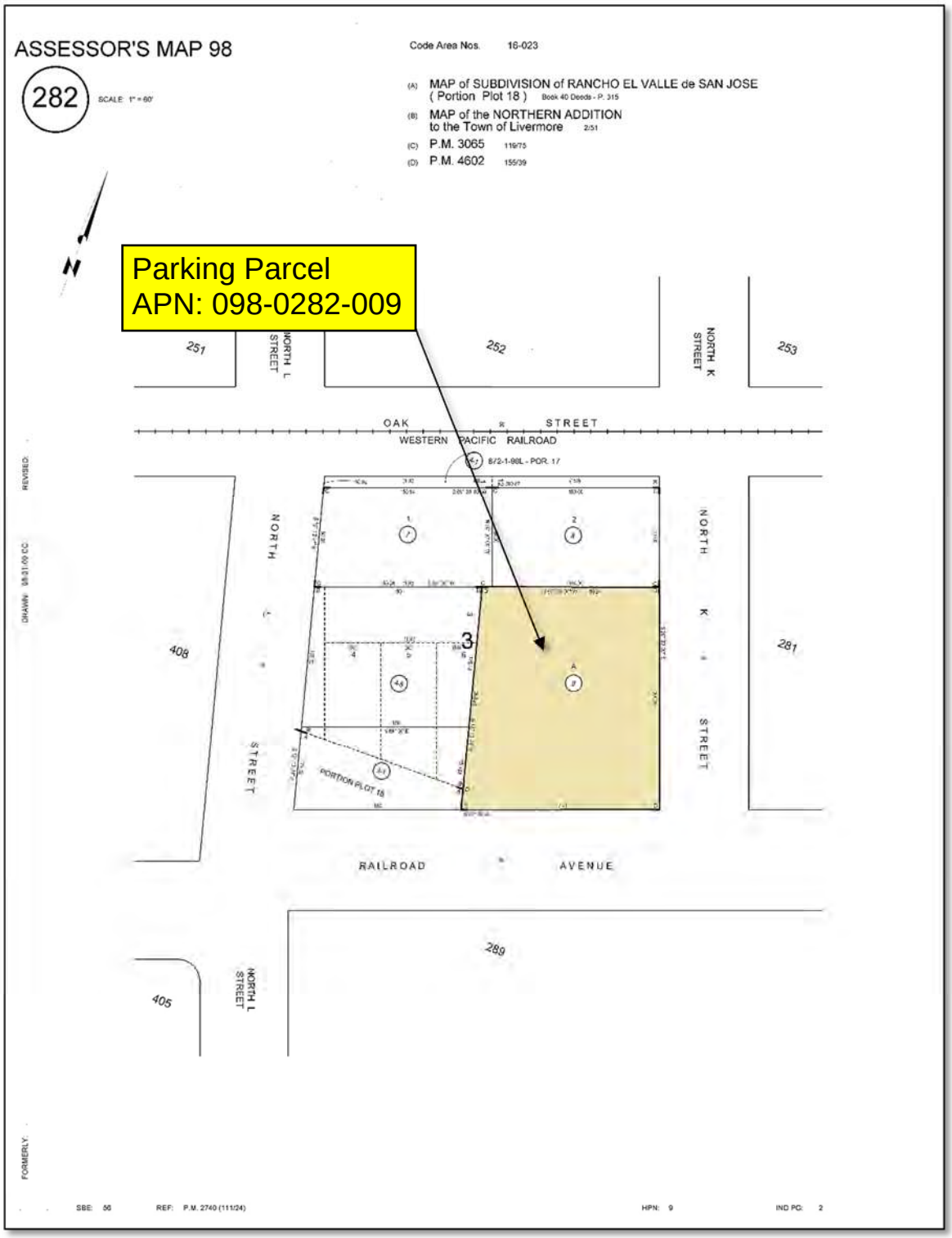


Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

PLEASE PLACE RECORDER LABEL BELOW THIS LINE

Recording Requested By &
Return to:

City of Livermore
City Clerk's Office
1052 So. Livermore Ave.
Livermore, CA 94550

No fee for recording
pursuant to Government
Code section 27383

A.P.N.: 098-0407-031-00, 098-0407-033-00, and 098-0282-009-00

MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("Memorandum") is made as of _____, 2022, by and between the 2205 Railroad Avenue LLC, a Delaware limited liability company (the "Developer"), and the City of Livermore (the "City"), to confirm that the City and Developer are parties to that certain Amended and Restated Disposition, Development and Loan Agreement between the City and the Developer dated as of _____, 2022, as may be amended from time-to-time (the "DDLA"). The DDLA concerns the sale of real property in Livermore, California, and a site acquisition loan for the purchase of property in Livermore, California, which property is described in the attached Exhibits A and J and the development of a four-story approximately 65,000-75,000 square foot hotel containing between 125-135 rooms, approximately 1,400-2,000 square feet of economically viable meeting space, a roof-top public open space and related hotel amenities and improvements (the "Project") on the Property identified in Exhibit A and the use of the Parking Parcel identified in Exhibit J to satisfy a portion of the parking requirements identified in the conditions for approval for the Project. (The Exhibits to this Memorandum have been marked to be consistent with the Exhibits to the DDLA.)

The DDLA is a public document and may be reviewed at and in the office of the City Clerk for the City of Livermore.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the DDLA, of which this is a memorandum. In the event, and to the extent that, that any of the terms or provisions of this Memorandum are inconsistent with the terms or provisions of the DDLA, the provisions of the DDLA shall govern and prevail.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum and the DDLA by duly authorized representatives, all on the date first written above.

DATE:

BORROWER:

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By: PresidioCo Holdings LLC,
a Delaware limited liability company,
Its: Manager

By: _____

Name: _____

Title: _____

DATE:

CITY:

CITY OF LIVERMORE,
a municipal corporation

By: _____

Name: Marc Roberts

Title: City Manager

APPROVED AS TO FORM:

By: _____
Assistant/City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

LEGAL DESCRIPTION HOTEL PARCEL

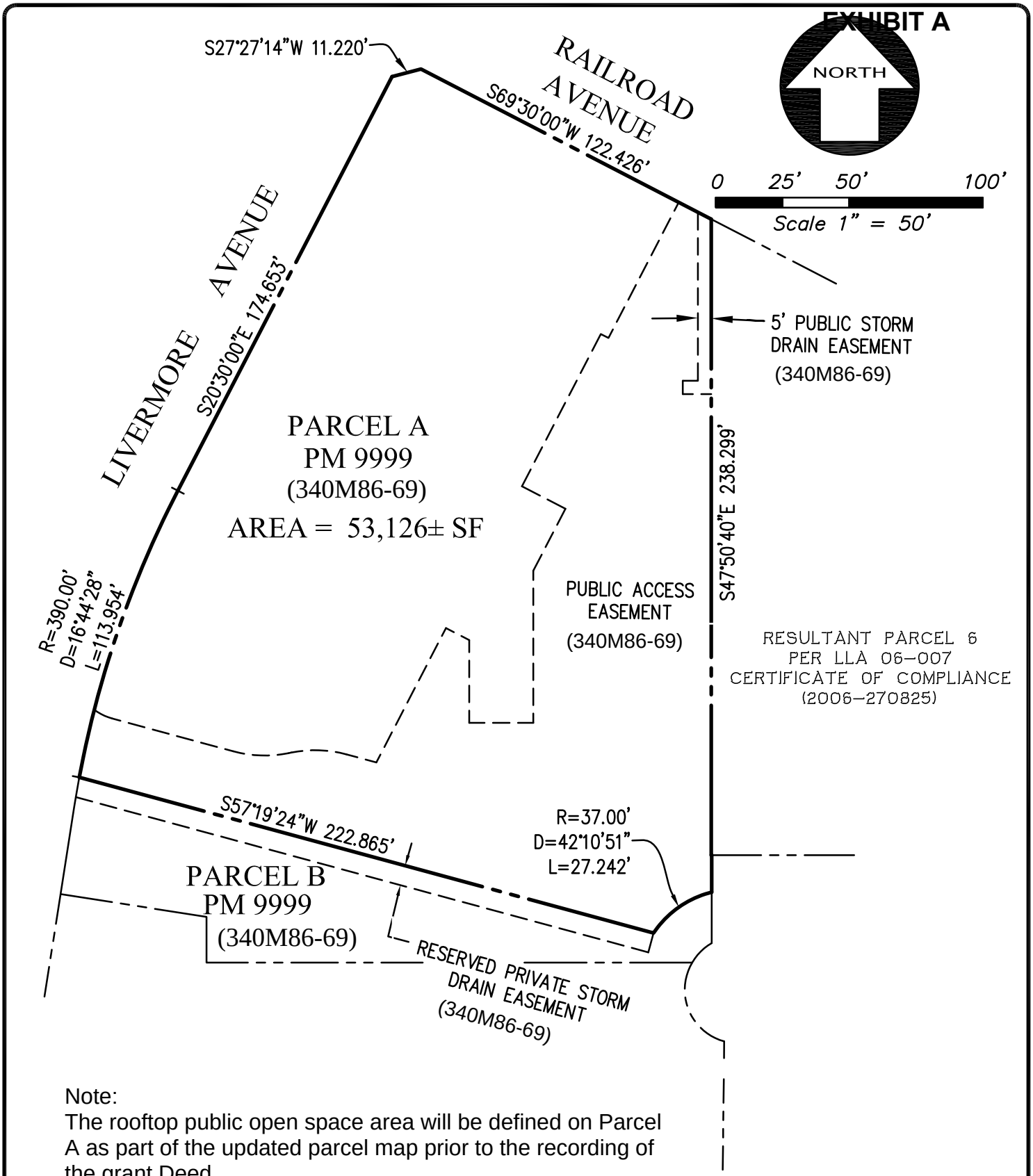
PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

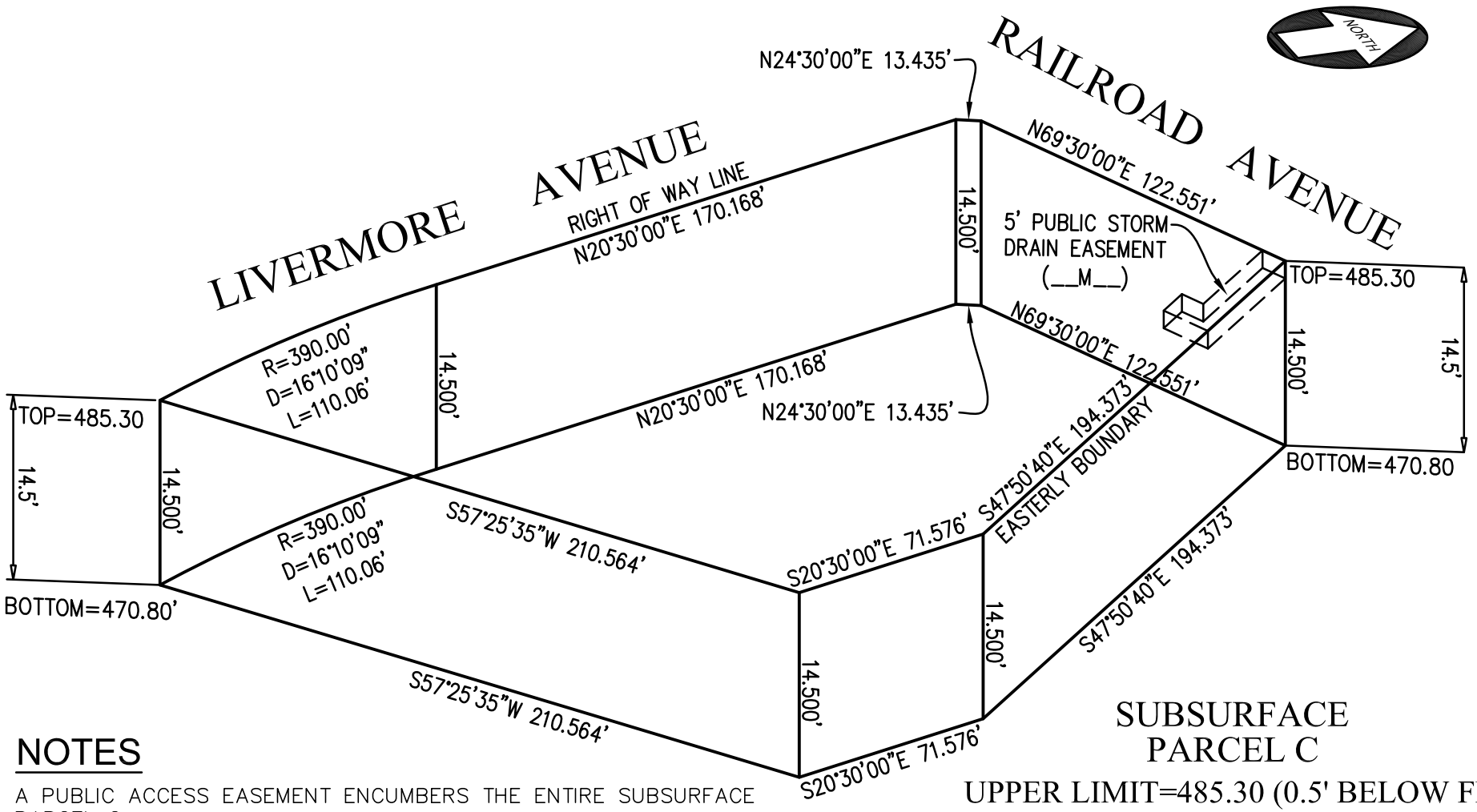


Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C

PARCEL MAP 9999

LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

Exhibit J Parking Parcel Description

(Legal Description of Parking Parcel to be provided by Developer upon purchase of property)

PARCEL MAP 9999

CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA
A RESUBDIVISION OF RESULTANT PARCEL 7 PER LOT LINE ADJUSTMENT 06-007, RECORDED JULY 12, 2006 AS INSRUMENT No. 2006270825 AND AS FURTHER DESCRIBED IN GRANT DEED RECORDED JANUARY 13, 2017. UNDER SERIES No. 2017011568; GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011570: AND GRANT DEED RECORDED OCTOBER 24, 1989 UNDER SERIES No. 89-286823
BY THE
CITY OF LIVERMORE
COMMUNITY DEVELOPMENT DEPARTMENT
SEPTEMBER 2018

OWNER'S STATEMENT

THE UNDERSIGNED. HEREBY STATE THAT THEY ARE THE OWNERS OF ALL THE LANDS DELINEATED WITHIN THE BOUNDARY LINES UPON THE HEREIN EMBRACED MAP ENTITLED "PARCEL MAP 9999. CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA" CONSISTING OF FOUR (4) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT THEY HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP; THAT SAID MAP DOES PARTICULARLY SET FORTH AND DESCRIBE ALL PARCELS OF LAND SO RESERVED FOR PUBLIC PURPOSES BY THEIR BOUNDARY COURSES AND EXTENT.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC THOSE PORTIONS OF PARCEL A AND PARCEL B WITHIN THE BOUNDARIES OF LIVERMORE AVENUE RIGHT OF WAY DEDICATION AND RAILROAD AVENUE RIGHT OF WAY DEDICATION, AS SHOWN AND EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP FOR THE USES AND PURPOSES OF PUBLIC HIGHWAYS.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN PUBLIC UTILITIES AND APPURTENANCES THERETO UNDER, ON AND OVER THAT CERTAIN PORTION OF PARCEL B SHOWN UPON SAID MAP AS "P.U.E." (PUBLIC UTILITY EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP AND THE RIGHT TO ENTER UPON SAID STRIPS AND/OR PARCEL OF LAND FOR THE PURPOSES OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING AND REPAIRING SAID PUBLIC UTILITIES AND APPURTENANCES THERETO.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN STORM DRAINS AND THE APPURTENANCES THERETO UNDER, ON, AND OVER THOSE CERTAIN PORTIONS OF LAND SHOWN UPON SAID MAP AS (P.S.D.E) STORM DRAIN EASEMENT THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP, TOGETHER WITH THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING. RECONSTRUCTING, MAINTAINING AND REPAIRING SAID STORM DRAINS AND ANY APPURTENANCES THERETO.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN FACILITIES (INCLUDING SIDEWALKS, PAVING AND LANDSCAPING) AND ANY APPURTENANCES THERETO UNDER, ON AND OVER THOSE CERTAIN PORTIONS OF PARCEL A. AND ALL OF PARCELS B AND C. SHOWN AND UPON SAID MAP AS "P.A.E." (PUBLIC ACCESS EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID PARCEL OF LAND FOR THE PURPOSES OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING AND REPAIRING SAID FACILITIES (SIDEWALKS, PAVING AND LANDSCAPING) AND ANY APPURTENANCES THERETO TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS OF THE PUBLIC FOR PEDESTRIAN AND VEHICLE ACCESS AND USES.

THE UNDERSIGNED HEREBY RESERVES AN EASEMENT TO CONSTRUCT AND MAINTAIN STORMDRAINS, BIO-TREATMENT SWALES, AND APPURTENANCES THERETO, UNDER. ON. AND OVER THAT PORTION OF PARCEL B SHOWN UPON SAID MAP AS (Pr.S.D.E.) PRIVATE STORMDRAIN EASEMENT THEREON. ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP, TOGETHER WITH THE RIGHT TO ENTER UPON SAID PORTION OF PARCEL B FOR THE PURPOSE OF CONSTRUCTING. RECONSTRUCTING, MAINTAINING, AND REPAIRING SAID FACILITIES (STORMDRAINS, BIO-TREATMENT SWALES) AND APPURTENANCES THERETO.

THIS MAP SHOWS OR NOTES ALL EASEMENTS. EXISTING OR OF RECORD WITHIN THE BOUNDARY LINES OF THE HEREIN EMBODIED MAP.

OWNERS: CITY OF LIVERMORE, A MUNICIPAL CORPORATION,

BY: Marc Roberts
MARC ROBERTS, CITY MANAGER OF THE CITY OF LIVERMORE

OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) S.S.

ON 9-17-18, 2018 BEFORE ME, Amber C. Calkins, Notary Public PERSONALLY APPEARED MARC ROBERTS, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED. EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

SIGNATURE: Amber C. Calkins
PRINT NAME: Amber C. Calkins
MY COMMISSION NUMBER: 2177174
MY COMMISSION EXPIRES: 1-13-2021
PRINCIPAL COUNTY OF BUSINESS: Alameda

CITY ENGINEER'S STATEMENT

I, CHERI R. SHEETS, CITY ENGINEER OF THE CITY OF LIVERMORE, ALAMEDA COUNTY. STATE OF CALIFORNIA, HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "PARCEL MAP 9999, CITY OF LIVERMORE, ALAMEDA COUNTY. STATE OF CALIFORNIA", AND THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP (IF ANY) AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF THE STATE LAWS AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

Cheri R. Sheets
CHERI R. SHEETS, R.C.E. NO.38751
EXPIRES ON MARCH 31, 2019
CITY ENGINEER, CITY OF LIVERMORE
ALAMEDA COUNTY. CALIFORNIA

9/5/18
DATE

REGISTERED PROFESSIONAL ENGINEER CHERI R. SHEETS No. 38751 Exp. 3/31/19 CIVIL STATE OF CALIFORNIA

I. LAWRENCE K. SAMPSON, A LICENSED SURVEYOR FOR THE CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA. DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "PARCEL MAP 9999. CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA", AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

Lawrence K. Sampson
LAWRENCE K. SAMPSON
P.L.S. 4238, EXP. 6/30/2020

9/06/18
DATE

LICENSED LAND SURVEYOR LAWRENCE K. SAMPSON Exp. 6/30/20 4238 STATE OF CALIFORNIA

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE OK OF THE CITY OF LIVERMORE IN MAY. 2018. I HEREBY STATE THAT THIS MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

I FURTHER STATE THAT "PARCEL MAP 9999. CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA" IS A SUBDIVISION INTO PARCELS OF LAND CONTAINING 1.426 ACRES. MORE OR LESS.

JOSEPH D. THOMPSON
P.L.S. 8121. EXP. 12/31/2018

9/4/18
DATE

LICENSED LAND SURVEYOR JOSEPH D. THOMPSON No. 8121 Exp. 12-31-18 STATE OF CALIFORNIA

COMMUNITY DEVELOPMENT DIRECTOR'S STATEMENT

PARCEL MAP 9999 CONFORMS WITH THE CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY, AND WAS PROCESSED IN ACCORDANCE WITH THE SUBDIVISION MAP ACT SECTION 66428(b).

Paul Spence
PAUL SPENCE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA

9/7/18
DATE

CITY CLERK'S STATEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED. AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) S.S.

ON THIS 7th DAY SEPTEMBER 2018 BEFORE ME, SARAH BUNTING, CITY CLERK, CITY OF LIVERMORE, ALAMEDA COUNTY. CALIFORNIA, PERSONALLY APPEARED PAUL SPENCE PERSONALLY KNOWN TO ME TO BE THE DIRECTOR OF COMMUNITY DEVELOPMENT OF THE CITY OF LIVERMORE.AND IS THE PERSON AUTHORIZED BY THE CITY OF LIVERMORE MUNICIPAL CODE TO APPROVE THIS PARCEL MAP WAIVER.

I FURTHER CERTIFY THAT THE INTEREST IN ALL THOSE PARCELS OF LANDS, EASEMENTS AND OTHER LEGAL INTERESTS IN LAND OFFERED FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFERS. IS HEREBY ACCEPTED BY THE UNDERSIGNED CITY CLERK ON BEHALF OF THE CITY COUNCIL PURSUANT TO AUTHORITY CONFERRED BY RESOLUTION NO. 1-65 OF THE CITY COUNCIL ADOPTED ON JANUARY 4, 1965.

NOTE; PER SECTION 6699.20.2, THE FILLING OF THIS MAP SHALL CONSTITUTE THE VACATION AND ABANDONMENT OF THE UNRECORDED STORM DRAIN EASEMENT ACROSS THE CENTRAL PORTION OF PARCEL "A"., AS CERTIFIED HERETO BY THE CITY CLERK OF THE CITY OF LIVERMORE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 17th DAY OF SEPTEMBER 2018.

SARAH BUNTING
CITY CLERK AND CLERK OF THE CITY COUNCIL
CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA

CLERK OF THE BOARD OF SUPERVISOR'S STATEMENT

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) S.S.

I, ANIKA CAMBELL-BELTON. CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, HEREBY STATE, AS CHECKED BELOW THAT:

[ ] AN APPROVED BOND HAS BEEN FILED WITH THE SUPERVISORS OF THE SAID COUNTY AND STATE IN THE AMOUNT OF $_____ CONDITIONED FOR THE PAYMENT OF ALL THE TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES WHICH ARE NOW A LIEN AGAINST SAID LAND OR ANY PART THEREOF BUT NOT YET PAYABLE, AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.

[ ] ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID. AS CERTIFIED BY THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

[✓] EXEMPT

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 2nd DAY OF OCTOBER A.D. 2018.

ANIKA CAMBELL-BELTON
CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA. STATE OF CALIFORNIA

BY: Anika Lamia
DEPUTY COUNTY CLERK

BOARD OF SUPERVISORS ALAMEDA COUNTY, CAL.

COUNTY RECORDER'S STATEMENT

FILED THIS 3rd DAY OF October, 2018
AT 12:45 p.M., IN BOOK 340 OF MAPS AT PAGES 86-89 INCLUSIVE, RECORDERS SERIES
NO. 2018192226 AT THE REQUEST OF OLD REPUBLIC TITLE COMPANY.
FEE $ 89.00 PAID

STEVE MANNING
COUNTY RECORDER IN AND FOR THE
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

BY: K. Sam
DEPUTY COUNTY RECORDER

COUNTY RECORDER ALAMEDA COUNTY, CALIFORNIA

SHEET 1 OF 4 SHEETS

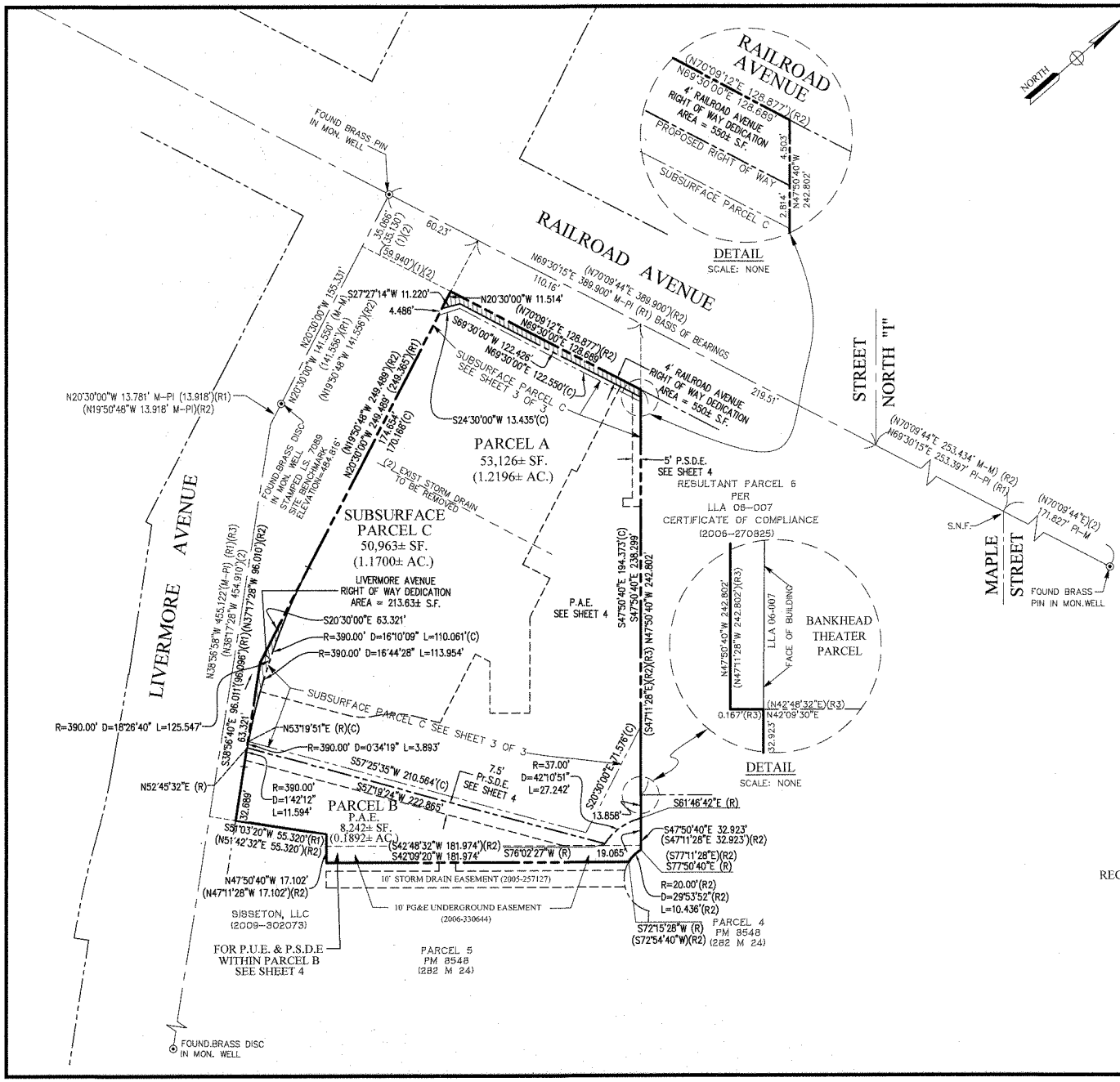
Parcel Map 9999

Map Bk 340

PP 86-89

EXHIBIT A

EXHIBIT I SHEET 1 OF 4



NOTES

(1) ALL DISTANCES SHOWN ARE GROUND AND DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF.

(2) THE STORM DRAIN ACROSS THE CENTRAL PORTION OF PARCEL "A" IS TO BE REMOVED AND ANY UNRECORDED STORM DRAIN EASEMENT IS HEREBY DEEMED VACATED AND ABANDONED PER SECTION 66499.20.2 OF THE SUBDIVISION MAP ACT.

BASIS OF BEARINGS

THE MONUMENT LINE OF RAILROAD AVENUE TAKEN AS NORTH 69°30'15" EAST. AS SHOWN ON PARCEL MAP 8370 (274 M 92-93).

BENCHMARK

CITY MONUMENT ON NORTH LIVERMORE AVENUE, APPROXIMATELY 150 FEET SOUTH OF RAILROAD AVENUE.

ELEVATION = 484.816 FEET (CITY OF LIVERMORE 2K DATUM)

MAP REFERENCES

(R1) PARCEL MAP 8370. (274 M 92)
(R2) PARCEL MAP 8548 (282 M 24)
(R3) LOT LINE ADJUSTMENT 06-007. CERTIFICATE OF COMPLIANCE 2006-270825.

LEGEND

	PARCEL MAP BOUNDARY
	NEW PROPERTY LINE
	STREET MONUMENT LINE
	STREET MONUMENT TIE
	LOT LINE
⊙	FOUND STREET MONUMENT AS NOTED
(R)	RADIAL BEARING
S.N.F.	SEARCHED, NOT FOUND
(XXX)	RECORD INFORMATION(IF VARIES)
M-M	MONUMENT TO MONUMENT
PI-M	POINT OF INTERSECTION TO MONUMENT
(R1)	PER REFERENCE DOCUMENT
P.U.E	PUBLIC UTILITY EASEMENT
P.A.E.	PUBLIC ACCESS EASEMENT
E.V.A.E	EMERGENCY VEHICLE ACCESS EASEMENT
Pr.S.D.E	PRIVATE STORM DRAIN EASEMENT
P.S.D.E	PUBLIC STORM DRAIN EASEMENT
F.O.B	FACE OF BUILDING
℄	PROPERTY LINE
BM	BENCHMARK
(C)	SUBSURFACE PARCEL C DIMENSION

PARCEL MAP 9999

CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA

A RESUBDIVISION OF RESULTANT PARCEL 7 PER LOT LINE ADJUSTMENT 06-007, RECORDED JULY 12, 2006 AS INSRUMENT No. 2006270825 AND AS FURTHER DESCRIBED IN GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011568; GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011570; AND GRANT DEED RECORDED OCTOBER 24, 1989 UNDER SERIES No. 89-286823

BY THE

CITY OF LIVERMORE
COMMUNITY DEVELOPMENT DEPARTMENT
SEPTEMBER 2018

SCALE 1"=40'

SHEET 2 OF 4 SHEETS

Parcel Map 9999

Map Bk 340

EXHIBIT A Pg 82

EXHIBIT I SHEET 2 OF 4

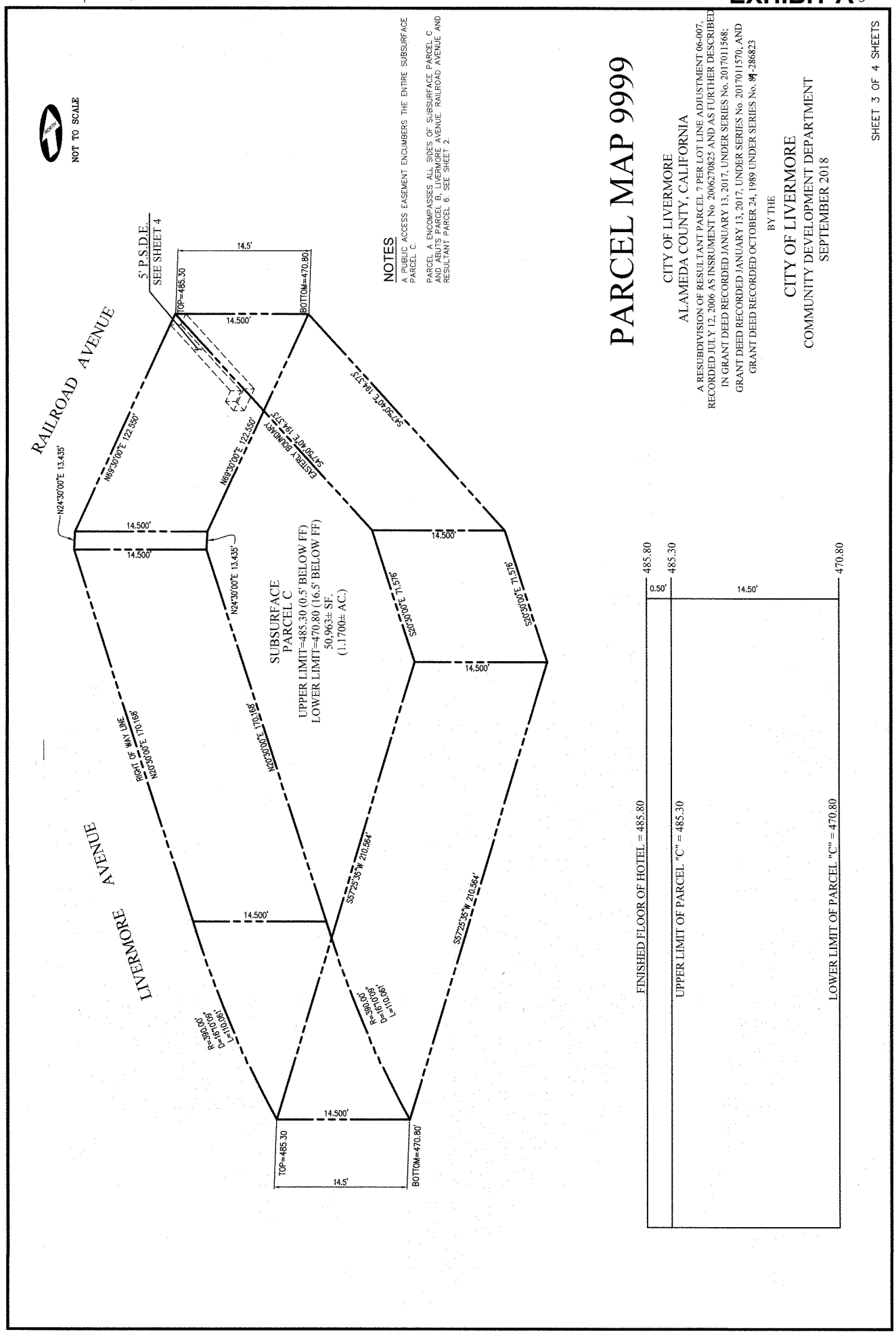


EXHIBIT I SHEET 3 OF 4

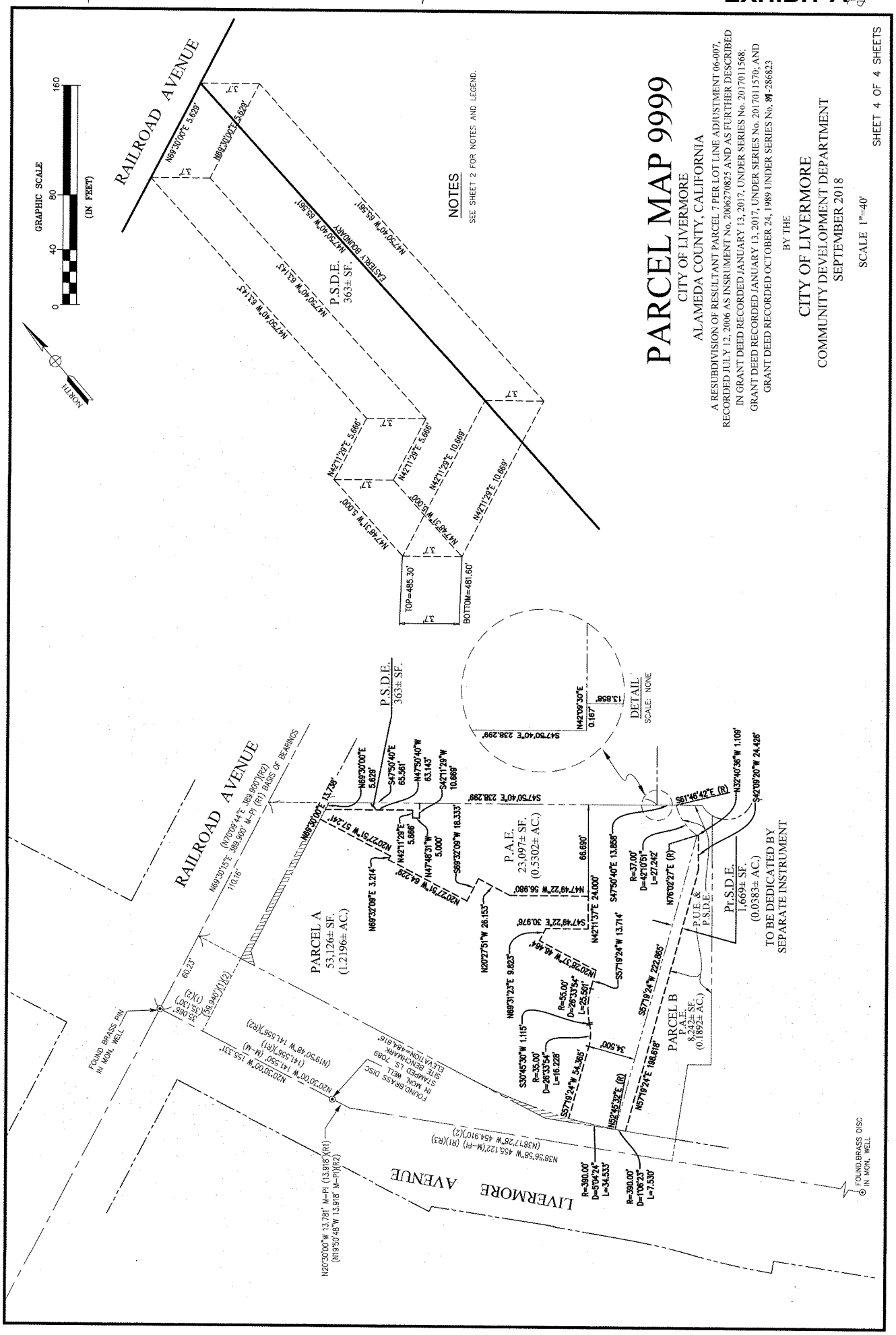


EXHIBIT I SHEET 4 OF 4

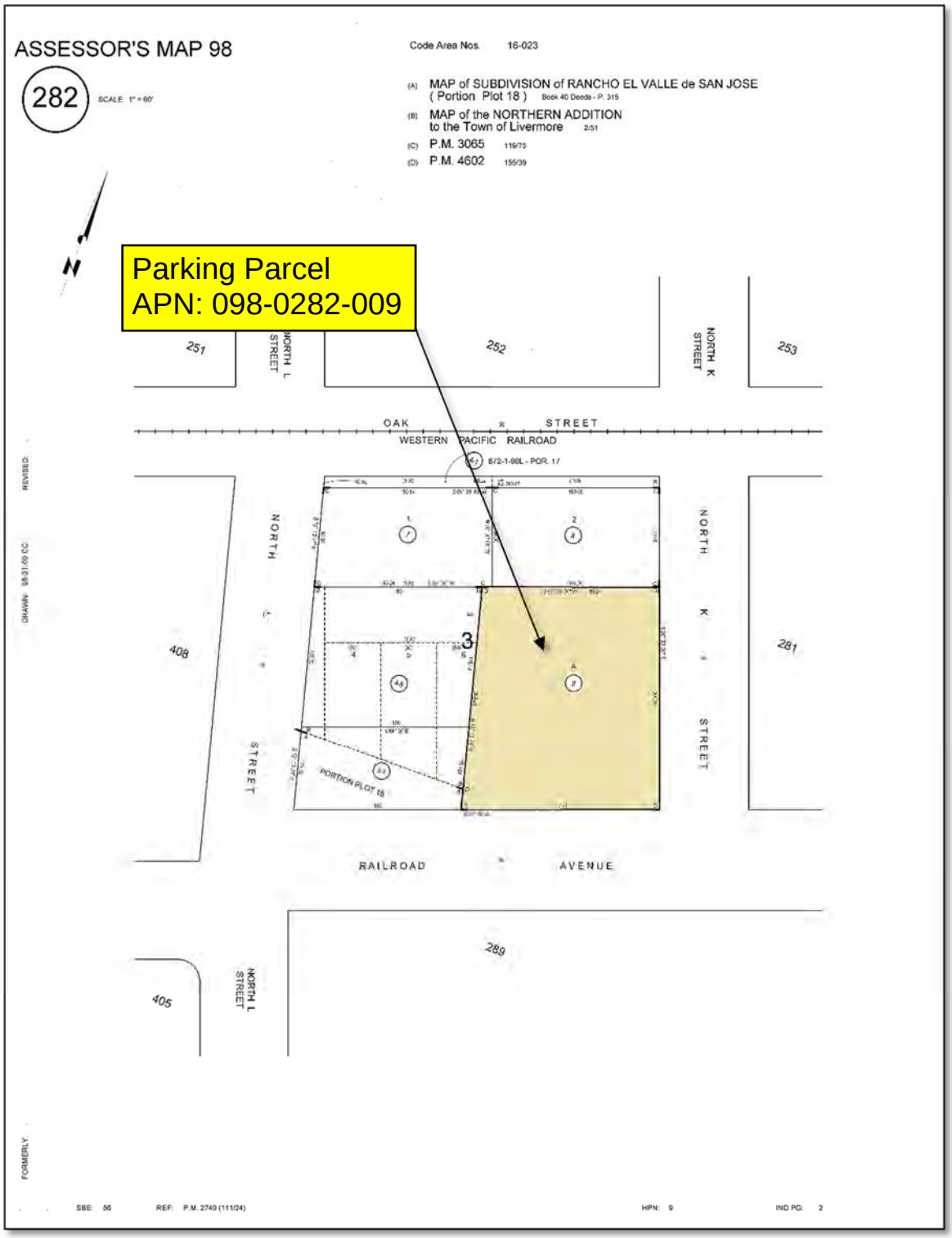

ASSESSOR'S MAP 98
282
SCALE: 1" = 60'
Code Area Nos. 16-023
(A) MAP of SUBDIVISION of RANCHO EL VALLE de SAN JOSE (Portion Plot 18) Book 40 Deeds - P. 315
(B) MAP of the NORTHERN ADDITION to the Town of Livermore 2/51
(C) P.M. 3065 119/75
(D) P.M. 4602 155/39
Parking Parcel
APN: 098-0282-009
251
NORTH L STREET
252
NORTH K STREET
253
OAK STREET
WESTERN PACIFIC RAILROAD
8/2-1-98L - POR. 17
NORTH L STREET
NORTH K STREET
408
281
3
PORTION PLOT 18
RAILROAD AVENUE
289
405
NORTH L STREET
REVISED:
DRAWN: 08-31-09 CC
FORMERLY:
SBE: 56
REF: P.M. 2740 (111/24)
HPN: 9
IND PC: 2

EXHIBIT J

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE
Amended and Restated Disposition, Development and Loan Agreement
Site Acquisition Loan

Principal Amount: $1,923,750 _____, 2022

APN 098-0282-009-00

FOR VALUE RECEIVED, the undersigned 2205 Railroad Avenue LLC, a Delaware Limited Liability Company ("Borrower") whose address is 262 Glorietta Boulevard, Orinda, California 94563, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of ONE MILLION NINE HUNDRED AND TWENTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY Dollars ($1,923,750), together with interest accrued thereon, as set forth in this Promissory Note ("Note").

Pursuant to that certain Amended and Restated Disposition, Development and Loan Agreement ("DDLA") dated _____, 2022, by and between City and Borrower (the "Developer"), the Developer agreed to construct a four-story approximately 65,000-75,000 square foot hotel containing between 125-135 rooms, approximately 1,400-2,000 square feet of economically viable meeting space, a roof-top deck and related hotel amenities and improvements (the "Project") on the Property (defined below) and agreed to satisfy a portion of the parking requirements identified in the conditions for approval for the Project on the Parking Parcel (identified below).

In accordance with the DDLA, the property consists of the parcels located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore in the City of Livermore, Alameda County, California (APNs: 098-0407-031-00 and 098-0407-033-00) as more particularly described and depicted as Parcel A and Parcel C on Parcel Map 9999 and in Exhibit A attached hereto (the "Property").

Likewise, in accordance with the DDLA, the parking parcel consists of a parcel located at the northwest corner of Railroad Avenue and North K Street commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) as more particularly described and depicted in Exhibit B attached hereto (the "Parking Parcel").

In accordance with the DDLA, the Borrower intends to purchase, develop, own, and operate the Project on the Property and to use the Parking Parcel to satisfy a portion of the parking requirements identified in the conditions of approval for the Project. Pursuant to the DDLA and its terms and conditions for the loan, the City has made a site acquisition loan to Borrower in the original principal amount of ONE MILLION NINE HUNDRED AND TWENTY-THREE

THOUSAND SEVEN HUNDRED AND FIFTY Dollars ($1,923,750) to fund the acquisition of the Parking Parcel to help satisfy a portion of the parking requirements in the conditions of approval for the Project (the "Site Acquisition Loan").

This Note is made and delivered pursuant to and in conjunction with the DDLA entered into by and between the City and Borrower dated as of even date herewith. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance the acquisition of the Parking Parcel for the Project, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply with all terms and conditions of this Note.

2. Principal. The principal amount of this Note, $1,923,750 ("Principal Amount"), loaned to the Borrower by the City to finance the acquisition of the Parking Parcel for the Project, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three and one-half percent (3.5%) annual interest as of the date of this Note.

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) three months after the completion of the Project's construction as determined by the issuance of a certificate of occupancy for the hotel, or (ii) December 31, 2025, whichever is sooner (the "Maturity Date"); unless otherwise terminated for infeasibility in accordance with the DDLA.

5. No Assumption. Except as may be otherwise set forth in this Agreement and the DDLA, this Note shall not be assumable by the successors and assigns of Borrower without the City's prior written consent.

6. Security. This Note is secured by that certain Deed of Trust and Assignment of Rents executed concurrent with this Note and recorded against the Parking Parcel in the Official Records of Alameda County, wherein the Borrower is the Trustor, and the City is the Beneficiary (the "Security Instrument"). City shall be entitled to the benefits of the Security Instrument and shall have the right to enforce the covenants and agreements contained herein, in the Security Instrument, and in the DDLA executed by and between the Borrower and the City as a condition of the DDLA. Any restrictive covenants executed by and between City and Borrower as a condition of the DDLA shall remain effective for the full duration of those restrictions and shall survive repayment of this Note as set forth in the DDLA.

7. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Site Acquisition Loan as set forth in the DDLA during the Term of this Note. This Note becomes due and payable in full on the earlier of: (a) the date of any Transfer, as defined in the DDLA not authorized by the City; (b) an Event of Default by Borrower which has not been cured as provided for in the DDLA; but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to current annual interest due, and then to reduce the principal amount of the Site Acquisition Loan. All payments by the Borrower shall be paid to the City in currency of the United States

of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

8. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time to time before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

9. Encumbrances. The Borrower shall not encumber either or both the Property or Parking Parcel, permit the covenancy, transfer, or encumbrance of either or both the Property or Parking Parcel, allow the placement of any liens, notes, or deeds on either or both the Property or Parking Parcel, or use either or both the Property or the Parking Parcel as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved financing plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 14 below.

10. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property or the Parking Parcel, or both, in accordance with the DDLA;
B. The Borrower fails to cure a default consistent with the requirements of Section 11 below;
C. The transfer of the Property, Parking Parcel, or this Note in violation of Section 13, and without the City's written approval consistent with the requirements of Sections 14 and 15 below;
D. The encumbrance of the Property or Parking Parcel, or both, in violation of Section 8, without the City's written approval consistent with the requirements of Sections 9 and 15;
E. Borrower is found to be in Default of the DDLA.

11. Default – Notice & Opportunity to Cure. If in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of thirty (30) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. Any investor, limited partner of Borrower or Borrower's assignee shall have the same notice and

cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

12. Default Rate. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "Default Rate"); provided, however, if any payment due hereunder is not paid when due, the Default Rate shall apply to commence upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

13. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property, Parking Parcel, or any parts thereof, or any trust or power, or any transfer in any other mode or form, of the Property or Parking Parcel, or any parts thereof or any interests therein; provided, however, that the Borrower may transfer any or all of its interest in the Property, the Parking Parcel, or both, to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City.

14. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property, the Parking Parcel, or both: The Property and Parking Parcel is to be transferred to another qualified developer, as pre-determined by the City, who will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA.

15. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances, and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note and the DDLA. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 24.

16. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, the Parking Parcel, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property and the Parking Parcel.

17. Notices. Any demand or notice which either party desires to deliver to the other shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited

in the United States mail with first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

18. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

19. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

20. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

21. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

22. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

23. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

24. Nonrecourse. Except as expressly provided in this Section, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property, the Parking Parcel, and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Site Acquisition Loan in the DDLA of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Site Acquisition Loan in the DDLA as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City

may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the DDLA or other documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Site Acquisition Loan in the DDLA Loan, or in DDLA or other documents between the City and the Borrower, or in connection with any request for any action or consent by City in connection with the DDLA and its terms and conditions for the Site Acquisition Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations in the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property or the Parking Parcel and which has a material adverse effect on the value of the Property, the Parking Parcel, or both; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA.

[Signatures on the Following Page]

DATE:

BORROWER:

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By: PresidioCo Holdings LLC,
a Delaware limited liability company,
Its: Manager

By: _____

Name: _____

Title: _____

DATE:

CITY:

CITY OF LIVERMORE,
a municipal corporation

By: _____

Name: Marc Roberts

Title: City Manager

APPROVED AS TO FORM

By: _____

Exhibit A – Property Description – Hotel Parcel
Exhibit B – Parking Parcel Description

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

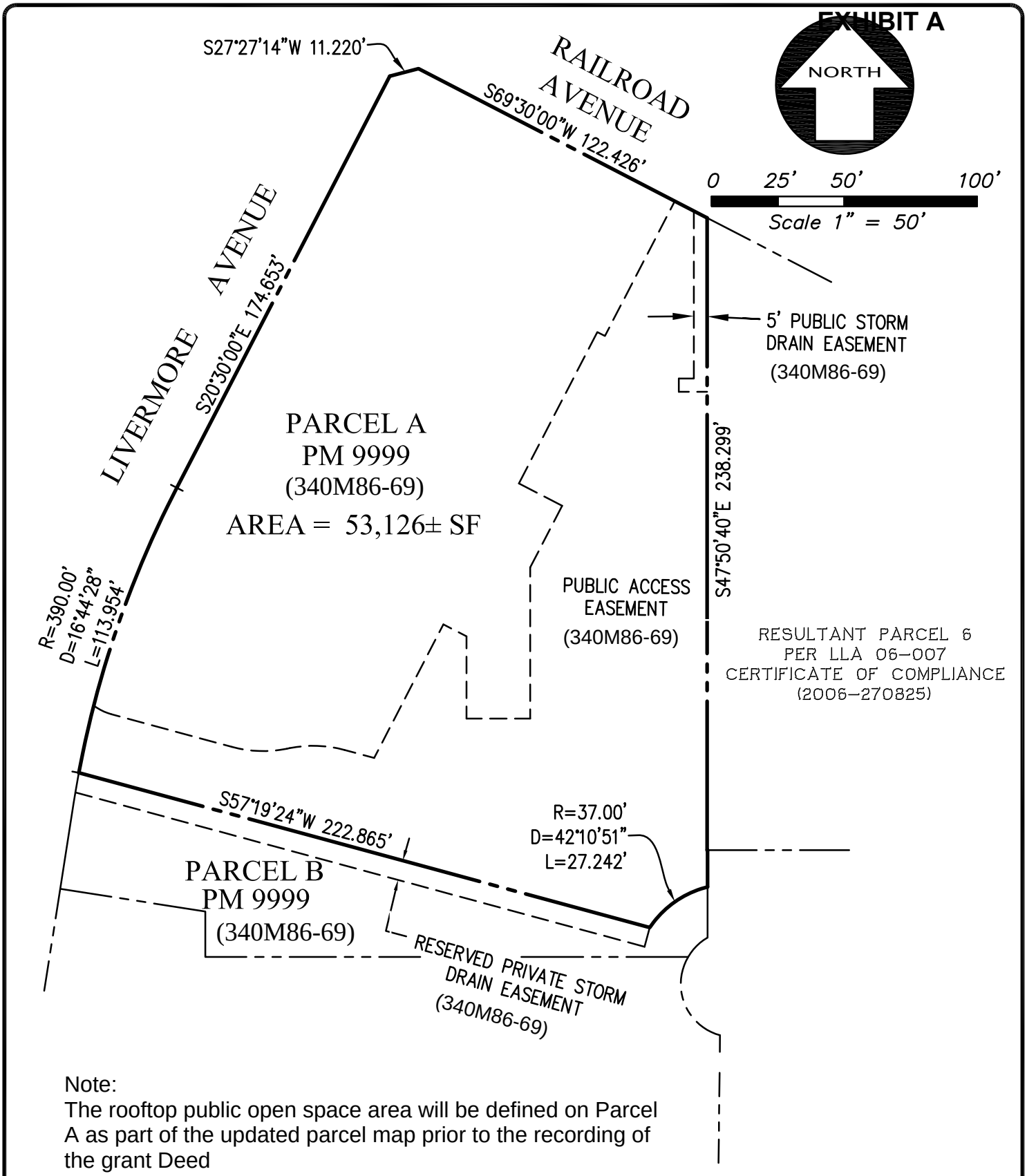
REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A

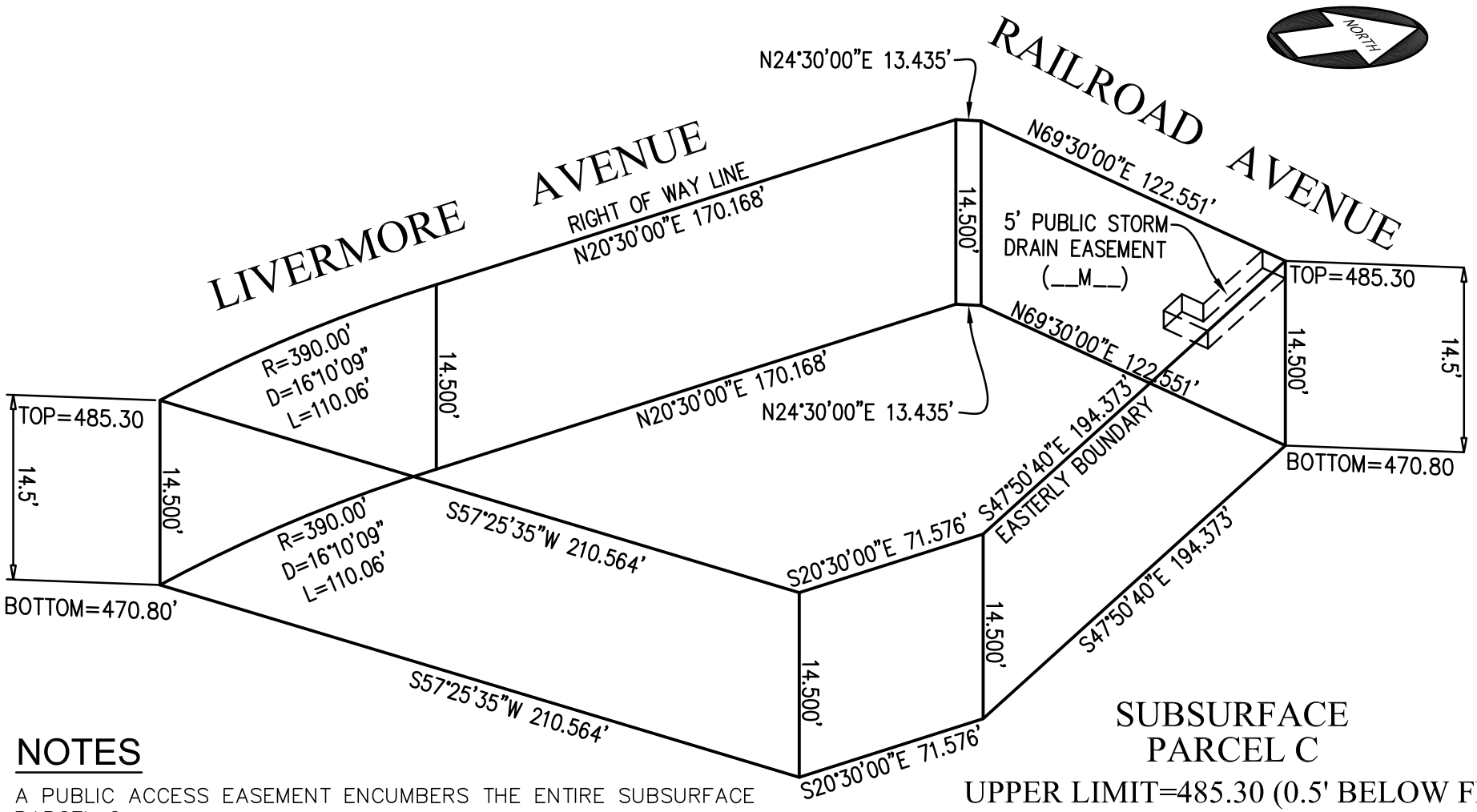


Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT B

Parking Parcel Description
(Legal Description of Parking Parcel to be provided by Developer upon purchase of property)

DESCRIPTION OF PUBLIC IMPROVEMENTS

A. South Livermore Avenue Roadway Modifications

The Livermore Avenue roadway modifications are to create a dual drop-off zone in front of the proposed Hotel lobby. The drop-off zone will consist of a minimum eight (8) foot wide sidewalk in front of the lobby, a nine (9) foot wide drop-off lane adjacent to the sidewalk, an eight (8) foot wide drop-off lane, and a two (2) foot wide striped buffer separating the travel lanes from the drop-off lanes. The curb gutter along the east side of Livermore Avenue shall be realigned to reroute the existing two northbound travel lanes around the drop-off lanes and then align back with the existing lane configuration at the intersection of Livermore Avenue and Railroad Avenue signalized intersection. The two northbound travel lanes shall be twelve (12) feet wide south of the drop-off area then be reduced to eleven (11) feet wide travel lanes across the frontage of the drop-off area and then widen as necessary to conform with the existing travel lanes at the intersection. The existing northbound left-turn pocket at the intersection of Livermore Avenue and Railroad Avenue shall be modified such that the left-turn pocket shall be a minimum length of one hundred thirty (130) linear feet with a minimum sixty (60) foot taper as follows:

1. Remove the existing median in Livermore Avenue and salvage the existing pavestones.

2. Remove the existing curb, gutter, sidewalk, and street trees along the east side of Livermore Avenue from the southeast corner of the Livermore Avenue/Railroad intersection to the existing crosswalk near the southern boundary of the Hotel.

3. Remove the existing paving within Livermore Avenue to install a new raised median.

In addition, a solar-powered pedestrian flashing beacon shall be installed at the existing crosswalk just south of the hotel parcel exit driveway. Cost-sharing for these improvements shall be per the provisions of the DDLA.

B. Railroad Avenue

New Railroad Avenue frontage improvements shall be constructed by the City as part of City Project 202116 widening of Railroad Avenue. The developer shall remove and replace any damaged frontage improvements as a result of constructing the Hotel Improvements. The Developer shall install storm drain improvements as required to meet on-site hotel and on-site public roadway stormwater requirements. The developer shall slurry seal and restripe Railroad Avenue from Livermore Avenue to fifty (50) feet beyond the eastern boundary of this project from the median to the gutter along the Hotel frontage due to utility cuts in the street.

C. <u>On-Site Public Roadway</u>

The following improvements and public improvements shall be designed and constructed by the Developer as part of the on-site public roadway:

1. Public roadway from Railroad Avenue to Livermore Avenue routing around the east side of the Hotel varying in width from twelve (12) feet to fourteen (14) feet in width.

2. Seven (7) ADA parking spaces along the eastern boundary of the proposed Hotel Development.

3. An eight (8) foot wide loading zone at the courtyard of the proposed Hotel development.

4. A ten (10) foot wide loading zone along the southern boundary of the Hotel Parcel to serve the Hotel and the existing commercial businesses that front First Street.

5. A five (5) foot wide sidewalk from the Bankhead Theater plaza area to Railroad Avenue along the eastern boundary of the proposed Hotel. The sidewalk shall be flush to grade from the southeast corner of the Hotel the full length of the ADA parking spaces then ramp up to a standard walkway with a 6” curb up to the driveway entry at Railroad Avenue.

6. New curb and gutter along the eastern and western boundaries of the on-site roadway improvements.

7. Bio-retention swale located along the northeast portion of the roadway improvements and new 12” storm drain piping from the bio-retention swale to an existing drop inlet located at the southeast corner of the intersection of Railroad Avenue and Livermore Avenue.

8. New landscaping shall be installed along the eastern boundary of the hotel parcel from the northern point of the ADA parking up to the northeast corner of the hotel parcel. The landscape shall be designed to screen a portion of the adjacent Bankhead Theater and serve as a bio-treatment device to treat the stormwater runoff from the new public roadway.

9. Bio-retention planters located on the adjacent City property (Parcel B, Parcel Map 9999) along the southern portion of the 10-foot-wide loading zone and new 12” storm drain piping from the bio-retention planters to an existing storm drain maintenance hole located at the roadway exit driveway on Livermore Avenue.

10. New street-level driveway approach with ADA ramps on Railroad Avenue at the northeast corner of the Hotel.

11. New street-level driveway approach with ADA ramps on Livermore Avenue at the southwest corner of the Hotel.

D. Landscape on City Parcel B, Parcel Map 9999

The Developer shall design and construct new landscaping in City Parcel B of Parcel Map 9999 adjacent to and along the southern boundary of the hotel parcel. The landscape at the southern boundary of the hotel parcel shall be bio-treatment devices designed to treat a portion of the public roadway and loading zone along the southern boundary of the Hotel Parcel. Additional landscape improvements shall be installed in the area where the existing trash compactor will be removed after the new Joint Solid Waste Facility is installed. Landscape in this area shall match the existing landscape and be irrigated from the existing irrigation system serving the City parcel.

E. Joint Solid Waste Facility

The Developer shall design and construct a Joint Solid Waste Facility in close proximity to the Hotel sized to serve the solid waste produced including but not limited to garbage, organics, and recyclable services by the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema. The Joint Solid Waste Facility will replace the temporary facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West). The Developer shall maintain access to the temporary solid waste facility during the construction of the Project until such time as the Joint Solid Waste Facility is completed and operational. Once the Joint Solid Waste Facility is operational, the Developer shall remove the temporary solid waste facility and install new landscape and irrigation connected to the City's irrigation system at the location of the former temporary solid waste facility.

PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT is entered into by and between 2205 Railroad Avenue LLC, a Delaware limited liability company ("Developer"), and the City of Livermore, a municipal corporation ("City").

RECITALS

A. The Developer and City are parties to that certain Amended and Restated Disposition and Development Agreement dated XXXXXXXX, 2021, and recorded on XXXXX, 2021, in the official records of Alameda County California as instrument number XXXXXXXXXX (the "DDLA").

B. The Public Improvements as defined in the DDLA have not yet been completed according to the requirements of the DDLA. The City and Developer desire to establish an agreement binding the Developer to complete the Public Improvements no later than 2 years after the date this Agreement is executed.

AGREEMENT

NOW, THEREFORE, the City and Developer hereby agree that the aforementioned recitals are true and correct, and further agree as follows:

1. Performance of Improvements. The Developer shall perform all work as specified in Exhibit "A", attached, and incorporated herein by this reference, in strict accordance with all specifications, plans, applicable City standards, and to the satisfaction of the City Engineer. The work shall be performed, and all materials and labor shall be provided, at the Developer's sole cost and expense subject to the reimbursement provisions set forth in the DDLA. The Developer has provided detailed improvement plans, for all public improvements depicted in Exhibit "A". All required public improvements shall be constructed in accordance with the approved improvement plans (dated , sheets), and current City standard specifications and details, all of which are on file in the office of the City Engineer.

2. Special Conditions. The Developer shall be required to comply with the special conditions as follows: There are no special conditions.

3. Time for Completion. All required public improvements shall be complete and ready for acceptance by City Council as determined by the City no later than 2 years after the execution of this Agreement.

4. Permits, Licenses, and Compliance with the Law. The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the work specified in this Agreement. The Developer shall also comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

EXHIBIT M

5. Acceptance by City. The City shall accept for maintenance the public improvements required by this Agreement after City has determined the Developer has caused all public improvements to have been made in accordance with the requirements of Paragraph 1 above. All public improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

6. Continued Maintenance For One Year. The Developer shall maintain all public improvements required by this Agreement for one year following the completion by the Developer, and acceptance of the public improvements by City Council. All public improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

7. Inspection by City. All work done by the Developer shall be inspected by an inspector employed by the City at the cost and expense of the Developer. The Developer shall pay the City, on-demand, the cost of the inspection in accordance with City ordinances. In order to permit the City to inspect the work, the Developer shall provide to the City proper and safe access to the project site at all times, and all portions of the work, and to all shops wherein portions of the work are in preparation.

8. Payment of Outstanding Fees. Prior to acceptance of the public improvements for permanent maintenance by the City, the Developer shall pay all outstanding fees that are due in accordance with City ordinances or this Agreement. In the event the fees are not paid within one year of the date of execution of this Agreement, the Developer shall pay interest at seven percent (7%) per annum from that date until the fees are paid, whether or not any conditions of this Agreement are extended or modified.

9. Reimbursement by City. The City shall reimburse the Developer for its costs for the Public Improvements in accordance with the reimbursement provisions set forth in the Development Agreement.

10. Bonds Required. The Developer shall provide to the City surety bonds of a form satisfactory to the City Attorney issued by a company authorized to issue surety bonds in the State of California as follows:

(a) At the time of signing this Agreement, the following bonds shall be provided:

i. Faithful Performance – in the amount of 100 percent (100%) of the total estimated construction costs, or $ TBD , to secure faithful performance of this Agreement by the Developer.

ii. Labor and Materials – in the amount of fifty percent (50%) of the estimated construction costs, or $ TBD , to secure payment by the Developer of laborers and material engaged pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

EXHIBIT M

(b) At the time of signing this Agreement, or before the City accepts the public improvements, the Developer shall also provide a Warranty Bond for maintenance in the amount of fifteen percent (15%) of the cost of the public improvements, or $ TBD , to secure performance of Sections 1 and 6 above. This bond shall remain in effect for one (1) year after the date of acceptance by the City Council of the public improvements required by this Agreement.

11. Alternate Security. In lieu of the bonds required by Paragraph 10 above, alternative security in the form outlined by City ordinance, compliant with the Government Code, and approved by the City Attorney may be provided.

12. Reporting Damages. If any damage (including personal injury, death, or property damage) occurs in connection with the performance of this Agreement, the Developer shall immediately notify the City Risk Manager's office by telephone at (925) 960-4172, and Developer shall promptly submit to the City's Risk Manager a written report, in a form acceptable to the City, with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property, if any), (b) the name(s) and address(es) of witnesses, and (c) the name(s) and address(es) of any potential insurance companies.

13. Indemnification. The Developer shall indemnify, defend, and hold the City, its officers, officials, employees, agents, and volunteers harmless against any and all claims, injuries, damages, losses, and suits, including attorney's fees and legal costs, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused solely by the negligence of the City.

14. Insurance Required. The Developer shall procure and maintain insurance for the duration of the contract in the amounts and under the terms set forth in Exhibit "B" against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Developer, its agents, representatives, employees, or subcontractors.

15. Attorney's Fees to Prevailing Party. If any action at law or in equity, including an action for declaratory relief, is brought to challenge, enforce, or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, expert witness fees, and costs, in addition to any other relief to which they may be entitled.

16. Agreement Binds Successors. This Agreement pertains to and runs with the land benefited by the privileges it grants and binds the successors in interest of the parties to this Agreement.

17. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and

effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

18. Modifications. This Agreement may not be modified unless by written instrument signed by both parties.

19. Governing Law. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

****

Signatures and Attachment List on the Following Page

DATE:

DEVELOPER:

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By: PresidioCo Holdings LLC,
a Delaware limited liability company,
Its: Manager

By: _____

Name: _____

Title: _____

Mailing Address:
2205 Railroad Avenue
262 Glorietta Boulevard
Orinda, CA 94563
Attn: Rikesh Patel

(ALL SIGNATURES MUST BE NOTARIZED)

DATE:

CITY OF LIVERMORE,
a municipal corporation

By: _____

Name: Marc Roberts

Title: City Manager

ATTEST:

(SEAL)

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Assistant/City Attorney

Attachments:
Exhibit A – Engineering Considerations
Exhibit B -- Insurance Requirements

EXHIBIT M

DDLA Schedule of Performance

	Pre-Escrow Requirements	Due Date
1	Pre-submittal meeting between City and Developer for entitlements	20-Dec-21
2	Developer submittal of entitlement package	4-Jan-22
3	Developer submittal of complete entitlement package in response to City comments	24-Jan-22
4	Developer submittal Phase 1 for Parking Parcel lot prior to close of escrow	27-Jan-22
5	Developer completes purchase of Parking Parcel property	15-Feb-22
6	Preliminary pro-forma submitted by Developer to City	28-Feb-22
7	Developer Submittal of Draft Hotel Standard Proposal	28-Mar-22
8	City Council review of entitlement package (date subject to on-time submittal of complete entitlement package)	11-Apr-22
9	City approval of parcel map waiver (staff level - subject to on-time submittal of complete entitlement package)	11-Apr-22
10	Developer and the City have entered into a Lease and Operating Agreement for the Hotel and Parking Parcels	11-Apr-22
11	City records parcel map for Hotel Parcel	22-Apr-22
12	Close of Escrow and final transfer of property to Developer	29-Apr-22
13	Joint Compactor/Solid Waste Facility Agreement signed by all applicable parties	30-Jun-23
14	Developer Submittal of Final Hotel Standard Proposal	3-Jul-23
15	City response to final Hotel Standard Proposal (date subject to on-time submittal of Final Hotel Standard Proposal in Item 14 above)	30-Nov-23
16	Building permit submittal by Developer including Hotel, Parking Parcel, Joint Solid Waste Facility and all public improvements	18-Aug-23
17	Final submittal of Final Hotel Standards Proposal in response to City comments	12-Jan-24
18	City approval of Final Hotel Standards Proposal, with conditions as needed (date subject to on-time submittal of Item 17 above)	2-Feb-24
19	Submittal of improvement agreement, bonds, and final off-site improvement plans	4-Mar-24
20	Developer submittal of letters of intent from lenders/equity partners demonstrating full financing needed to construct	15-Feb-24
21	Council approval of improvement agreement and public improvements (subject to on-time submittal of Item 18 above)	13-May-24
22	Developer has obtained Building Permit approval by City for Hotel, Parking Parcel and Joint Solid Waste Facility	31-May-24
23	Start of construction of Joint Solid Waste facility and Hotel (Outside Date)	30-Jun-24
24	Start of construction of Parking Parcel improvements	30-Jan-25
25	Construction of Hotel and all public improvements, and Parking Parcel complete	15-Nov-25
26	Hotel opens and lump sum payment due for loan + interest on Parking Parcel and final payment due for the Hotel Property purchase	31-Dec-25

Scope of Development

The Scope of Development provides the baseline standards from which the Developer shall prepare plans for the project. The final construction drawings shall be consistent with the scope established here, subject to any changes approved by the City Council as part of the Downtown Design Review Entitlements.

Scope of Development:

The project shall include the design and construction of a four-story 125-135-room hotel with an approximately 3,300 square foot bar/lounge, 1,500-2,000 square foot meeting space, 3,500 square foot rooftop deck open to the public consistent with DDLA Exhibit Q, fitness center, outdoor pool, an open courtyard and patio, and related amenities. The design of the project, including the off-site valet parking lot, shall meet the requirements of the City's Downtown Specific Plan in effect at the time of project entitlement. The hotel shall be designed as an upscale or upper-upscale hotel, under the STR, Inc. Chain Scales Rating system or similar industry-recognized rating system as more particularly described in DDLA Exhibit E (Hotel Standards). The hotel shall be designed and appointed with a quality that meets or exceeds the following hotel types, as they exist at the time of the execution of this agreement: Marriot AC, Marriot Autograph Collection, Hilton Canopy, and the Curio Collection by Hilton.

The design of the hotel exterior shall meet or exceed the quality of the hotel project approved on the project site on September 10, 2018, via Council Resolution No. 2018-155. Interior and exterior materials, workmanship, fixtures, features, and amenities shall be durable and of high quality and further the project's position as a preeminent downtown destination.

The project shall also include off-site valet parking at 2080 Railroad Avenue, consistent with DDLA Exhibit J (Parking Parcel) or other similar off-site valet parking lot if approved by the City Council, consistent with the terms of the DDLA. In addition to valet parking service, the project shall meet its accessible parking requirement on the project site.

The project shall also construct and manage a private Joint Solid Waste Facility for the Livermore Valley Center, per DDLA Exhibit F (Joint Solid Waste Facility Agreement Material Terms) which shall be consistent in design with the surrounding uses and the requirements of the City's Downtown Specific Plan. The project shall also demolish the existing temporary solid waste compactor facility, once the new facility is operational, and provide for replacement landscaping on adjoining City property.

TEMPORARY PARKING LEASE AGREEMENT
(Hotel Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, is made and entered into by and between 2205 Railroad Avenue LLC, a Delaware Limited Liability Company ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. Lessor desires to construct a four story approximately 65,000-75,000 square foot hotel, containing between 125-135 hotel rooms on two City-owned parcels (APNs: 098-0407-031-00 and 098-0407-033-00) located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (hereinafter "Hotel Parcel").

B. On_____, the City and Lessor entered into a Disposition, Development and Loan Agreement (the "DDLA") wherein the City agreed to sell the Hotel Parcel to Lessor for $71,521. Prior to the close of escrow, the City was using a portion of the Hotel Parcel as a temporary paved surface public parking lot. Upon sale of the Hotel Parcel to Lessor, Lessor has agreed to lease a portion the Hotel Parcel to City at no cost for use as a temporary paved surface public parking lot until the commencement of construction on the Hotel Parcel.

C. As part of the Disposition, Development and Loan Agreement, the City made a loan to Developer to fund the acquisition of a piece of real property located at 2080 Railroad Avenue in Livermore in order to use the property as a valet parking lot to satisfy a portion of the City's parking requirements for the Hotel ("Parking Parcel").

D. Prior to commencement of construction of the Hotel, City desires to lease from Lessor and Lessor desires to lease a portion of the Hotel Parcel (hereinafter "Hotel Parcel" or "Leased Premises") as more particularly shown on Exhibit A attached hereto and incorporated herein. The Leased Premises is approximately 41,500 square feet of a paved surface public parking lot.

E. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. <u>Leased Premises</u>. Lessor leases to City and City leases from Lessor, the Leased Premises which consists of approximately 41,500 square feet of a paved surface public parking lot, as indicated on Exhibit A.

2. Possession; Delay in Delivery of Possession.

(a) Except as otherwise provided in this Lease Agreement, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Hotel Parcel and/or the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the commencement date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. Rent. As a condition of the sale of the Hotel Parcel from City to Lessor**,** Lessor agrees to lease the Leased Premises to the City at no cost for use as a temporary paved surface public parking lot. This no cost lease was incorporated into the sales price for the Hotel Parcel through the DDLA. City shall be responsible for all costs associated with the maintenance of the Leased Premises as set forth in Section 7 of this Lease Agreement.

4. Term. This Lease Agreement shall commence on [date], 2022 ("Commencement Date") and terminate on the date when Lessor commences construction of the Hotel. Lessor shall provide City with 30 days written notice prior to the date that construction of the Hotel will commence. This Lease Agreement shall supersede and replace any other lease agreement between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Hotel Parcel

5. Solid Waste Disposal and Collection. In accordance with the DDLA, Lessor is required to design, construct, and own a Joint Solid Waste Facility that will provide garbage, organics, and recyclable services for the Hotel, Bankhead Theater, First Street Mixed Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema. The Joint Solid Waste Facility shall replace the temporary solid waste facility located south of the Hotel Parcel and north of the First Street Mixed-Use Commercial Project (West). Lessor shall maintain sufficient truck access to allow solid waste collection at the existing temporary solid waste facility until such time when the Joint Solid Waste Facility is constructed and operational. At the time Lessor provides City written notice of the date construction of the Hotel will commence, Lessor shall identify how solid waste collection access will be maintained if the Joint Solid Waste Facility is not yet operational.

6. City's Use of Leased Premises.

(a) Use of Leased Premises. City shall only use the Leased Premises for the purpose of a temporary paved surface public parking lot and for trash collection at the temporary solid waste facility located south of the Hotel Parcel.

(b) **Rules Regarding Use.** City shall observe and comply with the rules and regulations annexed to this Lease Agreement and, after notice of these rules, City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Hotel Parcel or Leased Premises.

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) **Hazardous Materials.** City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Hotel Parcel or Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Leased Premises, of any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

7. City Obligations.

(a) Services and Utilities. City shall provide basic electricity and power for the Leased Premises.

(b) Maintenance. Except as otherwise provided herein, City shall at its own cost and expense, maintain the Leased Premises, and every part thereof, in good and sanitary order, condition, and repair. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

8. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary, surface public parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

9. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Hotel Parcel, and City will keep the Leased Premises free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Leased Premises, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event that Lessor provides City with the required written consent, City shall at its own cost comply with any and all Federal, State, or local laws

and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

10. Destruction. If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood, earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

11. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, paved surface public parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

12. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for a temporary surface public parking lot . City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for improvements, construction and/or repair work outside of the Lessor's obligations.

13. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Hotel Parcel or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

14. Taxes. Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Hotel Parcel, improvements located on the Hotel Parcel, personal property located on or in the Hotel Parcel or improvements, and the leasehold interest created by this Lease Agreement.

15. Lessor Refinancing. City is aware that Lessor is leasing its interest in the Leased Premises to City and that Lessor's leasehold interest in the Leased Premises is related to an outstanding lease financing. City agrees that it will use best efforts to cooperate with Lessor in connection with a refinancing of the outstanding lease financing, including executing any estoppel, consent, and other similar documents requested by the Lessor.

16. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

17. Insurance. For the duration of this Lease Agreement, City shall procure and maintain, at its own cost, insurance in the amounts and under the terms set forth in Exhibit B attached hereto against claims for injuries to persons or damages to property which may arise from or in connection with this Lease Agreement.

18. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Hotel Parcel or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Hotel Parcel and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

19. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

20. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

21. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement.

22. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations, improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

23. Entry by Lessor. City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; and (x) responding to an emergency.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry

into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement.

24. Notices. Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

Lessor: 2205 Railroad Avenue LLC
A Delaware limited liability company

Attn:
262 Glorietta Boulevard
Orinda, California, 94563

25. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

26. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

27. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) **California Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) **Review of Lease.** Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) **Performance Excused.** The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) **Mutual Termination.** This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) **Headings.** The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) **Waiver.** A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) **Attachments.** All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) **Attorney's Fees and Costs.** If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

**********Signatures and Attachment List On Next Page**********

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

2205 Railroad Avenue LLC
A Delaware limited liability company

By: PresidioCo Holdings LLC
A Delaware limited liability company
its manager

Lessor
By: _____ Dated: _____
[Signer's Name]
[Signer's Title]

City or Lessee

City of Livermore
A Municipal Corporation

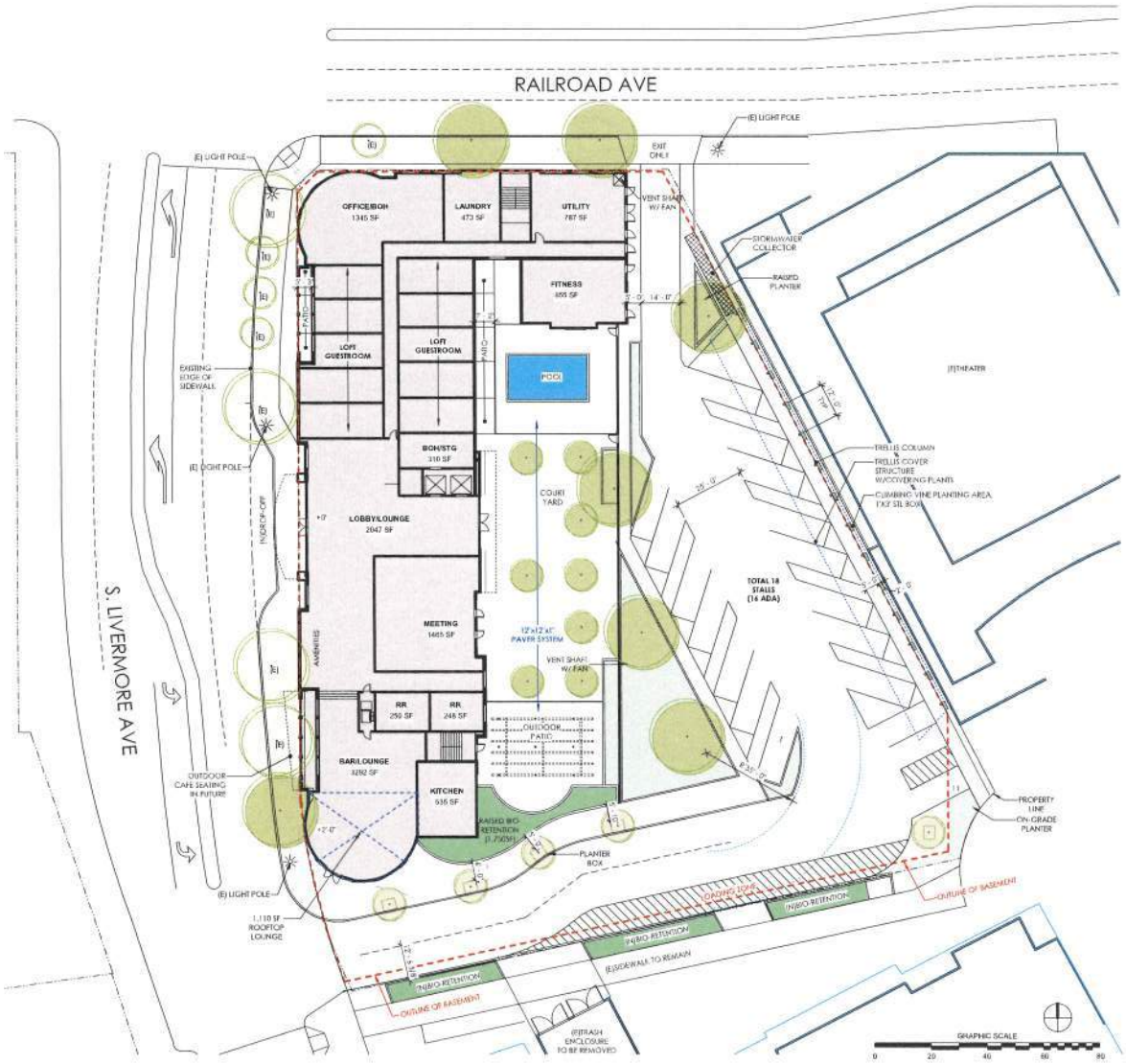
By: _____ Dated:_____
Marc Roberts
City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

Attachments:
Exhibit A – Real Property Site Plan – Hotel Parcel
Exhibit B – Insurance Requirements

EXHIBIT A
REAL PROPERTY SITE PLAN - HOTEL PARCEL



LEVEL 1 / SITE PLAN 1" = 20'-0" 1

ADDRESS: 2205 RAILROAD AVE
LIVERMORE, CA 94550

APPLICANT: RIKESH PATEL/PRESIDIO COMPANIES
(415) 264-7295
RIKESH@PRESIDIOCO.COM

APN: 98-407-29-2, 98-289-13-11

SITE AREA: 1.22+/- ACRES

ZONING: DOWNTOWN SPECIFIC PLAN (DSP)

OCC. CLASSIFICATION & USE: R-1 HOTEL, S-2 PARKING GARAGE

BUILDING CONSTRUCTION TYPE: TYPE V-A, SPRINKLERED

HEIGHT: PARAPET 54'-6", TOWER 63'-0"

AREA SUMMARY

LEVEL	PROGRAM	AREA (APPROX.)	AREA (APPROX.)	ROOM COUNT	STALL COUNT	NOTES
			-	-	-	
LEVEL 1	LOBBY/AMENITIES/BOH		17,900 SF	-	-	
	POOL/COURTYARD		-	-	-	7,000 SF (EXTERIOR)
	OUTDOOR PATIO				-	1,600 SF (EXTERIOR)
	GUEST ROOMS			10	-	LOFT STYLE
LEVEL 2	GUEST ROOMS		17,850 SF	41	-	
LEVEL 3	GUEST ROOMS		17,150 SF	41	-	
LEVEL 4	GUEST ROOMS		17,150 SF	41	-	
TOTAL		51,300 SF	**70,000 SF**	**133**	**120**	527 SF/RM

HRGA ARCHITECTURE
2277 Fair Oaks Boulevard, Studio 220
Sacramento, California 95825
916.993.4800 | www.hrgarchitects.com

presidiocompanies

LIVERMORE HOTEL

12/16/2021

4

Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

Terms and Conditions of Deed Restriction to Grant Deed

The following are requirements and restrictions to the Grant Deed for APN 098-0407-031-00 & 098-0407-033-00 (Hotel Parcel):

2205 Railroad Avenue LLC (Grantor) shall hereby grant to the City of Livermore, a municipal corporation (Grantee), public access and use to over and on rooftop public open space on the roof of the hotel. This open space is required to comply with the following:

1. The rooftop public open space area shall be comprised of a minimum 3,500 square foot publicly accessible area on the roof on the southern side of the building and provide seating for a minimum of 15 people.

2. The rooftop public open space area shall be accessible by elevator, provide lighting for safety purposes, and meet all State and Federal accessibility standards in effect at the time of construction.

3. The rooftop public open space shall be available for public use at least 6 days each week from 11 a.m. to 8 p.m. In addition, public use of the rooftop public open space shall be available each year from 9:00 a.m. to 10:00 p.m. on the Fourth of July, from 9:00 am to 9:00 pm for the Downtown Winter Holiday Parade event and the Downtown Rodeo Parade, and from 11 a.m. to 8 p.m. on all other federal holidays.

4. Rooftop public open space access routes and hours of operation shall be posted in the hotel lobby and on the hotel website.

5. Any closures of the rooftop public open space for private activities shall be posted in the lobby and on the hotel website a minimum of 24 hours in advance.

6. Hotelier shall maintain a log of closures for private events to demonstrate compliance with the open hour requirements.

7. The rooftop public open space area may also include amenities such as tables, umbrellas, shade structures, planting, and other similar amenities.

8. The hotel may also provide additional components or structures on the rooftop area, such as a kitchen or warming kitchen, bar, restrooms, and related structures. The square footage required for these components shall be in addition to the minimum 3,500 square foot area required for public open space.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.1**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Marc Roberts, City Manager

SUBJECT: Oral report from the Director of Emergency Services regarding the COVID-19 emergency, its impacts, and the governmental operations in response to that emergency, as well as discussion and direction regarding the City's emergency operations in response to that emergency.

RECOMMENDED ACTION

An oral report will be given at the meeting.

SUMMARY

DISCUSSION

ATTACHMENTS

Prepared by: Christine Martin
Assistant City Manager

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.2**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Comprehensive General Plan and Housing Element Update – Draft Vision Statement and Guiding Principles

RECOMMENDED ACTION

The Planning Commission and staff recommend the City Council adopt a Resolution approving the General Plan Update – Draft Vision Statement and Guiding Principles.

SUMMARY

On March 1, 2021, the City Council selected updating the General Plan as a priority and directed staff to seek consultant assistance and develop a 3-year work program. On June 28, 2021, the City executed a contract with PlaceWorks as the preferred consultant team for the General Plan Update. The project team (City staff and consultants) has prepared a Draft Vision Statement and a set of Guiding Principles, based on community input. The Vision Statement and Principles will serve as the foundational document for the General Plan update.

The vision should describe the future of Livermore as the community would like it to be in 2045. The vision statement will be at the forefront of the General Plan to set the tone for the entire document. The Guiding Principles provide direction for decision-making as the General Plan is implemented over time. Staff presented the Draft Vision and Guiding Principles to the General Plan Advisory Committee and the Planning Commission on October 27, 2021 and November 16, 2021, respectively. Staff revised the Draft Vision statement based on Committee feedback and Commission recommendations. Staff recommends the Council approve the Draft Vision Statement.

DISCUSSION

Background

The General Plan is the City's long-range policy document for growth, land use, sustainability and resource and open space conservation. The current planning period for the City's General Plan is 2003-2025. Adopted in 2004, the City's General Plan is almost 18 years old. The traditional planning period for

updating the General Plan is 10-20 years. A comprehensive General Plan update is required due to the age of the current document and data that supports it (e.g. traffic and environmental impact studies).

Since the last comprehensive General Plan update, many state and regional policies have changed, which can have an influence on local policy. In addition, the comprehensive General Plan update process offers the community and City an opportunity to re-evaluate existing General Plan policies and develop new ones that address shifts in community priorities, technologies, and current land use and real estate market trends.

Based on community feedback gathered through a General Plan Visioning process, the project team presented a draft Vision Statement and the Guiding Principles to the General Plan Steering Committee and received the Committee's feedback on the draft statement and guiding principles on October 27. On November 16, the project team presented the Vision Statement and the Guiding Principles to the Planning Commission. The Planning Commission provided recommended modifications for review and approval by the Council.

Draft Vision Statement and Guiding Principles

The project team led a General Plan Visioning process, which included a community engagement process, collecting and summarizing themes and topics that emerged from community feedback, and ultimately developing the Draft Vision Statement and Guiding Principles.

Community input gathered over the course of the outreach process to identify key issues, goals, and aspirations for Livermore in 2045 was synthesized into a Draft Vision Statement. The Draft Vision Statement expresses a shared image of Livermore's future and is intended to be ambitious, inspirational, and unique to Livermore. It will set the tone for the entire General Plan. In addition to the Draft Vision Statement are a set of Guiding Principles that will shape how the Goals and Policies of the General Plan are applied to achieve the vision (Resolution, Exhibit B).

Community Outreach and Engagement

The project team hosted a series of outreach events, both in-person and virtually, to hear the community's ideas about a vision for Livermore in 2045. All project materials were distributed in both English and Spanish, and most activities had at least one native Spanish speaker in attendance for translation needs. Each event provided background information and asked questions seeking input on the Vision and Guiding Principles.

In Person Events: In-person outreach was held at existing community events or destinations as described in Table 1:

Table 1. In Person General Plan Outreach Events

Date	Outreach Event	Number of Attendees
September 9, 2021	Farmers' Market Pop-up	80
September 14, 2021	Marylin Avenue School Food Pantry Pop-up	15
September 25, 2021	Rincon Library Open House	100
September 30, 2021	Farmers' Market Pop-up	40

October 10, 2021	Rincon Library Pop-up	50
October 14, 2021	Farmers' Market Pop-up	60
October 16, 2021	Livermore Pridefest Pop-up	130
October 30, 2021	Dias de los Muertos	40

The in-person outreach events engaged approximately 515 people in person.

The questions asked at each September event and the online engagement (see Online and Virtual Events below) included:

1. What do you like about Livermore?
2. What is your vision for Livermore in 2045?
3. What guiding principles should steer the General Plan?
4. What key issues should the General Plan address?

At the October outreach events, participants were asked to rank the importance of the following key issues including:

- Local jobs and businesses
- Quality architecture
- Diversity and equity
- Housing affordability
- Agriculture, open space, and recreation
- Emergency preparedness and safety
- Walking and biking
- Arts, culture, and community events
- Community building
- Climate change

Online and Virtual Events: In addition to in-person community events, the project team employed an online engagement tool and hosted a virtual workshop.

The online tool allowed participants to respond to questions and provide comments at their own pace. The online tool, operated through a Social Pinpoint platform, was active September 9 through October 3, and resulted in 80 online participants.

In addition, the project team hosted a virtual workshop via Zoom on Thursday, September 23, 2021 from 6:30 PM to 8:30 PM and presented information about the General Plan, the update process, the purpose of a Vision Statement and Guiding Principles, and how community visioning fits into the broader update effort. After the presentation, workshop attendees participated in an interactive online poll followed by small group discussions. The small group discussion allowed participants to share ideas and hear different perspectives about and priorities for Livermore's future. A community spokesperson from each small group reported the highlights of the discussion to the large group. Approximately 25 people attended the virtual workshop.

Community Survey: Finally, the project team conducted a statistically valid communitywide Visioning Survey, to identify key issues the General Plan should address and ask the community about the

qualities and characteristics Livermore should embody in the 2045 horizon year. The survey was conducted via telephone and through an online survey form in English and Spanish between September 9 and September 30, 2021. The survey sample size was 450 respondents.

Overall Community Input Results: Overall, the project team engaged with and/or heard from over 1,000 participants across all the outreach channels. Key themes from the input collected through the visioning outreach process are summarized by question in Attachment 1, a compilation of all the community comments is found in Attachment 2, and an analysis of the Community Survey is found in Attachment 3.

General Plan Advisory Committee Feedback

On October 27, 2021, the General Plan Advisory Committee met to review and provide feedback on the draft Vision Statement. The Committee is comprised of 19 members that represent the Livermore community in the development of the Livermore 2045 General Plan. The Committee's role is to ensure continuous and balanced public representation and provide feedback that conveys the community's perspectives and local knowledge. The Committee provides feedback on work products, serves as liaisons to the broader community, and advises the project team on effective outreach and engagement. The Committee was generally pleased with the draft documents and offered clarifying and supporting language. Detailed Committee feedback on the Draft Vision Statement and Guiding Principles is provided in Attachment 4.

Planning Commission Recommendations

The role of the Planning Commission is to advise the City Council on the adoption and on-going review of the General Plan and serve as an advisory body to the Council on matters related to city growth and development. In addition, the Commission promotes public interest in planning and encourages citizen participation in the formation of the General Plan.

Based on the Committee feedback and their own deliberations, the Planning Commission recommended the Vision Statement and Guiding Principles be revised, generally, as follows:

- Use aspirational language
- Incorporate the GPAC's comments
- Include economic sustainability in addition to environmental sustainability
- Integrate the concept of reliability, resiliency, and security of resources (i.e. water, electricity, etc.)
- Improve family-friendly wording
- Include other attributes: sciences, arts, cultural amenities, jobs, and breweries
- Expand the downtown statement to include other commercial spaces
- Revise agricultural heritage to an active statement
- Incorporate biological diversity into open space preservation

Planning Commission comments and recommendations are found in Attachment 4. The project team has revised the draft vision statement based on Planning Commission's recommendations for Council's review and approval.

FISCAL AND ADMINISTRATIVE IMPACTS

The City's 2021-2023 Operating Budget includes the General Fund appropriations necessary to cover

the General Plan Update including staff time and consultant contract costs of $2.8 million through the end of Fiscal Year 2022-23. The scope of work for the General Plan Update includes preparation of a vision statement.

ATTACHMENTS

1. Community Input Themes
2. Community Input Received
3. Community Survey Analysis
4. Advisory Committee and Planning Commission Visioning Comments
5. Resolution
6. Exhibit A Planning Commission Resolution 29-21
7. Exhibit B - Vision Statement and Guiding Principles

Prepared by: Andy Ross
Senior Planner

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

Themes of Visioning Outreach

Key themes from the input collected through the visioning outreach process are summarized below by question.

WHAT DO YOU LIKE ABOUT LIVERMORE?

Frequent attributes participants said they liked about Livermore, grouped by topic area, included:

- Small town
- Family friendly
- Welcoming
- Inclusive
- Diverse
- Community
- Safe
- Downtown
- Restaurants
- Wineries
- Library
- Schools
- Bankhead Theater
- National Laboratories
- Farmers' Market
- Parks
- Arts and Events
- Open space
- Greenbelt around the city
- Biking
- Walking/hiking

WHAT IS YOUR VISION FOR LIVERMORE IN 2045?

Common themes from participants' vision for Livermore included:

- Small town feel, family friendly
- Safe and healthy community
- Vibrant downtown
- Strong local economy, economic opportunity
- An accessible transportation system for pedestrians, bicyclists, and public transit
- Variety of affordable housing options
- Protected open space

WHAT GUIDING PRINCIPLES SHOULD STEER THE GENERAL PLAN?

The most frequent guiding principles the community identified included:

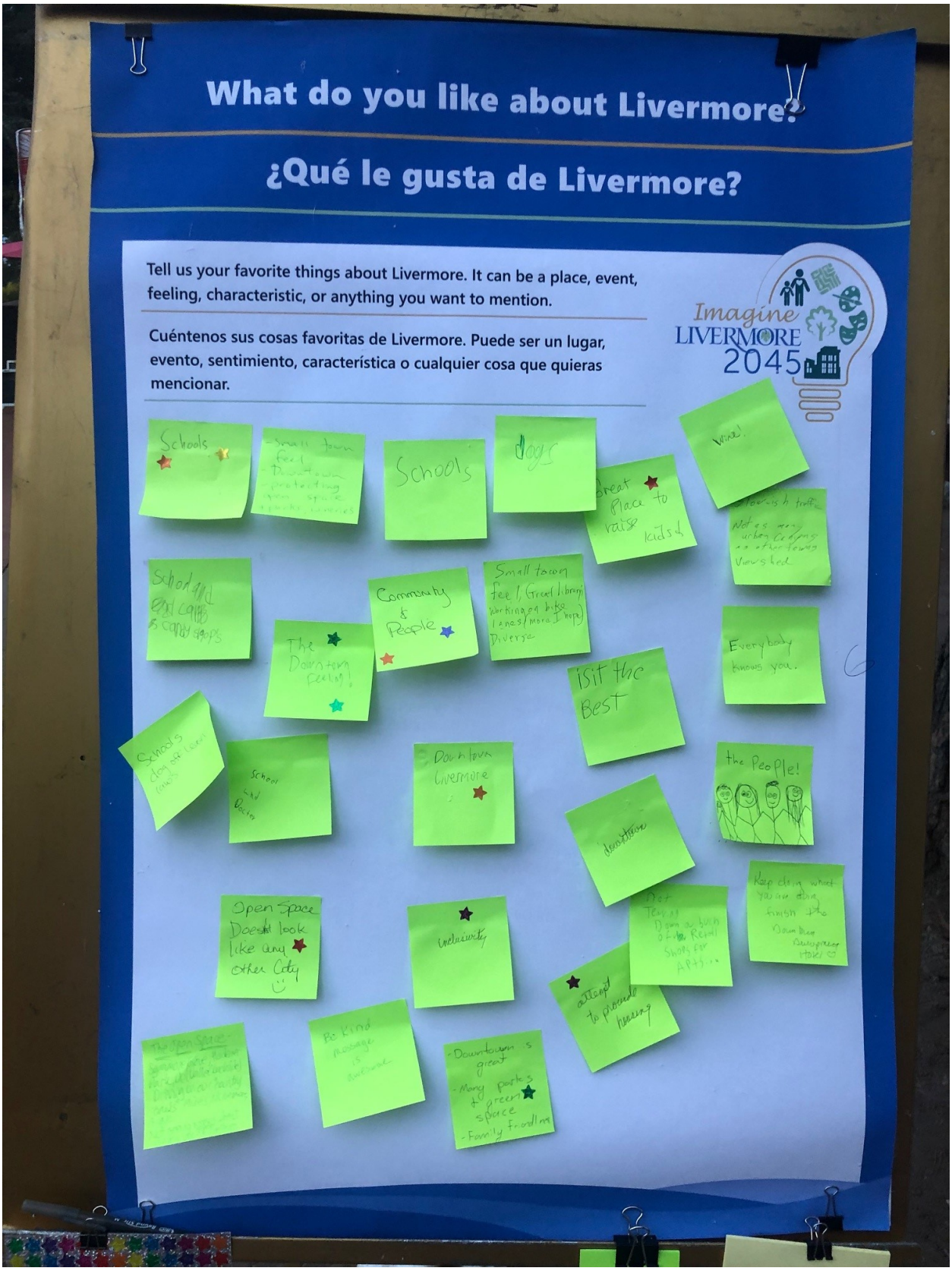
Diversity
Inclusivity
Equity
Safety
Prosperity
Balance
Sustainability
Family friendly/welcoming

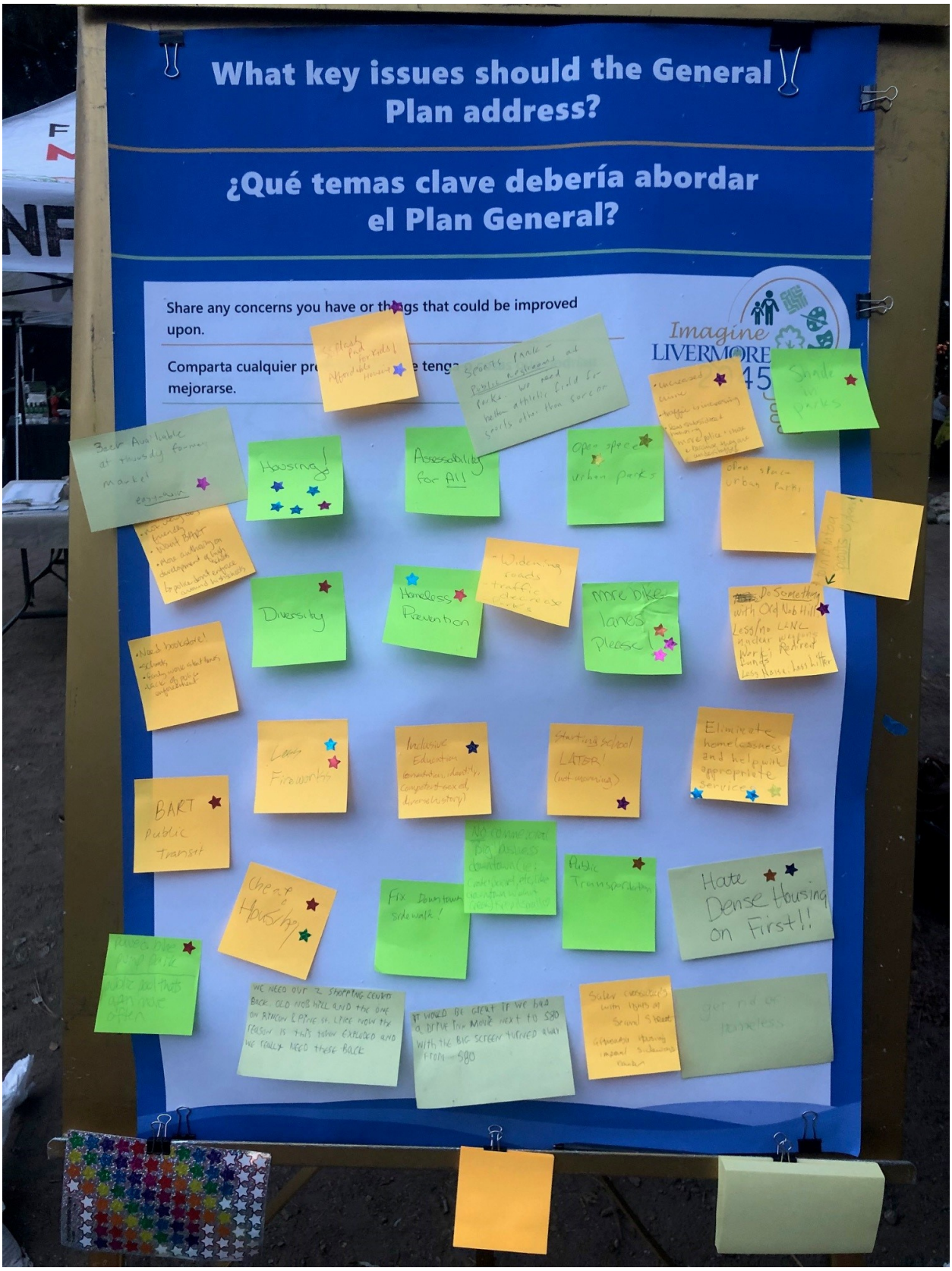
WHAT KEY ISSUES SHOULD THE GENERAL PLAN ADDRESS?

Common key issues participants identified included:

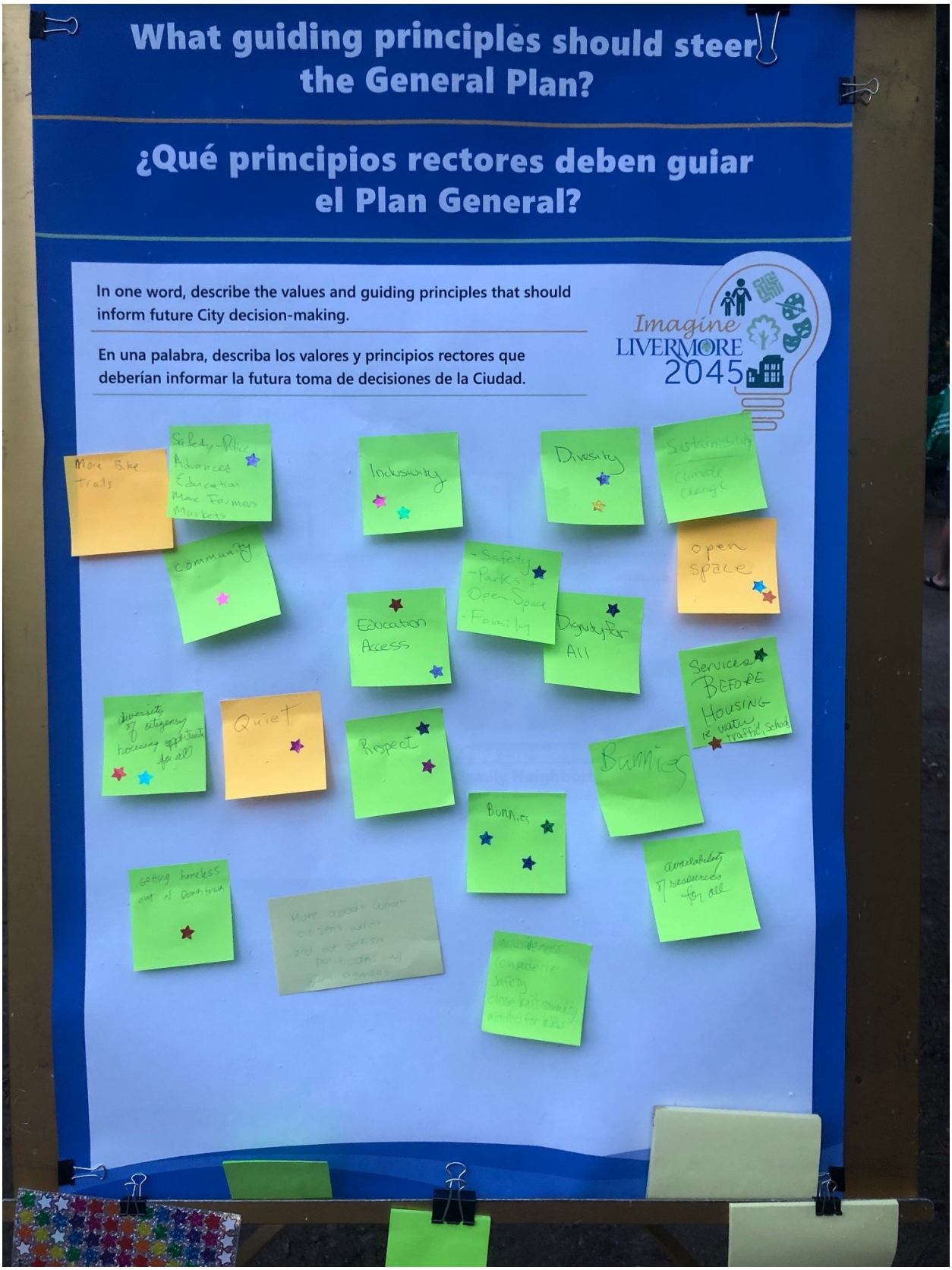
Crime
Community health
Climate change
Managed growth
Public services and infrastructure level of service
Traffic/congestion
Public transit system including BART to Livermore
Parking
Negative impacts to city from airport expansion
Lack of affordable and diverse housing
Homelessness
Rent control
More high-density housing
No four-story housing developments

September 9, 2021 Farmers' Market Pop-up

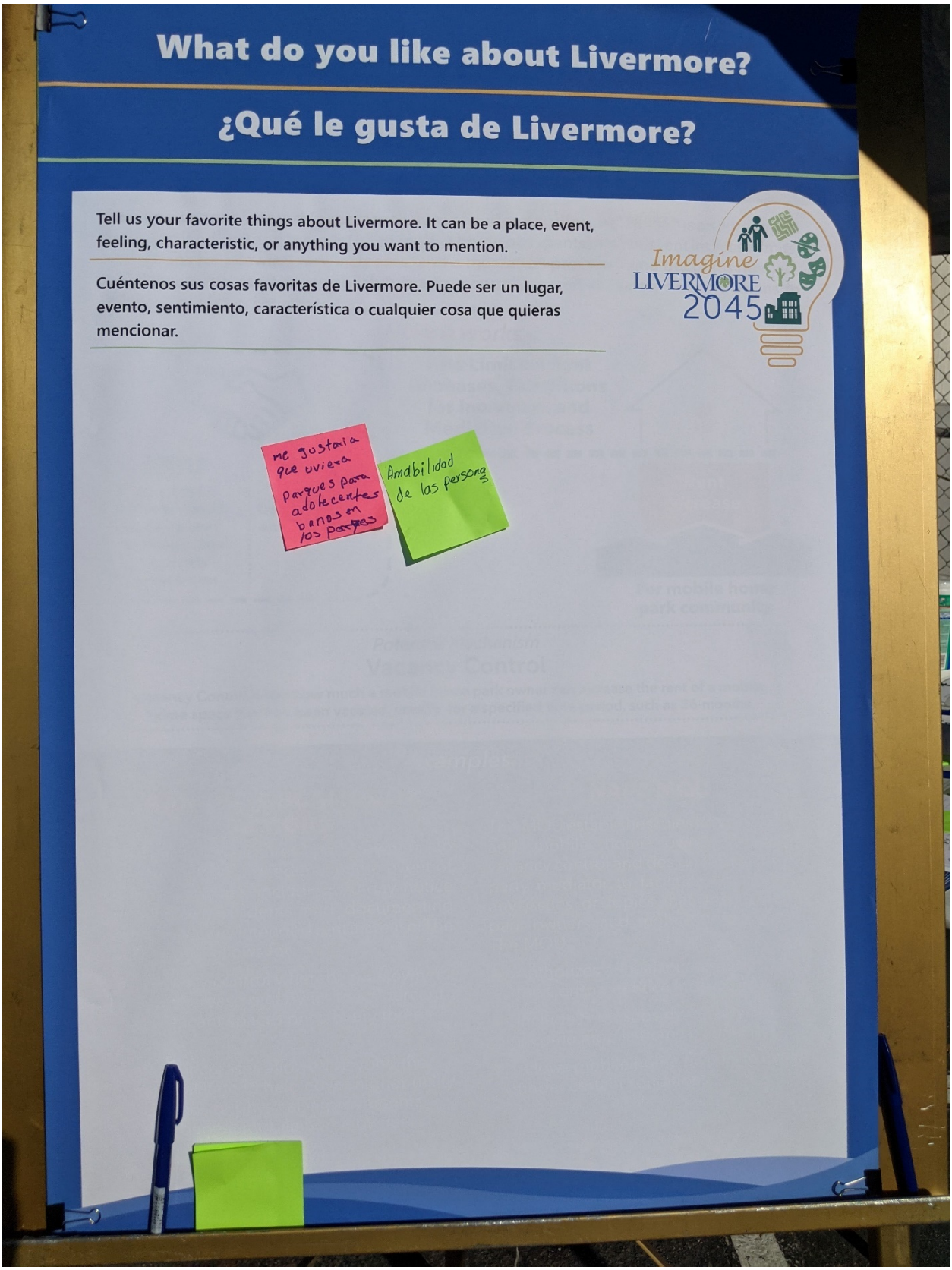

What do you like about Livermore?
¿Qué le gusta de Livermore?
Tell us your favorite things about Livermore. It can be a place, event, feeling, characteristic, or anything you want to mention.
Cuéntenos sus cosas favoritas de Livermore. Puede ser un lugar, evento, sentimiento, característica o cualquier cosa que quieras mencionar.
Imagine LIVERMORE 2045
Schools
Schools
Dogs
Great Place to raise kids
Community & People
Small town feel, Great library, Parking and bike lanes (more I hope) Diverse
The Downtown Feeling!
¡Sit the Best
Everybody knows you.
the People!
Downtown Livermore
Open Space Doesn't look like any other City
Inclusivity
Be Kind
Downtown is great
Many parks & green space
Family friendly

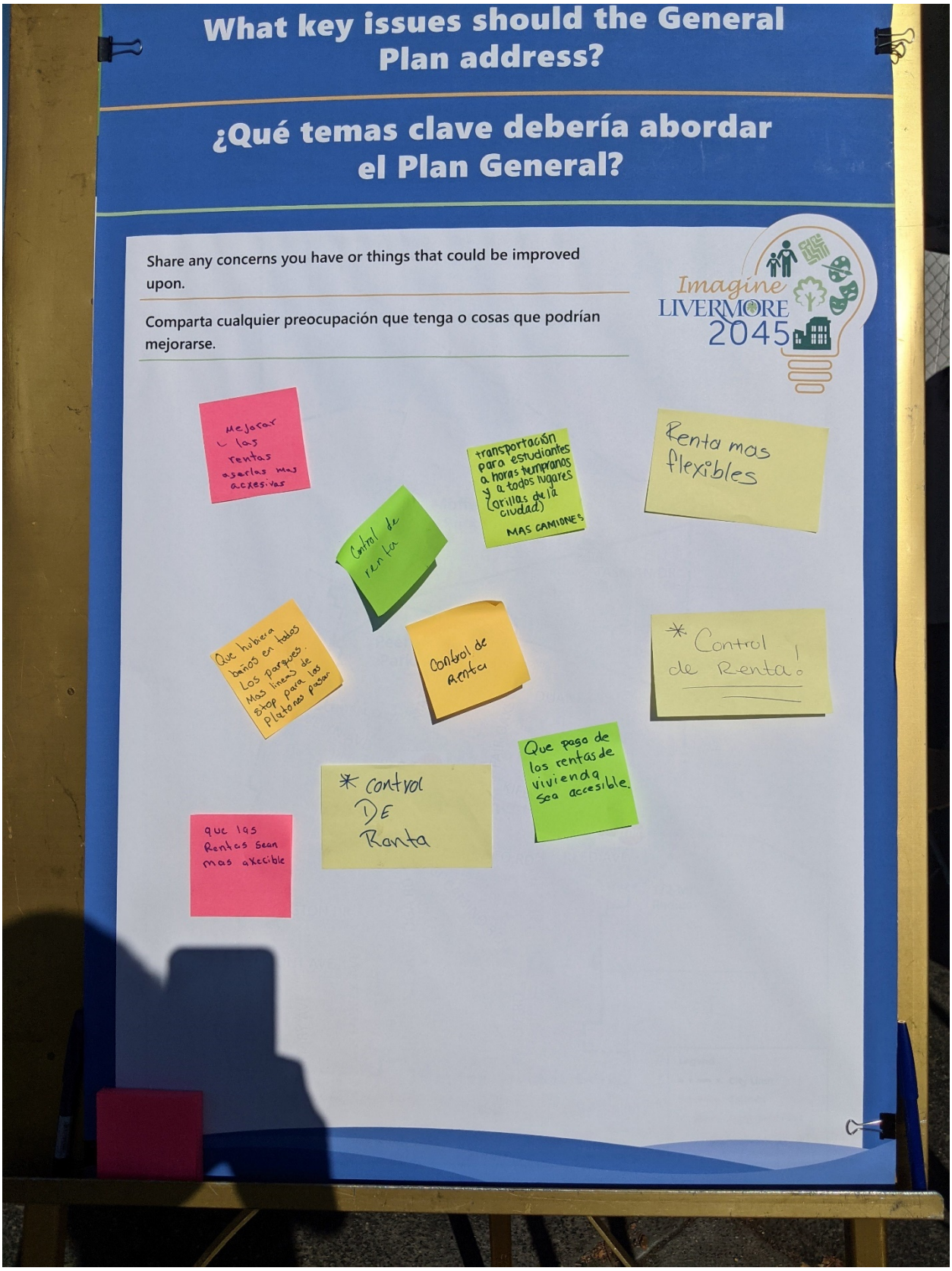

What key issues should the General Plan address?
¿Qué temas clave debería abordar el Plan General?
Share any concerns you have or things that could be improved upon.
Comparta cualquier preocupación que tenga o cosas que podrían mejorarse.
Imagine LIVERMORE 45
Housing!
Accessability for All
Open space Urban Parks
Shade in parks
Diversity
Homeless Prevention
More bike lanes Please!
Less Fireworks
Inclusive Education
Starting school LATER! (not morning)
Eliminate homelessness and help with appropriate services
BART Public Transit
Public Transportation
Cheap Housing
Fix Downtown sidewalk!
Hate Dense Housing on First!!
WE NEED OUR 2 SHOPPING CENTER BACK. OLD NOB HILL AND THE ONE ON RAILROAD & PINE ST. LIKE NOW THE TEENS IS THIS TOWN EXTINCT AND WE TOTALLY NEED THESE BACK
IT WOULD BE GREAT IF WE HAD A DRIVE INN MOVIE NEXT TO SBD WITH THE BIG SCREEN TURNED AWAY FROM 580

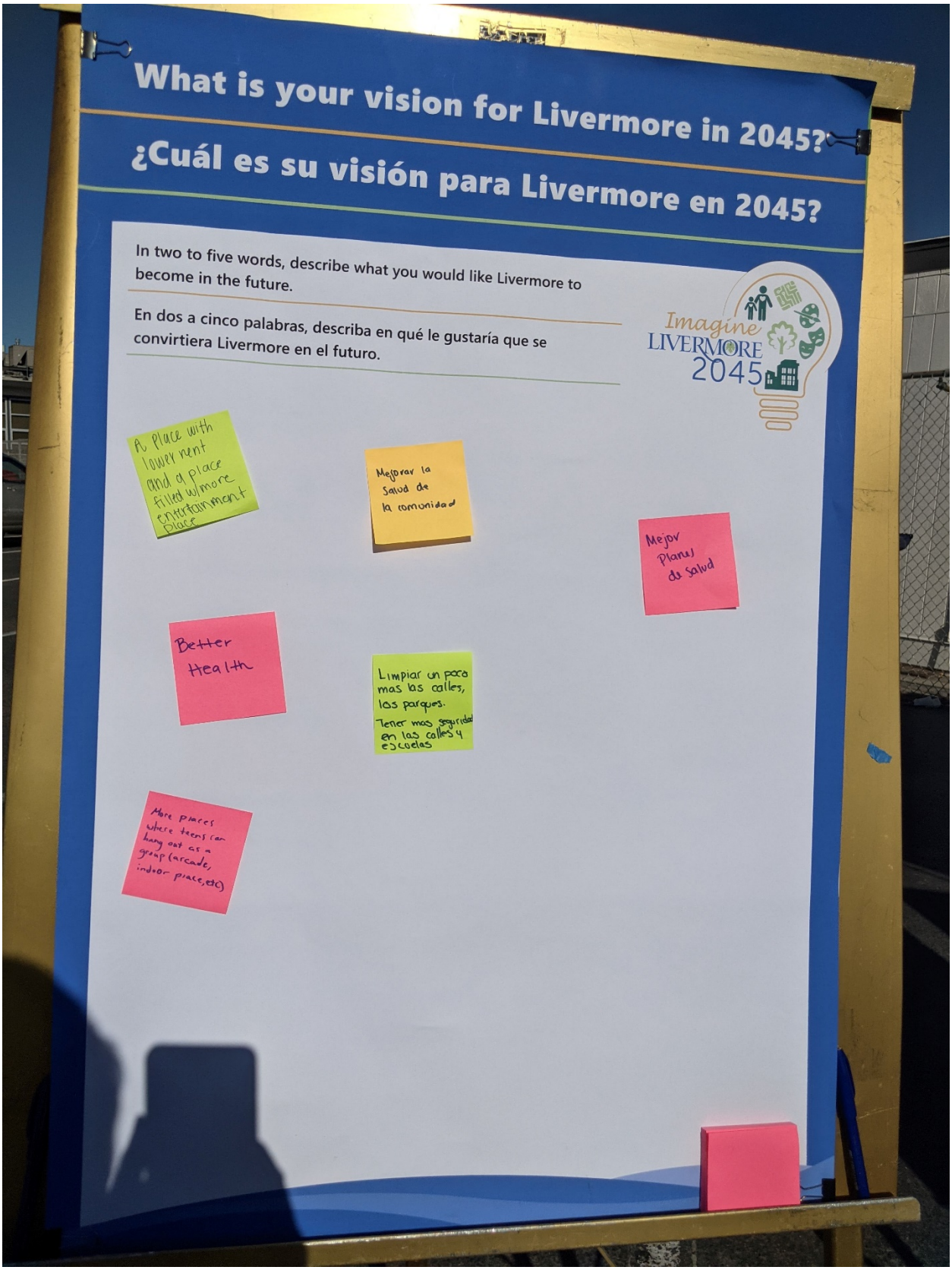
What is your vision for Livermore in 2045?
¿Cuál es su visión para Livermore en 2045?
In two to five words, describe what you would like Livermore to become in the future.
En dos a cinco palabras, describa en qué le gustaría que se convirtiera Livermore en el futuro.
Imagine LIVERMORE 2045
Safety Services
Inclusive education
More Housing for non profit workers
A Diverse community
More housing for teachers, police service providers
Retain Small Town Feel
No more high density housing in Downtown
- Small town feel
- low traffic
- family oriented
Continue the Sidewalk Downtown District
More vagon options
MORE


What guiding principles should steer the General Plan?
¿Qué principios rectores deben guiar el Plan General?
In one word, describe the values and guiding principles that should inform future City decision-making.
En una palabra, describa los valores y principios rectores que deberían informar la futura toma de decisiones de la Ciudad.
Imagine LIVERMORE 2045
More Bike Trails
Safety, Police Advances Education More Farmers Markets
Inclusivity
Diversity
Sustainability
Climate change
Community
- Safety - Parks + Open Space - Family
open space
Education Access
Dignity for All
Services BEFORE Housing
Diversity of ethnicity housing opportunities for all
Quiet
Respect
Bunnies
Bunnies
Getting homeless out of Downtown
More about what citizens want and not just participant agendas
Accessibility of resources for all
Consider safety close kait community activities for kids

September 14, 2021 Marylin Avenue School Food Pantry Pop-up


What do you like about Livermore?
¿Qué le gusta de Livermore?
Tell us your favorite things about Livermore. It can be a place, event, feeling, characteristic, or anything you want to mention.
Cuéntenos sus cosas favoritas de Livermore. Puede ser un lugar, evento, sentimiento, característica o cualquier cosa que quieras mencionar.
Imagine LIVERMORE 2045
me gustaria que uviera parques para adolecentes bandos en los parques
Amabilidad de las personas

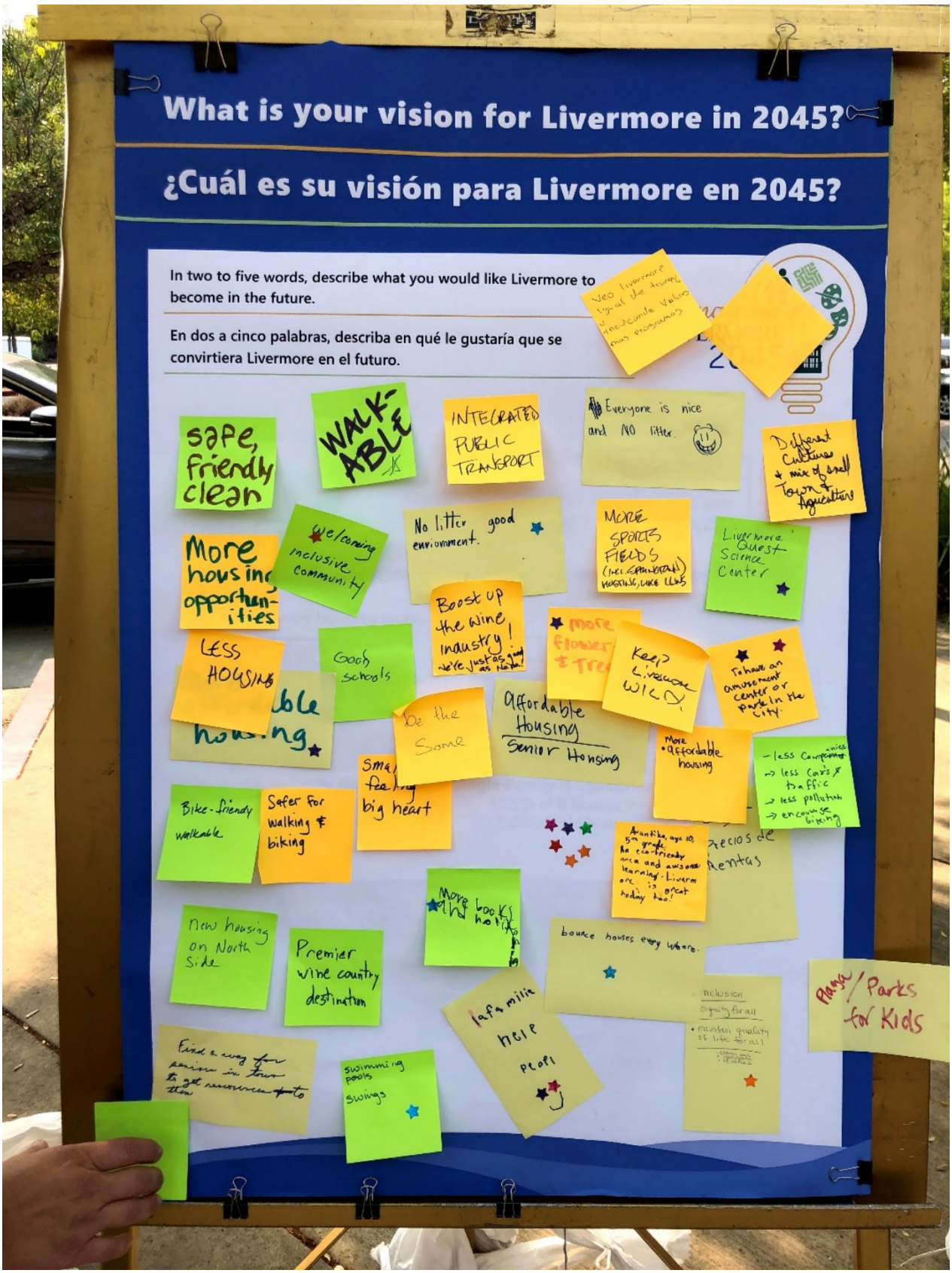

What key issues should the General Plan address?
¿Qué temas clave debería abordar el Plan General?
Share any concerns you have or things that could be improved upon.
Comparta cualquier preocupación que tenga o cosas que podrían mejorarse.
Imagine LIVERMORE 2045
Mejorar las rentas asarlas mas acxesivas
transportación para estudiantes a horas tempranas y a todos lugares (orillas de la ciudad)
MAS CAMIONES
Renta mas flexibles
Control de renta
Que hubiera baños en todos Los parques. Mas lineas de stop para los Platonas pasar
Control de Renta
* Control de Renta!
Que pago de los rentas de vivienda sea accesible.
* control DE Ranta
que las Rentas sean mas axecible


What is your vision for Livermore in 2045?
¿Cuál es su visión para Livermore en 2045?
In two to five words, describe what you would like Livermore to become in the future.
En dos a cinco palabras, describa en qué le gustaría que se convirtiera Livermore en el futuro.
Imagine LIVERMORE 2045
A Place with lower rent and a place filled w/more entertainment place
Mejorar la salud de la comunidad
Mejor Planes de salud
Better Health
Limpiar un poco mas las calles, las parques.
Tener mas seguridad en las calles y escuelas
More places where teens can hang out as a group (arcade, indoor place, etc)

September 25, 2021 Civic Center Library Open House

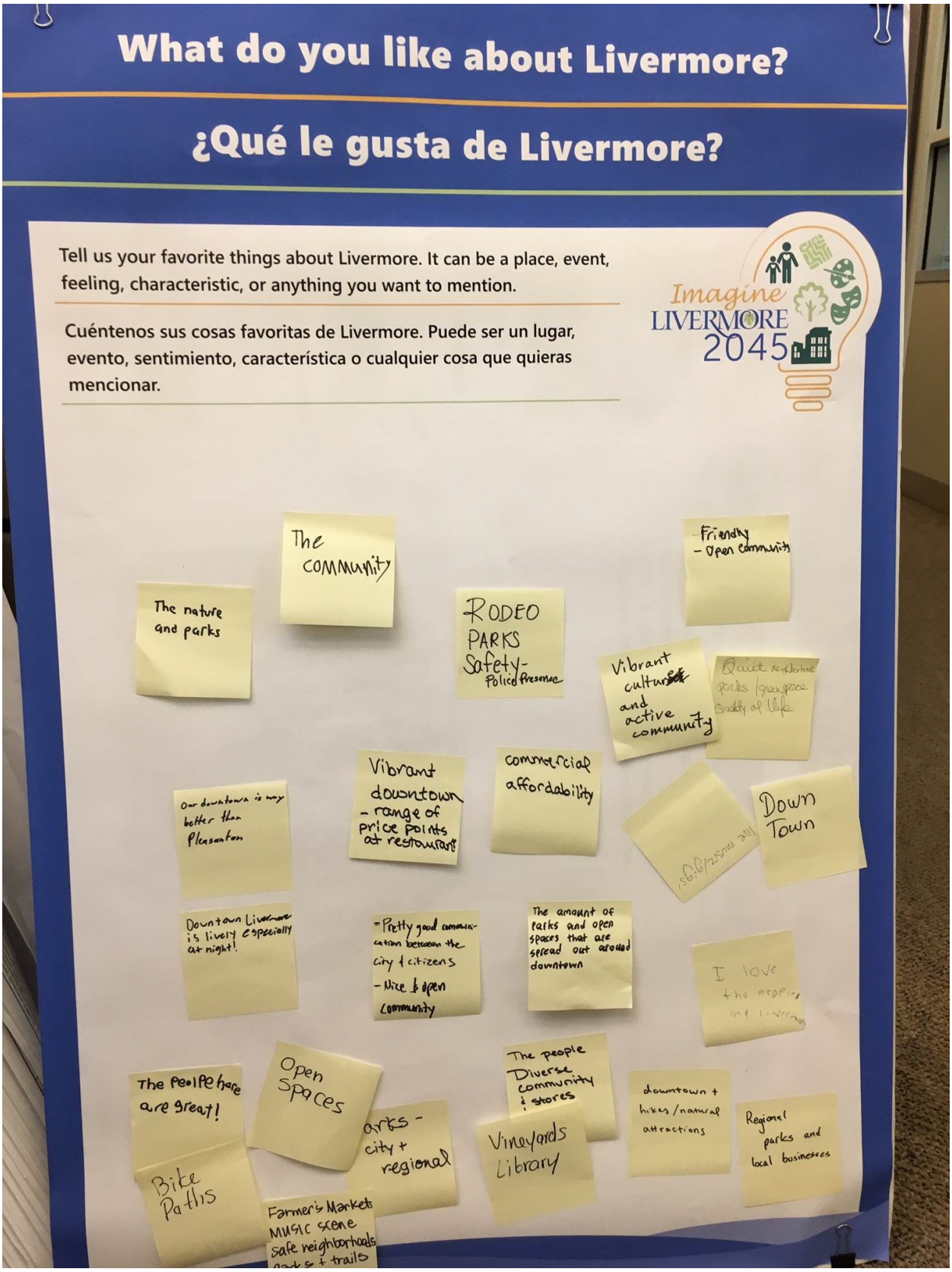
What do you like about Livermore?
¿Qué le gusta de Livermore?
Tell us your favorite things about Livermore. It can be a place, event, feeling, characteristic, or anything you want to mention.
Cuéntenos sus cosas favoritas de Livermore. Puede ser un lugar, evento, sentimiento, característica o cualquier cosa que quieras mencionar.
Imagine LIVERMORE 2045
Location
Downtown
People
Friendly & nice people
Martial arts
OPEN SPACE
I like the Library
People get along together
People care about each other
Small town in a large metropolitan area
Me Gusta su tranquilidad su seguridad Pero sobre todo su Gente.
More Diverse Entertainment/Services
Community
Great Town Friendly People
My home since 1956 Love my town
downtown walkable art shows
Open Space
Downtown
The library
Kids activities
convenient location
Low Crime
great library low crime dog parks
Library
Community
greenery
Vines
Safety
Family City & Safety
Me gusta Livermore es muy Tranquilo
Me gusta su tranquilidad, la cultura y que aun no pierde su estilo.
I like that it's not a big city with huge buildings
Educational School System Engagment Possitive
La familia
Ecosystem friendly and solar panel energy for everyone to enjoy!
Family-friendly neighborhoods
people keeping Earth safe.

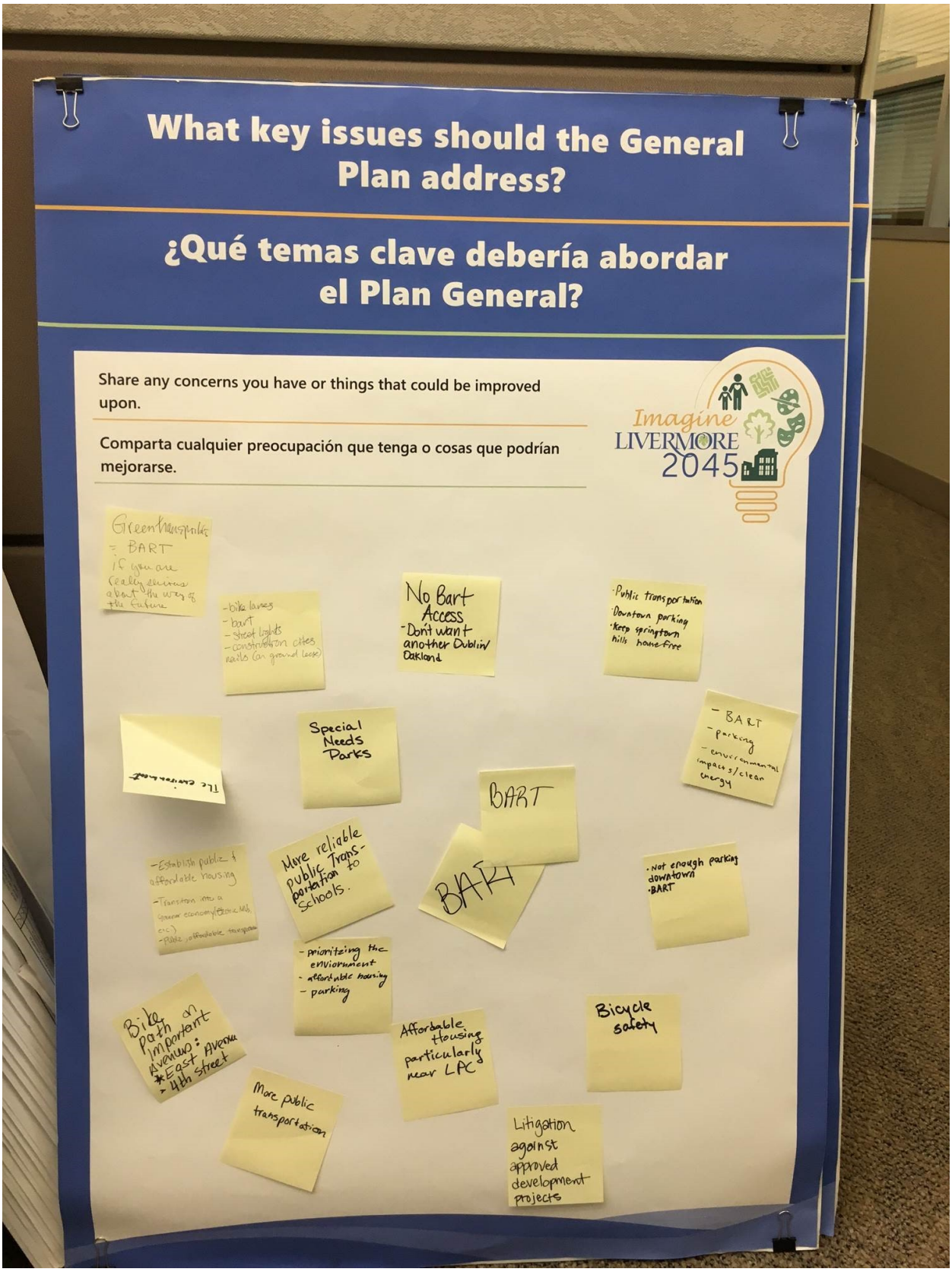
¿Qué temas clave debería abordar el Plan General?
Share any concerns you have or things that could be improved upon.
Comparta cualquier preocupación que tenga o cosas que podrían mejorarse.
Imagine LIVERMORE 2045
Too much growth too fast
Affordable housing
Traffic on S. Livermore & College Ave A) Can we get a 4-way stop sign?
INCLUDE SPRINGTOWN
TRAFFIC SAFETY
Lack of around train (Ventura St)
-housing (too expensive)
-clean up under bridge
-more market/stores options that are affordable
-more resources so parks don't have homeless
Law Enforcement
SAFETY HOUSING Areas.
Environment safety
OPEN SPACE
homeless population
RENTAS ACCESIBLES
mental health issues
Nightlife Housing Opportunities
Continued growth while retaining small-town values
Rent Control
no 4 story housing Downtown
Resolver Problema del agua. No Mas construcción de cosas
BART to Livermore
Mejores ESCUELAS.
affordability
Problemas con la fosa de tratamiento de las aguas
Pollution & Climate change
Balance Growth and History
Affordability
SAFETY
littering
Ensuring wineries/vineyards are preserved
Bike lane on 580 over pass on Vasco

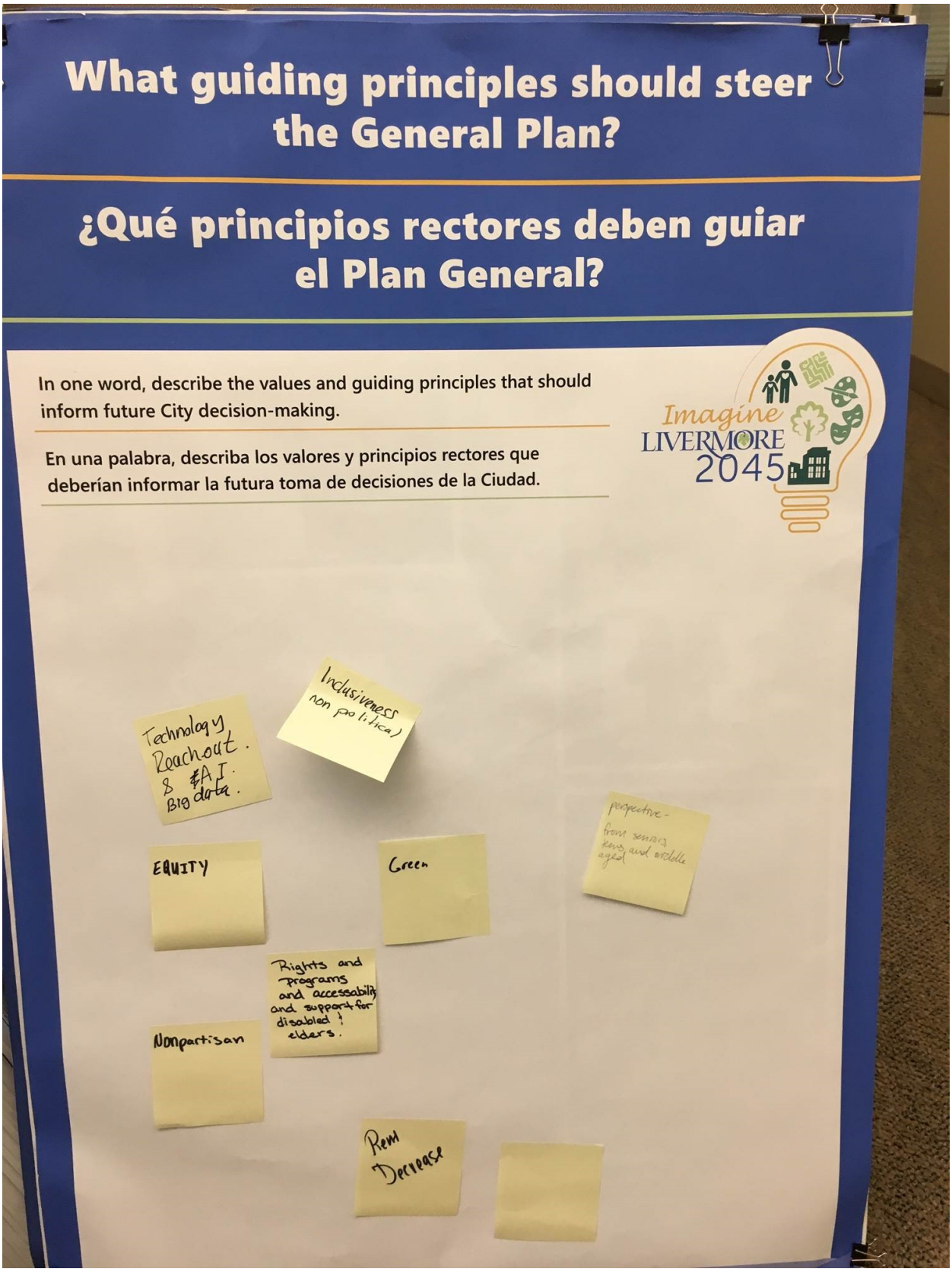

What is your vision for Livermore in 2045?
¿Cuál es su visión para Livermore en 2045?
In two to five words, describe what you would like Livermore to become in the future.
En dos a cinco palabras, describa en qué le gustaría que se convirtiera Livermore en el futuro.
safe, friendly clean
WALK-ABLE
INTEGRATED PUBLIC TRANSPORT
Everyone is nice and NO litter.
Different Cultures + mix of small Town + Agriculture
More housing opportunities
welcoming inclusive community
No litter good environment.
MORE SPORTS FIELDS
Livermore Quest Science Center
Boost up the wine industry, we're just as good as Napa!
LESS HOUSING
Good schools
Keep Livermore WILD
To have an amusement center or park in the city.
Affordable Housing
Senior Housing
Be the Same
More affordable housing
- less Companies
-> less cars & traffic
-> less pollution
-> encourage biking
Bike-friendly walkable
Safer for walking & biking
big heart
precios de rentas
More books
New housing on North Side
Premier wine country destination
bounce houses every where.
inclusion
equity for all
Parks for Kids
swimming pools
swings

What guiding principles should steer the General Plan?
¿Qué principios rectores deben guiar el Plan General?
In one word, describe the values and guiding principles that should inform future City decision-making.
En una palabra, describa los valores y principios rectores que deberían informar la futura toma de decisiones de la Ciudad.
Imagine LIVERMORE 2045
support
community
availability
bikes trails environment (enjoyment.)
ECOSYSTEM
Healthy Family use of city (bikes trails, playgrou
Affordable Housing For All
Safe healthy more afforable
Language Accessibility
Nice (Kindness)
y alcanze a la comunidad hispana
Science-based economy
NO ROOM FOR RACISM
I LOVE family
Equity - A great community for members of all backgrounds + incomes
AFFORDABLE CHILD CARE
The cities's will
Healthy Safety respectful humanitarian
Fomentar Valores
unicorn zoo and mall
BETTER PLAY STRUCTURES in PARKS

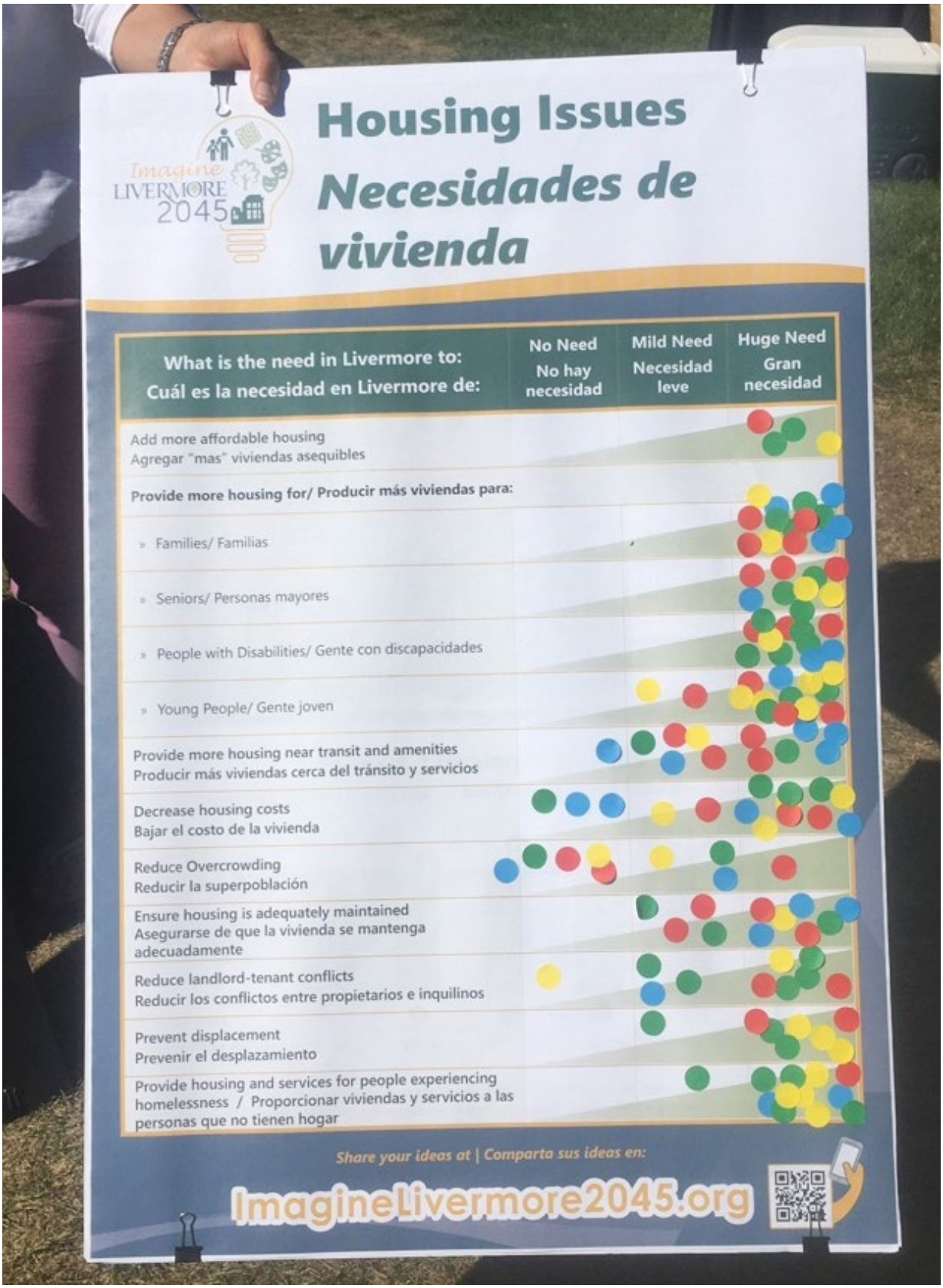
September 30, 2021 Farmers' Market Pop-up


What do you like about Livermore?
¿Qué le gusta de Livermore?
Tell us your favorite things about Livermore. It can be a place, event, feeling, characteristic, or anything you want to mention.
Cuéntenos sus cosas favoritas de Livermore. Puede ser un lugar, evento, sentimiento, característica o cualquier cosa que quieras mencionar.
Imagine LIVERMORE 2045
The community
Friendly - Open community
The nature and parks
RODEO PARKS Safety- Police Presence
Vibrant culture and active community
Quiet neighborhoods parks / greenspace Quality of life
Vibrant downtown - range of price points at restaurant
commercial affordability
Down Town
Our downtown is way better than Pleasanton
Downtown Livermore is lively especially at night!
- Pretty good communication between the city & citizens - Nice & open community
The amount of parks and open spaces that are spread out around downtown
I love the people in Livermore
The people Diverse community & stores
The People here are great!
Open Spaces
Parks - city + regional
Vineyards Library
downtown + hikes / natural attractions
Regional parks and local businesses
Bike Paths
Farmer's Markets MUSIC scene safe neighborhoods parks + trails


What key issues should the General Plan address?
¿Qué temas clave debería abordar el Plan General?
Share any concerns you have or things that could be improved upon.
Comparta cualquier preocupación que tenga o cosas que podrían mejorarse.
Imagine LIVERMORE 2045
Greenhouse gas = BART if you are really serious about the way of the future
-bike lanes
- bart
- street lights
- construction cities
rails (on ground level)
No Bart Access
-Don't want another Dublin/ Oakland
·Public transportation
·Downtown parking
·keep springtown hills home-free
Special Needs Parks
- BART
- parking
- environmental impacts/clean energy
BART
BART
More reliable public Transportation to Schools.
-Establish public & affordable housing
-Transition into a green economy (Electric Mb etc)
-Make affordable transportation
·Not enough parking downtown
·BART
- prioritizing the enviornment
- affordable housing
- parking
Bike path on important avenues:
*East Avenue
- 4th Street
Affordable housing particularly near LPC
Bicycle safety
More public transportation
Litigation against approved development projects


What guiding principles should steer the General Plan?
¿Qué principios rectores deben guiar el Plan General?
In one word, describe the values and guiding principles that should inform future City decision-making.
En una palabra, describa los valores y principios rectores que deberían informar la futura toma de decisiones de la Ciudad.
Imagine LIVERMORE 2045
Technology Reachout. & #AI. Big data.
Inclusiveness non political
EQUITY
Green
Rights and programs and accessability and support for disabled & elders.
Nonpartisan
Rent Decrease

October 10, 2021 Rincon Library Pop-up


Imagine LIVERMORE 2045
Housing Issues
Necesidades de vivienda
What is the need in Livermore to:
Cuál es la necesidad en Livermore de:
No Need
No hay necesidad
Mild Need
Necesidad leve
Huge Need
Gran necesidad
Add more affordable housing
Agregar "mas" viviendas asequibles
Provide more housing for/ Producir más viviendas para:
» Families/ Familias
» Seniors/ Personas mayores
» People with Disabilities/ Gente con discapacidades
» Young People/ Gente joven
Provide more housing near transit and amenities
Producir más viviendas cerca del tránsito y servicios
Decrease housing costs
Bajar el costo de la vivienda
Reduce Overcrowding
Reducir la superpoblación
Ensure housing is adequately maintained
Asegurarse de que la vivienda se mantenga adecuadamente
Reduce landlord-tenant conflicts
Reducir los conflictos entre propietarios e inquilinos
Prevent displacement
Prevenir el desplazamiento
Provide housing and services for people experiencing homelessness / Proporcionar viviendas y servicios a las personas que no tienen hogar
Share your ideas at | Comparta sus ideas en:
ImagineLivermore2045.org

Imagine LIVERMORE 2045
What is Important for Livermore over the next 20 Years?
¿Qué es importante para Livermore sobre los próximos 20 años?
How important are these issues to you?
¿Qué importancia tienen estos temas para usted?
Not Important
No importante
Somewhat Important
Algo importante
Very Important
Muy importante
Supporting local jobs and businesses
Apoyo los trabajos y negocios locales
Requiring quality architecture
Exige una arquitectura de calidad
Ensuring diversity and equity
Garantizar la diversidad y la equidad
Making housing affordable
Hacer que la vivienda sea asequible
Supporting agriculture, quality open space, and recreation
Apoyar la agricultura, los espacios abiertos de calidad y la recreación
Being prepared for emergencies and safety
Estar preparado para emergencias y seguridad
Improving walking and bicycling
Mejorar la caminata y andar en bicicleta
Promoting arts, culture, and community events
Promover los eventos artísticos, culturales y comunitarios
Building a sense of community
Construyendo un sentido de comunidad
Preventing and responding to the effects of climate change
Prevenir y responder a los efectos del cambio climático
Share your ideas at | Comparta sus ideas en:
ImagineLivermore2045.org

September 23, 2021 Virtual Visioning Workshop

GROUP #1:

Notetakers- [use page 5 to paste any chat room comments for the project record (if there is any)]

Prior to starting the discussion, each participant should introduce themselves and their affiliation with Livermore (resident, business owner, community organization, etc)

- Participants
  - Mallika, City of Livermore
  - Nancy McKenzie, Resident
  - Asa Strout, Resident - Spokesperson for report back
  - Veronica Stewart Long, Grew up here resident
  - Janel, Resident
  - Katie Myers (Steve), Resident
  - Marina (Interpreter)
  - Ricky, PlaceWorks

Question #1: What did you see that resonated with you from the large group poll about what you like about and imagine for Livermore? Anybody want to throw out a few more words before we dive into our next discussion questions?

- Responses
    - Liked comments about Downtown, energy. Very safe for seniors, to go to restaurants and Bankhead, similar to San Francisco. Very nice community. Concerned about some tagging in Downtown, more so in last couple of weeks.
    - Like seeing how welcoming Livermore is. People have come from other parts of the state and brought their experiences and made Livermore what it is today.
    - One thing that resonated with me is the small-town feel. Coming from bigger city, but love living here because it feels safe and quiet, with the exception of July 4th. Livermore feels like a sanctuary.
    - Safety is something I like about Livermore. Being able to riding a bike as a kid when young and still seeing youth today enjoying that. Feel safe when walking around.
    - Like how diverse Livermore is and is getting. Diversity is not just about who but about what. Different things for different people, so much stuff to do, very vibrant, expanding to have more things and more diverse.
    - Natural beauty of Livermore - really precious natural resources, Sycamore Park, the creek, the hills, have not built over with development. Livermore is beautiful and we should keep valuing that.
    - There is a nice balance of amenities, things for the residents, but then also shops and restaurants and activities, but can also go to a quiet park, go to a lake.
    -

Question #2: What is your vision for Livermore in 2045?

- Responses
    - Leaning in on what we do well and working on things that we don't. Protecting open space - there is more opportunity to create open space. The company doing quarries, there is opportunity to do open space there. Economic development, building more homes for people who have been living here and who grew up here. Sustainability. Live and work in Livermore. Many families had someone who worked in the Laboratories. Increase employment opportunities over next 20 years.
    - Want Livermore to grow but concerned about what is happening in Downtown. Like to keep small-town feel and do not like seeing high-rise. Understand need to grow. Want to keep the community feeling, to go Downtown and see people I know in restaurants, active in community.
    - Hope we understand health benefits of bicycling and build more bicycle lanes, and improve public transportation to decrease carbon emissions. Enabling healthy and environmentally friendly things, Livermore can lead the way as an example for this country.
    - We have an energy crisis. Fires cause power outages across the State. Turning Livermore to be energy independent. Solar farm is not ideal but solutions like that is going to be needed to sustain Dublin, Pleasanton, Livermore. Sustainable, independent system for Livermore to thrive. Can be example for what other micro-regions can do as well.
    - Be an example of a community can grow but maintain small-town feel. Economic growth and energy independence as worthwhile goals for 2045.
    - Being a healthy place to live, providing ways for people to get around. Maybe golf cart roads. Something safe and healthy way to travel. See lack of view of ecosystem and how a city fits in an ecosystem. Would like to see native plants, that City does not put plants from other places (eg., Africa, China, etc.). Support local bugs. Things we do, we should keep where we are in mind). What our water aquifers are doing. We should pay attention to the whole ecosystem. Also something that incorporates the human experience, people gathering, such as Downtown space that has a lot of function and can provide a lot of use to the community.
    - Making Livermore more transit-oriented and less car-dependent. Would like to see safe streets in Livermore, creating more open walking space. Fourth Street is opportunity to slow down traffic to make safer for people to walk Downtown. East Avenue is another example where traffic is fast and does not feel safe. Looking at how to make Livermore safer to walk and to drive slowly without pressure to drive

faster. Micro bus services to go around (like Emeryville Go-Around), something that goes around the Livermore area or whichever area you are in.

- Issue of transportation is so important for next 20 to 30 years. Hope this plan will take into consideration that transportation technology is likely to change over this time span, such as autonomous vehicles, so keep this in mind. (Bishop Ranch has autonomous bus, perhaps this as an idea for Downtown)
- To improve pedestrian friendly, close First Street on Friday, Sat, Sun, make it a pedestrian mall. (Pleasanton example, drivers going there can still get around). Like times when streets are closed for wine festival, feels safe.
- Like the idea of autonomous transportation, wonderful idea.
- Every city will experience growth. Whatever plan we have, has to have clear and concise idea of what the housing will look like in how we build and what we build (many residents have left Livermore due to unaffordable rents). A lot of mention of affordable housing would need to be accompanied by middle income and higher-income housing. Create a diverse housing roadmap. This is going to be important because many people have issues with the type of housing going in Downtown. Does Vision 2045 redraw growth boundary to allow for where new housing is going to go but protect open space? We literally lack the space to build housing, see this as biggest hurdle.
- About housing, like the approach of integrated housing where affordable housing is part of every development that comes in. This makes a lot of sense, to not have areas that are just only affordable. Okay with higher buildings, not in exact core of Downtown, which should be reserved for community character. Look for other places for higher housing and can be strategic on placement.
- Mixed income is going to be important, housing crisis is so bad that middle income people cannot afford to live here. Middle income housing will help keep diversity. The junction. The other side of tracks, north part of town (north Downtown area) known as the affordable area of town, from May Nissen Park to Junction Avenue Middle School. Create more economically diverse city.
- More taco places (semi serious). More seriously - by 2045, found solutions for displaced or homeless individuals, this is important issue to address. One of the things I like about Livermore is sense of community, sense of helping each other out, and they are part of the community.
- More equitable distribution of school programs. For example, Joe Mitchell International Baccalaureate program is not available at other schools.

Question #3: What principles do you think are important for the City to consider as they update the General Plan and make decisions on Livermore's future?

- Responses
  - Maintain welcoming attitude of city. Have both people who grew up here and people who recently relocated here. Would like to maintain that Livermore is welcoming to new folks.
  - Safe city
  - City should facilitate healthy living. The way the City responded to the pandemic is an example or model.
  - Preserving natural resources
  - City should fit into the local ecosystem
  - Inclusivity, for race, age groups, economic statuses, people of disabilities, to include people of all backgrounds
  - Local businesses, smaller restaurants that speak to local residents. Keep big chains out of Livermore.
  - A space, a people's place, do not have to spend money to be there
  - Design of spaces where people can have positive interaction, which can create a stronger community, to encourage relationships between people of different backgrounds. Example is Lizzie's Fountain, something like this space on a larger scale.
  - Diverse and together
  - Sustainability - City should be thinking about what needs to happen to make things it builds sustainable. Aim to create a sustainable city with more public transportation and less dependence on cars. Energy and resource sustainability for households and buildings. Preservation of water. Possible consideration - all new construction should not have a lawn? Creating a sustainable and self-sufficient Livermore.
  - Making City safe and easy to travel for seniors. Safe in Downtown. Do not want General Plan to forget about seniors. Thinking about senior citizens. They are a big part of the community.
  - Livermore has an aging population. Idea is to have senior housing in Downtown, to be centrally located and have easy access to shops and services. Do not put senior housing in a remote location.
  - Diverse housing. Housing where people grow up next to different age groups, multigenerational. Interactivity between different ages. People can live longer around a more diverse age community, more active.
  - As Livermore grows, how can we accommodate new businesses that can provide for the new people?

Question #4: What key issues should the General Plan address?

[Notetakers- use next page to paste any chat room comments for the project record]

- Responses
  - Housing homeless people
  - Safety
  - Preserving open space
  - Sustainability and sustainable growth
  - Creating places for diverse community
  - Creating space to exist, for the community to exist
  - Creating community, where all people welcome, they feel invested, this is where people can feel a sense a belonging
  - Maintaining and creating a community
  - Diverse and together
  - Diversity and inclusivity
  - Honoring heritage - have more holistic, inclusive heritage
  - Honoring heritage while being diverse

GROUP #2:

Notetakers- [use page 5 to paste any chat room comments for the project record (if there is any)]

Prior to starting the discussion, each participant should introduce themself and their affiliation with Livermore (resident, business owner, community organization, etc)

- Participants
  - Allison Giffin, PlaceWorks
  - Tricia Pontau, Planner at the City of Livermore
  - Paula DeLiso, Livermore property owner since early 80's, resident in the last few years
  - John Kundert, has lived in Livermore since 1980.
  - Alan Burnham (spokesperson), has lived in Livermore since 70's,
  - Allie Felker, lives and works in Livermore
  - Loretta Kaskey, Livermore resident (old South Side). History of commuting to South Bay, interested in transportation, history, and heritage
  - Paul Spence, City of Livermore Community Development Director

Question #1: What did you see that resonated with you from the large group poll about what you like about and imagine for Livermore? Anybody want to throw out a few more words before we dive into our next discussion questions?

- Since the 70's, Livermore has had positive changes, like the development of Downtown, and a few negative changes like more traffic. General Plan policies can balance the positive changes while minimizing negative impacts
- Hiking around Livermore is great and there are great future hiking opportunities nearby
- Keep Livermore's great open spaces and vibrant downtown,
- Add more housing Downtown to stimulate economic vitality
- Make Downtown a place people want to be, more than just bars and places to drink and eat. It should have historic museums, a science center, theaters (film and performing arts), art galleries, different types of shopping. There should be a variety of choices for leisure for all age groups.
- It should be easy to start a small business in Livermore
- Maintain a small-town feel. Have accessible hiking and outdoor recreational activities
- Maintain an urban boundary, to emphasize the connection to the rural environment
- Refresh/revitalize the parks in Livermore
- Livermore is unique in character, has a rich cultural heritage, and is not sprawling
- It's great that kids can learn about local history about Livermore in school. We should continue to be able to share Livermore's history.

Question #2: What is your vision for Livermore in 2045?

- To evolve in such a way to respect the quality and integrity of existing neighborhoods
- Create more inclusion between North Livermore and the rest of Livermore. That could look like adding a downtown area to the Vasco Springtown area of north Livermore
- Bring back vibrant shopping centers and retail experiences where people want to gather, and that people can access by walking. Connecting the City by walking is important to fostering lively places.
- Live-work-play environments can create retail experiences that activate public spaces and downtown areas.
- Sustainable/complete neighborhoods, with amenities in every neighborhood that residents can walk to (restaurants, grocery stores, parks, places of worship)
- Ensure that zoning code is consistent with Livermore 2045 vision
- Need to modify infrastructure to accommodate emerging mobility technology (e-bikes, etc.)
- Infrastructure should also respond to emerging patterns in goods movement, like autonomous delivery.
- Zoning and other policies should keep up with and anticipate these potential changes in mobility
- Need to create spaces and opportunities for pop-ups, like weekend farmers markets, food truck areas/food halls
- Need to connect trails and nature opportunities in Livermore to other outdoor recreation opportunities nearby. Consider partnership opportunities with other public entities to utilize underutilized open space for public access
- Minimize cut-through traffic
- N3 Ranch: waterway that feeds Lake Del Valle. Livermore should look into investing in this area for public open space (as other public agencies have done).
-

Question #3: What principles do you think are important for the City to consider as they update the General Plan and make decisions on Livermore's future?

- Sustainability, including fiscal responsibility/sustainability, environmental sustainability, and in terms of being able to adequately maintain City infrastructure and services.
- Equity: having more than one voice or one type of voice at the table (civic engagement and policy-making), fostering an environment where everyone can thrive and that emphasizes unique, individual strengths
- Diversity, inclusion, a welcoming community
- Continue to support a balance of housing types and affordability levels, as well as job types and economic opportunities
- Continuing to support all Livermore residents, both current residents and future, especially residents who live on low incomes
- Ensure adequate infrastructure and services for new housing, especially in light of State laws like accessory dwelling unit policies.
- Policy flexibility to allow for innovation, like new technology
- Balance growth with maintaining character and integrity of existing neighborhoods

Question #4: What key issues should the General Plan address?

- policy that allows cannabis retail
- Balance meeting state mandates while maintaining aspects of Livermore that residents want to keep unchanged.
- Growth should be deliberate, and City policy should reflect clearly where and what types of growth should occur based on ability to provide infrastructure and services

GROUP #3:

Notetakers- [use page 5 to paste any chat room comments for the project record (if there is any)]

Prior to starting the discussion, each participant should introduce themself and their affiliation with Livermore (resident, business owner, community organization, etc)

- **Participants**
  - **John Marchand, Former Mayor**
  - **Alana, Resident**
  - **Ruben and Family, Resident**
  - **Jackie, Resident**
  - **Deborah, Resident**
  - **Andy, PlaceWorks**
  - **Wesley, PlaceWorks**

Question #1: What did you see that resonated with you from the large group poll about what you like about and imagine for Livermore? Anybody want to throw out a few more words before we dive into our next discussion questions?

- **Inclusive, engaged community, conservation**
- Inclusive, Accepting Livermore! However, there was former opposition for the Downtown
- We want open space in Downtown!!
    - And in other parts of the city of Livermore!!
- A connection with nature
- Preservation of nature
- LARPD is the voter chosen jurisdictional authority
- Discussion on Solar Farms
- Long term water conservation
    - Water capture issues
- Community Engagement
    - Notifications
    - Better community communication
- Better Transportation

Question #2: What is your vision for Livermore in 2045?

- **Alternative forms of transportation, resilient, inclusive, and prepared city, quality of life, small businesses (Downtown)**
- Public Transportation
    - Emphasis to reduce dependency on private vehicles
    - City bikes
    - Alternative forms of transportation
    - De-incentivize car use
    - More Bike Lanes
    - We don't have the best public transportation
        - Especially in the South
    - We need options! Access to vehicles!
    - More parking in Downtown
    - Livermore does not have the dense areas like other major cities
    - City Transportation Program
        - Ride share program
        - Para Transit program
- Less people are shopping
    - Covid-19
    - Amazon
- More on the ground businesses
    - Small businesses in particular
    - Downtown businesses may be different than Costco
    - **Balance** between big box and small businesses
    - Sales Tax
- Inclusive city
    - Limited mobility
    - Visual impairments
    - Not many existing accommodations
- Resilient Livermore
    - Disaster preparedness
- Quality of Life
    - Sufficient resources
    - Arts and sciences
    - Clean and safe adequate
    - More student art, drama, music
        - Partnership with the school district
        - LARPD does not have arts, music programs

- Technology
    - Intertwined with inclusion, resiliency, transportation
-

Question #3: What principles do you think are important for the City to consider as they update the General Plan and make decisions on Livermore's future?

- **Socioeconomic integration, inclusive development, mix of housing types, leverage existing city strengths**
- Maintain character of our town
    - Small town feel
    - Preserve downtown feel
- More consistency of development
- Inclusivity
    - More socioeconomic integration throughout the city
    - Low income housing throughout the city
- Create walkable, attractive communities throughout Livermore
- Inclusionary housing ordinance
- Mix of housing affordability
- Open hilltops
- ADUs
    - Incentive programs
- Single-family zoning
    - Socioeconomic integration
    - Increase density
- Mix of housing types
- Strength based approach
    - Opportunities
    - Technology
        - Laboratories

Question #4: What key issues should the General Plan address?

- Conservation of space and resources
- Resiliency and emergency preparedness
- Leverage existing strengths
    - Diversity of folks
    - Land
    - Tech
    - Ranch/Ag
- Ranching
- Winery identity
- Grow within resources
- Water
- Housing
- Walkability
- Quality of Life
- School needs
- Arts

GROUP #4:

Notetakers- [use page 5 to paste any chat room comments for the project record (if there is any)]

Prior to starting the discussion, each participant should introduce themself and their affiliation with Livermore (resident, business owner, community organization, etc)

- Jake Potter, City of Livermore (facilitator)
- Carey Stone, PlaceWorks (notetaker)
- Bill Leach
- George
- Larry Gosselin
- Jim Hutchins
- Patti Cole

Question #1: What did you see that resonated with you from the large group poll about what you like about and imagine for Livermore? Anybody want to throw out a few more words before we dive into our next discussion questions?

- Surprised that there was no mention of airport expansion and associated noise that will result.
- Too many generalizations and not enough specifics about the vision for 2045.
- Things that make Livermore unique and should continue to focus on are the importance of the Arroyos and maintaining the health of them; parks and trails are important - need to be maintained. Bike access is improving, but room for improvement.
- **Open spaces** are a positive, but Livermore is encroaching into open space. People don't want to become Dublin. There used to be greenspaces between Bay Area cities. Need to protect and prioritize protecting open spaces. Need trails with scenery along the arroyos.
- Raise awareness of the unique alkali ecosystem; remaining ag and **preserving ag** should be a focus.
- Try to keep Livermore's character; it is going from small town and now housing is extending to outer edges. Growth is natural, but it needs to be controlled and planned.
- Land surrounding Livermore is zoned ag; it provides a diversity of potential uses. Needs to be specificity about those uses and pathway to implementation. General Plan needs more specificity. Engage with Alameda County, ag advisory committee and engaging with existing plans and implementing these plans. General Plan should have a comprehensive ag element.
- Population of the city will grow. Where do we put them? Move to airport - no. Wine area - no? Up North Livermore Ave - maybe?
- General Plan lacks structure; has circular reasoning - policies, objectives, goals. It needs a defined process for documentation of the problems we are discussing. Policy should be established by the City Council (per City Charter).
- Being specific is critical; if not specific it will be generic and open to interpretation and molded to individuals' viewpoints.

Question #2: What is your vision for Livermore in 2045?

- A City that people wan to be a member of; be an **inviting city.**
- Continue to make reasons for people to come **downtown** with shaded parks and benches. There will be more older people in the future. Continued support for visual and performing arts. Spirited, enthusiasm and encouragement. Help local wineries, especially small ones, get noticed. Find a new and fair way to pay for all of this. A generation from now you will want BART to downtown transit center.
- Livermore continues to be **welcoming and appeals to families,** especially families with young children. Affordable housing is a concern for young families; do something to help this demographic own a home or a place of their own.
- **Affordable housing** issue applies to other demographics; need ethnically diverse housing.
- Address **transportation** issues; certain areas of city with problematic transportation. East Avenue is getting smaller; either people will drive less or find other ways of getting around.
- Agriculture becomes recognized as a peri-urban and urban **agricultural activity**. The jurisdictional lines should be blurred in regard to ag activity.
- Transportation - move away from auto focus; electric or carbon vehicles.
- Possible to solve Legacy problem - unfinished apartment complex on Groth site? (bankruptcy court approving a new contractor)

Question #3: What principles do you think are important for the City to consider as they update the General Plan and make decisions on Livermore's future?

- City Council to obtain **consensus** between Council and community on all actions; if no consensus you will create divergence and bad feelings.
- Decisions that City makes needs to be in support of entire community not select groups otherwise you drive the community apart. Perception that certain groups are getting preference over other groups. City needs to figure out how to avoid this.
- Groups that don't have input need to provide input.
- Good, high **diversity** is important. Children will be better equipped to deal with world if they grow up in diverse community. City should keep diversity in mind when making decisions.
- Expand scoping when projects are considered (in regard to EIRs). Conflicts should be resolved at the start of the process not end. Architectural renderings, traffic flow, etc. should be laid out early in the process.
- In context of climate change and quality of life, natural resource management; **conservation** measures.
- Climate change is an emergency/crisis.
- Support small businesses; Walmarts/Targets killing small businesses. Lots of stores downtown long ago, now mostly restaurants. An unfortunate trend; nice if the City could do something to keep small non-restaurant businesses alive.
- **Courteous** - this should be considered in public processes (at citizen level).
- Council and community should think about why people want to live in Livermore; City to provide financial support for the visual and performing arts.
- What the City envisions will draw who comes in the future. "If you build it, they will come." This will dictate the core group who will be attracted to the city.
- Council/City should consider what is possible and not; can't do everything.
- Standards of performance in ag community haven't stayed consistent with economic performance of urban community. Improve economic viability of ag land.
-

Question #4: What key issues should the General Plan address?

- Public safety is a key issue across the board.
- Downtown safety
- Gangs are more prevalent; police job is more difficult because of groups promoting police disrespect.
- What would attract people and keep them here in Livermore?
- Schools - teachers need to be upgraded - they are not effectively identifying with the generations as they change. Teachers aren't paid enough; demoralized. Teachers are struggling to be good teachers.
- Housing should be addressed right up front.
- Should the General Plan allow MF housing on a SF lot? SB 9 and 10 - no legal way of stopping this. Taking away City control over land use decisions is a bad thing.
- Climate crisis - extends to every aspect of planning.
- Collaboration across jurisdictional boundaries for ag and open space enhancement.
- Transportation and alternative vehicle lanes (bikes, neighborhood electric vehicles/slow speed EVs).
- Public transit
- Tourism in the city and rural environment. Hospitality industry wants to see "heads and beds" on the weekends. Tri-Valley Tourism wants to see tourism in the area and rural countryside. Why no resort in South Livermore? This has been an elusive goal. Wineries are struggling without the wineries.
- A resort bigger than Purple Orchid? Owner has trouble running inn. Measure D is in conflict with hotel operation.
- In past years, City helped facilitate volunteerism. This has waned over years. Schools could use help. Elderly/special needs could use support. Livermore used to known for high level of volunteerism. Bring this up again communitywide. There used to be a website that housed volunteer opps.
- Library facilitated volunteering.
- Volunteering can build community; help with public safety issues.
- Larger churches collaborate on volunteer efforts; homeless plans; tiny home plans; all the plans call for engagement from the community.
- Link ag activities to school programs
- Need a volunteer center to help with community building.
- Shifted from a society that wants to help to one that looks to how the community can help them.
- Reduction of altruism and empathy.

GROUP #5:

Notetakers- [use page 5 to paste any chat room comments for the project record (if there is any)]

Prior to starting the discussion, each participant should introduce themself and their affiliation with Livermore (resident, business owner, community organization, etc)

- Participants
    - Max, LHS student
    - Tracy,
    - Laning,
    - Sheryl, east side Livermore
    - Victoria, south Jensen
    - Beth, atty on 4th St. resident for 30 yrs

Question #1: What did you see that resonated with you from the large group poll about what you like about and imagine for Livermore? Anybody want to throw out a few more words before we dive into our next discussion questions?

- Couldn't get to the website, but liked some of the comments. Focused on housing, would like to see questions/comments on housing
- Liked the comments on open space, hills, hiking, parks, portions of the city are walkable. Would like to hear more about housing
  Stated that comments about Livermore being safe/inclusive. Tracy sees an opportunity to define those terms in a broad and inclusive way
- PTSD triggers - Livermore has fewer than other cities
- States definitions really matter
- Commented that it would be nice if Downtown was more pedestrian friendly (pedestrian zone)
- Opportunity to make small businesses a part of Livermore being a destination city, making the city "safe"
- "Small town" how do we define it?
- "Open space" needs more definition.

Question #2: What is your vision for Livermore in 2045?

- Has been tracking the accessibility as the metro region grows. What does it mean because we have an airport, Tri-Valley Link, CalTrans, we have an enormous opportunity, how do we take advantage of that? Less gas dependent, hotter, less capable of being a
- Less dependence on cars. Measure D - open space boundary, knowing we'd have more infill, more density, preserving open space, having a vibrant core
- Expanding transport in Livermore, expanding density with mixed uses
- Crime free environment, feeling safe to take family downtown, living here, not feeling at risk of being burglarized, assaulted. Infill - concerned that if there is a ton of housing, is there going to be room for us downtown? Been here since 1968.
- Want to see more walkability, this means more infill, ability to walk to shops, restaurants, wants more emphasis put on transportation, trails, mixed use buildings. What if downtown wasn't the only destination? Wineries? If there were more neighborhood spots, maybe infill wouldn't be much of a concern. I lived in SF for 16 years, I want to see diversity, inclusive environment, different education, occupation, diverse cultural spot. Don't want to see ourselves isolate
- Sincere cultural diversity is important to them. Oakland and SF didn't plan for their own economic independence. A friend said "what happened"? (to SF) - SF made everything a priority and nothing became a priority. Financial responsibility, equitable distribution of resources.
- The arts are a way to make the City interesting, viable,
- What are some priorities?
- There's a framework of decision making - cultural decision making, political/operational making, economic decision making. Cultural - including in the sense of folks who grew up on ranches, for example see themselves as part of the LGBQT biracial. Strive for tolerance from our neighbors. Political - lets heal. Part of that is realizing we've been misled, afraid, understanding that we have more in common that not. Economic - making sure we have a rich diverse tax base, participate in business corridors. Some need to just work and live their lives - we need to provide that
- Social services are intact and work
- Value truth and science and discourse
- Commuters coming through, impact on that. Route commuters around the city instead of through it.
- What does it look like for seniors? Senior friendly

Question #3: What principles do you think are important for the City to consider as they update the General Plan and make decisions on Livermore's future?

- Responses

  *Don't move too quickly
  *Widespread Community and Representative Participation
  *Compassion

  Try to imagine the environment, climate, transportation, more people (or not)
  - can't see into the future, bias as parent, build up the city as a place that will support children
  Democracy is participatory

  ***Fiscal prudence**
  Curiosity, being open to new ideas, open to what's coming
- Hearing from different groups in a balanced unbiased way

Question #4: What key issues should the General Plan address?

- Traffic, commuting, noise
- Housing (affordable), accessible
- Hearing from different groups in a balanced unbiased way
- Sustainability
- Environmental impact
- Physical and mental health
- Social services
- Specifically address Homelessness
- Open Space (open space in Downtown too)
- Impact of climate change (example plating plants that will survive in hotter, drier climate, BART tracks warping)
- Pedestrian friendly, walkability
- Transportation (sustainable)
- New housing - a requirement of solar/greywater (green building/sustainable building)

- Equity, sincere inclusivity (not just saying, but doing) deep attention to how residents are participating with each other
- Long-term Livermore should be able to sustain its population through industry, planning smartly, thinking of what resources we have (Live-work) smart econ growth
- Most children of Livermore can't afford to live here because there aren't enough affordable housing
- Took 10 years to save to buy, should have been able to do that sooner
- Inclusivity/arts
- We need more senior housing downtown

September 9, 2021 to October 3, 2021 – Online Visioning Activity Comments

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
Key issues: Preserving open space, clean water and air quality, reliable energy sources locally, controlling growth at the airport, thoughtful integration of zoning within the city, better outreach including the continuation of online access to live meetings, continued support for whole community collaboration (business, schools, national labs, etc) in solutions to challenges, including encroachment on our local authority to make decisions for our
A current issue is the powerful group that has managed to sway the public and the city council to a place where opposing concerns are not heard. The downtown debate is a matter of power for that group. Anyone who threatens their power by suggesting something other than their plan - they get attacked and ridiculed. It is a very unhealthy condition for the city. It has created a divisiveness that ultimately harms the quality of life here.
Housing - inclusionary. Low-income apartment complexes are convenient for cities trying to fill their mandated quotas. They are not necessarily the best thing for residents of the city. Find a way to make inclusionary housing work. The Eden Housing approach is a quickie fix-it approach and residents must live with stigma (with the way
“Urban heat island”. No one has mentioned this phenomenon. Concrete and buildings absorb heat and radiate it within the local area leading to increased temperatures. Insufficient greenery exacerbates this problem. Downtown Livermore is going to see increased local temperatures. San Jose has “Our City Forest” which is dedicated to planting and maintaining trees within the city to counteract the warming. Spreading out the high
Parking in downtown insufficient. Apartment dwellers may have parking space allocated in garage but realistically how many of us use the garage for a car? We use our garages to store all our stuff. This will lead to
Key Issues : Open space, traffic, parking, building height, addressing resources (water, sewage, electricity, trash) of increasing - workers, residents, and cars. Provide realistic and attainable solutions about transportation - not every persons situation means we can all drive a motorcycle, take the bus, ride a bike, etc. If wishes were fishes we would all be fisherman.
The planning and the input process is shaped by the City to support the City. The citizens committee is laced with former city officials and since it is being chosen by council, it will be an extension of the status quo. Since the council is locked together in a solid front, an issue for the process is how to be truly representative of the
Cutting East Ave. from 4 lanes to 2 lanes (1 in each direction) would be a big mistake. Just take a traffic count reading now, especially during school days at drop off & pick up. Don't spend money unnecessarily by contracting with outside consultants on a project that will fail, and that the majority of affected residents don't
Make sustainability a watchword for our future. A downtown park will bring together residents of all ages and abilities. Preserve our small town atmosphere of outdoor markets and dining in proximity to fine entertainment offered by the Bankhead theater.
Communication. Put planning projects and documents where people can see them. The live links were taken off the "Major Projects" table. Why was everyone surprised by the Legacy leviathan? The former mayor deflects to no one objecting to the Legacy project when people raise concerns about the next 4 story leviathan going up across the street from the first one. No one objected because they weren't aware of it. It is a communication
Why bother to comment, when the whole City establishment -- Council and staff -- ignore what the people of Livermore steadfastly tell them what is needed in downtown re-development? Get that right -- before you mess
Council not abiding by prior downtown plans - adding 4 story high density (human density) in downtown - violation of downtown plan, limited parking, cleanliness.
Ongoing efforts to address abandoned or under-utilized spaces within city limits, like the empty store on South Livermore Ave., to make them more useful. Keep promoting commercial developments that will provide good living-wage jobs, like the Gillig factory by the airport, high tech, etc. -- the goal should be to make Livermore a place where one can both live and work, not a bedroom community for commuters. The key issue, in general,

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
No airport expansion NO jets Respect zoning and the character of neighborhoods Downtown sidewalks and parking garage could be cleaned more frequently Trash cans downtown need to be emptied more frequently on weekends Basically a need for more services downtown No recycled drinking water Support more rooftop solar on homes and require solar installations on all new commercial buildings Prohibit city diesel landscaping equipment to improve air quality
No airport expansion… lead in aviation fuel is not acceptable for health of our children in nearby schools. Noise levels of proposed airport expansion exceed current city and county noise limits and are unacceptable for those living near airport and citywide… We hear those 737 jets all over town …Not tolerable Expand Ricon and Springtown libraries Add more fire and police and bring down response times…Add larger park downtown Expand Recycled water for landscaping NOT for drinking
WATER,,,make sure we have enough for any future development...in fact don't plan any future development until water is guaranteed. I am alarmed actually to how we just keep on planning to grow during this drought...farmers don't plant if they don't have reliable water but yet we keep planting houses and businesses.
I want a beautiful park downtown, not the Eden Housing project. I don't care how much money we lose if Eden doesn't get put in where it is now designated to be. NO to the airport expansion. We have 3 major airports already: San Jose, San Francisco and Oakland all between 28 to 46 miles away. We don't need a fourth in our own backyard. The northern half of town does not need nor want huge jets flying overhead.
Airport - the frequency of small jet flights, and their associated noise, has increased considerably. Bringing in larger planes would have a very large, very bad impact. The current Eden project downtown is not what was voted on I hope it can be altered to preserve what is left of downtown, including parking.
Listen to your constituents on Eden Housing project and the airport expansion. I realize we need more low income housing, but it does't need to be in the main square of our town. Expansion of the airport benefits very few of our residents, but it does diminish the quality of life for a lot of the residents, especially those living in the flight path of the airport. For the size of our city, we seem to have an inordinate number of homeless. We need
Many of us residents are very concerned about our Livermore Airport (LVK) becoming busier with more flights of all types of aircraft - especially more noisy jets using LVK. We bought our home almost 29 years ago and it was rare to see a jet on the approach to LVK and now we are seeing and hearing many noisy jets flying over our neighborhood - some days 10 to 12 jets a day. Our Livermore City Council several years ago voted to allow a
Do street repairs and neighborhood maintenance equally - including north of downtown. Legacy's failure is an opportunity to include low-income housing that would have been on the catalyst site. The developer will likely ask for concessions when they finally find a builder, make sure the City residents also benefit. City should create incentives for a grocery in the Pacific Ave shopping center. It has been abandoned for

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
Creating Housing for young and old rich and poor; Preserving Water for drinking and agriculture; Supporting lower and higher education for all children and adults; Encouraging business opportunities for the long term and incorporating businesses into the community fabric; Providing community supported entertainment for youth and adults through sports and the arts; Continue to acknowledge our connection to the past and to be open to changes for the future; Jobs are essential.
Make it easier for high school graduates and retirees to stay instead of fleeing. The mass exodus of people seeking a more financially balanced lifestyle is saddening.
The airport/city are in a position that prohibits any action being taken against jet/plane activity once a plane is in the air. There is no recourse or punishment other than a letter to the offending pilot/owner. The airport is zoned to allow expansion. Until the city finds a method for protecting its citizens from even more noise from jets in the future, it needs to change the airport zoning to stop expansion until reasonable solution can be found
A. Consider long-term effects of high density housing impacting infrastructure: 1. water usage: how many faucets, toilets, showers in multi-unit structures? 2. sewage hookups: how many hookups in multi-unit structures? 3. emergency response: how are police, fire, ambulance, PGE, city maintenance, garbage able to respond to areas with narrow streets and limited parking? How will neighbors be able to exit their units when emergency crews are blocking the street access?
I think that Livermore needs more access to public transportation in general, but especially Bart, as we are pretty far into the East Bay and Bart is a convenient way to get around. I also think that it's important to preserve our little downtown, and stop building all this low income housing. It takes away from the cute town feel that Livermore has. Keep the parks; it should feel open and natural. We don't need to make Livermore a metropolitan
Federal Aid Highway Act of 1956 created a highway system to replace the earlier 1912 Lincoln Highway, Route 66, etc. Downtown Livermore was spared because the main road went eastwest and the new road was placed well north of downtown. Hwy 580 was a monstrosity to other parts of the east bay, from castro valley to downtown oakland, 580 construction obliterated whole neighborhoods and shopping areas that were 100 years
#NAME?
In my opinion, the General Plan (GP) should improve levels of respect and trust between members of the community and the city council. The GP should guarantee communication that leads to respect and trust.
There a few issues we as citizens of this awesome community need to address. Firstly, how can we move forward on the important things if we have a group of people who choose not to listen. There could be discussion on this issue that would take up entirely too much space but the fact remains. Our elected officials have their own idea for what's good for us. So far, their lack of openness hD been disappointing. When we as
Access to housing and transportation, across ALL income groups. A more culturally informed and sensitized law enforcement that continually engages with the community. A high-performing school district. Getting the unhoused off the streets and establishing stronger partnerships with faith-based institutions and non-profits to help the unhoused reintegrate into the mainstream. Enabling and encouraging narratives that foster inclusiveness, respect, and anti-racism.

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
Major concerns with all the tall buildings going in literally everywhere. It's so depressing to see the views we once had be overtaken by these hideous rack and stack homes. Way too many people and traffic because of all these crammed in houses or condos or whatever they are. I feel like when I drive downtown the buildings are looming over. Livermore's ranching history and small town feel is why people live here and stay here. It's not
I want to make sure the police department has community oversight. We created a police force to keep us safe; we need to make sure they keep that in mind for ALL Livermore residents. Of all skin tones. In every
The 2017 outreach found a "common theme" was people didn't want high density housing downtown, and buildings should be limited to 2-3 stories, yet we have the four-story high density Legacy under construction, and the Council approved the four-story high density Eden Housing project. The Council needs to follow its own
Keep the city safe and family friendly. Don't build high rises downtown blocking the view of the hills and adding to traffic congestion in the central area. Don't narrow roads...that makes it more difficult/complicated and congested for cars and increases accidents. Add lighting for better visibility on streets. Don't pollute north livermore above Springtown with solar farm and batteries. Don't put new housing so close to the
I understand that some people want to keep the city with a small town feel, with very low population density and high relative density of private, large vehicles. That model is not sustainable. A modern city cannot prioritize cars over people. It should be a pedestrian, bicycle, and public transport friendly city including extending BART. Besides, the city should prepare for the extreme weather related to climate change, and add energy efficiency
reduce the need for parking by expanding the Livermore trolley coverage throughout the city Fri PM -Sun early afternoon. If people can park at shopping malls or public parking places near their homes and hop on to a trolley to get to the downtown, that would address several concerns being debated right now. Make the trolley electric
Please do not put up Housing community in downtown. Improve parking situation. Widen roads on Tesla and Vasco to accommodate traffic. A pressing issue is the lack of side walk on Tesla and Vasco for pet walkers.
The City spent $500,000 from spring to fall of 2017 for a public outreach program to determine what the top issues were... The top five concerns were #1 Parking… #2 Community Character… #3 Open Space… #4 Traffic/Roadways/Walkways… #5 Downtown Hotel… #6 New Retail Uses… #7 Hotel Location… #8 Cultural Facilities… #9 Public Finance… #10 Housing.
I've lived in Livermore for 32 years. I've always loved the small town feel of this area and would hate for that atmosphere to change. Tall buildings in the downtown area are not conducive to that small town ambiance. Low income housing is fine but not at the expense of the larger Central Park. Parking appropriate to the kinds of cars we have here (and that includes a lot of pick up trucks) would be good. Had I wanted to live in Walnut Creek or Berkeley I would have moved there.
Lets stop the Airplane flying above the residential area. Airplane noise plus lead poisoning is a serious health issue. City should do something about it, its hight time.
I like affordable housing north of Railroad Ave so that Livermore can have a vibrant park on the old Lucky site. We need affordable housing and we need a destination park.
I like the open space around Livermore that has been preserved by our Urban Growth Boundary; open space in the city with parks for everyone to use; inclusionary affordable housing that is distributed in developments throughout the city and not segregated in one area; public amenities in the downtown - parks, shopping, restaurant, cultural facilities, adequate public parking; no blocks of 4 story housing in the downtown where there
We need more underground parking in the downtown core area, especially if current parking areas are going to be converted in the development. And let's re-open discussions about a BART station - it was such a shame that
Downtown does not have sufficient parking even on weekdays. Multi storey parking would be good.
Public transportation is huge. It is non existent on the south side of Livermore. Schools are greatly impacted at drop off and pick up times because of it.

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
Bigger parking spaces (no small sizes that are hard to get into and out of). More green space downtown. Less housing in the area between Railroad and First St. More housing could be
We don't need another fountain downtown. Are you kidding me with a third fountain at the intersection of
Bike/ped safety. More protected bike lanes. Cars and trucks drive too fast and are too large to safely share the
If more housing is needed then adequate parking needs to go hand-in-hand. At least 2 spots per unit.
Don't mirror Dublin's stack and pack development. Unlike them, we have a downtown, let's preserve it.
The theme of "small town feel" seems pretty loaded. To me it screams of nativism. It essentially tells people to stay out, but the plan for the next 20 years should encourage growth in a smart way.
We MUST address the out of control building of Stack and Pack housing. We do not have the water, electricity and roads to support this rapid growth. PLEASE keep our beautiful downtown resident and tourist friendly by focusing on safety, open space, parking, litter/graffiti free. Many homeless people do NOT want to be homeless. We need mental, physical, dental health support for our homeless residents and job training so they can get back
Reallocate funding to support mental health and human services. Create a support structure for our un-housed community. Also, fix infrastructure that's in disrepair or old. For example, my neighborhood sidewalks do not have handicap dips. This greatly decreases accessibility, walkability, even biking. If we want to get people out of their cars (and
We need more housing, but more density should be along our major transit corridors, ACE, present Wheels routes, Downtown, and freeway corridors. We also need to limit traffic coming through residential areas avoiding the freeway, but treating our streets as freeway; they rarely drive 40 MPH or less on 35 MPH roads and routinely encroach upon the bike lanes, including passing on the right on one lane roads. It isn't safe to bike our
We should build more dense, affordable housing in Livermore! I'm a young adult who grew up in the Bay Area and who wants to stay here for the rest of my life and it genuinely feels like Bay Area nimbyism is going to cause that dream to be out of reach. We need more housing. We need more dense, walkable places. We need better public transit. I also value open space and conservation. The way to reduce sprawl is to build up, not out. I
Stop the three and four story housing downtown. It is destroying our small town environment. Worse yet, the city has decided that it is OK to build dense housing with insufficient parking for those living there. The lack-of-parking issue is the same even for housing that is not downtown. even 1.5 parking spots per unit is not enough, as can be witnessed at any of the large apartment complexes in town. The streets around those complexes are
Please STOP the high rise buildings downtown, do it elsewhere if you must. Love the small town feel Livermore has now. Many people are leaving California for many reasons, overgrowth is one of them. If I wanted to live in
Maintain small town feel with responsible growth. Watching Dublin's growth and seeing the traffic in their town is sad. It adds to congested 580 traffic. With small town approach, offer leadership/equity/ belonging centered leadership programs for middle schoolers and adults. Livermore must teach about others who are different from them and provide better global
Please STOP building houses! Our small town can not handle any more traffic. Please keep our downtown quaint with buildings that don't go higher than two stories. We also love our unique selection of independent shops that are downtown. Please stop building on our beautiful hills. Our open space is shrinking and that is so sad. We do not need to build absolutely everywhere! We'll lose our towns small town charm.
Keep the small town feel. Enough high density housing - we can't handle the traffic congestion. No more development on the hills - preserve the open space.
Stop building 4 story buildings! Keep all buildings at a max of 2 stories.
Livermore is a car dependent community where you have to drive anywhere. I would like to make Livermore more friendly to alternative transportation methods

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
San Mateo Airport only has unleaded fuel stations because the lead is aerosoized and absorbed into children's lungs. There is no safe level of lead. I would like Livermore airport to transition to unleaded fuel stations.
We need more shopping and centers- such as the old Nob Hill, near the Bingo center- need to be developed quickly and not just left to rot. I'll never understand why the Neighborhood Walmart didn't go in there. It would have been such a help to residents who live near there. Although I love the emphasis on wine in Livermore, we do need more family friendly and non-alcohol related shops to cater to our residents. I have heard many
Please please can y'all include redoing the sidewalks downtown? They look horrible and they are a tripping hazard. All of the grout in between the tiles is either gone or falling out. They look mismatched and unincorporated. If we want to beatify downtown the sidewalk issue is a must redo! Thank you.
Working with the airport to help them transition to fuel that does not contain lead
Homeless population and safety. Significant negative impact from waste, loitering, and altercations with this
Hi, we are looking program to teach kids etiquette's. if you can help with that then please inform us.
Principle: Respect. Do not allow the mocking of citizens. Do not let people who mock other citizens be on the General Plan Update Committee. Diversity and diverse ideas are part of the human condition and it must be
The General Plan should promote health, safety and connection to our community and environment; past,
Principle: Transparency. Make information, documents, proceedings accessible. Do not allow city officials to misrepresent things by omitting details, re-interpret study results and reports, or create special reports that are supposed to be unbiased but really are. Make it so citizens can have meaningful participation by being well
Guiding Principle: Take the time to do things right.
The principle of democracy should steer the General Plan. Future City decision-making should evolve to figure out a way to give residents information and easy access to city documents. It should include a process where people can be heard and some accountability for ignoring them or worse yet - insulting them. Record all the advisory board meetings and post them. Post meeting minutes and agenda packets where they can be found.
Ecosystem awareness in every aspect of planning and management. Weaving and strengthening social fabric as an outcome of public areas. Built environments and designs that facilitate healthy lifestyles. Corridors for flora, fauna, and humans. Safe environments in terms of mass casualty events. Recognition of heritage - ALL of it -not
Let the citizens of the city that live here have an equal voice as the political activist, business activist, social agendas. So form a committee that is EQUAL and TIMELY to influence a decision before action is taken as the political, social, state, business have more real/perceived control over this town. Define these principles in a
Fitting INTO the ecosystem. The traditional Judeo-Christian, patriarchal - and outdated, approach has caused a plethora of problems that we are now scrambling to solve. There has to be a "systems approach" incorporated into all aspects of planning and managing the city. No one is minding the "forest" and things are set up for
A mayor snd city council that serves the people not big developers and special interest groups.
"Mitigation". Climate change is going to be the overriding challenge connected to/embedded within every other challenge we will face in the next 20 years. The General Plan needs to address and implement the infrastructure changes required for the sake of future generations: higher density housing that is also affordable and nearer jobs, facilitation of human energy (walking, bikes) to get around, more usable, green public transit, etc. -- just
Protect health (no airport expansion) and safety first (more fire , police and paramedics) Reduce current noise limits Limit growth to allow city to increase or maintain current level of services … No recycled drinking water More neighbors parks and larger park downtown

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
General plan should be written to maintain a municipal airport but prohibit proposed airport expansion which will turn current airport into a commercial airport. Maintain or reduce current noise limits. Services especially police, firemen and paramedics and schools must be expanded before growth. Respect current open space, parks and city vistas. Respect South Livermore plan and UGB
Representative. As in representative of the interests and opinions of Livermore's citizens.
Integrity
Integrity
The General Plan should provide more spaces and opportunities for social interaction, such as presently happens at the Farmers Market in Carnegie Park and around the fountains in the evenings. As the population grows, the
It really saddens me to continue reading comments along the lines of “no low income housing “. Livermore will become a very backwards city if only the very very wealthy can live here! Where do these people think restaurant employees should live? How about the childcare providers? Retail workers? Low paid office clerks? There are thousands of jobs that classify people in the category of the working poor- they should be welcome
Inclusive
In my opinion, the general plan should be guided by principles of collaboration and mutual respect.
inclusive
Saying no to low income housing is extremely exclusive! Very ignorant sentiment! We should encourage diversity. Diversity in age, income, race, ethnicity, gender etc. most people in Livermore value diversity and
Ensure proper infrastructure to provide adequate power, water, road capacity and other services for residents already here before building more housing and allowing new super sized companies/warehouses to strain it
Climate-change
People Safety
* Keep freeway traffic on freeways. Reduce city "cut through". Reduce number of lanes on East Avenue down to two, versus current four lanes. Remove car traffic from first street from L to Maple. * Provide more/safer bike lanes for families (bike users aged 6years+) to travel to/from public school and downtown. * Provide more shade structures across all civic places -- especially playgrounds/parks * Require new housing to have solar and no natural gas hookups
Inclusion, character, diversity, tranparancy, open
Stop dealing with the small group of folks who constantly try to deter growth and development. They are a loud minority that's really holding us up. People want to move to Livermore, but if there's not enough housing being built, or amenities coming into the city core, the trend is going to pass us by.
Is this good for the current residents! Many times I feel that decisions are made for future residents but us long
Incorporate guiding polices and actions to identify and account for the cultural history of Native American
Family friendly
No low income housing downtown!
Inclusivity. Openness. Curiosity. Forward-thinking. Creativity.
Maintain our small-town feel. We need to reverse the current trend of turning our small town into an urban nightmare. Does anyone really want Livermore to look and feel like downtown Oakland or San Francisco? I don't, and I suspect that most of the new residents fleeing urban cores don't either. Livermore has a great heritage of a ranching community, mixed with a (relatively) recent addition of high tech. My family would like to
small town feel
Why does the city council insist on placing a housing project in the middle of our downtown? Seriously? It makes
Sustainability and inclusivity

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
I'd like us to be guided by growing an inclusive, environmentally sustainable community. Build more housing, especially affordable housing. Preserve green space by building up instead of out. Why limit ourselves to only 3 or 4 story buildings? Improve walking and biking trails and public transit. Invest in our schools, our parks and rec
Foresight/preparedness (for what is likely coming in the next 20 years)
Healthy inclusive connected community
Our waterways - I would love to see something happen with them. Could they be managed in a way to maintain a year-round flow? Could we get one downtown? Do we still have the springs that used to be used in this area?
I have a vision that Livermore is a safe place for migrating species. We should have the plants they need to survive, we should know what and when things are passing through. We should take responsibility for ensuring
I have a vision of a place where people can grow old and still get out into the community to lead interesting lives. This means making it safe and amenable to modes of travel that the elderly need.
A community space where our diverse heritage is recognized and honored. Ideally in downtown because people feel like downtown is theirs -it is the heart of a community and we already naturally gather there. Include aspects of native flora and fauna and some feature to mark equinoxes/solstices to connect this spot to the
Less dependent on the electrical grid... starting 2023, all new residential construction, and homes that are sold to have solar panels installed... All commercial buildings to install solar panels.
"I WANT TO LIVE IN A WORLD CREATED BY ART NOT JUST DECORATED WITH IT" - Banksy. There are places that - when you are in them, you can feel an energy. My vision is a place created and maintained with a vision of healthy people and healthy ecosystem - and the place itself being a work of art.
Create a city - environment, council, behavior that acts on: 1. integrity without arrogance or dismissal 2. trust with transparency 3. sustainable and strategic development 4. understand that we work to live (not work for striving affluenza) 5. logical arguments and not logical fallacies (activist, social media) 6. thinks about consequences of proposals before acting
Unite Livermore with a large downtown park with adequate parking. Move housing outside of direct downtown, mindful of building height and lot lines, unlike Legacy project that will change downtown character, and I suspect a surprise to majority of Livermore residents. More transparent Livermore government that listens to residents when they get involved. Downtown outreach was duplicitous. Be mindful of traffic and traffic flow. Livermore is
Large downtown park that serves the full public.
I would like Livermore to be "a peaceful place for all".
A Livermore with more parks, green belts, and less cut thru traffic Keep commuters on freeways and off city streets with no turn signs, speed bumps, etc . Livermore with slower growth and maintain current UGB —respect zoning A City where underutilized space —old nob hill etc. are developed before stores in freeway A Livermore without 737 jets A Livermore that requires purple recycled water pipes for all new developments no recycled drinking water Respect current neighborhoods
Livermore with more parks, protecting open space and vistas, the South Livermore Plan, city UGB and no airport
Downtown 1st Street becomes a one-way street from L St to Livermore Ave
Friendly, vibrant community.
Keep the small town atmosphere.
Welcoming, accepting, creative, intelligent and socially democratic.

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
More affordable housing available and near to students and lower wage staff at Las Positias College. Most of the students work one or two jobs in addition to going to school. Many are, and are likely to work at the lower wage jobs at the Livermore mega mall. They need affordable
Continue to be a welcoming and inclusive community. Community members need to be educated about high-density housing. An extremely tiny fraction of high-density housing is designated low-income. High density developments can house many more units and people per acre than single homes, serving a need for increased housing units. Many young families are able to become homeowners. Developers make more money, city and county collect more fees and taxes. Can current
Biodiverse and sustained!
Here is what I agree with: Livermore MUST HAVE an amazing park downtown that welcomes residents and tourists of all ages by using elements from nature. Small town feel, mix of homes and agriculture/open space, wide tree lined streets, nice downtown that's taken care of with nice shops/restaurants, wineries. Inclusive.
Inclusive, green
My vision for Livermore is to have an amazing park downtown that welcomes residents and tourists of all ages by using elements from nature - ie, not Disney. I have visited parks in Europe and Mexico that spark curiosity and trigger imagination.
My LIvermore vision includes: 1) Jobs-housing balance. it is unjust to develop jobs in retail and service industries that require people to commute or live in multi-family households. 2) Development of an agro-economy to protect our borders. We failed to support horse ranches, trails, and conservation. Now local cities have lost or will lose their green belts. Proper land stewardship is necessary. 3) We will meet our green power needs locally using distributed and microgrid power strategies;
Clean energy is very important in my eyes. Wind and solar, and in my opinion, nuclear energy, will be instrumental in the future. Not only do carbon emissions harm island nations and coastal communities, but non-renewable energy is exactly that, and if we were to use non-renewables until they ran out, we would be forlorn to not prepare to replace them with renewables, so why not do so before running out of non-renewables is even
Negative emissions. Fighting climate emergency.
Have bart access and a bart station. Have coffee shops and other retail spaces/European style cafeterias available for the Isabel neighborhood.
Eco-friendly, water wise landscaping and planning. Focus on keeping downtown and wineries as places to visit, expanding/maintaining open space access, and providing affordable housing options for all incomes
Inclusive, bike friendly, parks, affordable housing
It would be nice to have a unique attraction or destination in spring town.
The next new neighborhood should be based off of principals of permaculture, be eco friendly and energy independent using wind/solar power and put abundance back into the grid so Livermore can cut energy costs.
I'd like to see a state-of-the-art inter-generational daycare facility. As well as a drop in childcare brought back.
Keep the small town feel! No to the low income housing and the high rise buildings. Keep it safe and family
As a 54 year resident, I am very opposed to having a downtown that consists of huge 4 story buildings that will certainly lead to degradation of parking and traffic, as well as displacing other important facilities and open space. It would definitely degrade the quality and character of Livermore and that would be very sad.
We moved to downtown Livermore 8 months ago from the San Jose downtown core because of Livermore's small town feel. We wanted to be away from constant noice and traffic and constant crime. We did not know of the plans for a large low-income housing project to be built in the area. Our vision is for a spacious park to be shared by everyone. Housing communities can be placed almost anywhere, but not in a quaint little town.

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
Wide tree lined city streets. Family activities with small town charm, parades and farmers markets. Roads improved to handle additional car traffic from increasing population of residents and made safer for pedestrians and bikes. Pathways created to route commuters away from cutting through neighborhoods. Historic downtown preserved with views of the hills. New housing placed in less congested areas and closer to freeway/commute
Diverse, vibrant, green, intellectual, touristic
A clean, crime free city with improved public transport.
For thirty years, any intelligent person has been able to find out about global warming. Earth in the Balance and Jim Hansen have told us. We're supposed to be a city of scientists. We've wasted millions on refinement of nuclear weapons. If we ever get around to using them, GAME OVER. In the meantime, we're practically closing down activities at LLNL that provide understanding of global warming. There's a price to stupidity. Look at the
Pedestrian downtown, robotic parking garage
Remove car traffic from first street. Arterial roads can continue through First, but not cars driving along first. Remove all pm street parking from first, and improve the bike paths and bus routes to first. Our downtown should be for people, not for cars. Zone downtown for mixed use: second street and more of first would be wonderful candidates for first floor
Follow the path that has been set - keeping a balance between growth and infrastructure. Make sure that we have the open space and parks that are so vital; the infrastructure including streets, schools, public facilities, cultural amenities (historical, performing and visual arts, ethnic) that are so vital to a community. If Livermore
I would love to see downtown First St. permanently transformed into a pedestrian-only walkway/plaza.
Welcoming, inclusive, down-home feel (no more 3/4 story homes).
A trolly type transport that drives from downtown to the vineyards would be pretty cool I'm surprised it doesn't exist. The vineyards may even be interested in subsidizing this on the weekends. I know there is one business that does this as a specialty thing, but I'm talking about a regular public transport. First street downtown should
An attractive thriving community for families.
Charming downtown with no high rises and beautiful green space.
Small growth for small business and restaurants
More family focus. I'd love to see Livermore have an inclusive/adaptive park where all can play.
Mountain Biking & Hiking - separate trails to include these health focused visitors & Livermore residence. Family Friendly Spaces -the children's museum is great! Consider children's aspects in your design throughout. We want to include children's sense of wonder and joy in many spaces. Picnic areas -for casual take out dining Big Bike- lanes to accommodate mountain and road bikers riding downtown for a meal or snack.
Better traffic flow, public transportation etc. will equal greater economic growth. Car traffic within the city is okay, but the traffic on the main highway is terrible. Now, we can't fix the highway, but we can we can look at ways to reduce the amount of our cars on the highway. Like reliable public transportation to the BART station,
Can we somehow have a co-op type space where everyone who wants to sell/trade their homegrown fruits/vegetables/honey, etc or even hand made crafts can do so? Similar to the one in Columbia, if you want to check it out.
We need to think about sustainable industries within Livermore, so there are high paying and long term jobs available for our current and future residents. This way we can reduce monetary flight to over cities, and
Please stop all downtown building that is over two stories. While we do need housing, downtown is absolutely the worst place for it. We are going to lose our small town feel. Build high density housing by the transit centers

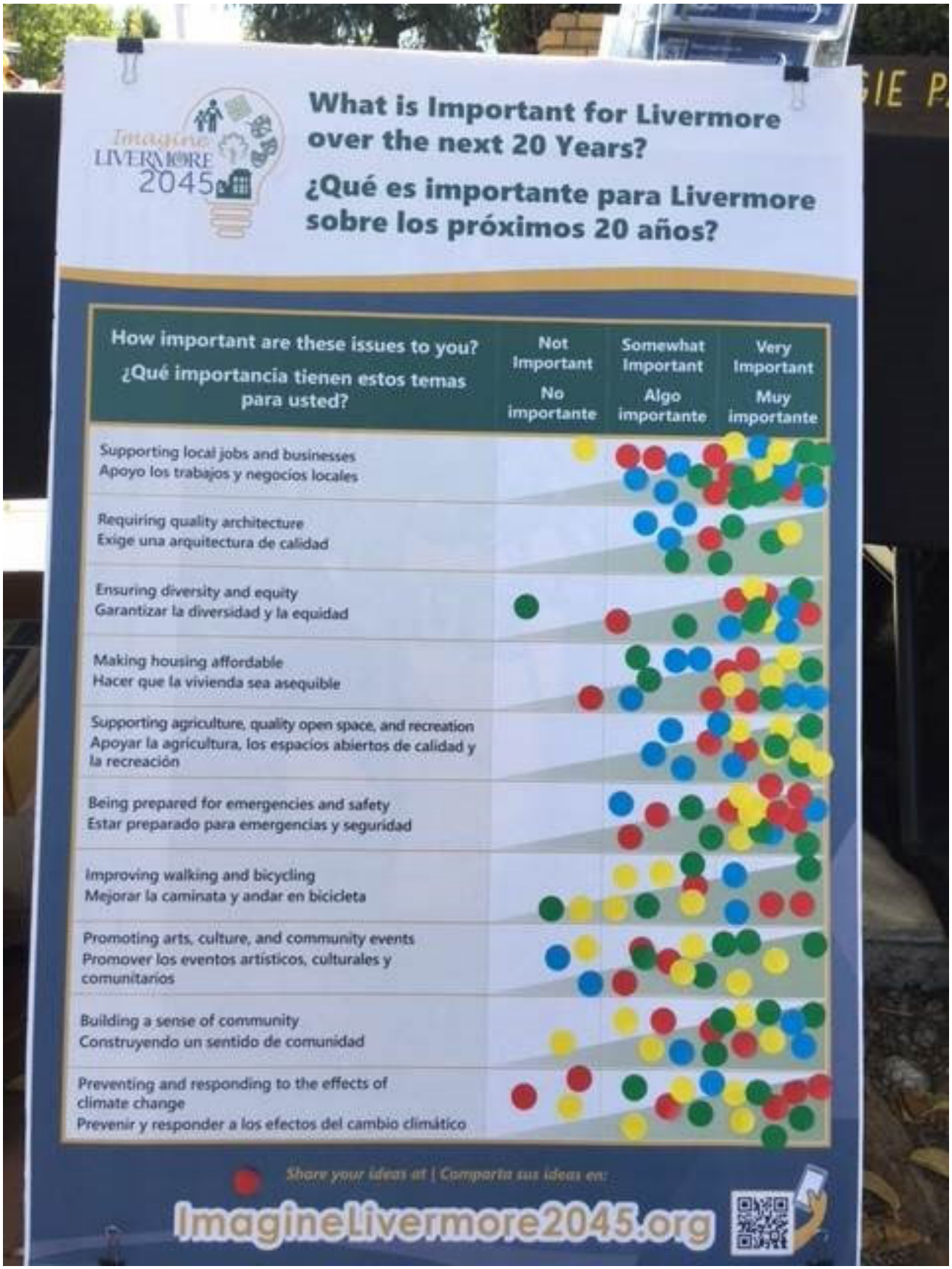
September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
I support density downtown and general in-building. Without it, we are excluding many many people from living here and making Livermore insular and exclusionary. This protects our hills and open space, as well. I want many destinations for leisure and activity: encourage mixed-use building and green spaces throughout so that neighborhoods have places they can go and it's not all centered downtown. This supports walkability and
Make Livermore public transportation a top priority
We need to preserve more open space. We also need to have a balance in the agricultural industry. Wine is great, I love it, but we are losing smaller, family friendly horse boarding facilities because the county and city are making it too difficult to add improvements to facilities that don't already have them. Instead what we are getting is more high end show barns that aren't relaxing and charge way TOO much for boarding. We need to
Awesome future hiking/mtb park potential: 1 N3 Ranch (50,000 acres) is available for purchase, with state/country funding already allocated. 2. Zone 7 purchased 5,000 acres surrounding Lake Del Valle and wants EBRPD/LARPD to manage new trails surrounding the lake. 3. Lake A of Chain of Lakes is now under Zone 7
A wine country destination and a technology center I believe the two above listed goals are easily achievable, since we already are both :-) But I would like to see us keep the focus we have and continue to build on our strengths.
A welcoming thriving community that houses and caters to ALL
I commented before that I liked the safety I feel here. I need to retract that comment because I just learned of a rape/assault downtown. many of us were surprised and dismayed. I went looking for info and found out that we have at least two every month. The safety that I said I liked - does not really exist and I didn't know it.
Our dedication to preserving open space, honoring our agricultural heritage and the collaboration between our national labs, school district, businesses and art community represent the strengths of Livermore.
I like getting a glimpse of the hills between buildings. Somehow just seeing them helps me feel grounded and connected to where we are on the planet. I hope our viewshed is acknowledged, protected, and incorporated
I left San Jose because of the type A, narcissistic, know-it all,and me first people were defining the community. I like that Livermore has people that said hello to each other, acknowledged that arts, science, agriculture, and a shared history that equally defines a community - not just political city dominance, social stratification, and insane drive of money. The values are reflected in the daily behavior of how we drive, greet each other, and
It is the antipodes of the Bay Area. It is a self actuating community. Cowboys, Cowgirls, Winemakers, Physicists, Scientists, Actors, Operatic Singers, Rock 'n' Rollers, Country
Parks, trails, walking paths, arts and cultural development - vineyard, theaters, wind power on hills. Solar on
The paths that allow walking and biking mostly away from roads are great. I like how helpful, professional, conscientious, and dedicated the city employees are, from police, city hall, everyone I have dealt with -- municipal operations seem generally and relatively well managed. The in-fill development effort replacing sprawling and/or out-of-date facilities with new, more useful buildings has also been great. On a lighter note, I
Love Civic Center library —expand Ricon and Springtown libraries Like parks, open space and beautiful vistas Like small town atmosphere Keep outdoor seating in front of restaurants Consider making two blocks downtown pedestrian only Maintain shade trees all over city and add more

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
Like the large city parks, and smaller neighborhood parks, open space and beautiful vistas...We need a larger central park downtown....no hotels in residential areas ..We have a great civic center library better to maintain what we have before building more
I like the (remaining) small town atmosphere and the surrounding rural areas. And still there are concerts at the Bankhead and shopping and restaurants.
Small town atmosphere.
I like the history of Livermore and how the past has been incorporated into present day Livermore. I used to think Livermore was a cow town and would never be sophisticated like Pleasanton. I was surprised when changing First Street created a quaint mixture of old and new and Livermore became a happening place. Who would have thought? If we can ever complete the downtown plan I think we will be surprised at how it fits in
I like the diverse community and the liveliness of the downtown area. There is always something you can do: hike in Sycamore Grove, go to Lake Del Valle, eat at a restaurant downtown, etc. Also, it's great that we have
I like the fact that it is not part of a contiguous urban area. When you drive into Livermore - you know it because it is surrounded by open space. I like the mix of "country" with "scientists." I love learning that someone is connected to someone else I know - the "tangled webs we weave" lol. It is the "small world" stuff. I like how the culture is humble. I like all the attention on the arts. The regional/large nature areas are great. Being a "one-
Small town vibe, green belt, vineyards, downtown, people, parks, Lab
I like the welcoming atmosphere and the feeling of community.
I think that Livermore has a lot of things to love. The community here is very inclusive and open, and I think that that's a very important thing. I also think that it's really great how friendly and nice everyone here! I am so lucky
I like how Livermore has a safe feeling. I'm part of a minority, and I have not really experienced any backlash because of that. I also like the diversity in Livermore. I've known people from many different places and many different backgrounds and have been able to meet and become friends with many. The community seems good.
I think Livermore is quite an LGBT friendly city, at least from my experience, and that's something I quite like.
Small town feel, mix of homes and agriculture/open space, wide tree lined streets, nice downtown that's taken care of with nice shops/restaurants, wineries and golf courses, hiking
Livermore wine country! Bike & walking paths through vineyards! Vibrant downtown full of small, local
TECH COMPANY
The downtown plan was such a great idea and testimony to the city council’s long term vision. We moved here in 2004 and don’t mind the commute to South Bay at all. At the end of the day, the serenity and small town character pay back in spades! The combination of vineyards on our surrounding mountains, the windmills, the family owned wineries, the
My family loves Livermore. The city has great vibes, friendly neighbors and great outdoor and social life. I would hate for it see it all diminish due to improper planning and housing amidst a cozy downtown. AS a resident, we would love to see more underground parking spaces. More access to public transport from housing communities. Connection to ACE and and local BART would be great. More trash bins and efficient trash pick up
Move housing off the Lucky site, north of railroad Ave. Keep a large Park and an underground parking lot downtown. Keep four lanes on east avenue. There needs to be a way to move folks out of town in an emergency. Get a local Bart station (preferably at the downtown transportation hub near junction and old first street). Explore the possibility of making a portion of downtown car free. Don’t let developers overload the
Complete the Concannon extension between Arroyo and Holmes. Address Vancouver Way which is a freeway!
Open space in and around the City; lively downtown with a variety of restaurants; Bankhead Theater; outdoor events such as Art Walk, Quest, Tuesday Tunes in our public spaces; murals and especially the whales on the tanks at the water treatment plant; bike paths in the city and into the open space around the city; many

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
I love the idea of more low-income housing downtown. I'm also not opposed to 3- or 4-story buildings. I think we have a nice balance of open space, retail, parking, and housing in the current general plan and I approve of the direction the city is taking our downtown. I look forward to future progress.
I like the low income housing project downtown. It is going to create a huge multiplier effect.
Livermore is a really friendly small city with loads of wonderful amenities like art festivals downtown, the beautiful state-of-the-art Bankhead Theater, a great farmer's market, cute restaurants and boutiques in the downtown, excellent outdoor activities, lots of great wineries with an active wine-growers association, and
More pedestrian/ bicycle friendly streets & trails. A FREE trolley or shuttle service to breweries/wineries would be great! A transportation system that goes to all four corners so Springtown/ North Livermore isn't the bald-headed step child of Livermore- we pay taxes too! A better staffed park maintenance service- our parks are pitiful- dead sections, weeds, general neglect! A HUGE community flower garden to attract pollinators! Bees
Open spaces, nature
I love the activities and vibe of Livermore. Every weekend there is something to do. Our downtown is amazing and I'd love to see it expanded. Putting in more housing and losing parking is a no win. The housing going in with retail downstairs was a good option though. Too bad it's just sitting there.
More housing downtown is a great idea, it helps keeps the shops there busy. I don't mind building height at all. I do want these units to have at least 2 parking spots per unit, with the adequate width per space so that they do not make downtown inaccessible. I won't go there if I can't get parking easily, it's not worth it when there are restaurants elsewhere in town. If you can't make adequate parking, the size of the park won't matter as I won't
I like the small town feeling of Livermore. Livermore has a charming downtown. Please keep the small town feel and stop allowing the building of the urban high rise apartments.
I am.in favor of keeping downtown space for commercial and community park area Not residential. Keep residential in their zones. I want to retain character of downtown. No three story buildings. Old Town heritage of Livermore should be kept . A quaint place to visit reflecting its history.
What I liked about Livermore was the small town feeling it used to have before the City Council started okaying 4
I love the charm of downtown Livermore. We need to encourage more small retail and high end restaurants here. There are no high end places to eat downtown. I love the wineries but we need more safe ways for people to taste. Biking is unsafe because of crazy drivers and bikes lanes are trashed or non existent.
Love the fact that we have a wide range of activities and options for different interests: arts, theater, great food, wine, festivals, farmers markets, big parks with hiking and recreation. I also love that we have a bustling downtown. It's one of the reasons we moved here, to have so much activity and things to do for the whole family, to be able to interact with the community. Not all the SF suburb cities have a downtown like ours — Pleasanton and Danville are the exceptions.
I like the small-town feeling that Livermore used to have. It is family oriented, and maintains it's heritage through the Rodeo and Parade each year (COVID years excepted). The work that was done in the down-town area 10 years ago to revitalize our down-town was exceptional. Unfortunately, Livermore is losing that small town feeling. The amount of high-rise housing that being built downtown is turning Livermore into the typical
I'd like to see a vibrant downtown with retail stores especially. I'd like to see our citizens be able to shop here in
I love that we still feel like a small town, and we need to foster and keep that! We don't want to be Dublin, Walnut Creek, Fremont, San Ramon, Oakland. We need to be really careful about not only how much we grow,
I love the wine valley feel- the beautiful areas kept free for agriculture which makes our city feel spacious and green and a little rural, even though we are a very modern city in many ways. I love the wine tasting and the events; they add so much to our lives. I take my children out wine tasting and to musical events; I invite guests
Affordable housing so people who work here can live here! That is so important to building a strong community.

September 9, 2021 to October 3, 2021 - Online Visioning Activity Comments
I like that the town is small and we should preserve the small town feeling. I love the wineries and parks! It makes it feel like we are on vacation at home.
I love the charm and small town feel, love the restaurants and downtown, love the upcoming development that is coming downtown, love the wineries and surrounding hills and parks. I love that living near town I can walk

October 14, 2021 Farmers' Market Pop-up


Imagine LIVERMORE 2045
What is Important for Livermore over the next 20 Years?
¿Qué es importante para Livermore sobre los próximos 20 años?
How important are these issues to you?
¿Qué importancia tienen estos temas para usted?
Not Important
No importante
Somewhat Important
Algo importante
Very Important
Muy importante
Supporting local jobs and businesses
Apoyo los trabajos y negocios locales
Requiring quality architecture
Exige una arquitectura de calidad
Ensuring diversity and equity
Garantizar la diversidad y la equidad
Making housing affordable
Hacer que la vivienda sea asequible
Supporting agriculture, quality open space, and recreation
Apoyar la agricultura, los espacios abiertos de calidad y la recreación
Being prepared for emergencies and safety
Estar preparado para emergencias y seguridad
Improving walking and bicycling
Mejorar la caminata y andar en bicicleta
Promoting arts, culture, and community events
Promover los eventos artísticos, culturales y comunitarios
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Construyendo un sentido de comunidad
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Share your ideas at | Comparta sus ideas en:
ImagineLivermore2045.org

Imagine LIVERMORE 2045
Housing Issues
Necesidades de vivienda
What is the need in Livermore to:
Cuál es la necesidad en Livermore de:
No Need
No hay necesidad
Mild Need
Necesidad leve
Huge Need
Gran necesidad
Add more affordable housing
Agregar "mas" viviendas asequibles
Provide more housing for/ Producir más viviendas para:
Families/ Familias
Seniors/ Personas mayores
People with Disabilities/ Gente con discapacidades
Young People/ Gente joven
Provide more housing near transit and amenities
Producir más viviendas cerca del tránsito y servicios
Decrease housing costs
Bajar el costo de la vivienda
Reduce Overcrowding
Reducir la superpoblación
Ensure housing is adequately maintained
Asegurarse de que la vivienda se mantenga adecuadamente
Reduce landlord-tenant conflicts
Reducir los conflictos entre propietarios e inquilinos
Prevent displacement
Prevenir el desplazamiento
Provide housing and services for people experiencing homelessness / Proporcionar viviendas y servicios a las personas que no tienen hogar
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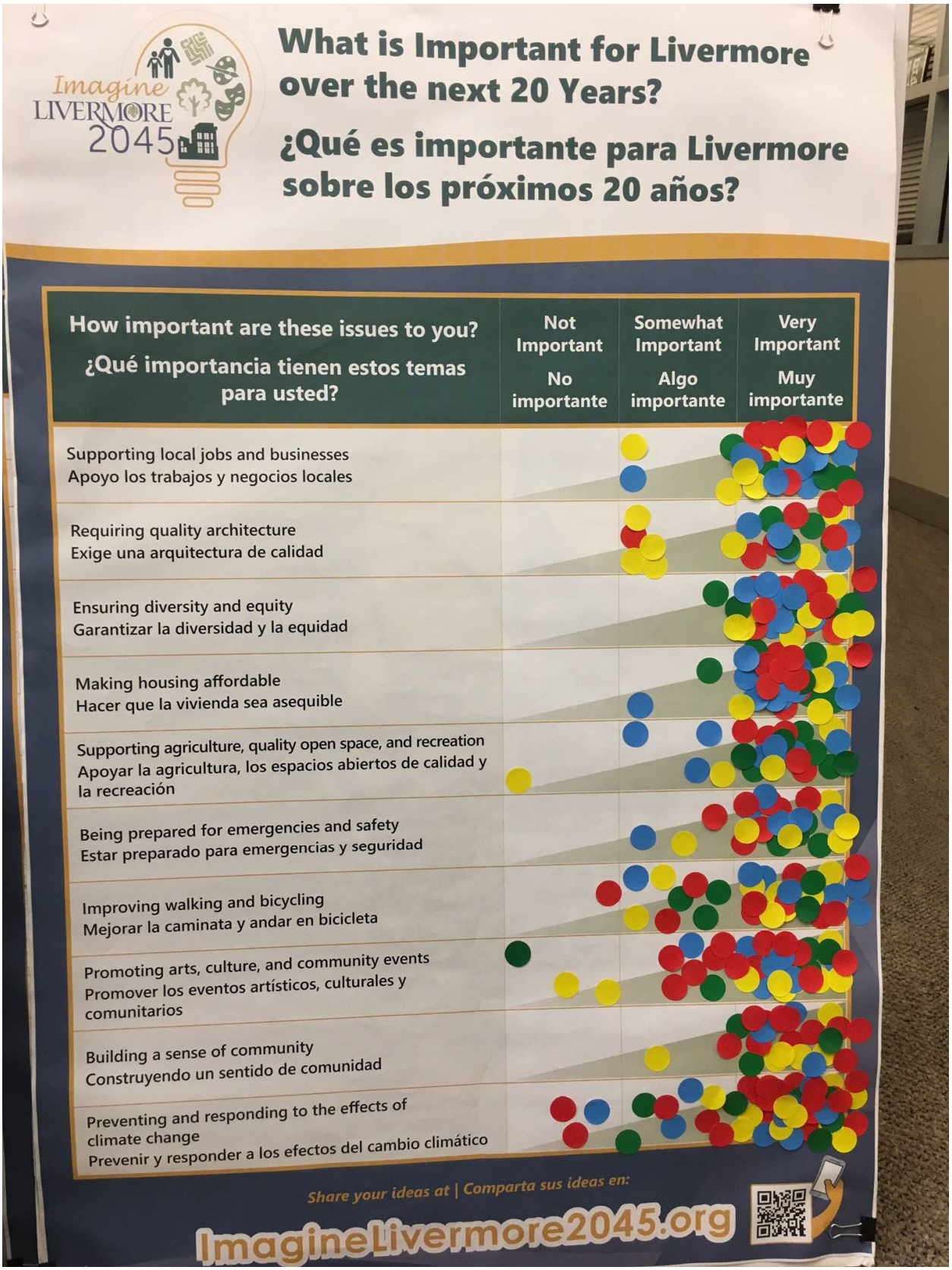
October 16, 2021 Livermore Pridefest Pop-up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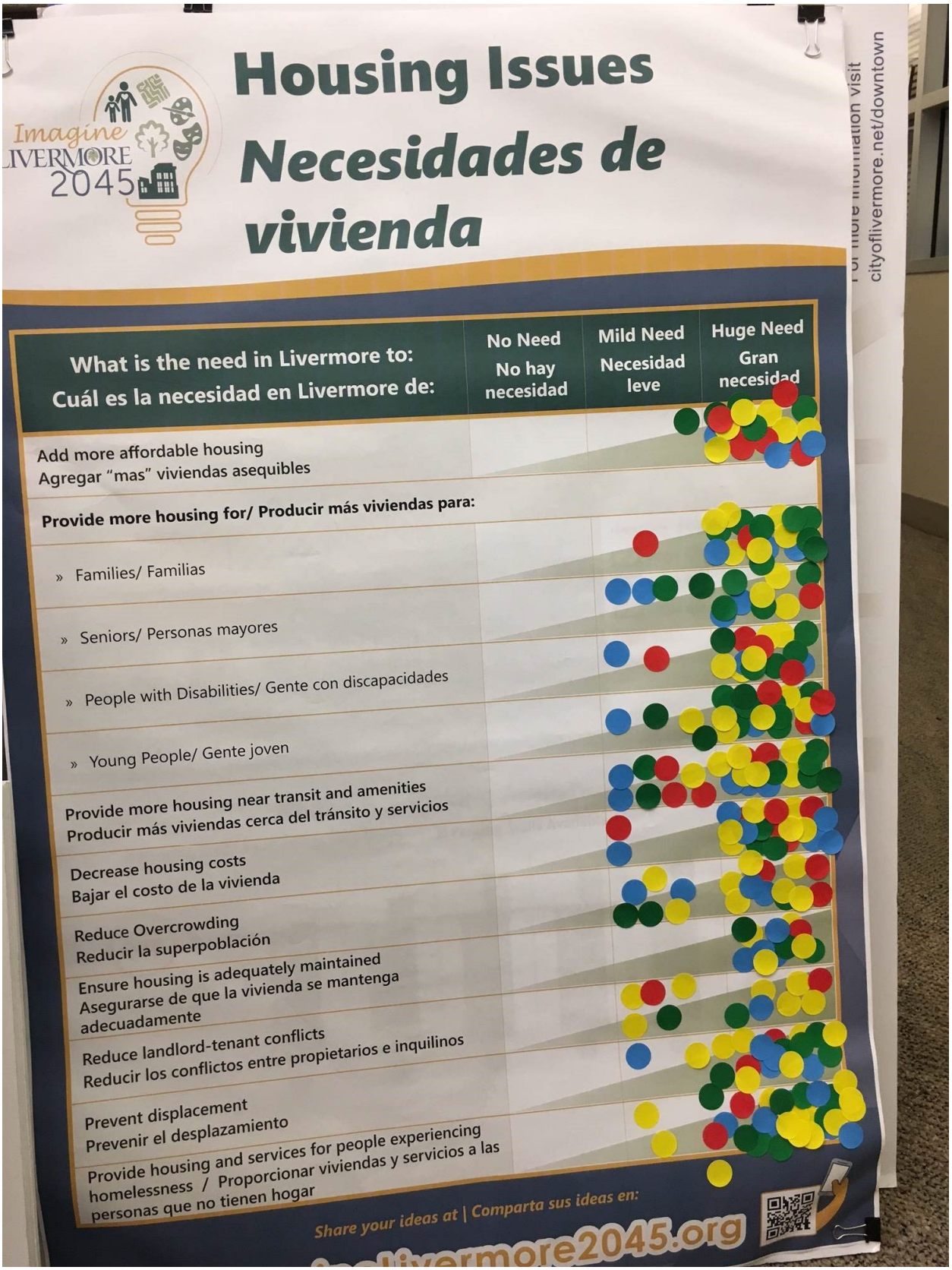
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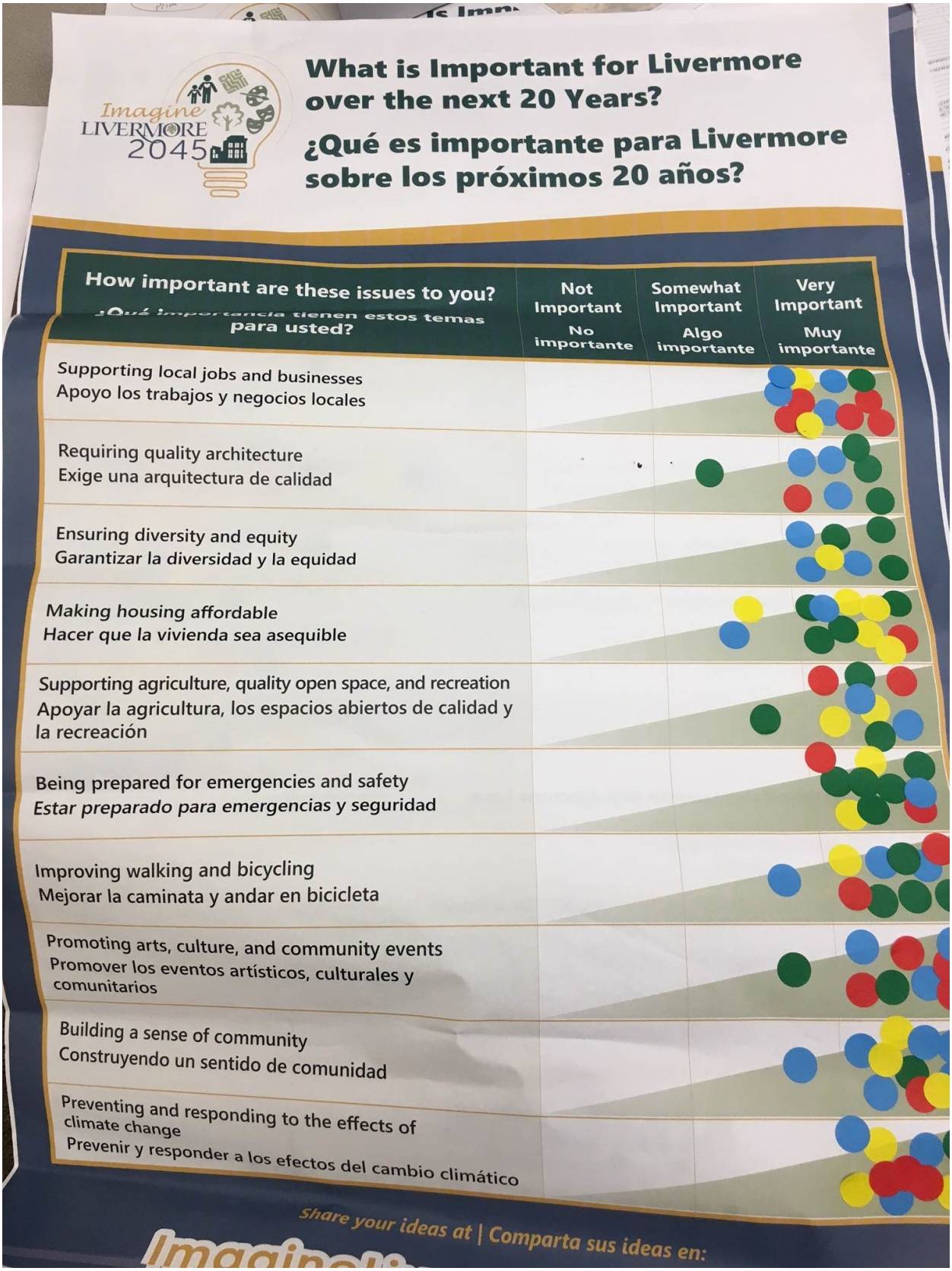
cityoflivermore2045.org
For more information visit
cityoflivermore.net/downtown

October 30, 2021 Día de los Muertos Pop-up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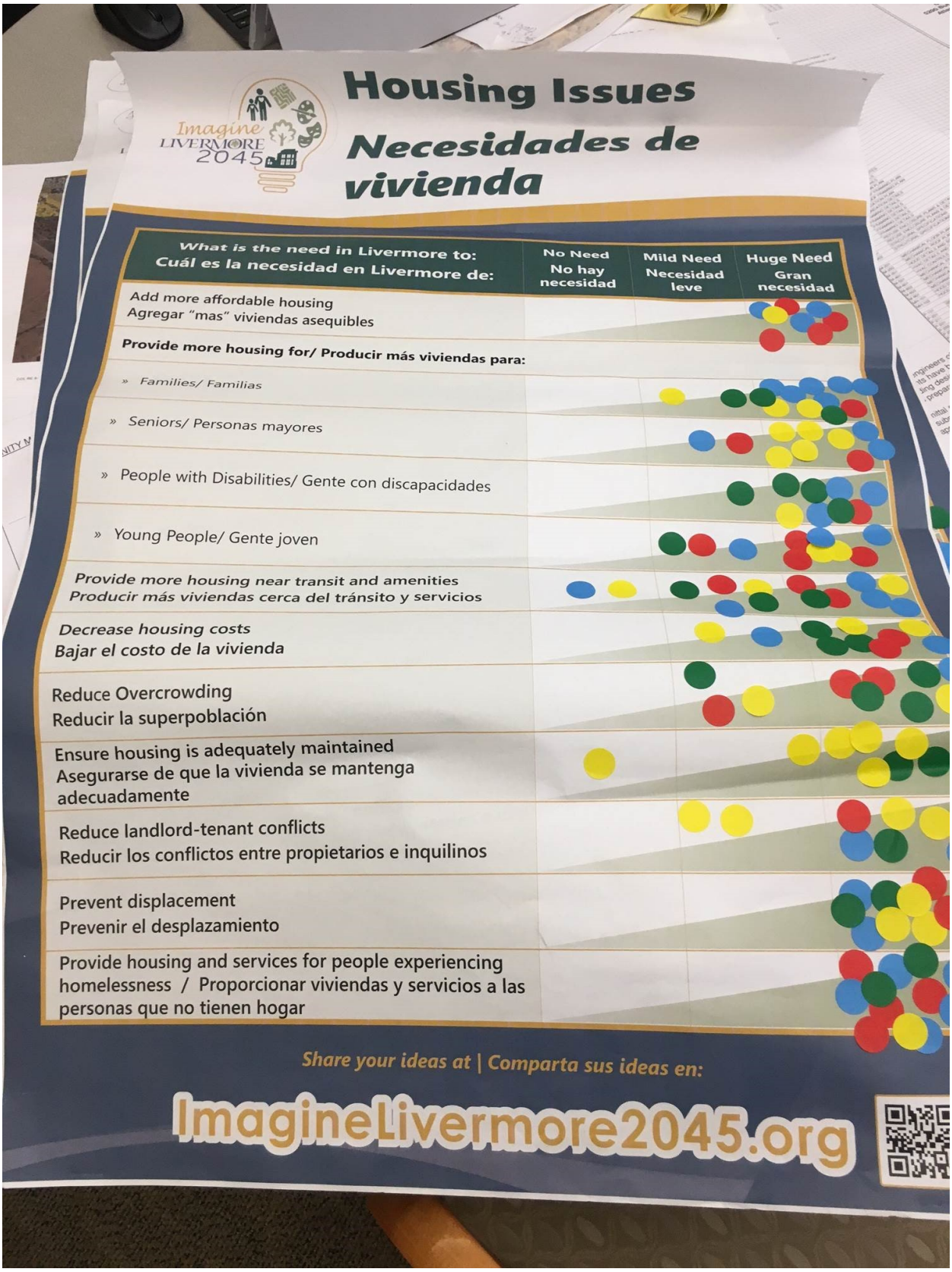
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Emails

October 1 to 20, 2021

Hello,

After reading the editorial section of the Independent News dated Sept. 30, I am motivated to share my vision of what Livermore should look like in 2045.

In 2045, I see a Livermore that has (1) preserved its heritage of country-style roots, (2) embellished old-town architecture with a touch of modern flare, (3) flourishing wine growers, (4) maintained outdoors hiking and biking trails, (5) sustained the open and clean yellow hills, (6) built a robust public utilities infrastructure, (7) strengthened middle and high school science and art education, (8) offered balance diverse community housing and limit the "big-box" buildings.

PLEASE DO NOT BECOME ANOTHER COOKIE-CUTTER, GENTRIFIED CITY!

The above will keep Livermore's CHARM: the open-sky, no-crowd, fresh-air feel, with a balance of a healthy community, employment opportunities, and modern conveniences. As the primary land of the Bay Area continues to grow, the outskirt cities (e.g. Livermore, Sunol, Morgan Hill, Gilroy) will feel the urge to give in to development lures from wealthy and growing private enterprises and general population migration. It will be a very big challenge for Livermore to grow along its surrounding while maintaining a value to its residences.

Thank you for opening up the forum to develop the vision.

GOOD morning regarding what is my vision for Livermore. 2045? That my children who will be 48 & 50 years old will have a house they can afford. The they will have tools and education and not be discriminated due to color or gender. I struggle with vision of the future since how Latinx community may not of housing. MAY NOT HAVE FOOD IN HOUSE NOW
LATINX FAMILIES ARE LIVING NOW IN LIVERMORE IN garages or due to pandemic in apt with Multipe families. Each family in one bed room and one family in living room at times.
LATINX families need there parents with them not having had one parent deported. I would like to have children constitutional rights to be protected. Thank you Latina mom

(1) I'd like the general plan to include a voluntary, resident only planning SANDBOX play-think-create area where participants would be allocated presence on the official city website homepage to openly discus any matter, directly or indirectly related to city government.

This sandbox would have zero legal authority.

However it would have the powers inherent in gathering real time information on all non-personnel, non-lawsuit related finance information and more. Participants on line would have access to all income and all expenses broken down interactively, to a near graphite level. I

Participants would also be given lists of all city assets, physical or financial, contractual, and access to the contracts.

Sandbox topics could for example create alternative development solutions, update and reprice city assets, illustrate various methods of generating balanced city budgets. The SANDBOX could naturally be used to help mitigate discussions on complex issues by creating alternative revenue streams.

City managers would hate this volunteer sandbox idea no doubt, but who the heck cares. We need to change a lot of things over the next few years and the stifling of public input on a vast array of topics is at the core of why the country, state, county and cities including our own, drift in and out of chaos.

The SANDBOX will plumb a new level of citizen community participation. Real names would be required. Participants would have to be city residents.

(2) I think the community would be better served with 6 district council seats and 1 elected mayor.

Livermore Resident Views of the 2045 General Plan

Key Findings of a Survey of Livermore Residents
Conducted Sept. 9-30, 2021

FM3 RESEARCH | OPINION RESEARCH & STRATEGY

Survey Methodology

Dates	September 9-30, 2021			
Survey Type	Dual Mode Resident Survey			
Research Population	Livermore Residents Ages 18 and Older			
Total Interviews	450			
Margin of Sampling Error	±4.9% at the 95% Confidence Level			
Contact Methods	Telephone Calls	Postcard Invitations	Text Invitations	Email Invitations
Data Collection Modes		Telephone Interviews	Online Interviews	

(Note: Not All Results Will Sum to 100% Due to Rounding)

Respondent Profile

The sample was drawn and weighted to reflect the distribution of key demographics of the adult population of Livermore according to the American Community Survey.

Gender	%
Male	49%
Female	51%

Age	%
18-29	18%
30-39	18%
40-49	22%
50-64	24%
65+	14%
Refused	4%

ZIP Code	%
94550	58%
94551	42%

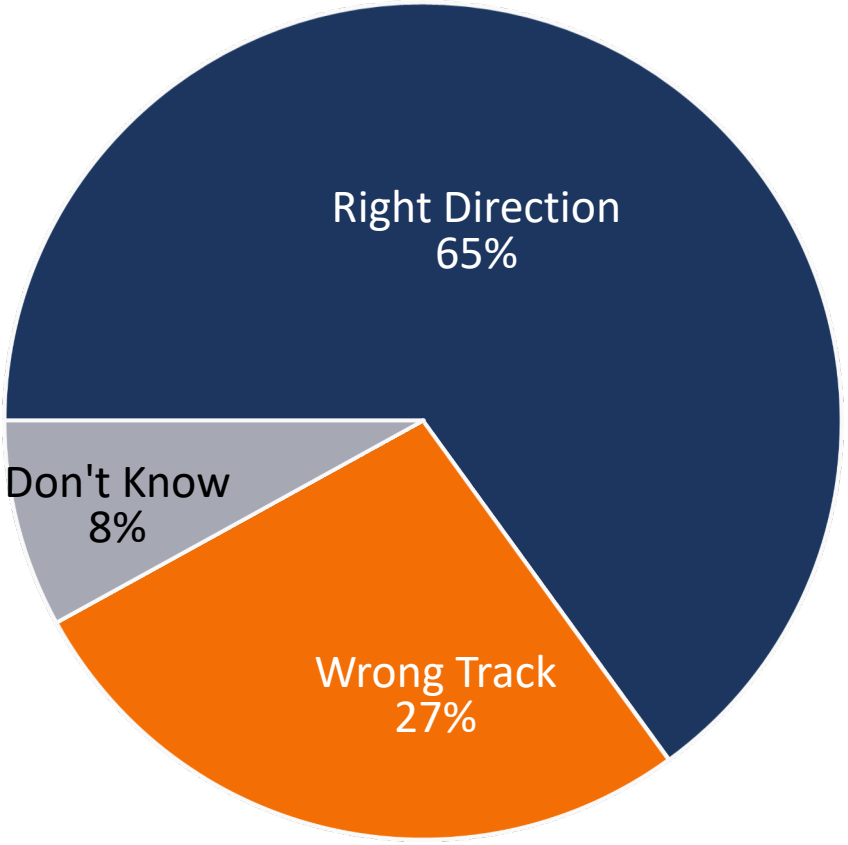
Race/Ethnicity	%
Latino/Hispanic	17%
White	60%
Black/African American	2%
API	8%
Other/Refused	13%

Education Level	%
High school or less	15%
Some college	34%
Four-year degree	29%
Graduate education	18%
Refused	4%

Views of Life in Livermore

Two-thirds of Livermore residents say sthings are headed in the right direction.

Do you think Livermore is generally going in the right direction or in the wrong direction?



Retirees and residents ages 65+ are more divided in their views, with less than half saying the city is headed in the right direction.

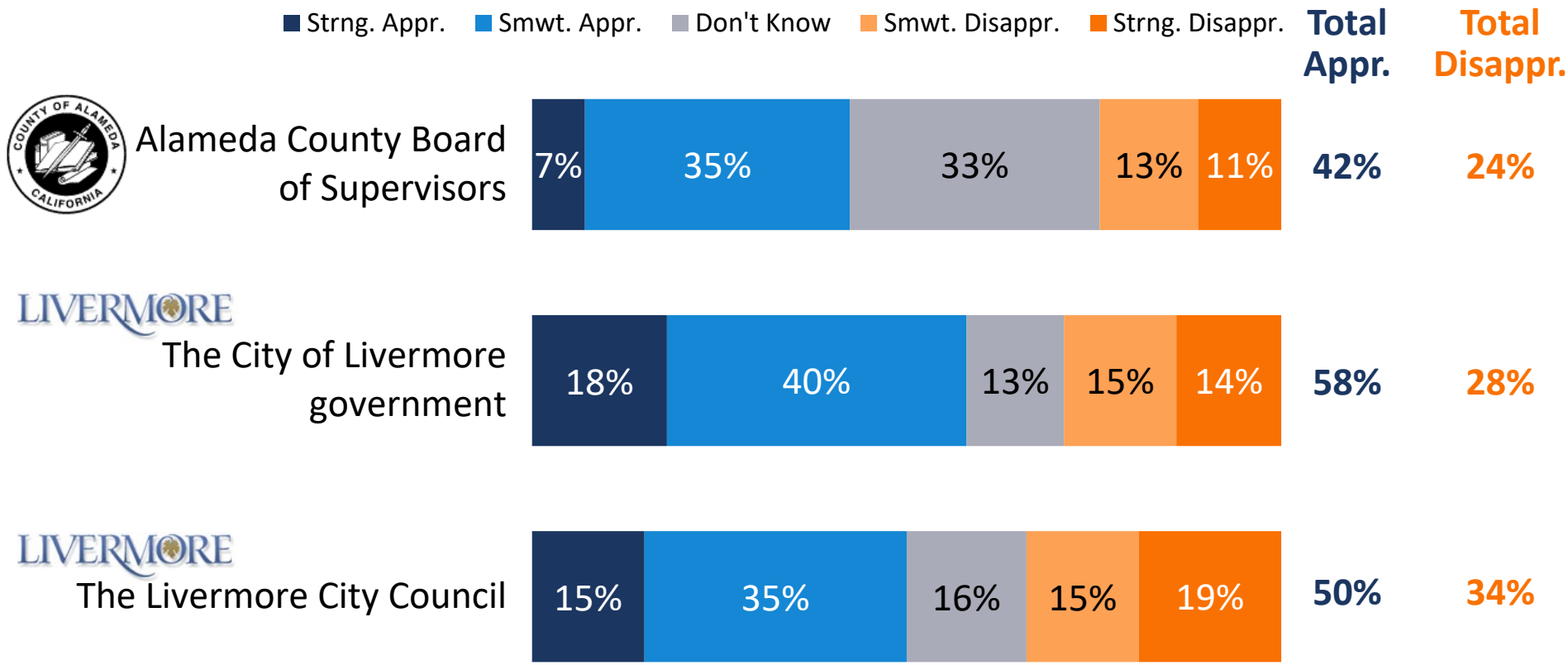
Broad majorities of every other major demographic subgroup are optimistic.

Q1.

649

Majorities approve of City government and City Council.

We'd like to know what you think of different levels of local government. Please indicate whether you strongly approve, somewhat approve, somewhat disapprove, or strongly disapprove of that level of local government. If you've never heard of it, you can indicate that instead.

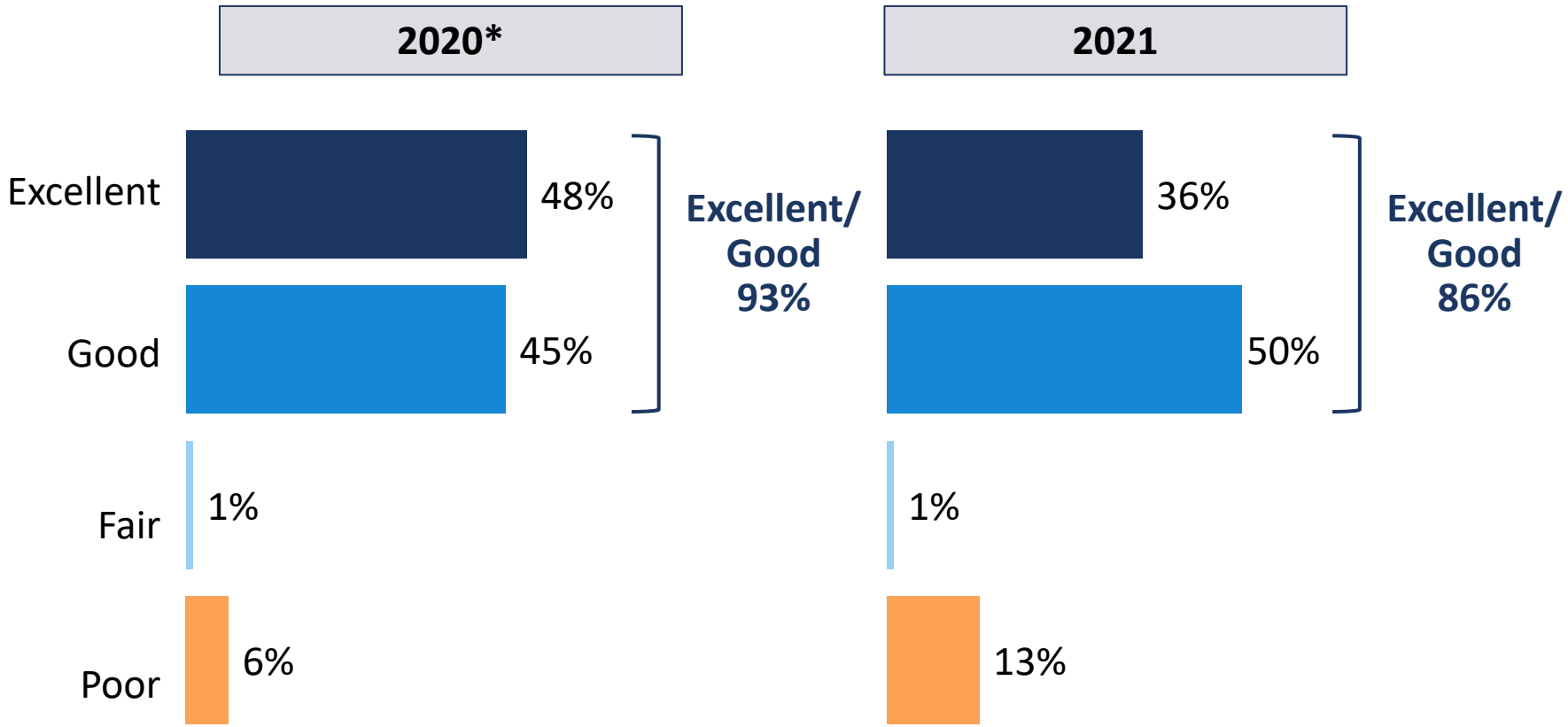


Q2.

650

More than four in five say that Livermore is an "excellent" or "good" place to live.

In general, would you say that Livermore is an excellent, good, fair, or poor place to live?

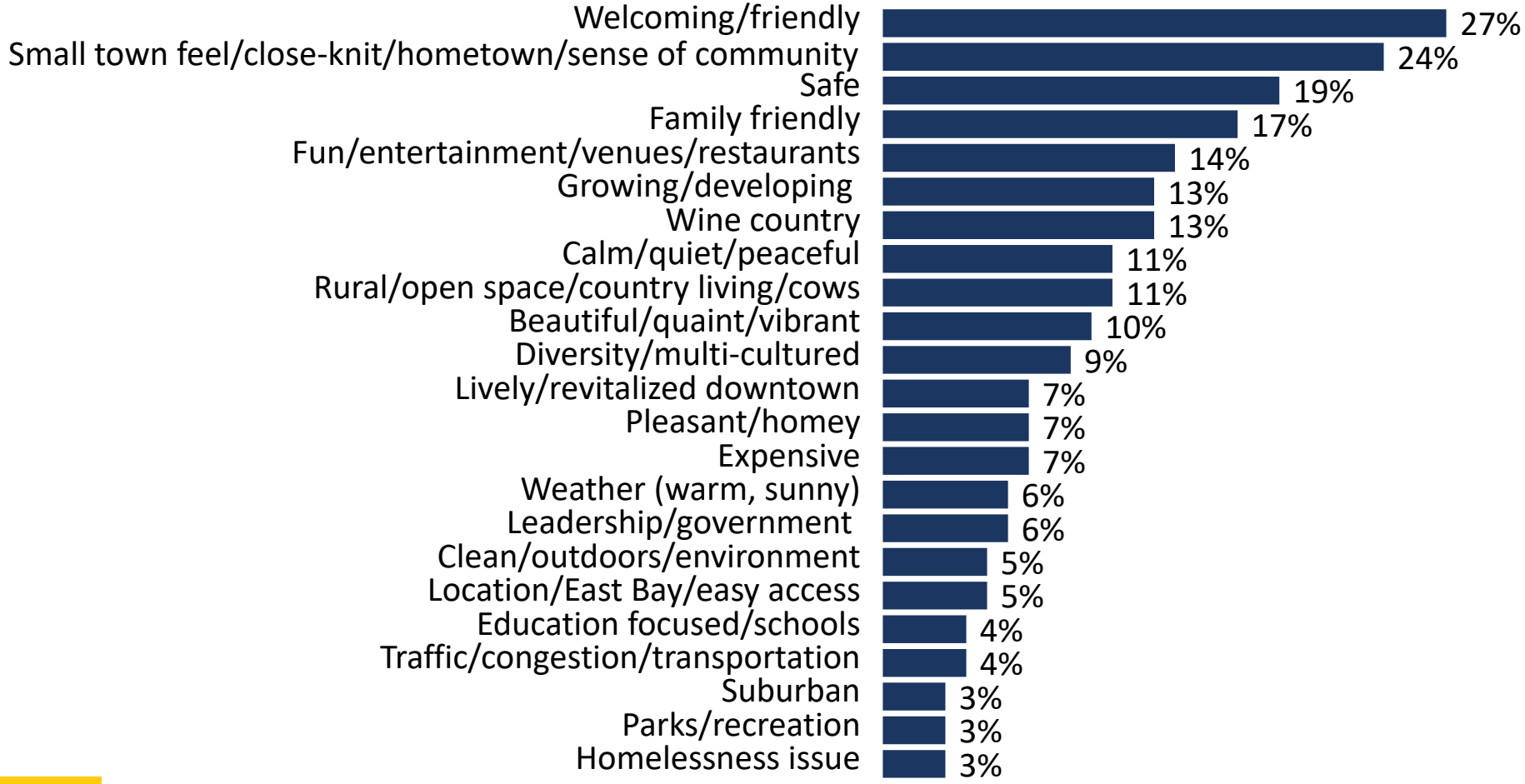


*Q3. *NCS Survey*

651

Residents describe Livermore as welcoming, friendly, safe and having a small-town feel.

Which three words or phrases best describe Livermore?
(Open-ended, 3% and Above Responses Shown)



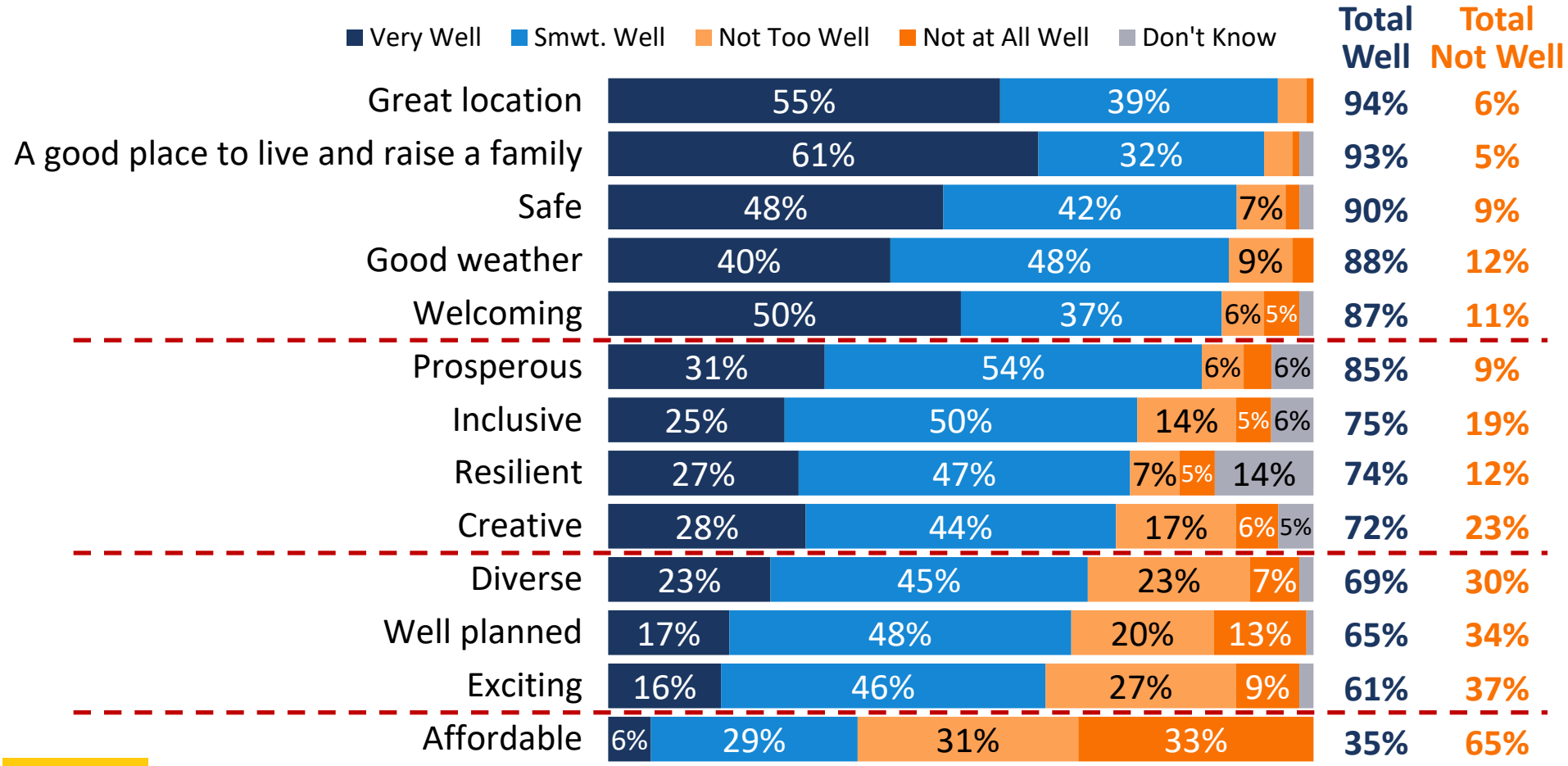
Q4.

652

Words to Describe Livermore

Residents overwhelmingly see Livermore as a great location, particularly to raise a family.

I am going to read you some words and phrases that might describe Livermore. Please tell me whether you think each of the phrases below describes Livermore very well, somewhat well, not too well, or not at all well. If you don't know, you can tell me that, too.



Q5.

654

Older residents are more likely to see Livermore as diverse and affordable; they are less likely to see it as well-planned.

Word/Phrase (Total Well)	All Residents	Men by Age		Women by Age	
		Ages 18-49	Ages 50+	Ages 18-49	Ages 50+
Great location	**94%**	94%	94%	97%	97%
A good place to live and raise a family	**93%**	93%	93%	94%	94%
Safe	**90%**	86%	91%	94%	89%
Good weather	**88%**	88%	88%	86%	91%
Welcoming	**87%**	85%	84%	92%	88%
Prosperous	**85%**	83%	87%	84%	87%
Inclusive	**75%**	72%	73%	77%	82%
Resilient	**74%**	72%	80%	78%	73%
Creative	**72%**	63%	69%	82%	79%
Diverse	**69%**	63%	85%	62%	74%
Well-planned	**65%**	72%	51%	76%	57%
Exciting	**61%**	57%	53%	66%	71%
Affordable	**35%**	31%	42%	33%	41%

Q5. I am going to read you some words and phrases that might describe Livermore. Please tell me whether you think each of the phrases below describe Livermore very well, somewhat well, not too well, or not at all well. If you don't know, you can tell me that, too.

655

Asian/Pacific Islander residents are much more likely to see the city as affordable.

Word/Phrase	All Residents	Race/Ethnicity			
		White Residents	Latino Residents	Asian/ Pacific Islander Residents	*All Residents of Color*
Great location	**94%**	94%	98%	96%	*96%*
A good place to live and raise a family	**93%**	94%	95%	89%	*92%*
Safe	**90%**	92%	92%	82%	*89%*
Good weather	**88%**	87%	94%	87%	*89%*
Welcoming	**87%**	84%	94%	92%	*93%*
Prosperous	**85%**	86%	88%	82%	*87%*
Inclusive	**75%**	74%	82%	73%	*77%*
Resilient	**74%**	72%	82%	71%	*80%*
Creative	**72%**	70%	86%	73%	*76%*
Diverse	**69%**	66%	72%	65%	*72%*
Well-planned	**65%**	63%	76%	71%	*75%*
Exciting	**61%**	60%	69%	63%	*63%*
Affordable	**35%**	28%	48%	61%	*52%*

White residents under age 50 are <u>much</u> less likely to see Livermore as affordable.

Q5. I am going to read you some words and phrases that might describe Livermore. Please tell me whether you think each of the phrases below describe Livermore very well, somewhat well, not too well, or not at all well. If you don't know, you can tell me that, too.

656

Wealthier residents are more likely to see the city as affordable and well-planned.

Word/Phrase (Total Well)	All Residents	Household Income				ZIP Code	
		<$100,000	$100,000-$150,000	$150,000-$250,000	$250,000+	94550	94551
Great location	**94%**	98%	97%	94%	93%	93%	96%
A good place to live and raise a family	**93%**	94%	93%	94%	97%	94%	92%
Safe	**90%**	89%	90%	91%	96%	92%	86%
Good weather	**88%**	89%	88%	88%	94%	86%	89%
Welcoming	**87%**	87%	93%	89%	91%	88%	86%
Prosperous	**85%**	82%	85%	90%	90%	87%	83%
Inclusive	**75%**	72%	79%	79%	75%	76%	73%
Resilient	**74%**	73%	76%	78%	79%	74%	74%
Creative	**72%**	66%	79%	73%	74%	73%	70%
Diverse	**69%**	66%	73%	69%	70%	69%	68%
Well-planned	**65%**	62%	76%	67%	79%	64%	67%
Exciting	**61%**	58%	70%	63%	56%	63%	59%
Affordable	**35%**	32%	32%	37%	54%	35%	35%

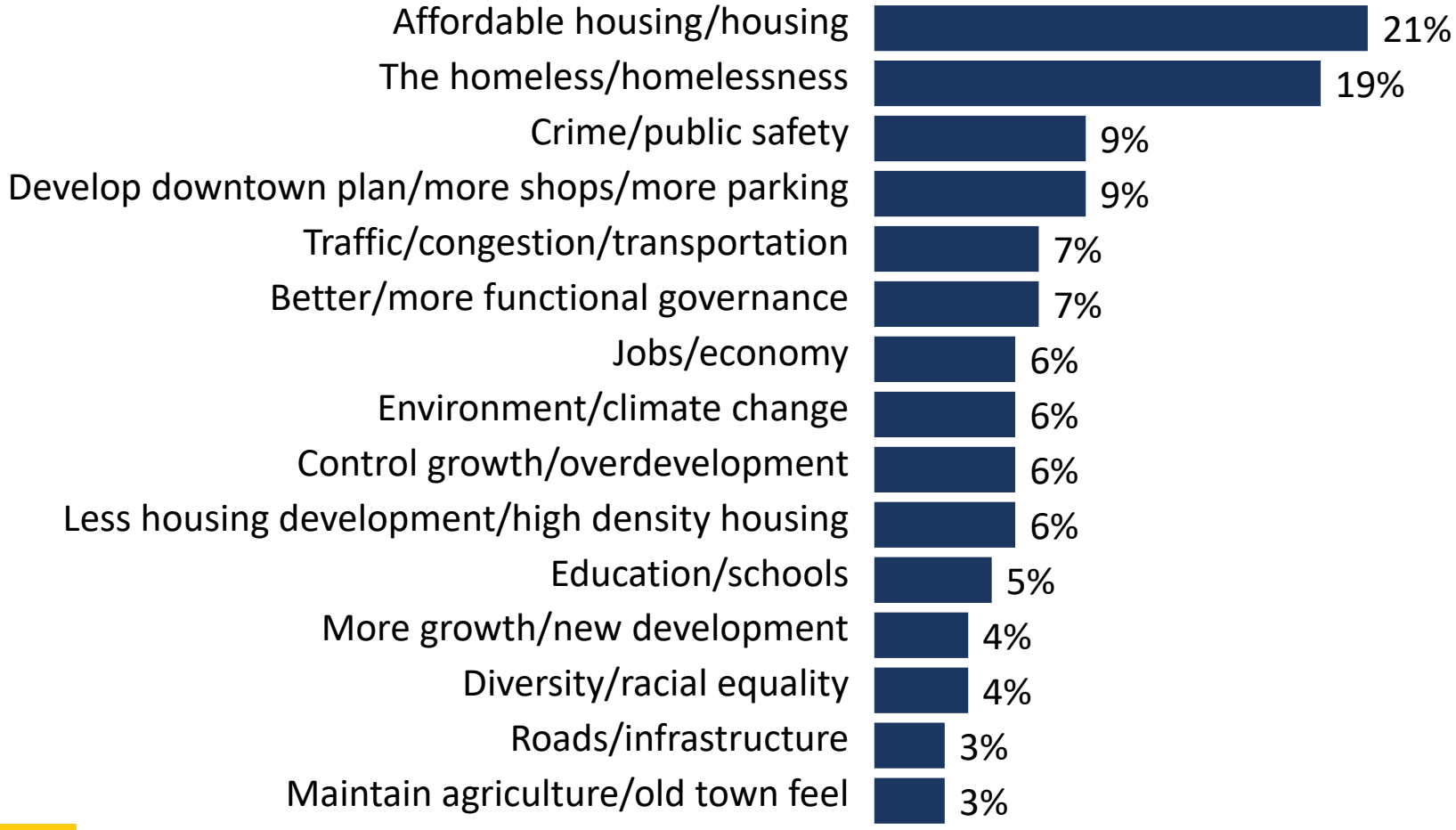
Q5. I am going to read you some words and phrases that might describe Livermore. Please tell me whether you think each of the phrases below describe Livermore very well, somewhat well, not too well, or not at all well. If you don't know, you can tell me that, too.

657

Residents want to see the City address housing costs and homelessness.

In your opinion, what is the most important issue you would like to see the City of Livermore address?

(Open-ended, 3% and Above Responses Shown)



Q10.

658

Verbatim Responses from Residents

I believe Livermore must do all it can to fight climate change. This means encouraging biking, walking, and public transit. It means infill development.

Location and availability of reasonably priced, moderate-income housing.

Keeping Livermore Urban/agriculture area is what makes Livermore special.

Stop the uglification of downtown Livermore's new construction.

The crime rate has been increasing in recent years. We need to keep our communities safe. Homeless community needs to be helped and we need to keep the city clean and safe.

Livermore needs to maintain that small community feel and forget about all the arts and cultural stuff. It needs to just be a town where families can thrive and know their neighbors.

Finish the downtown while preserving a small-town character.

Make downtown thrive, block 1st St. between N. Livermore and L St. to car traffic permanently. Focus making Livermore a destination in the Bay Area.

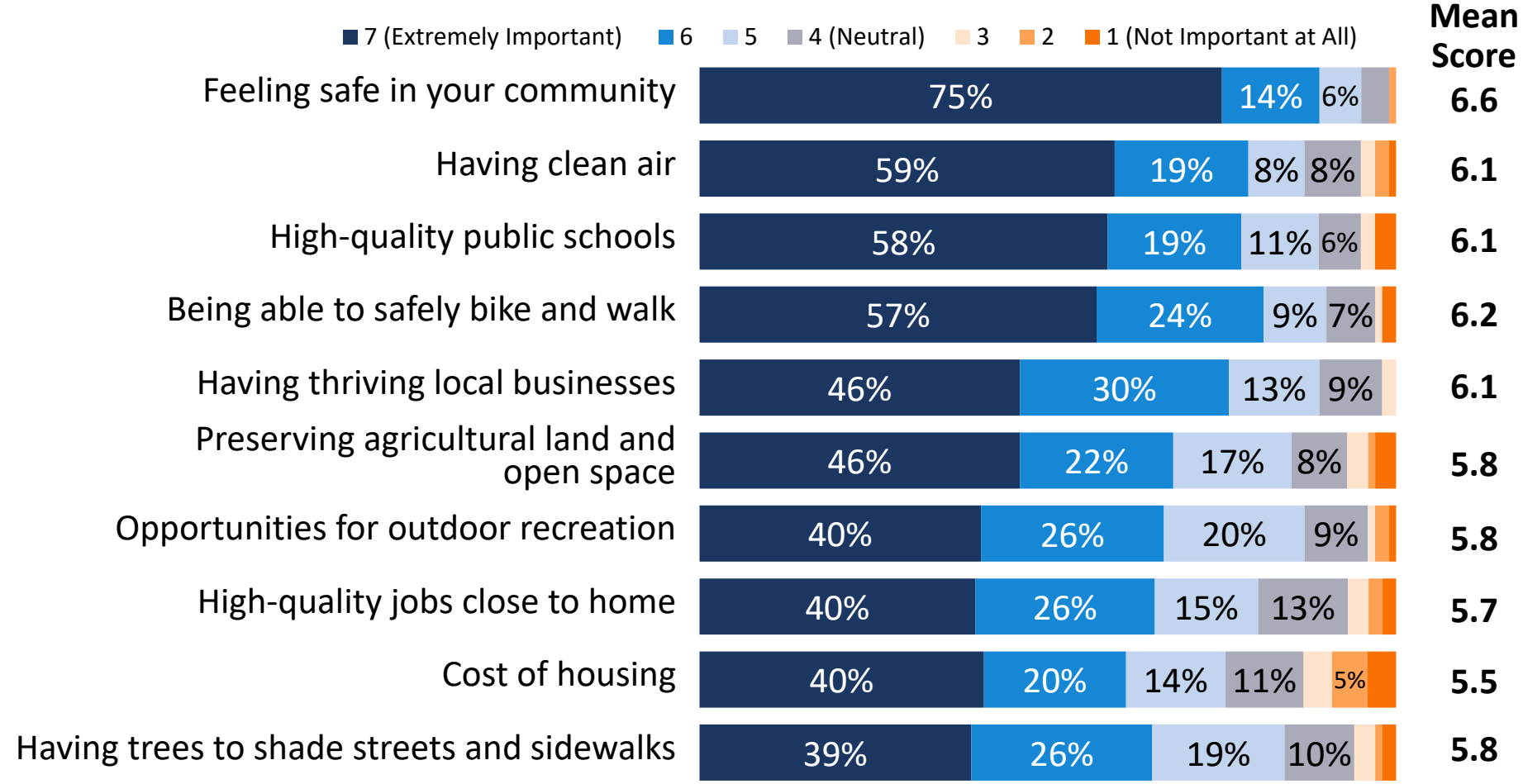
It is becoming unsafe, unsanitary and unfair to everyone to continue to allow folks to sleep and live in doorways and public spaces.

Q10. In your opinion, what is the most important issue you would like to see the City of Livermore address? 659

Quality of Life Considerations

Community safety is the most important quality of life factor, along with clean air and good schools.

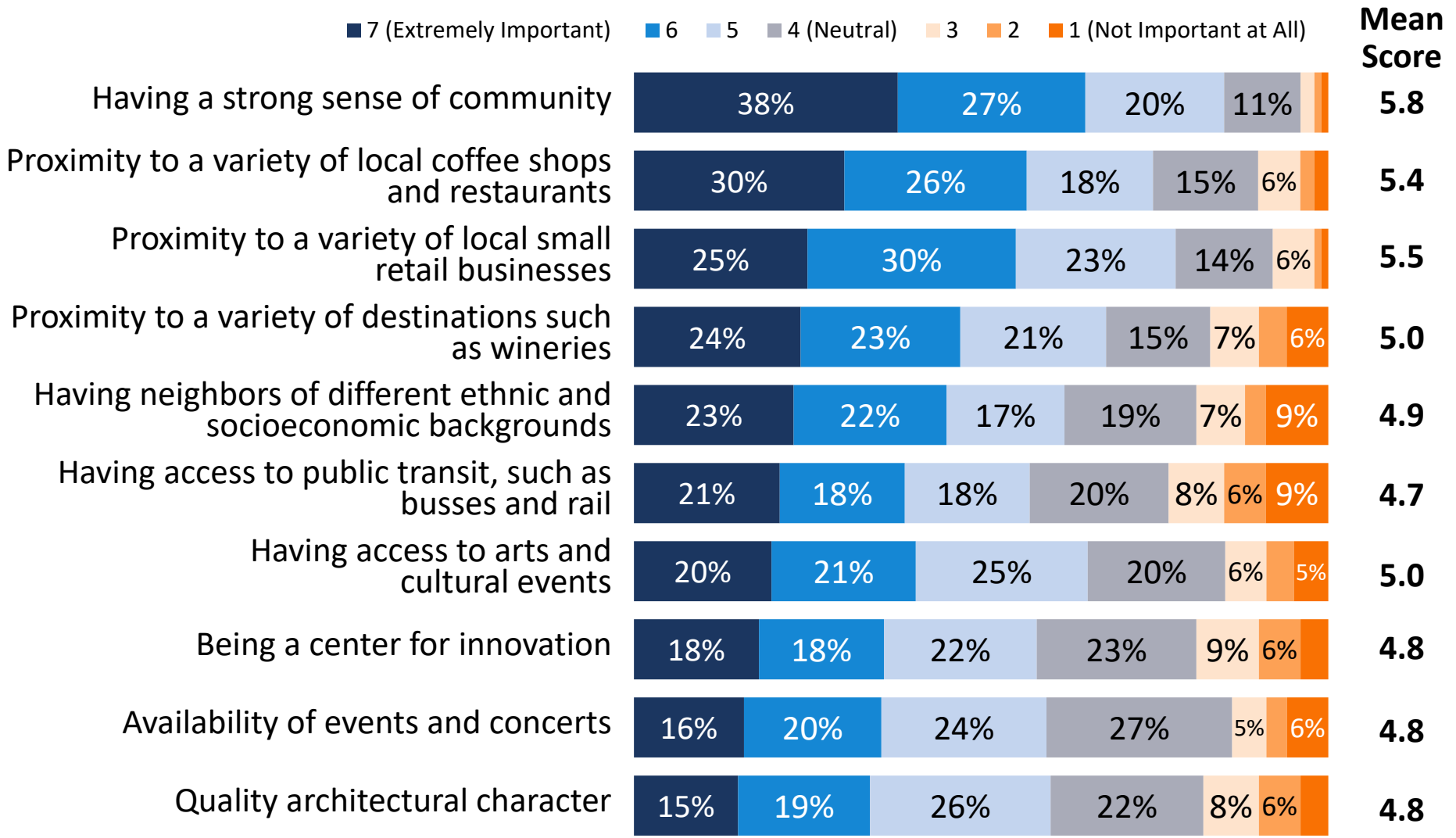
Here is a list of some factors that can affect quality of life. Please indicate how important each one is to you personally using a 7-point scale. 7 on this scale is "extremely important" and 1 is "not important at all." 4 on this scale is neutral.



Q6.

661

Innovation, entertainment options and architectural character are less important.



Q6. Here is a list of some factors that can affect quality of life. Please indicate how important each one is to you personally using a 7-point scale. 7 on this scale is "extremely important" and 1 is "not important at all." 4 on this scale is neutral.

662

Women over 50 assign higher importance to schools and business.

Factor Importance (7: Extremely Important)	All Res.	Men by Age		Women by Age	
		Ages 18-49	Ages 50+	Ages 18-49	Ages 50+
Feeling safe in your community	**75%**	75%	78%	73%	79%
Having clean air	**59%**	55%	60%	58%	67%
High-quality public schools	**58%**	54%	54%	55%	73%
Being able to safely bike and walk	**57%**	56%	50%	59%	64%
Having thriving local businesses	**46%**	42%	45%	43%	57%
Preserving agricultural land and open space	**46%**	40%	46%	43%	55%
Opportunities for outdoor recreation	**40%**	35%	44%	41%	47%
High-quality jobs close to home	**40%**	45%	27%	36%	49%
Cost of housing	**40%**	42%	31%	43%	46%
Having trees to shade streets and sidewalks	**39%**	36%	37%	38%	47%
Having a strong sense of community	**38%**	41%	35%	37%	42%
Proximity to a variety of local coffee shops and restaurants	**30%**	25%	36%	30%	36%
Proximity to a variety of local small retail businesses	**25%**	20%	31%	23%	32%
Proximity to a variety of destinations such as wineries	**24%**	19%	22%	28%	27%
Having neighbors of different ethnic and socioeconomic backgrounds	**23%**	22%	15%	26%	31%
Having access to public transit, such as busses and rail	**21%**	23%	18%	24%	21%
Having access to arts and cultural events	**20%**	16%	14%	22%	29%
Being a center for innovation	**18%**	20%	15%	16%	20%
Availability of events and concerts	**16%**	13%	23%	9%	22%
Quality architectural character	**15%**	14%	13%	16%	18%

Q6. Here is a list of some factors that can affect quality of life. Please indicate how important each one is to you personally using a 7-point scale. 7 on this scale is "extremely important" and 1 is "not important at all." 4 on this scale is neutral.

663

Latino residents value a strong sense of community and access to arts and culture a bit more.

Factor Importance (7: Extremely Important)	All Res.	Race/Ethnicity			
		White Res.	Latino Res.	API Residents	*All Residents of Color*
Feeling safe in your community	**75%**	76%	73%	83%	*71%*
Having clean air	**59%**	63%	58%	61%	*56%*
High-quality public schools	**58%**	62%	56%	51%	*50%*
Being able to safely bike and walk	**57%**	59%	56%	56%	*53%*
Having thriving local businesses	**46%**	49%	45%	35%	*40%*
Preserving agricultural land and open space	**46%**	43%	48%	48%	*44%*
Opportunities for outdoor recreation	**40%**	40%	41%	38%	*39%*
High-quality jobs close to home	**40%**	42%	35%	44%	*34%*
Cost of housing	**40%**	42%	39%	27%	*37%*
Having trees to shade streets and sidewalks	**39%**	39%	43%	48%	*39%*
Having a strong sense of community	**38%**	36%	46%	28%	*37%*
Proximity to a variety of local coffee shops and restaurants	**30%**	29%	36%	28%	*31%*
Proximity to a variety of local small retail businesses	**25%**	27%	25%	15%	*21%*
Proximity to a variety of destinations such as wineries	**24%**	20%	30%	30%	*30%*
Having neighbors of different ethnic and socioeconomic backgrounds	**23%**	26%	19%	20%	*19%*
Having access to public transit, such as busses and rail	**21%**	22%	24%	20%	*21%*
Having access to arts and cultural events	**20%**	20%	29%	12%	*21%*
Being a center for innovation	**18%**	19%	21%	19%	*19%*
Availability of events and concerts	**16%**	17%	20%	4%	*14%*
Quality architectural character	**15%**	14%	15%	19%	*15%*

Q6. Here is a list of some factors that can affect quality of life. Please indicate how important each one is to you personally using a 7-point scale. 7 on this scale is "extremely important" and 1 is "not important at all." 4 on this scale is neutral.

664

Lower-income households value a variety of aspects more highly than higher income ones.

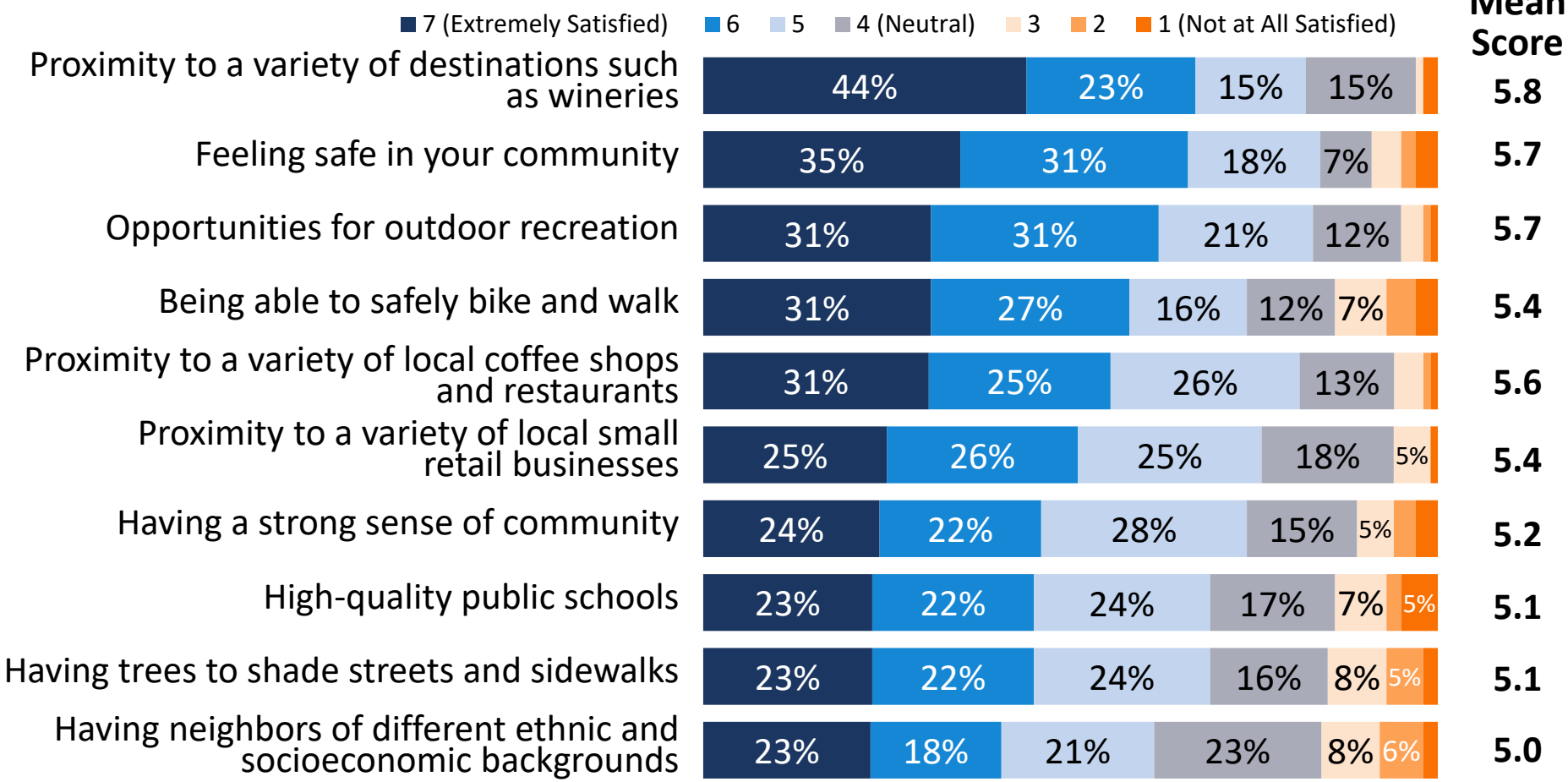
Factor Importance (7: Extremely Important)	All Res.	Household Income				ZIP Code	
		<$100,000	$100,000-$150,000	$150,000-$250,000	$250,000+	94550	94551
Feeling safe in your community	**75%**	78%	71%	77%	81%	75%	75%
Having clean air	**59%**	64%	61%	58%	57%	57%	62%
High-quality public schools	**58%**	61%	52%	58%	65%	62%	53%
Being able to safely bike and walk	**57%**	64%	52%	52%	62%	59%	54%
Having thriving local businesses	**46%**	56%	39%	48%	43%	47%	44%
Preserving agricultural land and open space	**46%**	47%	45%	47%	42%	46%	46%
Opportunities for outdoor recreation	**40%**	44%	37%	37%	50%	40%	41%
High-quality jobs close to home	**40%**	42%	37%	43%	42%	39%	41%
Cost of housing	**40%**	51%	38%	40%	30%	37%	45%
Having trees to shade streets and sidewalks	**39%**	43%	40%	36%	42%	40%	38%
Having a strong sense of community	**38%**	43%	34%	38%	37%	36%	40%
Proximity to a variety of local coffee shops and restaurants	**30%**	30%	33%	26%	41%	27%	34%
Proximity to a variety of local small retail businesses	**25%**	40%	23%	21%	25%	23%	29%
Proximity to a variety of destinations such as wineries	**24%**	31%	22%	14%	25%	19%	30%
Having neighbors of different ethnic and socioeconomic backgrounds	**23%**	33%	20%	20%	23%	21%	26%
Having access to public transit, such as busses and rail	**21%**	31%	18%	16%	11%	19%	24%
Having access to arts and cultural events	**20%**	31%	16%	16%	16%	18%	23%
Being a center for innovation	**18%**	22%	12%	19%	20%	14%	24%
Availability of events and concerts	**16%**	25%	15%	9%	14%	12%	20%
Quality architectural character	**15%**	24%	18%	8%	13%	15%	16%

Q6. Here is a list of some factors that can affect quality of life. Please indicate how important each one is to you personally using a 7-point scale. 7 on this scale is "extremely important" and 1 is "not important at all." 4 on this scale is neutral.

665

Residents are broadly satisfied with proximity to destinations, outdoor recreation and safety.

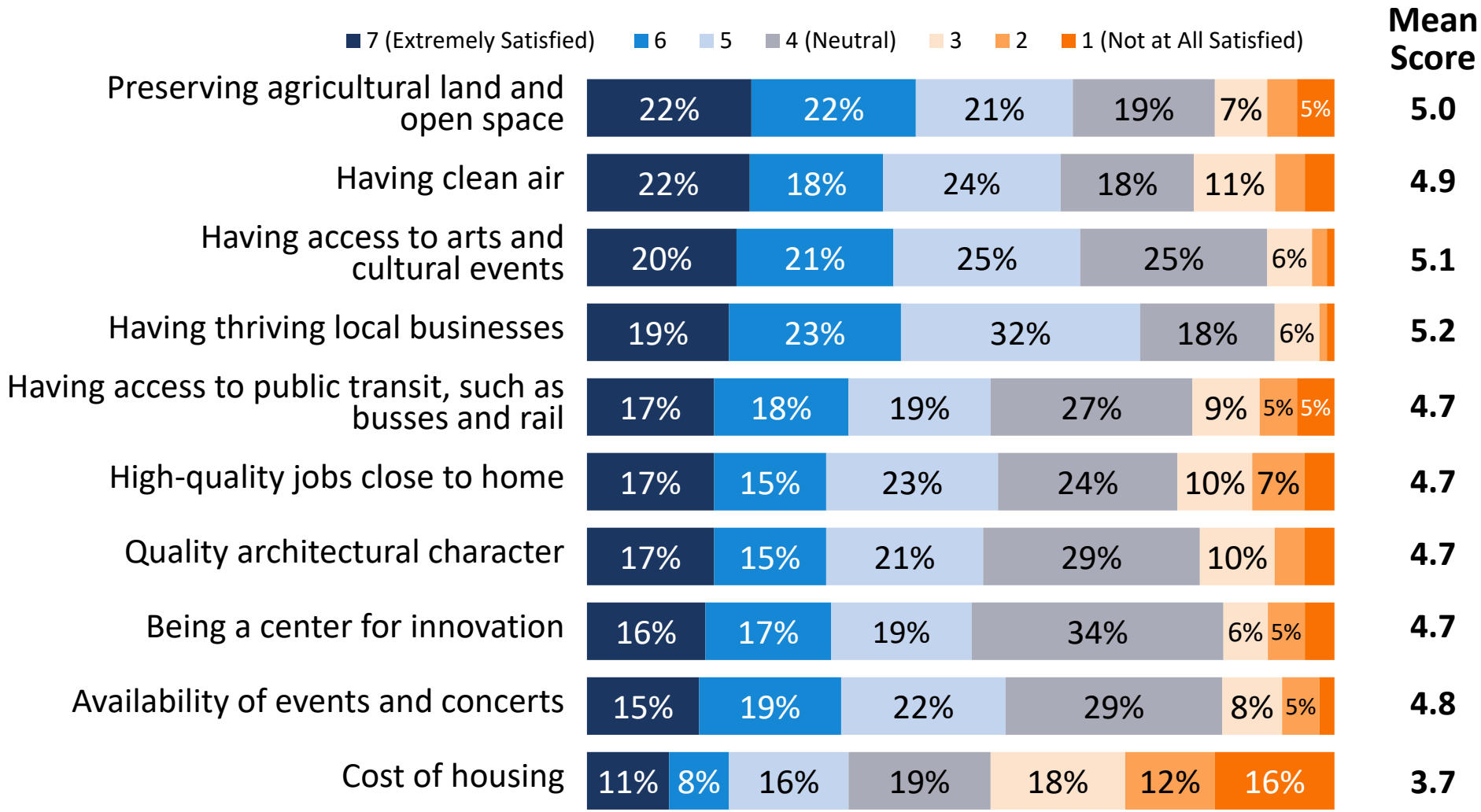
Using the same list of factors, please indicate how satisfied you are with each one in your life personally. 7 on this scale is "extremely satisfied" and 1 is "not at all satisfied." 4 on this scale is neutral.



Q7.

666

They are especially unsatisfied with the cost of housing.



Q7. Using the same list of factors, please indicate how satisfied you are with each one in your life personally. 7 on this scale is "extremely satisfied" and 1 is "not at all satisfied." 4 on this scale is neutral.

667

Women ages 50+ are more satisfied with safety of biking and walking.

Factor Satisfaction (7: Extremely Satisfied)	All Res.	Men by Age		Women by Age	
		Ages 18-49	Ages 50+	Ages 18-49	Ages 50+
Proximity to a variety of destinations such as wineries	**44%**	40%	39%	49%	50%
Feeling safe in your community	**35%**	35%	38%	31%	41%
Opportunities for outdoor recreation	**31%**	29%	28%	32%	40%
Being able to safely bike and walk	**31%**	30%	36%	24%	41%
Proximity to a variety of local coffee shops and restaurants	**31%**	26%	25%	37%	43%
Proximity to a variety of local small retail businesses	**25%**	18%	27%	31%	29%
Having a strong sense of community	**24%**	29%	26%	17%	24%
High-quality public schools	**23%**	18%	23%	22%	30%
Having trees to shade streets and sidewalks	**23%**	19%	22%	25%	25%
Having neighbors of different ethnic and socioeconomic backgrounds	**23%**	21%	18%	25%	27%
Preserving agricultural land and open space	**22%**	20%	30%	16%	26%
Having clean air	**22%**	14%	32%	21%	28%
Having access to arts and cultural events	**20%**	19%	19%	21%	24%
Having thriving local businesses	**19%**	10%	26%	20%	26%
Having access to public transit, such as busses and rail	**17%**	19%	18%	15%	14%
High-quality jobs close to home	**17%**	12%	17%	18%	24%
Quality architectural character	**17%**	13%	9%	21%	22%
Being a center for innovation	**16%**	11%	17%	15%	23%
Availability of events and concerts	**15%**	7%	19%	14%	27%
Cost of housing	**11%**	5%	14%	13%	12%

Q7. Using the same list of factors, please indicate how satisfied you are with each one in your life personally. 7 on this scale is "extremely satisfied" and 1 is "not at all satisfied." 4 on this scale is neutral.

668

Latino residents report more satisfaction with ethnic and socioeconomic diversity.

Factor Satisfaction (7: Extremely Satisfied)	All Res.	Race/Ethnicity			
		White Res.	Latino Res.	API Res.	*All Residents of Color*
Proximity to a variety of destinations such as wineries	**44%**	44%	52%	48%	*45%*
Feeling safe in your community	**35%**	33%	40%	46%	*39%*
Opportunities for outdoor recreation	**31%**	31%	35%	40%	*33%*
Being able to safely bike and walk	**31%**	30%	40%	28%	*33%*
Proximity to a variety of local coffee shops and restaurants	**31%**	30%	32%	36%	*34%*
Proximity to a variety of local small retail businesses	**25%**	27%	25%	21%	*23%*
Having a strong sense of community	**24%**	22%	30%	24%	*29%*
High-quality public schools	**23%**	23%	24%	17%	*21%*
Having trees to shade streets and sidewalks	**23%**	19%	34%	27%	*29%*
Having neighbors of different ethnic and socioeconomic backgrounds	**23%**	19%	33%	22%	*26%*
Preserving agricultural land and open space	**22%**	21%	26%	28%	*25%*
Having clean air	**22%**	22%	31%	19%	*26%*
Having access to arts and cultural events	**20%**	20%	19%	28%	*20%*
Having thriving local businesses	**19%**	18%	24%	20%	*21%*
Having access to public transit, such as busses and rail	**17%**	14%	22%	19%	*20%*
High-quality jobs close to home	**17%**	14%	27%	16%	*22%*
Quality architectural character	**17%**	14%	24%	20%	*22%*
Being a center for innovation	**16%**	15%	17%	12%	*16%*
Availability of events and concerts	**15%**	16%	16%	13%	*14%*
Cost of housing	**11%**	9%	14%	13%	*13%*

Q7. Using the same list of factors, please indicate how satisfied you are with each one in your life personally. 7 on this scale is "extremely satisfied" and 1 is "not at all satisfied." 4 on this scale is neutral.

669

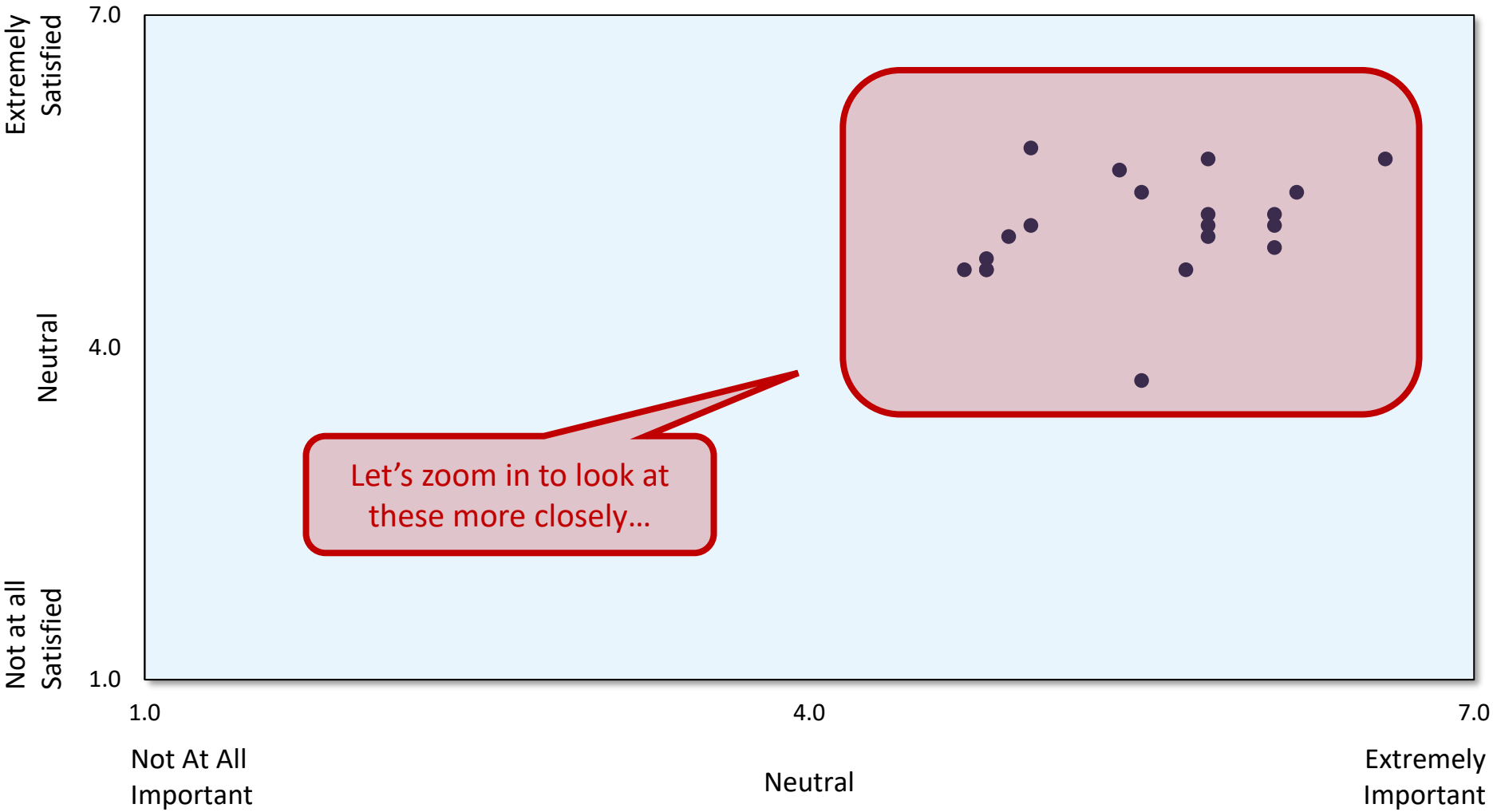
Lower-income households are more satisfied with the variety of shops and restaurants.

Factor Satisfaction (7: Extremely Satisfied)	All Res.	Household Income				ZIP Code	
		<$100,000	$100,000-$150,000	$150,000-$250,000	$250,000+	94550	94551
Proximity to a variety of destinations such as wineries	**44%**	44%	41%	41%	55%	39%	51%
Feeling safe in your community	**35%**	36%	38%	32%	34%	36%	34%
Opportunities for outdoor recreation	**31%**	34%	29%	32%	27%	32%	30%
Being able to safely bike and walk	**31%**	40%	34%	23%	24%	32%	31%
Proximity to a variety of local coffee shops and restaurants	**31%**	42%	24%	26%	40%	31%	32%
Proximity to a variety of local small retail businesses	**25%**	30%	21%	24%	25%	21%	31%
Having a strong sense of community	**24%**	23%	22%	22%	30%	24%	25%
High-quality public schools	**23%**	28%	22%	14%	22%	21%	26%
Having trees to shade streets and sidewalks	**23%**	30%	23%	16%	21%	22%	24%
Having neighbors of different ethnic and socioeconomic backgrounds	**23%**	27%	17%	13%	33%	22%	24%
Preserving agricultural land and open space	**22%**	26%	24%	17%	22%	21%	23%
Having clean air	**22%**	27%	26%	14%	15%	20%	25%
Having access to arts and cultural events	**20%**	25%	19%	13%	26%	17%	26%
Having thriving local businesses	**19%**	27%	11%	12%	22%	18%	20%
Having access to public transit, such as busses and rail	**17%**	17%	11%	13%	25%	17%	17%
High-quality jobs close to home	**17%**	23%	21%	10%	13%	17%	17%
Quality architectural character	**17%**	29%	10%	12%	13%	17%	16%
Being a center for innovation	**16%**	19%	14%	11%	18%	13%	20%
Availability of events and concerts	**15%**	21%	16%	11%	7%	14%	17%
Cost of housing	**11%**	14%	8%	7%	13%	11%	10%

Q7. Using the same list of factors, please indicate how satisfied you are with each one in your life personally. 7 on this scale is "extremely satisfied" and 1 is "not at all satisfied." 4 on this scale is neutral.

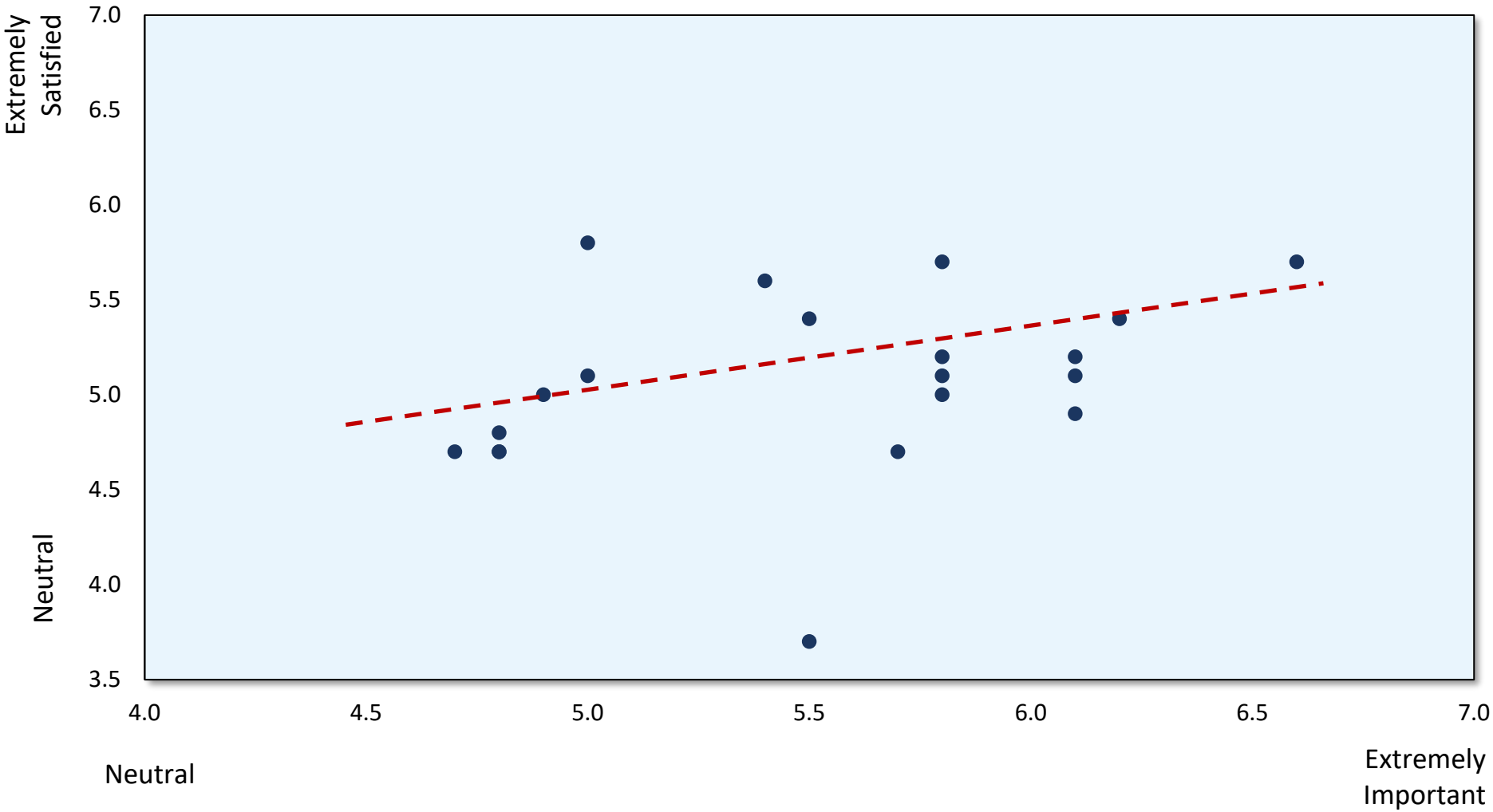
670

Most of these factors are seen as important, with generally high levels of satisfaction.



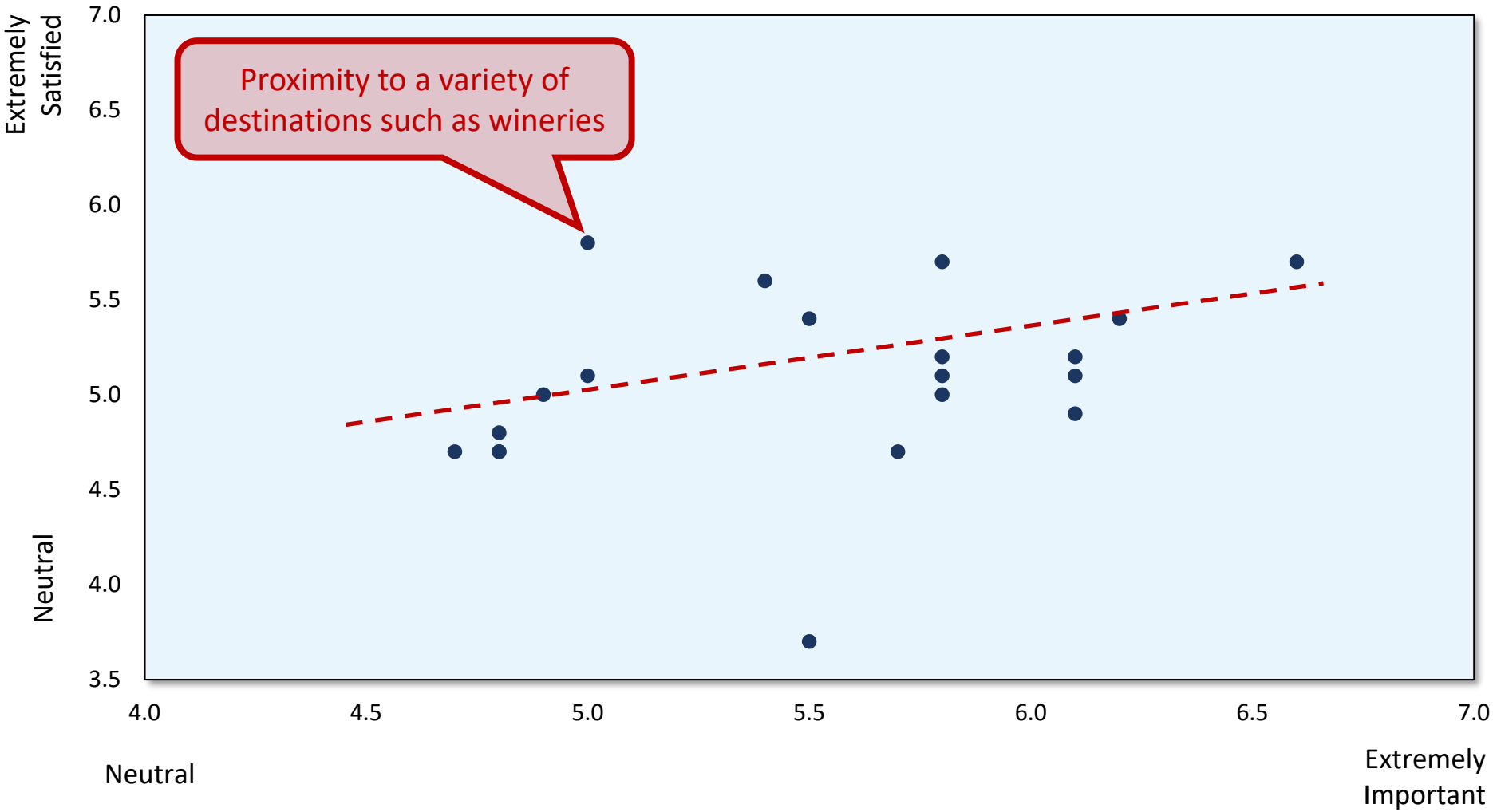
671

There's some relation to importance and satisfaction, but it does not appear strong.



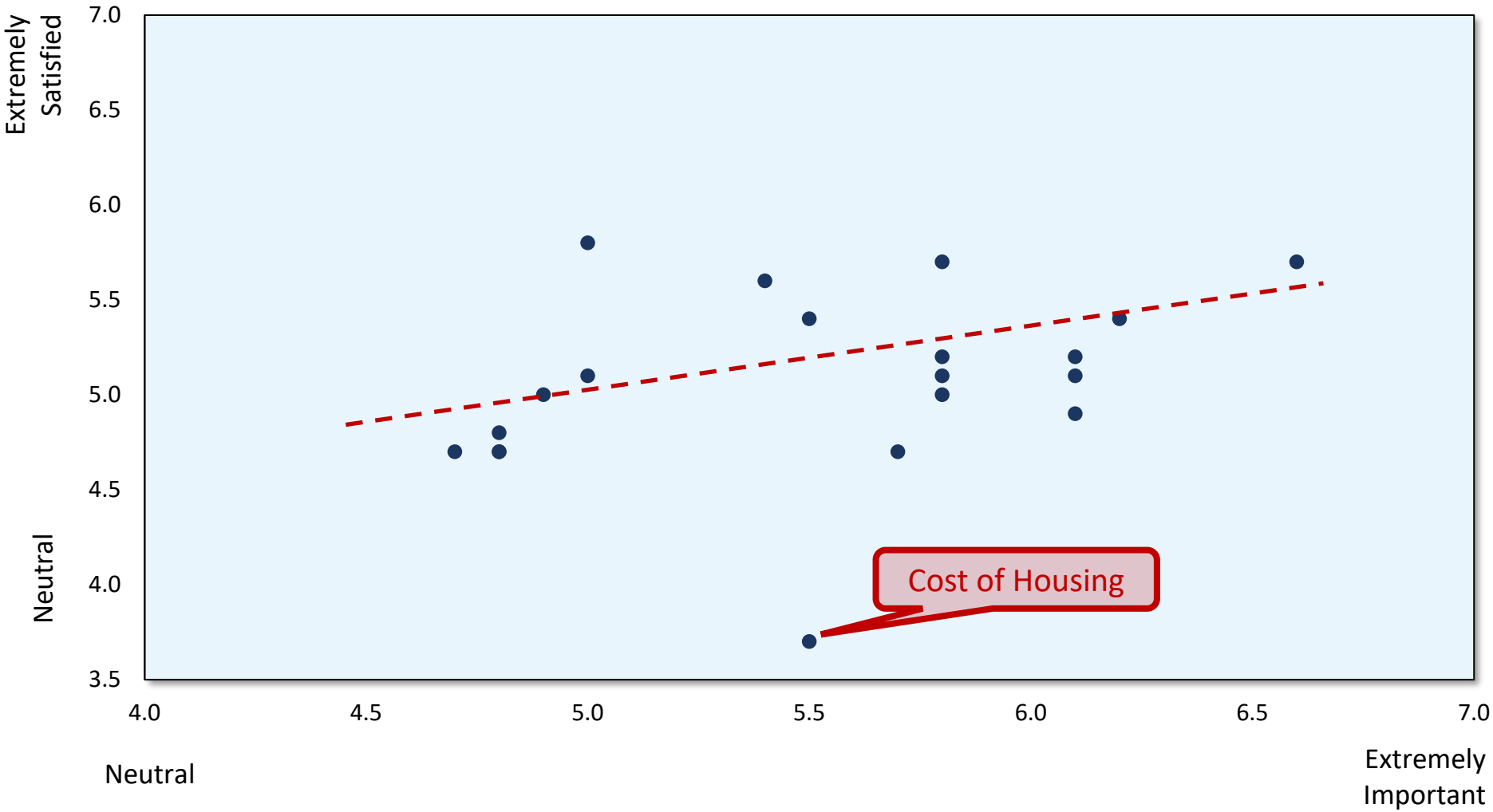
672

Satisfaction with proximity to wineries outpaces its perceived importance (to some extent)…



673

…while satisfaction levels with housing costs are lower than similarly importance factors.



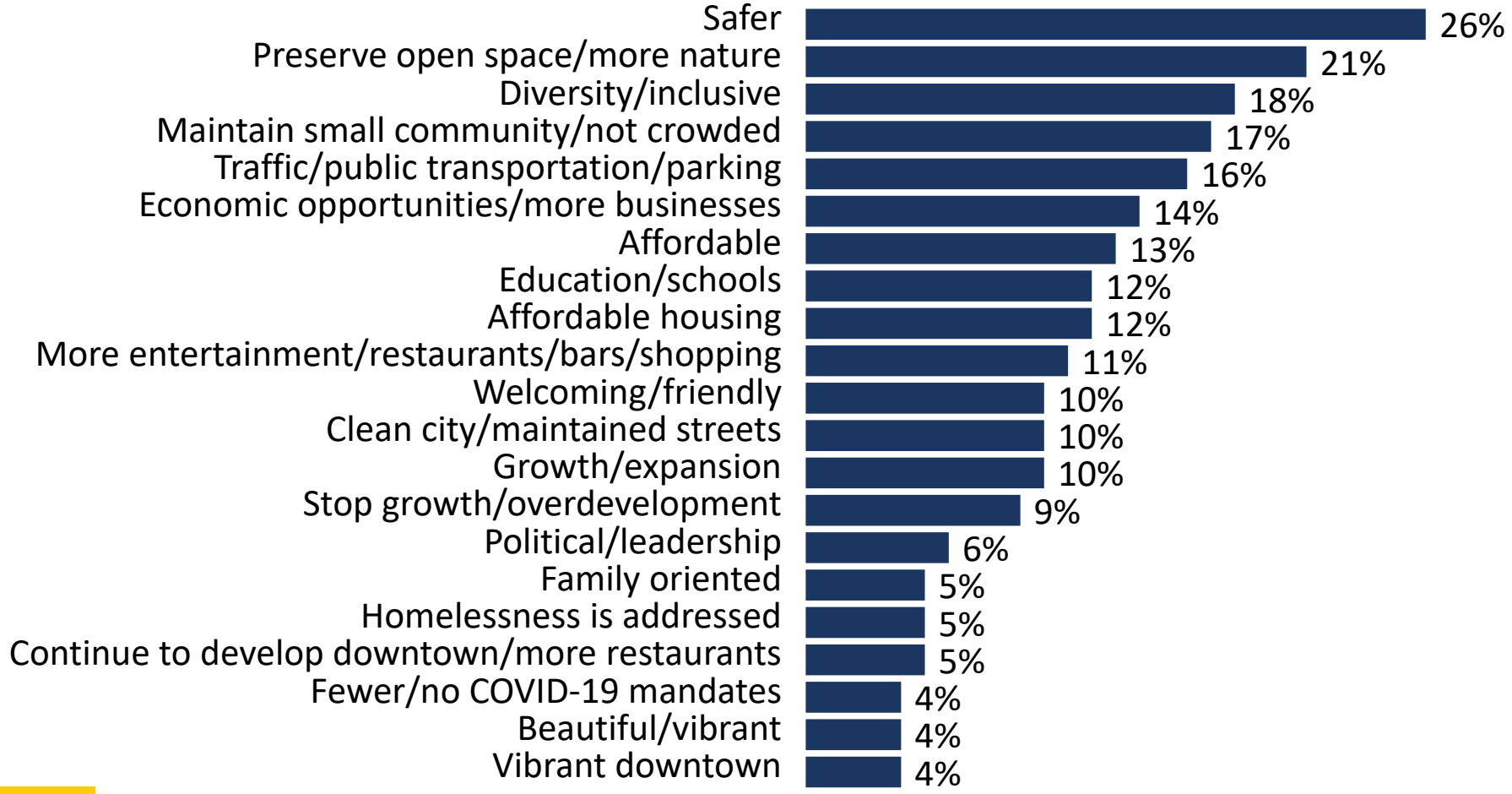
674

General Plan Vision

Residents want to see Livermore as safer, with open space and diversity, in 2045.

Which three words or phrases best describe what you want to see Livermore be like in 2045?

(Open-ended, 4% and Above Responses Shown)



Q8.

676

Livermore Resident Vision for 2045

Guiding Principle Statements
(Ranked in Order of Importance)

(EQUITY) I want all Livermore residents, regardless of their circumstances, to have equal access to City services and infrastructure.

(INCLUSIVITY) I want a Livermore in which all residents have a voice in shaping the direction of the City.

(PROSPERITY) I want Livermore to have a diverse and thriving economy with different types of homes, jobs, recreation, lifelong learning opportunities, and services for both current and future generations.

(DIVERSITY) I want a Livermore that respects our diverse cultural, religious, and political backgrounds, and that welcomes and supports all ages, incomes, and abilities.

(BALANCE) I want a Livermore that prioritizes both well-designed development and thoughtful preservation.

(SUSTAINABILITY) I want Livermore's actions to contribute to our social, economic, and environmental sustainability.

(RESILIENCE) I want Livermore to be strong and resilient and able to adapt to a changing world.

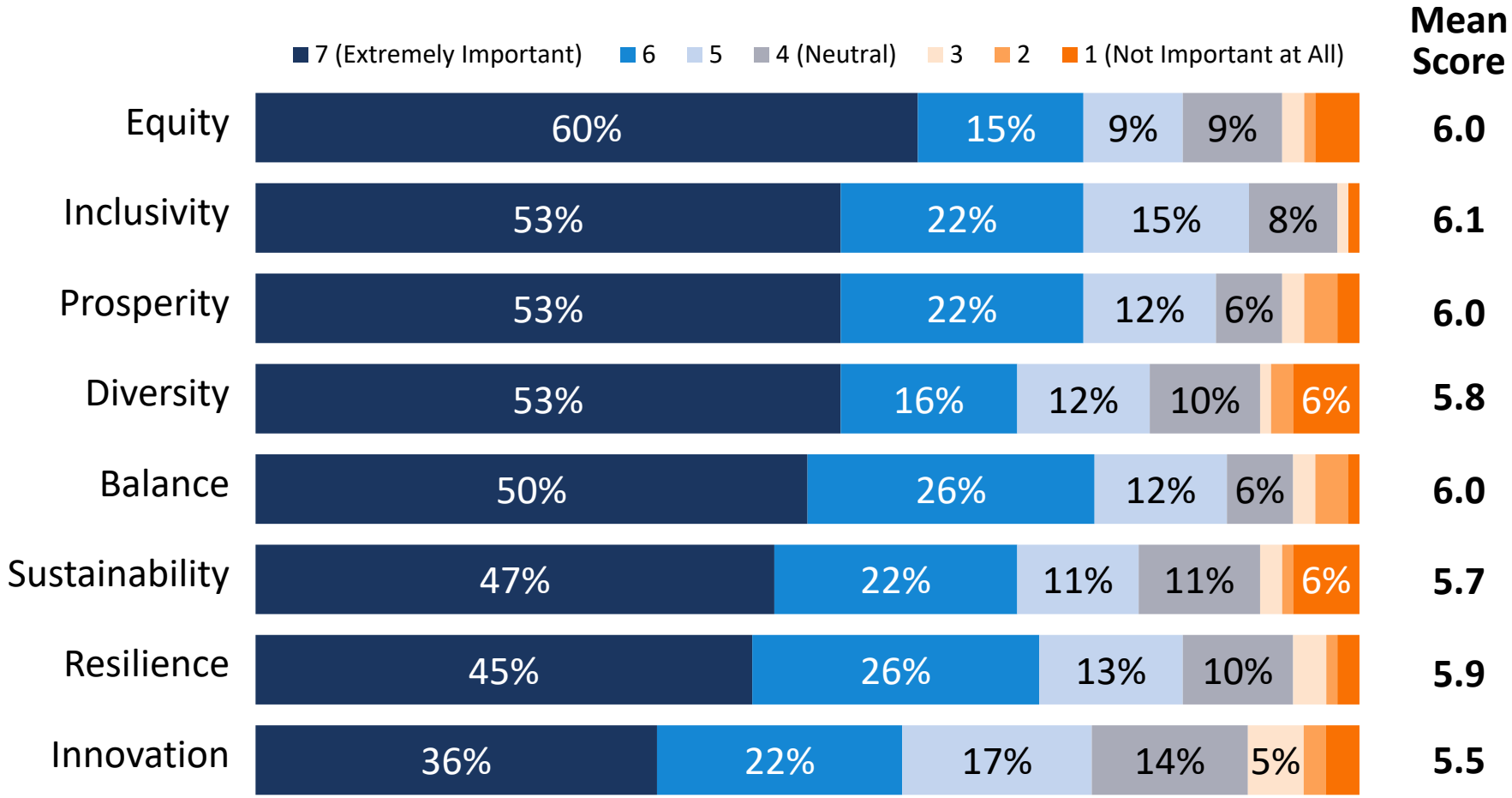
(INNOVATION) I want an innovative Livermore that thinks boldly, fosters new ideas, and generates opportunity.

Q9. I am going to read you a series of statements about the kind of City you want Livermore to be in the future. Please rate how important that statement is to you, where a 7 is "extremely important" and a 1 is "not important at all." 4 on this scale is neutral.

678

Equity, inclusivity, prosperity and diversity are key guiding principles.

I am going to read you a series of statements about the kind of City you want Livermore to be in the future. Please rate how important that statement is to you, where a 7 is "extremely important" and a 1 is "not important at all." 4 on this scale is neutral.



Q9.

679

These are ranked similarly by age and gender, with women 50+ valuing balance more.

(7: Extremely Important)

Statement	All Residents	Men by Age		Women by Age	
		Ages 18-49	Ages 50+	Ages 18-49	Ages 50+
Equity	**60%**	62%	52%	61%	60%
Inclusivity	**53%**	45%	57%	53%	62%
Prosperity	**53%**	52%	47%	56%	55%
Diversity	**53%**	57%	42%	55%	54%
Balance	**50%**	45%	49%	46%	64%
Sustainability	**47%**	42%	38%	53%	50%
Resilience	**45%**	46%	39%	44%	51%
Innovation	**36%**	36%	32%	34%	41%

Q9. I am going to read you a series of statements about the kind of City you want Livermore to be in the future. Please rate how important that statement is to you, where a 7 is "extremely important" and a 1 is "not important at all." 4 on this scale is neutral.

680

API residents value diversity and inclusion more that those in other groups.

(7: Extremely Important)

Statement	All Residents	Race/Ethnicity			
		White Residents	Latino Residents	Asian/ Pacific Islander Residents	*All Residents of Color*
Equity	**60%**	59%	67%	58%	*64%*
Inclusivity	**53%**	51%	57%	64%	*57%*
Prosperity	**53%**	54%	55%	47%	*54%*
Diversity	**53%**	52%	54%	67%	*61%*
Balance	**50%**	52%	43%	54%	*48%*
Sustainability	**47%**	48%	49%	45%	*47%*
Resilience	**45%**	46%	48%	46%	*45%*
Innovation	**36%**	35%	41%	44%	*41%*

Q9. I am going to read you a series of statements about the kind of City you want Livermore to be in the future. Please rate how important that statement is to you, where a 7 is "extremely important" and a 1 is "not important at all." 4 on this scale is neutral.

681

Lower-income households assign a higher value to all principles except resilience and balance.

(7: Extremely Important)

Statement	All Residents	Household Income				ZIP Code	
		<$100,000	$100,000-$150,000	$150,000-$250,000	$250,000+	94550	94551
Equity	**60%**	69%	61%	58%	57%	56%	65%
Inclusivity	**53%**	66%	47%	53%	49%	52%	56%
Prosperity	**53%**	64%	49%	55%	42%	51%	54%
Diversity	**53%**	68%	45%	52%	56%	54%	52%
Balance	**50%**	49%	45%	55%	53%	53%	46%
Sustainability	**47%**	58%	40%	46%	43%	45%	48%
Resilience	**45%**	49%	46%	44%	35%	42%	50%
Innovation	**36%**	42%	29%	33%	29%	34%	37%

Q9. I am going to read you a series of statements about the kind of City you want Livermore to be in the future. Please rate how important that statement is to you, where a 7 is "extremely important" and a 1 is "not important at all." 4 on this scale is neutral.

682

Conclusions

Conclusions

- Residents like living in Livermore overall, and broadly approve of City leadership.
- They characterize the city as welcoming, friendly, and a good place to raise families in their own words. Many people mention wine country and the sense of Livermore having a uniquely small-town feel while being connected to the greater Bay Area and all that provides.
- When we provide phrases for them to react to, some of the same themes rise to the top: "a good place to raise a family," "great location," and "welcoming" were seen as good descriptors of the city.
- When they look to their vision for 2045, residents want a City that has many of the same qualities it has now: safe, with open space and a small-town feel.
- However, as with many Bay Area cities, Livermore is not seen as "affordable," particularly by its younger residents. The cost of housing is also a key area where they feel dissatisfied, and when asked what issues they want the City to prioritize, housing and homelessness top the list. At the same time, a smaller group of residents are concerned about the pace or look of development, particularly in the downtown area.
- Residents most strongly valued feeling safe, having clean air, good schools, and being able to travel safely by bicycle and walking. Innovation, events/concerts, and architectural quality are lower priorities when it comes to quality of life.
- Inclusivity, equity, diversity and prosperity are key priorities for younger residents and residents of color.

For more information, contact:

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Curt Below
Curt@FM3research.com

Miranda Everitt
Miranda@FM3research.com

MEMORANDUM

DATE November 19, 2021

TO Livermore City Council

FROM Joanna Jansen and Carey Stone

SUBJECT Summary of General Plan Advisory and Planning Commission Comments on Draft Vision Statement and Guiding Principles.

This memorandum summarizes the General Plan Advisory Committee (GPAC) and Planning Commission comments on the Draft Vision Statement and Guiding Principles. The GPAC reviewed and commented on the Draft Vision Statement and Guiding Principles during a special meeting of the GPAC on Wednesday, October 27, 2021. The Planning Commission provided comments during a regularly scheduled meeting held on Tuesday, November 16, 2021.

VISION COMMENTS

Overall Comments

General Plan Advisory Committee

- Use more aspirational terminology to connote we are working toward achieving something. The current language feels neutral and focused on what we seek to maintain, not what we are striving towards.
- Add the concept of resiliency throughout the Vision and Guiding Principles, such as resilient water supply, resilient energy supply, a resilient economy, and resilient residents who have stable housing.
- Honor Native Americans in the Vision Statement or Guiding Principles.

Planning Commission

- Planning Commissioners generally agreed with the GPAC recommendations on the Draft Vision Statement and Guiding Principles.
- Draft Vision Statement is a good starting place, but reads like a list of items. It should have more emotional resonance.
- Vision statement should be aspirational, but
  should fall somewhere in between what can be achieved by 2045 and something that is more visionary.

- City Council should watch the GPAC and Planning Commission discussions of the Draft Vision Statement and Guiding Principles.
- Vision can only be achieved through regional coordination with other jurisdictions.
- Should safety be a guiding principle?

Vision Statement

General Plan Advisory Committee

- "Safe" could be a loaded term; add "safe and welcoming for all."
- Some GPAC members did not like the term "big heart." Other GPAC members thought it captured Livermore well.
- Add more in the vision about protecting the natural environment.
- Reflect agriculture as something that is actively happening:
    - The community values its agricultural sector ~~heritage~~ and natural open spaces surrounding the city.
- Expand vision statement to focus beyond downtown:
    - Residents and visitors enjoy a vibrant, active, clean city ~~downtown~~.
- Consider whether there may be multiple downtown-like areas in Livermore in 2045.
- Change the last sentence to "Residents honor ~~remember~~ Livermore's small-town roots…."
- Add that Livermore will be a caretaker of the climate. Put this in the Vision Statement as opposed to folding it into Sustainability (which was also suggested).
- Add the word "unique" to describe Livermore.
- Mention transit in the Vision Statement.
- Acknowledge Livermore as a science/tech hub.
- Underscore the importance of partnerships in achieving the vision, such as between the City and the Livermore Area Recreation and Park District or Livermore Valley Joint Unified School District.
- Reflect how Livermore collaborates and works together; the city is at its best when we work for the common good.
- Reflect the importance of maintaining Livermore's high quality of life.
- Add that "the City shall continue to be a place that supports the arts and encourages all its residents to make the arts and sciences a part of their everyday lives."
- Find a way to mention "craft" in the vision. There are many different forms and meanings of "craft" in Livermore.

Planning Commission

- Incorporate "good place to raise a family" somewhere in the vision statement.
- Mention science and arts and cultural amenities.
- Incorporate jobs-housing match.
- Consider acknowledging the challenges the city faces.
- Agree with GPAC suggestion to add "collaborative spirit" somewhere in the vision statement.
- Agree with GPAC suggestion to change "Residents honor ~~remember~~ Livermore's small-town roots…."
- Expand the reference to the downtown to be about the entire city or commercial spaces.
- State that "mobility will be convenient, safe, and rapid" instead of calling out the specific mode as transportation technologies are constantly evolving.
- Planning Commissioners had differing opinions about the GPAC's suggestion to change "agricultural heritage" to "agricultural sector." One Commissioner preferred heritage, and one Commissioner preferred sector although thought that there could be a better word than sector.
- Add active wording about what we will do to preserve agricultural heritage.
- Mention biological diversity and how it connects to the open space we are trying to preserve.

GUIDING PRINCIPLES

Balance. We prioritize well-designed development and thoughtful preservation.

General Plan Advisory Committee

- This principle reflects community feedback about both honoring our history and creating welcoming spaces.

Planning Commission

- Make this statement broader, there are many things that need to be balanced such as housing costs, public services, City staff resources, etc.
- Balancing means finding the middle between two sides; well designed development and preservation are not mutually exclusive.

Equity. We provide everyone access to services they need and the opportunities to flourish in healthy homes and neighborhoods.

General Plan Advisory Committee

- GPAC members did not make any specific comments about this Guiding Principle.

Planning Commission

- Revise this statement so that opportunities comes first and then access comes second.
- Consider adding "We strive to provide…"
- Add "we provide and connect people to services"
- Consider adding "affordable, healthy homes"

Diversity. We welcome and celebrate everyone, respect and listen to all viewpoints, and ensure everyone has a voice in City decisions.

General Plan Advisory Committee

- GPAC members expressed both that this principle could name different groups within Livermore, and also that
- These groups could change over time and some would inevitably be left out and/or alienated.
- GPAC members suggested adding ""with a specific emphasis on the experiences and perspectives of historically under-represented or marginalized communities" but also acknowledged that this feels watered down.
- Add "seek out the voices of those who have been underserved."

Planning Commission

- Make the connection between diversity and the General Plan by adding "We welcome and celebrate everyone, try to make Livermore a welcoming city,…"
- Viewpoints that disrespect other viewpoints are out of bounds; consider revising to acknowledge this caveat.
- This statement should also speak to making Livermore a more diverse place, encouraging groups who don't live here currently to become residents.

Sustainability. We protect open spaces, integrate nature into the urban environment, minimize our negative impacts on the planet, and plan ahead to adapt to a changing climate.

General Plan Advisory Committee

- Edit to include "strive to eliminate ~~minimize~~ negative impacts…"
- Add "and potential global impacting events" at the end of the sentence.
- Acknowledge that we depend on science for decision-making.
- State that Livermore will be a responsible caretaker of the climate.
- This should also address the sustainability of water and power infrastructure.
- Use "abundant" resources, "wise resource management," or at least "there will not be chronic shortages of resources like water and power."

Planning Commission

- We also need economic/fiscal sustainability and a balanced budget.
- Protecting open spaces needs to be better defined. What are the tradeoffs with protecting open space? Housing affordability? Economic vitality?
- Add something about mitigating climate change.
- Add something about improving the planet in face of climate change by proactively reducing carbon emissions.
- Disagree with the GPAC wording about "strive to eliminate ~~minimize~~ negative impacts…" Eliminate is not the right word, we will do our best to reduce impacts.

Prosperity. We have excellent City services and infrastructure that support a thriving local economy where people come to work, shop, dine, and spend time at our parks and open spaces, wineries, and cultural venues.

General Plan Advisory Committee

- We have excellent City services and infrastructure…" sounds like we might not have excellent services in the future. Reword to say we *create*, *maintain*, or *assure* excellent City services.
- Note that services and infrastructure "support growing housing and population needs…"
- Add language that commits to continual improvement "We improve upon our excellent City services."
- Services and infrastructure should be "guided by fiscal sustainability." Fiscal responsibility means we will have to prioritize.

Planning Commission

- Add something about the reliability, resiliency, and security of water, electricity, and other resources.
- Liked GPAC suggestion to add "excellent City services and infrastructure guided by fiscal sustainability…."
- Add "local craft economy…"
- Add "parks and open spaces, wineries, breweries, and cultural venues."

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING THE 2045 GENERAL PLAN UPDATE VISION STATEMENT AND GUIDING PRINCIPLES

On March 1, 2021, the City prioritized the comprehensive update of the Livermore General Plan, including Housing Element and Programmatic Environmental Impact Report, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.

On June 28, 2021, the City Council authorized a professional services agreement with PlaceWorks as the consultant team and directed staff to prepare and commence with the General Plan Update work program.

On June 28, 2021, the City authorized the formation of a General Plan Advisory Committee comprised of community members who live or work in Livermore to provide feedback and inform the General Plan Update.

On October 7, 2021, the City Council appointed 19 community members to the General Plan Advisory Committee.

From September through October 2021, the project team (made up of City and PlaceWorks staff) conducted a series of public engagement activities to solicit community input in the creation of the Draft General Plan Vision Statement.

On October 27, 2021, the General Plan Advisory Committee held a public meeting, received a presentation on the General Plan Draft Vision Statement and Guiding Principles, and provided their feedback to the project team.

On November 16, 2021, the Planning Commission held a public meeting, considered the Committee's feedback, public testimony, and staff recommendations, and adopted a resolution recommending the Council approve the Draft Vision Statement subject to the Commission's recommended revisions. The Planning Commission's Resolution No. 29-21 is attached to this resolution as Exhibit A.

On December 13, 2021, the City Council held a public meeting, considered the Committee's feedback, public testimony, and Planning Commission and staff recommendations for the proposed 2045 General Plan Update Vision Statement and Guiding Principles incorporating that feedback and the recommendations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore approves the General Plan Vision Statement and Guiding Principles, attached hereto as Exhibit B.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Planning Commission Resolution 29-21
Exhibit B – Vision Statement and Guiding Principles

EXHIBIT A

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVAL OF

DRAFT 2045 GENERAL PLAN UPDATE VISION STATEMENT AND GUIDING PRINCIPLES

On March 1, 2021, the City prioritized the comprehensive update of the Livermore General Plan, including Housing Element and Programmatic Environmental Impact Report, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.

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On November 16, 2021, the Planning Commission held a public meeting, considered the Committee's feedback, public testimony, and staff recommendations.

NOW THERFORE, BE IT RESOLVED that the Livermore Planning Commission, recommends the City Council approve the Vision Statement and Guiding Principles, subject to feedback from General Plan Advisory Committee and the following recommendations from Planning Commission:

- Use aspirational language
- Incorporate the General Plan Advisory Committee's comments
- Include economic sustainability in addition to environmental sustainability

- Integrate the concept of reliability, resiliency, and security of resources (i.e. water, electricity, etc.)
- Improve family-friendly wording
- Include other attributes: sciences, arts, cultural amenities, jobs, and breweries
- Expand the downtown statement to include other commercial spaces
- Revise agricultural heritage to an active statement
- Incorporate biological diversity into open space preservation

The documents that constitute the record of proceedings upon which this decision is based can be found in the Community Development Department 1052 S. Livermore Avenue, in Livermore, California.

On the motion by Commissioner Leary, seconded by Commissioner Branning, the foregoing Resolution was adopted at the Planning Commission meeting of November 16, 2021, by the following vote:

AYES: ANDERSON, BRANNING, DUNBAR, LEARY, STEIN.
NOES: NONE.
ABSENT: NONE.

Jacob Anderson, Chairperson

by Steve Stewart, Planning Manager
Secretary to the Planning Commission

Imagine LIVERMORE 2045

Vision

In 2045, Livermore is safe and welcoming for all. Residents and visitors enjoy a vibrant, active, clean downtown, complemented by commercial districts distributed throughout the city's various neighborhoods. Known for a healthy economy, Livermore supports a diverse variety of local jobs including those in science and technology, arts and trades, and agriculture. Livermore is recognized for its public art and cultural amenities, which are enjoyed by the local community and visitors alike. Individuals and families of all types and income levels find diverse housing choices close to shopping and entertainment, jobs, well-maintained parks, and exceptional schools.

Residents and visitors value clean energy, water, and air that contribute to Livermore's high quality of life. Everyone appreciates the availability of pleasant, convenient, zero-emission mobility and enjoys a variety of travel options. People walk and bike on paths, sidewalks, and trails for errands, to meet their daily needs, and for fun.

In 2045, Livermore is a unique community with a big heart where families and individuals flourish, and diverse people work together for the common good. Neighbors cultivate a connection to their city and to each other fostering a close-knit community where civic life and opportunity thrive.

Guiding Principles

Balance
We prioritize well-designed development and thoughtful preservation and collaborate to choose carefully among the tradeoffs inherent in progress.

Diversity
We welcome and celebrate everyone, respect and listen to differing viewpoints, seek out the voices of those who have been underserved, and ensure everyone has a say in City decisions.

Equity
We provide everyone access to services they need and the opportunities to flourish in healthy homes and neighborhoods.

Prosperity
We have excellent City services and infrastructure that support a thriving local economy where people come to work, shop, dine, and spend time at our parks and open spaces, wineries, and cultural venues.

Sustainability
We protect open spaces, integrate nature into the urban environment, minimize our negative impacts on the planet, and plan ahead to adapt to a changing climate.

Resiliency
We plan ahead to adapt to a changing climate, manage resources wisely, and ensure the stability of our homes, businesses, energy, and infrastructure.

Integrity
We recognize the Ohlone people as the original stewards of this area and honor small-town roots as we plan for future generations.

Declaración de la visión

En 2045, Livermore es seguro y acogedor para todos. Los residentes y visitantes disfrutan de un centro vibrante, activo y limpio, complementado por distritos comerciales distribuidos en los diversos vecindarios de la ciudad. Conocido por una economía saludable, Livermore apoya una variedad de trabajos locales, incluidos los trabajos de ciencia y tecnología, artes y oficios, y agricultura. Livermore es reconocido por su arte público y servicios culturales, que son disfrutados por la comunidad local y los visitantes por igual. Las personas y las familias de todos los tipos y niveles de ingresos encuentran diversas opciones de vivienda cerca de tiendas y entretenimiento, trabajos, parques bien mantenidos y escuelas excepcionales.

Los residentes y visitantes valoran la energía, el agua y el aire limpio que contribuyen a la alta calidad de vida de Livermore. Todos aprecian la disponibilidad de una movilidad agradable, conveniente y de cero emisiones y disfrutan de una variedad de opciones de viaje. La gente camina y anda en bicicleta por rutas, aceras y senderos para hacer mandados, para satisfacer sus necesidades diarias y para divertirse.

En 2045, Livermore es una comunidad única con un gran corazón donde las familias y las personas florecen, y diversas personas trabajan juntas por el bien común. Los vecinos cultivan una conexión con su ciudad y entre sí fomentando una comunidad muy unida donde la vida cívica y las oportunidades prosperan.

Principios rectores

Equilibrio
Priorizamos el desarrollo bien diseñado y la preservación cuidadosa y colaboramos para elegir cuidadosamente entre las compensaciones inherentes al progreso.

Diversidad
Damos la bienvenida y celebramos a todos, respetamos y escuchamos diferentes puntos de vista, buscamos las voces de aquellos que han sido desatendidos y nos aseguramos de que todos tengan voz en las decisiones de la Ciudad.

Equidad
Creamos oportunidades para prosperar en hogares y vecindarios saludables y conectamos a las personas con los servicios que necesitan.

Prosperidad
Nos sentimos orgullosos de nuestros excelentes y fiscalmente seguros servicios e infraestructura de la Ciudad que apoyan a una población en crecimiento y una economía local abundante y adaptable donde las personas vienen a trabajar, comprar, cenar y pasar tiempo en nuestros parques y espacios abiertos, bodegas, cervecerías y lugares culturales.

Sostenibilidad
Protegemos los espacios abiertos por su valor escénico, hidrográfica, biológico y recreativo, integramos la naturaleza en el entorno urbano, minimizamos nuestros impactos negativos a la planeta y reducimos proactivamente nuestras emisiones de gases de efecto invernadero. Utilizamos nuestros recursos financieros de manera productiva y a un ritmo manejable.

Resiliencia
Planificamos con anticipación para adaptarnos a un clima cambiante, administrar los recursos sabiamente y garantizar la estabilidad de nuestros hogares, negocios, energía e infraestructura.

Integridad
Reconocemos al pueblo Ohlone como los administradores originales de esta área y las raíces de la pequeña ciudad mientras planeamos para las generaciones futuras.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.3**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Discussion and direction on Livermore's preferred approach regarding the Livermore Amador Valley Transit Authority's draft Zero Emission Bus Fleet Transition Study.

RECOMMENDED ACTION

Staff recommends City Council receive the presentation and provide direction to the Livermore representatives on the Livermore Amador Valley Transit Authority Board of Directors on Livermore's preferred approach to transition to a zero-emission bus fleet.

SUMMARY

On October 11, 2021, the City Council requested an overview of the Livermore Amador Valley Transit Authority (LAVTA) Zero-Emission Bus Study. LAVTA will present the Livermore Amador Valley Transit Authority's draft Zero Emission Bus Fleet Transition Study at tonight's meeting. The City Council may provide direction to the City's LAVTA Board representatives on Livermore's preferred approach to transition to zero-emission busses.

DISCUSSION

In December 2018, the California Air Resources Board (CARB) approved the new Innovative Clean Transit regulation, requiring the state's public transit agencies to transition to all zero-emission bus purchases by 2030 and submit a board-approved zero-emission bus rollout plan to CARB by July 1, 2023. The new CARB regulation requires LAVTA's new bus purchases to be a minimum of 25% zero-emission buses beginning in 2026 and ramping up to 100% zero-emission buses in 2029, with the goal of transitioning the state's entire transit fleet to 100% zero-emission fleet by 2040.

At the October 11, 2021 meeting, the City Council requested that the Livermore Amador Valley Transit Authority's draft Zero Emission Bus Fleet Transition Study be placed on the agenda of a future Council meeting for discussion prior to the LAVTA Board taking any action on the item. A LAVTA representative will present the draft study at tonight's meeting. The City Council may ask questions and provide direction to the City's LAVTA Board representatives on Livermore's preferred approach to transition to zero-emission busses. The LAVTA Board is expected to review this item at their February 7, 2022

meeting.

FISCAL AND ADMINISTRATIVE IMPACTS

None.

ATTACHMENTS

1. Draft LAVTA ZEB Transition Master Plan

Prepared by: Julie Chiu
Associate Civil Engineer

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

ATTACHMENT 1

Livermore-Amador Valley Transit Authority Zero-Emission Bus Fleet Transition Study

Presented by: The Center for Transportation and the Environment

Date: August 11, 2021

Table of Contents

List of Figures ..... *iii*

List of Tables ..... *v*

Executive Summary *1*

Battery Electric Bus Only Scenario 4
Mixed Fleet: BEB and FCEB Scenario 5
Fuel Cell Electric Bus Only Scenario 5
Recommendations 6

1 Introduction *8*

CARB's Innovative Clean Transit Regulation **9**

ZEB Purchase Requirements 9
ZEB Bonus Credits 10
ZEB Rollout Plan 10
Exemptions 11
Reporting Requirements 11

2 ZEB Transition Planning *12*

Methodology **12**

Assessment Scenarios **13**

Assessment Assumptions **14**

3 Requirements Analysis *16*

Baseline Data Collection **16**

Fleet Composition 16
Routes and Blocks 17
Miles and Fuel Consumption 17

4 Service Assessment *17*

5 Fleet Assessment *20*

Cost Assumptions **21**

Baseline **21**

BEB Only **22**

Mixed Fleet: BEB and FCEB **24**

FCEB Only **25**

Fleet Assessment Cost Comparison **27**

6 Fuel Assessment *29*

Charging Analysis **30**

Hydrogen Pricing Sensitivity Analysis **31**
Low Carbon Fuel Standard Credits **31**
Baseline **31**
BEB Only **32**
Mixed Fleet BEB and FCEB **35**
FCEB Only **39**
Fuel Assessment Cost Comparison **43**
7 Maintenance Assessment ***44***
BEB Only **45**
FCEB Only **47**
Maintenance Assessment Cost Comparison **48**
8 Facilities Assessment ***49***
Battery-Electric Charging Scenarios Depot Infrastructure **49**
On-Route Charging Infrastructure **51**
BEB Only On-Route Charging Projects 52
BEB Only Depot Planning Projects 52
BEB Only Depot Structural Projects 53
BEB Only Power Upgrade Projects 54
BEB Only Depot Charger Installation Projects 56
BEB Only (with Depot and On-Route Charging) Infrastructure Cost Summary 58
Mixed Fleet: BEB and FCEB Scenario – BEB Facility **59**
Mixed Fleet Charging Scenario Depot Planning Projects 59
Mixed Fleet Charging Structural Projects 59
Mixed Fleet Power Upgrade Projects 61
Mixed Fleet Charger Installation Projects 62
Mixed Fleet Charging Infrastructure Cost Summary 64
Hydrogen Fuel Cell Infrastructure Scenarios **65**
50-Bus Mechanical Projects 65
Storage Capacity Projects 67
Mixed Fleet: BEB and FCEB Scenario – FCEB Facilities **67**
Planning Projects 67
Storage Capacity Projects 68
Maintenance Bay Upgrade Projects 69
Mixed Fleet FCEB Infrastructure Summary 70
FCEB Only **71**
Planning Projects 71
Storage Capacity Projects 72
Maintenance Bay Upgrade Projects 72
FCEB Only Infrastructure Summary 73
Facilities Assessment Cost Comparison **73**
9 Total Cost of Ownership Assessment ***75***

Costs by Scenario **75**
Baseline 75
BEB Only 75
Mixed Fleet: BEB and FCEB 76
FCEB Only 77
Total Estimated Costs **77**
10 Conclusions and Recommendations ***79***
Appendix A1 ..... ***81***
Addenda ***91***

List of Figures

Figure 1 – Battery and Fuel Cell Bus Schematic 2
Figure 2 - Total Cost of Ownership, by Scenario 6
Figure 3 - LAVTA System Map Highlighting Facility Locations 8
Figure 4 - Battery and Fuel Cell Electric Bus Schematic 9
Figure 5 - CTE's ZEB Transition Study Methodology 12
Figure 6 - 40' BEB Block Achievability Percentage by Year 20
Figure 7 - Projected Bus Purchases, Baseline Scenario 21
Figure 8 - Annual Fleet Composition, Baseline Scenario 22
Figure 9 - Annual Capital Costs, Baseline Scenario 22
Figure 10 – Projected Bus Purchases, BEB Only Scenario 23
Figure 11 – Annual Fleet Composition, BEB Only Scenario 23
Figure 12 – Annual Capital Costs, BEB Only Scenario 24
Figure 13 – Projected Bus Purchases, Mixed Fleet Scenario 24
Figure 14 – Annual Fleet Composition, Mixed Fleet Scenario 25
Figure 15 – Annual Capital Costs, Mixed Fleet Scenario 25
Figure 16 – Projected Bus Purchases, FCEB Only Scenario 26
Figure 17 – Annual Fleet Composition, FCEB Only Scenario 26
Figure 18 - Annual Capital Costs, FCEB Only Scenario 27
Figure 19 - Cumulative Bus Capital Costs, Fleet Assessment 27
Figure 20 – Annual Fuel Consumption, Baseline Scenario 32
Figure 21 – Annual Fuel Costs, Baseline Scenario 32
Figure 22 – Annual Fuel Consumption, BEB Only Scenario 33
Figure 23 – Annual Fuel Costs, BEB Only Scenario 34
Figure 24 - Potential LCFS Credit Revenue for 100% Renewable Electric, BEB Only Scenario 35
Figure 25 – Annual Fuel Consumption, Mixed Fleet Scenario 35
Figure 26 – Annual Fuel Costs, Mixed Fleet Scenario 36
Figure 27 - Potential LCFS Credit Revenue for Fossil Fuel SMR Hydrogen, Mixed Fleet Scenario 37
Figure 28 - Potential LCFS Credit Revenue for 100% Renewable Electrolysis Hydrogen, Mixed Fleet Scenario 38
Figure 29 - Potential LCFS Credit Revenue for Dairy Gas SMR Hydrogen, Mixed Fleet Scenario. 39
Figure 30 – Annual Fuel Consumption, FCEB Only Scenario 40
Figure 31 – Annual Fuel Costs, FCEB Only Scenario 40
Figure 32 - Potential LCFS Credit Revenue for Fossil Fuel SMR Hydrogen, FCEB Only Scenario .. 41
Figure 33 - Potential LCFS Credit Revenue for 100% Renewable Electrolysis Hydrogen, FCEB Only Scenario 42
Figure 34 – Potential LCFS Credit Revenue for Dairy Gas SMR Hydrogen, FCEB Only Scenario .. 42
Figure 35 – Total Costs, Fuel Assessments 43
Figure 36 - Annual Fleet Maintenance Costs, Baseline 45
Figure 37 - Annual Fleet Maintenance Costs, BEB Only Scenario 46
Figure 38 - Annual Fleet Maintenance Costs, Mixed Fleet Scenario 47
Figure 39 - Annual Maintenance Costs, FCEB Only Scenario 47
Figure 40 - Total Costs, Maintenance Assessments 48

Figure 41 - On-Route Infrastructure Projects, BEB Only Scenario 52
Figure 42 - Depot Planning Projects, BEB Only Scenario 53
Figure 43 –Incremental Depot Gantries, BEB Only Scenario 54
Figure 44 – Annual Depot Structural Projects Cost, BEB Only Scenario 54
Figure 45 – Incremental Depot Electrical Demand, BEB Only Scenario (MW) 55
Figure 46 – Depot Recommended Power Upgrade Projects, BEB Only Scenario (MW) 56
Figure 47 – Depot Annual Power Upgrade Project Costs, BEB Only Scenario 56
Figure 48 – Annual Depot Dispenser Installations, BEB Only Scenario 57
Figure 49 – Annual Depot Charger Installations, BEB Only Scenario 57
Figure 50 - Annual Cost of Depot Charger and Dispenser Installations, BEB Only Scenario 58
Figure 51 - Cumulative Total Infrastructure Costs, BEB Only Scenario 59
Figure 52 - Planning Projects, Mixed Fleet Charging Scenario 59
Figure 53 – Incremental Gantries, Mixed Fleet Charging Scenario 60
Figure 54 – Annual Structural Projects Cost, Mixed Fleet Scenario 61
Figure 55 – Incremental Electrical Demand, Mixed Fleet Scenario (MW) 61
Figure 56 – Recommended Power Upgrade Projects, Mixed Fleet Charging Scenario (MW) 62
Figure 57 – Annual Power Upgrade Project Costs, Mixed Fleet Charging Scenario 62
Figure 58 – Annual Dispenser Installations, Mixed Fleet Charging Scenario 63
Figure 59 – Annual Charger Installations, Mixed Fleet Charging Scenario 63
Figure 60 - Annual Cost of Charger and Dispenser Installations, Mixed Fleet Charging Scenario 64
Figure 61 - Cumulative Total BEB Infrastructure Costs, Mixed Fleet Scenario 65
Figure 62 - Planning Projects, Mixed Fleet Scenario 68
Figure 63 - Mechanical Projects, Mixed Fleet Scenario 68
Figure 64 - Storage Capacity Projects, Mixed Fleet Scenario 69
Figure 65 - Hydrogen Maintenance Bay Upgrade Projects, Mixed Fleet Scenario 69
Figure 66 - Annual FCEB Infrastructure Costs, Mixed Fleet: BEB and FCEB Scenario 70
Figure 67 - Cumulative Infrastructure Costs, Mixed Fleet: BEB and FCEB Scenario 70
Figure 68 – Planning Projects, FCEB Only Scenario 71
Figure 69 – Hydrogen Mechanical Projects, FCEB Only Scenario 71
Figure 70 - Hydrogen Storage Capacity Projects, FCEB Only Scenario 72
Figure 71 - Hydrogen Maintenance Bay Upgrade Projects, FCEB Only Scenario 72
Figure 72 - Cumulative Infrastructure Costs, FCEB Only Scenario 73
Figure 73 - Total Cumulative Costs, Facilities Assessment 74
Figure 74 – Total Costs by Type, Baseline Scenario 75
Figure 75 – Total Costs by Type, Depot and On-Route Charging Scenario 76
Figure 76 – Total Costs by Type, Mixed Fleet: BEB and FCEB Scenario 76
Figure 77 – Total Costs by Type, FCEB Only Scenario 77
Figure 78 – Total Cost of Ownership, by Scenario 77

List of Tables

Table 1 - ICT ZEB Percentage Requirements 1
Table 2 - Total Cost of Ownership, by Scenario 4
Table 3 – CARB Innovative Clean Transit (ICT) ZEB Transition Timeline for Small Agencies 9
Table 4 - ZEB Bonus Credits Applied to CARB ICT Transition Schedule 10
Table 5 - Fleet Breakdown by Depot and Length 16
Table 6 – Count of Blocks by Depot and Bus Length 17
Table 7 – Annual Service Miles by Depot and Bus Length 17
Table 8 – Annual Diesel Consumption by Depot and Bus Length 17
Table 9 – Selected Routes for Modeling 18
Table 10 – Modeling Results Summary 19
Table 11 – Fleet Assessment Cost Assumptions 21
Table 12 - Total Bus Capital Costs, Fleet Assessment 28
Table 13 – Fuel Cost Assumptions 29
Table 14 – PG&E Rate Schedule 30
Table 15 – LCFS Credit Revenue Estimates by Year, BEB Only Scenario 34
Table 16 – LCFS Credit Revenue Estimates by Year for Fossil Fuel SMR Hydrogen, Mixed Fleet Scenario 37
Table 17 – LCFS Credit Revenue Estimates by Year for 100% Renewable Electrolysis Hydrogen, Mixed Fleet Scenario 38
Table 18 – LCFS Credit Revenue Estimates by Year for Dairy Gas SMR Hydrogen, Mixed Fleet .. 39
Table 19 – LCFS Credit Revenue Estimates by Year for Fossil Fuel SMR Hydrogen, FCEB Only Scenario 41
Table 20 – LCFS Credit Revenue Estimates by Year for 100% Renewable Electrolysis Hydrogen, FCEB Only Scenario 41
Table 21 – LCFS Credit Revenue Estimates by Year for Dairy Gas SMR Hydrogen, FCEB Only Scenario 42
Table 22 - Total Fuel Costs Over Entire Transition Period, Fuel Assessment 43
Table 23 – Labor and Materials Cost Assumptions 44
Table 24 - Midlife Overhaul Cost Assumptions 45
Table 25 - Total Costs, Maintenance Assessments 48
Table 26 – BEB Infrastructure Project Cost Assumptions 51
Table 27 – On-Route Infrastructure Project Cost Assumptions 52
Table 28 – Structural Project Cost Assumptions 53
Table 29 – Depot Power Upgrade Cost Assumptions, BEB Only Scenario 55
Table 30 - Dispenser and Charger Project Cost Assumptions 57
Table 31 - Total Infrastructure Costs, BEB Only Scenario 58
Table 32 - Structural Project Cost Assumptions 60
Table 33 - Total BEB Infrastructure Costs, Mixed Fleet Scenario 64
Table 34 – FCEB Infrastructure Planning Assumptions 67
Table 35 – Total Infrastructure Costs, FCEB Only Scenario 73
Table 36 - Total Cumulative Costs, Facilities Assessment 74
Table 37 – Total Cost of Ownership, by Scenario 78

Executive Summary

Livermore-Amador Valley Transit Authority (LAVTA) engaged the Center for Transportation and the Environment (CTE) to perform a zero-emission bus (ZEB) transition study in May 2020. The study's goal is to create a plan for a 100% zero-emission fleet by 2040 to comply with the Innovative Clean Transit (ICT) regulation enacted by the California Air Resources Board (CARB). The results of the study will inform LAVTA Board members and LAVTA staff of the estimated costs, benefits, constraints, and risks of the transition to a zero-emission fleet and will guide future planning and decision-making.

On December 14, 2018, CARB enacted the ICT regulation, setting a goal for California public transit agencies to have 100% zero-emission fleets by 2040. The ruling specifies the percentage of new bus procurements that must be zero-emission for each year of the transition period (2023 – 2040). Those annual percentages are outlined in **Table 1** below.

Table 1 - ICT ZEB Percentage Requirements

Starting January 1	ZEB Percentage of Total New Bus Purchases
2026	25%
2027	25%
2028	25%
2029	100%

This schedule lays out a pathway to reaching 100% zero-emission fleets in 2040 based on a 12-year projected lifespan for a transit bus. There is the opportunity to request waivers, however, that allow purchase deferrals in the event of economic hardship or if zero-emission technology has not matured enough to meet the service requirements of a given route. These concessions recognize that zero-emission technologies may cost more than current internal combustion engine (ICE) technologies on a lifecycle basis and that zero-emission technology may not currently be able to meet all service requirements.

Zero-emission technologies considered in this study include battery-electric buses (BEB) and hydrogen fuel cell electric buses (FCEB). BEBs and FCEBs have similar electric drive systems that feature a traction motor powered by a battery. The primary differences between BEBs and FCEBs are the respective amount of battery storage and the method by which the batteries are recharged. The energy supply in a BEB comes from electricity provided by an external source,

typically the local utility's electrical grid, which is used to recharge the batteries. The energy supply for an FCEB is on-board the bus, where hydrogen, stored in tanks, is converted to electricity using a fuel cell. The electricity from the fuel cell is used to recharge the batteries. The electric drive components and energy source for a BEB and FCEB are illustrated in **Figure 1.**

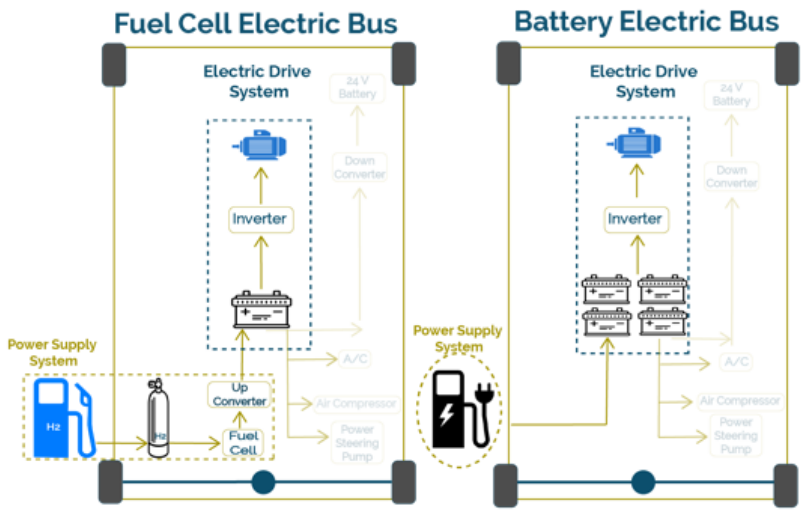

Figure 1 – Battery and Fuel Cell Bus Schematic

CTE worked closely with LAVTA staff throughout the project to develop an approach, define assumptions, and confirm the results. The approach for the study is based on analysis of three ZEB technology scenarios compared to a baseline scenario:

1. Baseline
2. BEB Only
3. Mixed Fleet: BEB and FCEB
4. FCEB Only

To accurately project service feasibility for each of these zero-emission technologies, CTE then assessed the block achievability of LAVTA's current service schedules. Block achievability is determined by comparing the estimated energy required to operate a BEB on a given block to the usable onboard energy storage capacity of the bus. If the block energy requirement exceeds the onboard storage capacity, the block is considered unachievable. If the block energy requirement does not exceed the usable onboard storage capacity, the block is considered to be achievable. Although not a zero-emission scenario, this study also includes a baseline scenario that is used to compare the cost of a ZEB transition to a "business-as-usual" case (i.e., without the need to meet ICT requirements).

The BEB Only scenario was developed to model a fleet option with a fleet consisting entirely of battery electric buses that can meet existing service range requirements. Fleets consisting of BEBs that only charge at a depot may not be able to meet the range requirements of many routes and require additional time returning to the depot to charge. These constraints would necessitate additional bus purchases to cover the charging times. On-route charging mitigates the possible need for additional bus purchases by extending the range of in-service buses and

reducing the depot time necessary for charging. A uniform technology throughout the fleet allows for the installation of a single fueling technology at the depot. The challenges of on-route charging are finding space along the routes for chargers and the additional costs of land acquisition, equipment, and infrastructure installation.

A Mixed Fleet: BEB and FCEB scenario was developed with the assumption that all of the blocks that could be achieved with depot only charged BEBs. Because the range of FCEBs exceeds that of BEBs, FCEBs are capable of completing blocks that BEBs cannot and are modeled therefore to replace ICE buses at a 1:1 ratio. FCEBs and hydrogen, however, are more expensive than BEBs and electricity, so a mixed fleet allows an agency to use the less expensive BEB technology where possible and cover service needs with FCEBs as needed. A mixed fleet is also more resilient to service interruptions if either fuel becomes temporarily unavailable. For agencies such as LAVTA that operate only one depot, however, mixed fleets present the spatial challenge of hosting both infrastructure types in one depot.

The FCEB scenario was developed to help identify benefits and mitigate challenges associated with switching the entire fleet to fuel cell technology. An FCEB fleet could replace ICE buses on a 1:1 ratio and avoids the need to install two types of fueling infrastructure or purchase additional land for on-route charging. A FCEB fleet, however, lacks the redundancy provided by diverse fuels that a mixed fleet utilizes. Additionally, the cost of the buses and fuel for this scenario make an FCEB fleet the most expensive option despite the savings in infrastructure costs compared to a large-scale fleet transition to BEBs.

Improvements in technology are expected, but there is no indication of when BEB technology may improve to the point of one-for-one replacement of internal combustion engine buses or when the cost of FCEBs and hydrogen fuel will decrease to cost-competitive levels. Given these unknowns and the possible rapid changes in zero-emission technologies as interest in the field grows, this study presents a range of estimated costs that can be expected for LAVTA's ZEB fleet transition.

The underlying basis for the assessment is CTE's ZEB Transition Planning Methodology, a complete set of analyses used to inform agencies planning the conversion of their fleets to zero-emission technologies. The methodology consists of data collection, analysis, and evaluation stages; these stages are sequential and build upon findings in previous steps. In the evaluation stage, CTE assesses energy efficiency and energy use by the buses to calculate the distance that a bus will be able to travel on a single charge or hydrogen fill. CTE collected sample data from eight of LAVTA's routes. Then, using generic ZEB battery capacity specifications for given bus lengths, CTE estimated range and energy consumption on all LAVTA routes and blocks under varying environmental and passenger load conditions. Once this information was established, CTE completed the following assessments to develop cost estimates for each of the three scenarios:

The **Fleet Assessment** develops a projected timeline for replacement of current buses with ZEBs that is consistent with the agency's fleet replacement plan. This assessment also includes a projection of fleet capital cost over the transition lifetime and it can be optimized with regard

to any state mandates, like CARB's ICT regulation, or to meet agency goals, such as minimizing cost or maximizing service levels.

The **Fuel Assessment** merges the results of the Service Assessment and Fleet Assessment to determine annual fuel requirements and associated costs. The Fuel Assessment calculates energy costs through the full life of the transition, including the agency's current fossil fuel buses. As current technologies are phased out in later years of the transition, the Fuel Assessment calculates the increasing energy requirements for ZEBs. The Fuel Assessment also provides a total energy cost over the transition lifetime.

The **Facilities Assessment** determines the necessary infrastructure to support the projected zero-emission fleet based on results from the Fleet Assessment and Fuel Assessment. The Facilities Assessment is calculated to meet the fleet procurement schedules defined in the Fleet Assessment and the and fueling capacity required based on the Fuel Assessments. The result shows quantities of hydrogen and battery electric infrastructure and calculates associated costs.

The **Maintenance Assessment** calculates all projected fleet maintenance costs over the life of the project. This includes costs related to existing fossil fuel buses remaining in the fleet, as well as new BEBs.

The **Total Cost of Ownership Assessment** compiles results from the previous assessment stages and provides a comprehensive view of all associated costs, over the transition lifetime. The table and figure below provide a side-by-side comparison of the cumulative transition costs for each scenario.

Table 2 - Total Cost of Ownership, by Scenario

Assessment Type	Baseline	BEB Only	Mixed Fleet: BEB and FCEB	FCEB Only
Fleet	$ 96,507,000	$ 133,274,000	$ 137,106,000	$ 150,188,000
Fuel*	$ 19,050,000	$ 19,965,000	$ 21,833,000	$ 30,399,000
Infrastructure	$ 0	$ 19,955,000	$ 14,427,000	$ 9,752,000
Maintenance	$ 22,902,000	$ 21,961,000	$ 23,536,000	$ 25,303,000
Total	**$ 138,459,000**	**$ 195,155,000**	**$ 196,902,000**	**$ 215,642,000**
% ZEB in 2040	**0%**	**100%**	**100%**	**100%**

*Excludes any potential LCFS credit revenue

Battery Electric Bus Only Scenario

As seen in **Table 2**, in an all BEB strategy, ZEB transition costs are likely to be $195 million for the BEB Only scenario (100% of LAVTA's fleet is replaced with BEBs by 2035 without adding additional buses). The costs shown in this graph increase over time because they are cumulative. The capital and maintenance costs for FCEBs exceed the additional costs from on-

route charging infrastructure and utility costs in the BEB scenario. The difference in cost between the Baseline and BEB scenario is largely the result of higher capital costs for BEBs compared to diesel-hybrid buses and the fact that infrastructure is already in place for diesel fueling. It should be noted that only 40-foot buses were considered in all ZEB transition scenarios. These parameters were based on LAVTA's current fleet structure and planned procurements, which include replacing 30-foot buses that are currently in their fleet with 40-foot buses going forward. Also, these bus lengths have passed Altoona testing and are thus allowable under the CARB ICT regulation.

Mixed Fleet: BEB and FCEB Scenario

The Mixed Fleet: BEB and FCEB scenario resulted in a total cost of approximately $197 million. Though the costs are less for a mixed fleet deployment than for the FCEB Only deployment, there is the added complexity of installing infrastructure for both fuel types. Since LAVTA has only one depot, the space constraint of installing both infrastructure types may be a challenge. Compared to ICE buses, ZEBs may require significantly less maintenance since their engines require no fluids and have fewer components to maintain.[1] It is possible then that a ZEB fleet would require fewer maintenance bays than an ICE fleet, possibly further reducing space constraints.

Fuel Cell Electric Bus Only Scenario

In the FCEB Only scenario, ZEB transition costs are estimated at $216 million for replacement of 100% of the fleet with FCEBs by 2035. A primary assumption for the FCEB Only scenario is that 40-foot fuel cell electric buses will be available during the entire transition period. It is expected that, due to the limited deployment of FCEBs in service in the United States, capital costs for these buses and hydrogen fuel costs will remain high in the near-term due to low market competition which is expected to change; however, more data is needed to adequately project these cost decreases. As such, this study uses current FCEB and infrastructure pricing for the entirety of the ZEB transition period.

For estimates of FCEB maintenance costs, CTE used data reported from Orange County Transit Authority's (OCTA) FCEB fleet of 10 New Flyer buses in their first year of operation. Fuel cell technology was new to OCTA and, as a result, the maintenance costs were higher than expected. OCTA does expect reductions in the long run. Given the necessary reliance on this early-adoption maintenance data, FCEB maintenance cost data has a wider error margin than BEB cost estimates. More concrete data will become available, and costs will likely fall as a larger number of fuel cell electric buses and hydrogen infrastructure are deployed. Significant investments in hydrogen infrastructure may take years to materialize, however.

[1] Eudy, Leslie and Matthew Jeffers. 2018. Zero-Emission Bus Evaluation Results: County Connection Battery Electric Buses. Golden, CO: National Renewable Energy Laboratory. NREL/TP-5400-72864. https://www.nrel.gov/docs/fy19osti/72864.pdf.

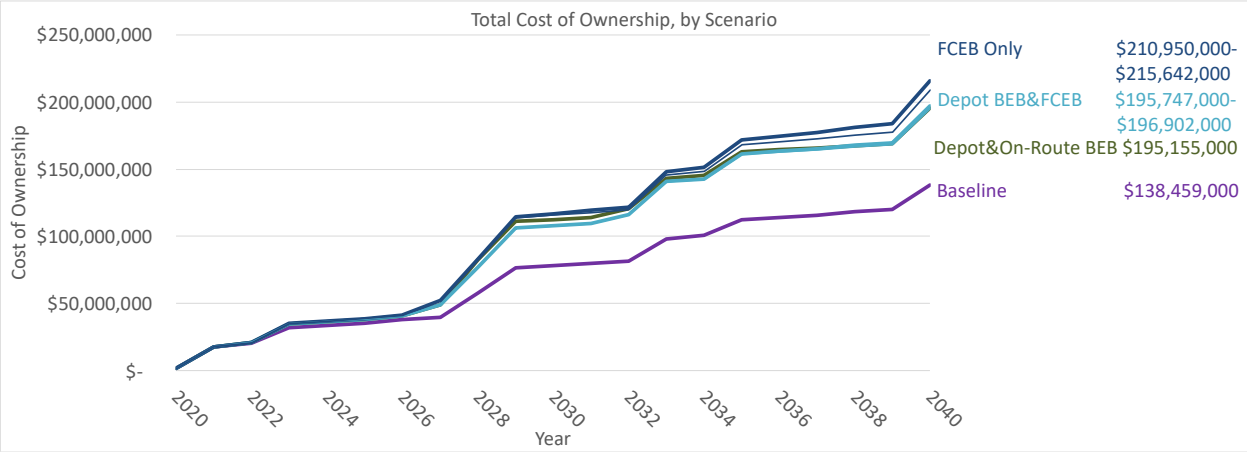

Figure 2 - Total Cost of Ownership, by Scenario

Recommendations

In addition to the uncertainty of technology improvements, there are other risks in trying to estimate costs over the 20-year transition period to consider. Although current BEB range limitations may be improved over time as a result of advancements in battery energy density and more efficient components, battery degradation may re-introduce range limitations, which is a cost and performance risk to an all-BEB fleet over time. In emergency scenarios that require use of BEBs, agencies may face challenges supporting long-range evacuations and providing temporary shelters in support of fire and police operations. Furthermore, fleetwide energy service requirements, power redundancy, and resilience may be difficult to achieve at any given depot in an all-BEB scenario. Although FCEBs may not be subject to these same limitations, higher capital equipment costs and availability of hydrogen may constrain FCEB solutions.

Given these considerations, the recommendations for LAVTA are as follows:

1. **Remain proactive with ZEB deployments:** LAVTA has been proactive in the purchase and deployment of BEBs through their ZEB Program. For successful fleetwide deployment, BEBs will require charge management software, hardware, and standards to manage the fleetwide transition. For FCEB deployment to be competitive, lower fuel costs that will evolve over time with the production of hydrogen at scale will be required. LAVTA should move forward thoughtfully, taking advantage of various grant and incentive programs to offset the incremental cost for ZEB deployment. Incentive programs may be eliminated in future years as ZEB procurements are required instead of being optional.
2. **Target specific routes and blocks for early ZEB deployments:** LAVTA should consider the strengths of given ZEB technologies and focus those technologies on routes and blocks that take advantage of their efficiencies and minimize the impact of the constraints related to the respective technologies. These technologies cannot follow a one-size-fits-all approach from either a performance or cost perspective. Matching the technology to the service will be a critical best practice. Results from early LAVTA ZEB deployment will help to inform these decisions.

The transition to ZEB technologies represents a paradigm shift in bus procurement, operation, maintenance, and infrastructure. It is only through a continual process of deployment with specific goals for advancement that the industry can achieve the goal of economically sustainable, zero-emission transportation sector.

1 Introduction

Beginning operation in 1986, LAVTA provides bus services to communities in the cities of Dublin, Livermore, Pleasanton and Alameda County. LAVTA's mission is "to provide equal access to a variety of safe, affordable and reliable public transportation choices, increasing the mobility and improving the quality of life of those who live or work in and visit the Tri-Valley area." LAVTA currently has one facility, located on Rutan Court, but will be moving to Atlantis Court by 2028:

1. LAVTA Current Facility: 1362 Rutan Court, Livermore, CA 94551
2. LAVTA Future Facility: 875 Atlantis Court, Livermore, CA 94551

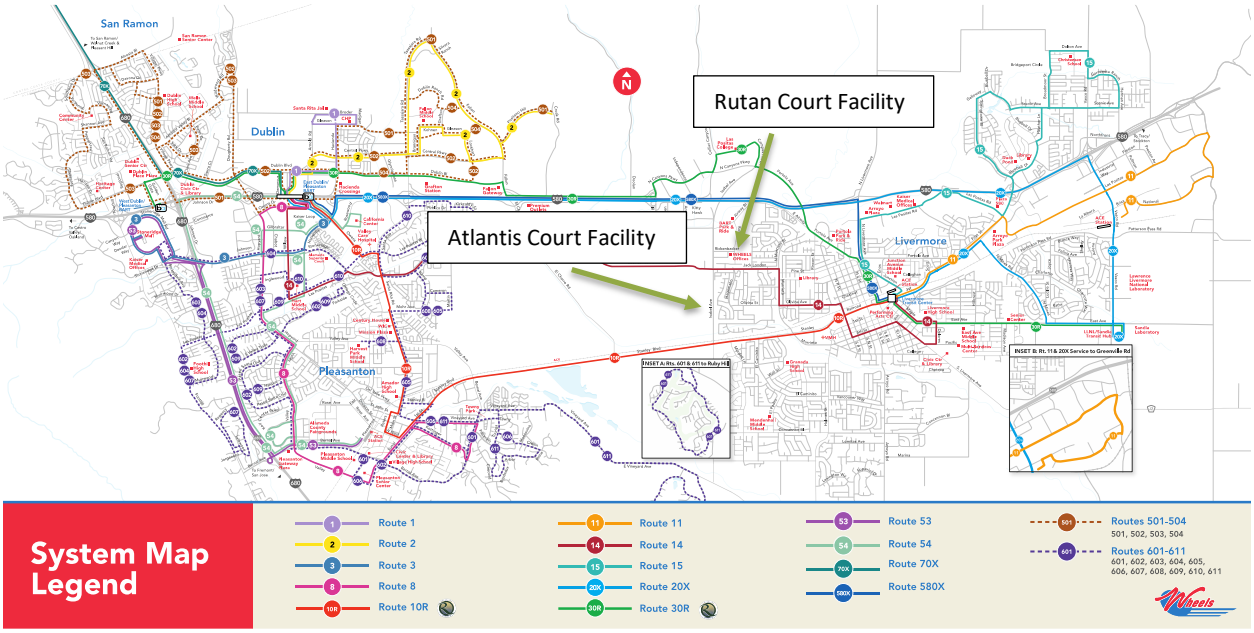

Figure 3 - LAVTA System Map Highlighting Facility Locations

LAVTA engaged CTE to perform a ZEB transition study in May 2020. The study's goal is to create a plan for a 100% zero-emission fleet by 2040 to comply with the Innovative Clean Transit (ICT) regulation enacted by California Air Resources Board (CARB). The results of the study will inform LAVTA Board members and LAVTA staff of the estimated costs, benefits, constraints, and risks of the transition to a zero-emission fleet and will guide future planning and decision-making.

Zero-emission technologies considered in this study include battery electric buses (BEBs) and hydrogen fuel cell electric buses (FCEBs). BEBs and FCEBs have similar electric drive systems that feature a traction motor powered by a battery. The primary differences between BEBs and FCEBs are the respective amount of battery storage and the method by which the batteries are recharged. The energy supply in a BEB comes from electricity provided by an external source, typically the local utility's electric grid, which is used to recharge the batteries. The energy supply for an FCEB is completely on-board, where hydrogen is converted to electricity within a fuel cell. The electricity from the fuel cell is used to recharge the batteries. The electric drive

components and energy source for a BEB and FCEB are illustrated in

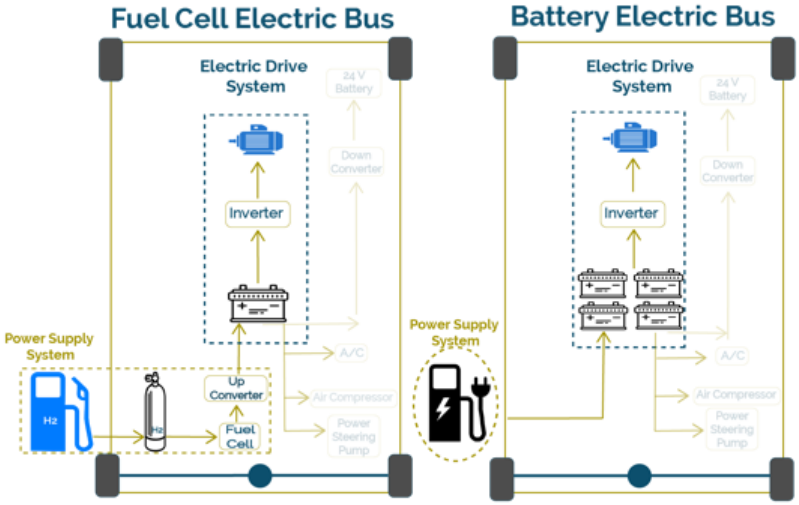

Figure 4 - Battery and Fuel Cell Electric Bus Schematic

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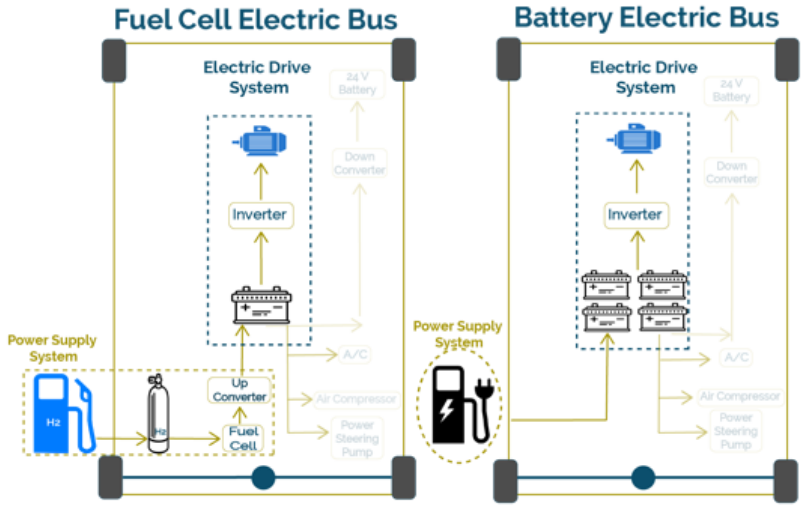

Figure 4 - Battery and Fuel Cell Electric Bus Schematic

CARB's Innovative Clean Transit Regulation

On December 14, 2018, CARB enacted the ICT regulation, requiring all California public transit agencies to purchase only ZEBs from 2029 onward, with partial ZEB purchasing requirements beginning in 2023 for large agencies, and 2026 for small agencies, with the goal of transitioning agencies to ZEB fleets. This section summarizes key elements of the ICT.

ZEB Purchase Requirements

LAVTA's fleet is designated as a small fleet by the California Air Resources Board (CARB) because the fleet does not exceed 100 vehicles at pullout. The ICT regulation requires that all

new bus purchases include a specified percentage of ZEBs in accordance with the following schedule:

Table 3 – CARB Innovative Clean Transit (ICT) ZEB Transition Timeline for Small Agencies

Starting January 1	Percent of New Bus Purchases	Purchase Discharge Criteria
2023		If 850 ZEBs by 12/31/2020
2024		If 1250 ZEBs by 12/31/2020
2025		-
2026	25%	-
2027	25%	-
2028	25%	-
2029	100%	-

New bus purchase requirements may be eliminated in 2023 and 2024 if a minimum number of buses are purchased by a specified date across all transit agencies in California. ZEB bonus credits do not count toward these milestones. Purchase of a cutaway bus, over-the-road bus, double-decker bus, or articulated bus may be deferred until either January 1, 2026 or until a model of a given type has passed the Altoona bus testing procedure and obtained a Bus Testing Report, regardless of if purchasing milestones are met or not.

ZEB Bonus Credits

Agencies may earn bonus credits for early acquisition of ZEBs, which may be used against future compliance requirements. To earn bonus credits, ZEBs must be placed into service according to the following schedule. Bonus credits expire on December 31, 2028.

Table 4 - ZEB Bonus Credits Applied to CARB ICT Transition Schedule

Technology	Placed in Service	ZEB Bonus Credit
BEB	Before January 1, 2018	1
FCEB	Before January 1, 2018	2
FCEB	January 1, 2018 to December 31, 2022	1

Since LAVTA does not plan to purchase any ZEBs until 2023, it will not be eligible to receive these credits for their purchases.

ZEB Rollout Plan

LAVTA is required to submit a ZEB Rollout Plan to CARB that has been approved by their governing board by July 1, 2023. ZEB Rollout Plans must include all of the following components:

- A goal of full transition to ZEBs by 2040 with careful planning that avoids early retirement of conventional internal combustion engine (ICE) buses;

- Identification of the types of ZEB technologies a transit agency is planning to deploy, such as battery-electric or fuel cell electric buses;
- A schedule for construction of facilities, infrastructure modifications, or upgrades including charging, fueling, and maintenance facilities to deploy and maintain ZEBs. This schedule must specify the general location of each facility, type of infrastructure, service capacity of an infrastructure, and a timeline for construction;
- A schedule for zero-emission and conventional ICE bus purchases and lease options. This schedule for bus purchases replacements must identify the bus types, fuel types, and number of buses;
- A schedule for conversion of conventional ICE buses to ZEBs, if any. This schedule for bus conversion must identify number of buses, bus types, the propulsion systems being removed and converted to;
- A description on how a transit agency plans to deploy ZEBs in disadvantaged communities as listed in the latest version of CalEnviroScreen at the time the Rollout Plan is submitted;
- A training plan and schedule for ZEB operators and maintenance and repair staff; and
- The identification of potential funding sources.

Exemptions

Agencies may request exemptions from ZEB purchase requirements in a given year due to circumstances beyond the transit agency's control. Acceptable circumstances include:

- Delay in bus delivery caused by setback of construction schedule of infrastructure needed for the ZEB;
- Available depot-charged BEBs cannot meet a transit agency's daily mileage needs;
- Available ZEBs do not have adequate gradeability performance to meet the transit agency's daily needs;
- When a required ZEB type for the applicable weight class [based on gross vehicle weight rating (GVWR)] is unavailable for purchase because the ZEB has not passed Altoona, cannot meet ADA requirements, or would violate any federal, state, or local regulations or ordinances;
- When a required ZEB type cannot be purchased by a transit agency due to financial hardship.

Reporting Requirements

Starting March 31, 2021 and continuing every year thereafter through March 31, 2050, each transit agency must submit an annual ICT ZEB compliance report by March 31 for the prior calendar year. The initial report must be submitted by March 31, 2021 and must include the number and information of active buses in the transit agency's fleet as of December 31, 2018.

2 ZEB Transition Planning

Methodology

This study uses CTE's ZEB Transition Planning Methodology, which is a complete set of analyses, used to inform agencies converting their fleets to zero-emission technology. The methodology consists of data collection and analysis and assessment stages; these stages are sequential and build upon findings in previous steps. The work steps specific to this study are outlined below:

1. Planning and Initiation
2. Requirements & Data Collection
3. Service Assessment
4. Fleet Assessment
5. Fuel Assessment
6. Facilities Assessment
7. Maintenance Assessment
8. Total Cost of Ownership Assessment

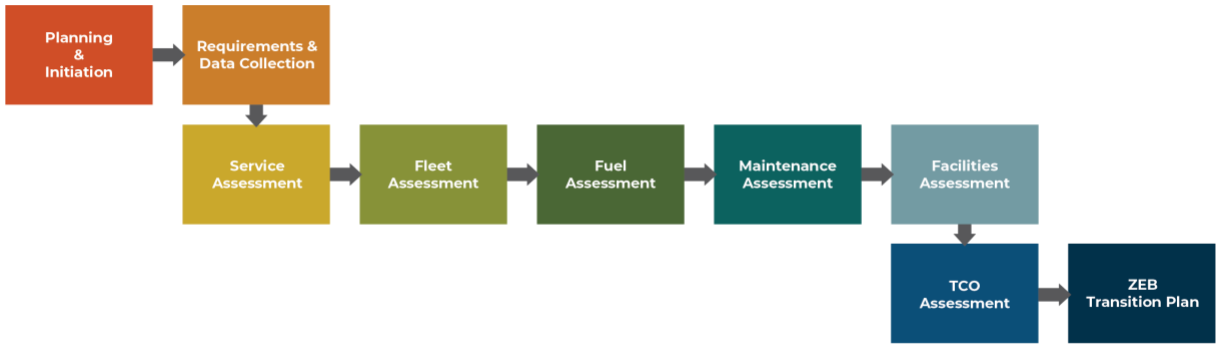

Figure 5 - CTE's ZEB Transition Study Methodology

The **Planning and Initiation** phase builds the administrative framework for the transition study. During this phase, the project team drafted the scope, approach, tasks, assignments and timeline for the project. CTE worked with LAVTA staff to plan the overall project scope and all deliverables throughout the full life of the study.

For the **Requirements & Data Collection,** CTE collected GPS data on selected LAVTA routes and used software models to estimate ZEB performance. The outputs from this modeling were used to estimate the achievability of serving every block in LAVTA's network using BEBs and FCEBs.

The **Service Assessment** phase initiated the data collection and technical analysis of the study. CTE met with LAVTA to define assumptions and requirements used throughout the study and to collect operational data. The results from the Service Assessment were used to guide ZEB procurement analysis in the Fleet Assessment and to determine energy requirements (depot charging, on-route charging, and/or hydrogen) in the Fuel Assessment.

The **Fleet Assessment** develops a projected timeline for replacing current buses with ZEBs that is consistent with the agency's fleet replacement plan. Multiple projection scenarios with different combinations of ZEB technologies are created. This assessment also includes a projection of fleet capital costs over the transition timeline, and it can be optimized for any state mandates like CARB's ICT regulation or agency goals such as minimizing cost or maximizing service levels.

The **Fuel Assessment** merges the results of the Service Assessment and Fleet Assessment to determine annual fuel requirements and associated costs. The Fuel Assessment calculates energy costs through the full transition timeline for each scenario, including the agency's current fossil-fuel buses. To more accurately estimate BEB charging costs, a focused Charging Analysis is performed to simulate daily system-wide charging use. As current technologies are phased out in later years of the transition, the Fuel Assessment calculates the increasing energy requirements for ZEBs. The Fuel Assessment also provides a total energy cost over the transition lifetime.

The **Facilities Assessment** determines the necessary infrastructure to support the projected zero-emission fleet based on results from the Fleet Assessment and Fuel Assessment. The Facilities Assessment is calculated for each scenario used in the Fleet and Fuel Assessments. The result shows quantities of hydrogen and battery-electric infrastructure and calculates associated costs.

The **Maintenance Assessment** calculates all projected fleet maintenance costs over the life of the project. This includes costs related to existing fossil-fuel buses remaining in the fleet, as well as new BEBs and FCEBs, calculated for each scenario.

The **Total Cost of Ownership Assessment** compiles results from the previous assessment stages and provides a comprehensive view of all associated costs, organized by scenario, over the transition lifetime.

Assessment Scenarios

The approach for this ZEB transition study is based on the creation and analysis of three scenarios, as well as a baseline:

0. Baseline
1. BEB Only
2. Mixed Fleet: BEB and FCEB
3. FCEB Only

Current battery electric bus technologies do not have the range to allow for a one-for-one replacement of all types of fossil-fuel buses. Technology and range improvements are expected; however, there are significant challenges to overcome, and the timeline to achieve the goal is uncertain. In many cases, if a transit agency were to maintain service levels after transitioning to a fleet of BEBs charged only at a depot, it would be necessary to replace conventional ICE buses at a 2:1 ratio to cover the range limitations and charging times of the new BEB fleet. Naturally, increasing fleet size to accommodate the 2:1 replacement ratio would result in

increased costs for purchasing, fueling, and maintaining additional buses and the additional infrastructure required to charge them. On-route charging provides an alternative to the larger fleet approach and, as such, the BEB Only scenario was developed to explore this alternative solution for deploying a ZEB fleet. In this scenario, BEBs are charged at the depots when not in-service and are charged on-route when necessary to complete service requirements.

The Mixed Fleet: BEB and FCEB scenario utilizes both battery electric and fuel cell electric technologies. The underlying assumption for the mixed scenario is that neither technology is suitable for 100% of the fleet replacement due to inherent constraints and that including both technologies allows for more flexibility. Additionally, using a mixed fleet of BEBs and FCEBs achieves a 100% zero-emission fleet without the need to add buses.

Finally, the FCEB Only scenario is based on the outputs of the Requirements Analysis, which found that FCEBs can meet all LAVTA's daily service requirements by block. This scenario examines the costs incurred by hydrogen fueling and transitioning to a 100% FCEB fleet.

Assessment Assumptions

Due to varying conditions over the course of a long-term fleet transition, it is necessary to establish a number of simplifying assumptions. These assumptions were developed based on discussions between CTE and LAVTA:

- Transition period is defined as achieving 100% ZEB fleet purchasing by 2040 to comply with the CARB ICT regulation;
- No change in fleet size will occur during the transition period except where necessary to maintain route achievability;
- Agency's planned procurements are included;
- A 12-year bus lifespan is assumed for future heavy-duty transit buses (i.e. buses are retired after 12 years of service);
- Costs are expressed in 2021 dollars with no escalation, and prices remain constant for the entire transition period;
- Current battery sizes for BEBs and fuel tank sizes for FCEBs are based on existing specifications for buses that have completed Altoona testing;
- A 5% improvement in battery capacity (for BEB) and efficiency (for FCEB) occurs every two years;
- A battery replacement will occur at the midlife of each heavy-duty transit BEB (six years), but the cost of this maintenance is included in the extended warranty cost; and
- A battery replacement and fuel-cell overhaul will occur at the midlife of each heavy-duty transit FCEB (six years) and the cost of this battery maintenance will also be included in the extended warranty. This cost is factored into the estimated maintenance costs as a sum expended in the year of vehicle purchase.

BEB-Specific Assumptions

Research by the US Department of Energy (DOE) suggests that battery density for electric vehicles has improved by an average of 5% each year.[2] For this study, considering the extended period of a complete fleet transition through 2040, CTE assumes a more conservative 5% improvement of battery density every two years. If the trend continues, buses will continue to increase the amount of energy they carry without incurring a weight penalty or reduction in passenger capacity.

Initially, as more BEBs entered the market, many believed that the costs of BEBs would continue to decrease due to higher production volumes and competition from new vendors. While cost decreases did occur for a time, costs appear to have leveled out in recent years. However, it should be also noted that vendors have added more battery storage over the same time period without increasing base costs.

The terms "fuel" and "energy" are used interchangeably in this assessment, as ZEB technologies do not always require traditional liquid fuel. In the case of BEBs, "fuel" is electricity and costs include energy, demand and other utility charges.

BEB labor and maintenance costs come from an analysis completed by the U.S. DOE National Renewable Laboratory (NREL).[3]

For infrastructure cost estimates, CTE and AECOM developed estimates for components of each project type to build up a total cost estimate by project type. Assumptions used for BEB infrastructure are shown in **Table 26**. Conceptual BEB Scenario layouts, prepared by AECOM, are provided in **Appendix A1** – LAVTA Depot Site Plans, **.**

FCEB-Specific Assumptions

FCEBs do not have the same range constraints as BEBs. Alameda-Contra Costa Transit District (AC Transit) and Orange County Transportation Authority (OCTA) have reported operational ranges for FCEBs up to 350 miles. Typically, FCEBs can more readily serve an agency's current blocks on a one-to-one basis with fossil fuel buses; however, costs of hydrogen fuel and bus capital costs create financial barriers to entry. This study assumes 5% bi-annual improvement in hydrogen tank size as a proxy for other component improvements such as battery capacity, motor efficiency, and fuel cell efficiency.

FCEB prices are expected to decrease over time as bus orders increase; however, CTE does not currently have an adequate basis to assume reduced costs for future FCEB purchases.

FCEBs are similar to fossil fuel buses in that they are fueled by a gaseous fuel— hydrogen—at a dispenser. In addition to the cost of the fuel itself, however, there are additional operational

[2] U.S. Department of Energy; LONG-RANGE, LOW-COST ELECTRIC VEHICLES ENABLED BY ROBUST ENERGY STORAGE, MRS Energy & Sustainability, Volume 2, Wednesday, September 9, 2015; https://arpa-e.energy.gov/?q=publications/long-range-low-cost-electric-vehicles-enabled-robust-energy-storage

[3] Eudy, Leslie and Matthew Jeffers. 2019. Foothill Transit Agency Battery Electric Bus Progress Report: Data Period Focus: Jul.2018 through Dec. 2018. Golden, CO: National Renewable Energy Laboratory. NREL/PR-5400-72209. https://afdc.energy.gov/files/u/publication/foothill_transit_beb_progress_rpt_5-2019.pdf.

costs for a hydrogen fueling station that must be considered. The fuel prices used in CTE's assessment were based on current prices at OCTA. These prices include fueling infrastructure maintenance, and delivery fees. CARB funded projects are also subject to a 33% renewables requirement, which mandates that 33% of the hydrogen delivered to OCTA must be produced with renewable energy, which further increases this price.

There is limited information on maintenance costs for FCEBs due to the limited number of buses in operation in the United States. Much of the information currently available comes from AC Transit, which has the largest FCEB fleet in the country. Unfortunately, many of these buses are older models that are past their warranty period and require expensive maintenance service from their European manufacturer, thus skewing the available dataset toward more expensive cases. CTE decided to model FCEB maintenance costs based on OCTA's FCEB fleet of 10 New Flyer buses during their first year of operation.

3 Requirements Analysis

Baseline Data Collection

Understanding the key elements of LAVTA's service is essential to evaluating the costs of a complete transition to a zero-emission fleet. LAVTA staff provided key data on current LAVTA service including the following:

- Fleet composition: vehicle propulsion types and lengths currently in operation
- Route and block information including distances and trip frequency
- Mileage and fuel consumption
- Maintenance costs

Fleet Composition

In 2020, the LAVTA bus fleet totaled 60 diesel hybrid buses including a six-bus contingency fleet. The fleet provided service on 31 fixed routes. A breakdown of the fleet by size is shown in **Table 5**. Bus services operate out of one depot, but since that depot will be moving, it is referred to as "Rutan" while the buses operate out of the Rutan Court depot and "Atlantis" when the ZEBs will operate out of the new facility at Atlantis Court. For the purposes of this document, that is assumed to be by 2028. Operations, maintenance, and fueling functions are performed at the depot.

Table 5 - Fleet Breakdown by Depot and Length

Depot	Bus Length (ft)			Total
	30'	35'	40'	
Rutan	17	10	33	60
Total	17	10	33	60

Routes and Blocks

LAVTA's current service consists of 31 routes run on 102 blocks, as detailed in

Table 6.

Table 6 – Count of Blocks by Depot and Bus Length

Depot	Bus Length (ft)			Total
	30'	35'	40'	
Rutan	18	17	67	102
Total	18	17	67	102

Miles and Fuel Consumption

Data on LAVTA's current fuel use was collected and used to estimate energy costs throughout the transition period. This study assumes that no cost escalation for fuel occurs throughout the transition period. Annual fleet mileage and fuel use are shown in **Table 7** and **Table 8**.

Table 7 – Annual Service Miles by Depot and Bus Length

Depot	Bus Length (ft)			Total
	30'	35'	40'	
Rutan	583,020	523,565	983,851	2,090,436
Total	583,020	523,565	983,851	2,090,436

Table 8 – Annual Diesel Consumption by Depot and Bus Length [Diesel Gas Equivalence (DGE)]

Depot	Bus Length (ft)			Total (DGE)
	30'	35'	40'	
Rutan	111,029	113,724	192,186	416,938
Total	111,029	113,724	192,186	416,938

4 Service Assessment

The Service Assessment analyzes the feasibility of maintaining LAVTA's current level of service using BEB and FCEB buses. This assessment does not incorporate any plans for expansions except where necessary to maintain block achievability. The main focus of the Service

Assessment is the Block Analysis, which analyzes bus range limitations to determine if ZEBs could meet the service requirements of the blocks within the transition period. The energy needed to complete a block is compared to the available energy for the prospective bus type that is planned for the block. If the prospective bus's available energy exceeds the block's required energy, then that block is considered achievable for that ZEB type. The Service Assessment also outputs a timeline for when blocks become achievable for zero-emission buses as technology improves. This information is used to then inform ZEB procurements in the Fleet Assessment.

Bus efficiency and range are primarily driven by bus specifications; however, both metrics can be impacted by a number of variables including the route profile (i.e., distance, dwell time, acceleration, sustained top speed over distance, average speed, traffic conditions), topography (i.e. grades), climate (i.e. temperature), driver behavior, and operational conditions (e.g. passenger loads and auxiliary loads). As such, efficiency and range of a given BEB model can vary dramatically from one agency to another. Therefore, it is critical to determine efficiency and range estimates that are based on an accurate representation of LAVTA's operating conditions.

The first task in the Service Assessment is to develop route and bus models to run operating simulations for representative LAVTA routes. Rather than collecting data from all of LAVTA's routes, CTE used a sampling approach in which representative sample routes were identified based on topography and average speed characteristics. CTE then collected GPS data from 8 LAVTA routes that were identified for sampling. GPS data includes time, distance, bus speed, bus acceleration, GPS coordinates, and roadway grade. These variables were used to develop the route model. CTE used component-level specifications and the collected route data to develop a baseline performance model by simulating the operation of an electric bus on each route. Collecting data on and modeling every route in LAVTA's network would be ideal; however, this is impractical due to the amount of time and labor this approach would require.

The modeling outputs of the sample routes were then applied to all routes and blocks that share the same characteristics. Routes selected for the analysis are included in **Table 9** below. CTE uses Autonomie, a powertrain simulation software program developed by Argonne National Labs for the heavy-duty trucking and automotive industry. Within Autonomie, CTE modified software parameters to assess energy efficiencies, energy consumption, and range projections for electric buses specifically.

Table 9 – Selected Routes for Modeling

Depot	Hills/ Low Speed	Hills/High Speed	Flat/Low Speed	Flat/High Speed	Count
Rutan	503, 611		2, 8, 14, 30	70, 580	8
Count	**2**	**0**	4	2	8

The route modeling includes analysis of varying passenger load, accessory load, and battery degradation to estimate real-world bus performance, fuel efficiency, and range. The GPS data from routes and the specifications for each of the bus models are used to simulate operation on

each type of route. The models were run with varying loads to represent "nominal" and "strenuous" loading conditions. Nominal loading conditions assume average passenger loads and moderate temperature over the course of the day, which places marginal demands on the motor and heating, ventilation, and air conditioning (HVAC) system. Strenuous loading conditions assume high or maximum passenger loading and near-maximum output of the HVAC system. This nominal/strenuous approach offers a range of operating efficiencies to use for estimating average annual energy use (nominal) or planning minimum service demands (strenuous).

Route modeling ultimately provides an average energy use per mile (kilowatt-hour/mile [kWh/mi]) for each combination of route, bus size, and load case. System-wide energy use is estimated in subsequent assessments, using the results shown in

Table 10.

Table 10 – Modeling Results Summary

Bus Length [ft]	Route	Nominal Efficiency [kWh/mi]	Strenuous Efficiency [kWh/mi]
40	2	2.05	2.70
	8	2.02	2.78
	14	1.90	2.52
	30X	2.16	2.91
	70X	2.24	2.58
	503	2.14	2.86
	580X	2.14	2.59
	611	1.61	2.28

The Block Analysis, using the assumed 5% improvement in battery capacity or hydrogen storage capacity every other year, determines the timeline for when routes and blocks become achievable for BEBs and FCEBs. This information is then used to inform ZEB procurement decisions in the Fleet Assessment. Overall, the block analysis helps to determine when, or if, a full transition to BEBs or FCEBs may be feasible. Results from this analysis are also used to determine the specific energy requirements and develop the estimated costs to operate the ZEBs in the Fuel Assessment.

Results from the block analysis are included in **Figure 6** below.

The BEB achievability in **Figure 6** shows that, by 2040, 72% of LAVTA's blocks can be completed by 40-foot BEBs and that all blocks are achievable with FCEBs throughout the transition period. This analysis assumes that FCEBs can already complete any block under 350 total miles.

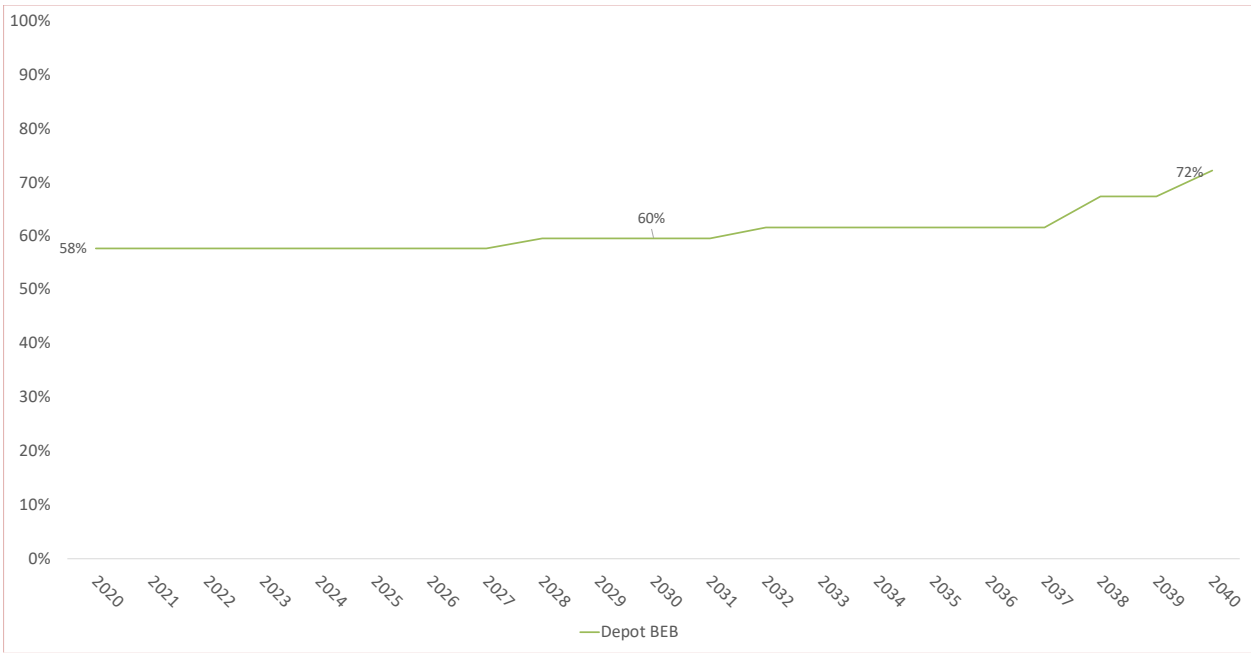

Figure 6 - 40' BEB Block Achievability Percentage by Year

While routes and block schedules are unlikely to remain the same over the course of the transition period, these projections assume the blocks maintain a similar distribution of distance, relative speeds, and elevation changes because LAVTA maintains service to similar destinations within the city. This core assumption affects energy use estimates and block achievability in each year.

Another factor affecting block achievability is battery degradation. BEB range is negatively impacted by battery degradation over time. A BEB may be placed in service on a given block with beginning-of-life batteries; however, it may not be able to complete the entire block at some point in the future before the batteries reach end-of-life. End-of-life is typically defined as when batteries reach 80% of available service energy. Conceptually, older buses can be moved to shorter, less demanding blocks and newer buses can be assigned to longer, more demanding blocks. LAVTA can rotate the fleet to meet demand, assuming there is a steady procurement of BEBs each year to match service requirements.

5 Fleet Assessment

The goal of the Fleet Assessment is to determine the technology type and quantity of zero-emission buses, as well as the schedule and cost to transition the entire fleet to zero emissions. Results from the Service Assessment are integrated with LAVTA's current fleet replacement plan and purchase schedule to produce two main outputs: a projected bus replacement timeline through the end of the transition period and the total capital costs of those replacements.

Cost Assumptions

CTE and LAVTA developed cost assumptions for each bus length and technology type (e.g. CNG, gasoline hybrid, BEB, FCEB). Key assumptions for bus costs for the LAVTA ZEB Transition Study are as follows:

- Bus costs are based on LAVTA's most recent procurement price and the Metropolitan Transit Commission (MTC) Pricelist
- Bus costs are inclusive of estimates for configurable options and taxes
- Future bus costs are based on year 2020 prices

Table 11 provides estimated bus costs used in the analysis.

Table 11 – Fleet Assessment Cost Assumptions

Length [ft]	BEB	FCEB
40'	$1,270,577	$1,412,602

Note: Based on MTC Pricelist

Baseline

In the Baseline Scenario, LAVTA continues to replace retired buses with diesel-hybrid buses on a 12-year replacement cycle. This scenario illustrates the costs LAVTA would expect over the 20-year period if it purchased no ZEBs. **Figure 7** shows the number of diesel-hybrid buses that would be purchased each year through 2040 in this scenario.

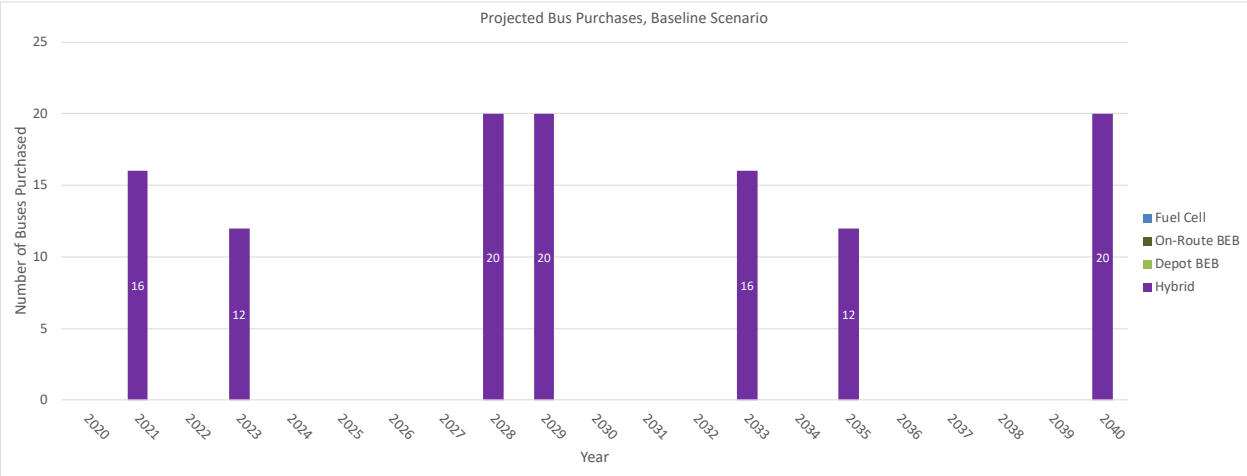

Figure 7 - Projected Bus Purchases, Baseline Scenario

Figure 8 depicts the annual fleet composition through 2040 for the Baseline scenario; the fleet remains composed of diesel-hybrids over the 20-year period.

Figure 8 - Annual Fleet Composition, Baseline Scenario

Figure 9 shows the annual total bus capital costs for the diesel-hybrid buses purchased in each year in the Baseline Scenario.

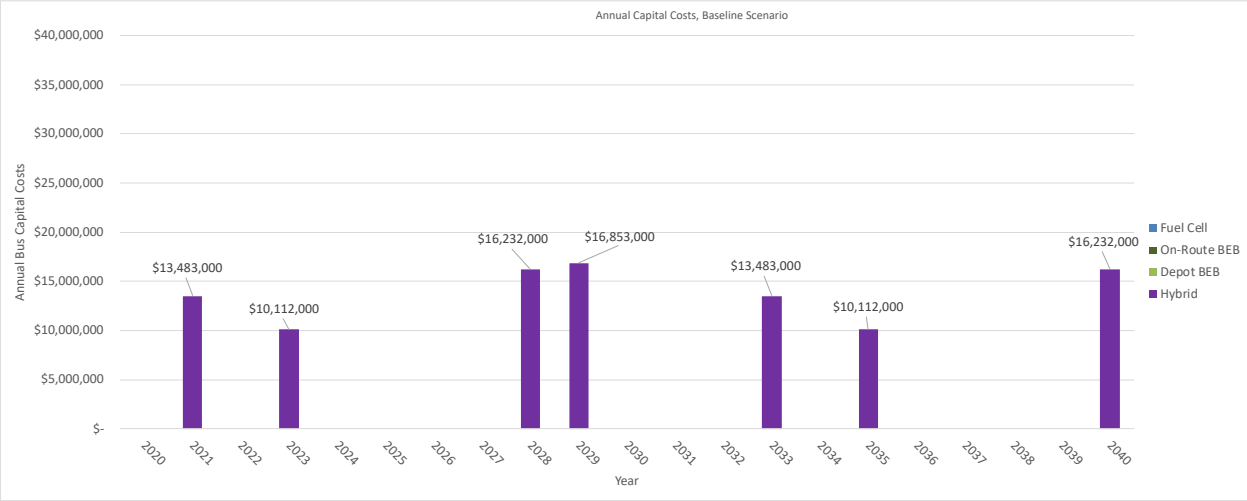

Figure 9 - Annual Capital Costs, Baseline Scenario

BEB Only

On-route charging allows an agency to add energy to buses while the bus is in service, complementing depot charging and improving block achievability for BEBs. On-route charging removes the need to travel extra distance and take extra time to charge at a depot. Based on LAVTA's Service Assessment, on-route charging would be required to accommodate an all-BEB fleet without increasing fleet size by extending the range of on-route charged buses indefinitely.

The figures below show projected purchases, annual fleet composition, and annual total capital costs for the BEB Only scenario. By 2035, the addition of on-route charging allows LAVTA to replace 100% of the fleet with BEBs without needing any additional buses.

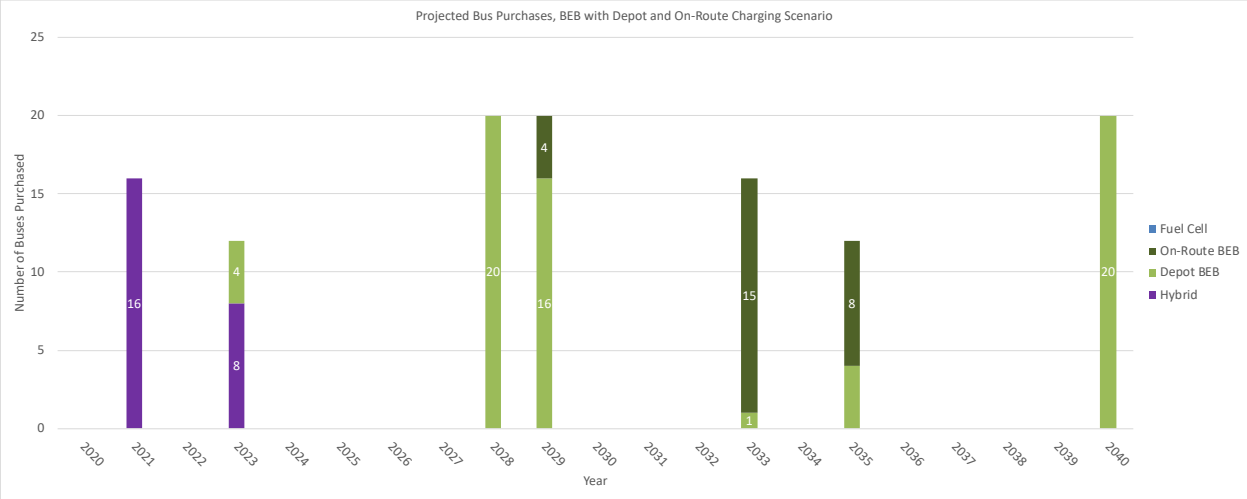

Figure 10 – Projected Bus Purchases, BEB Only Scenario

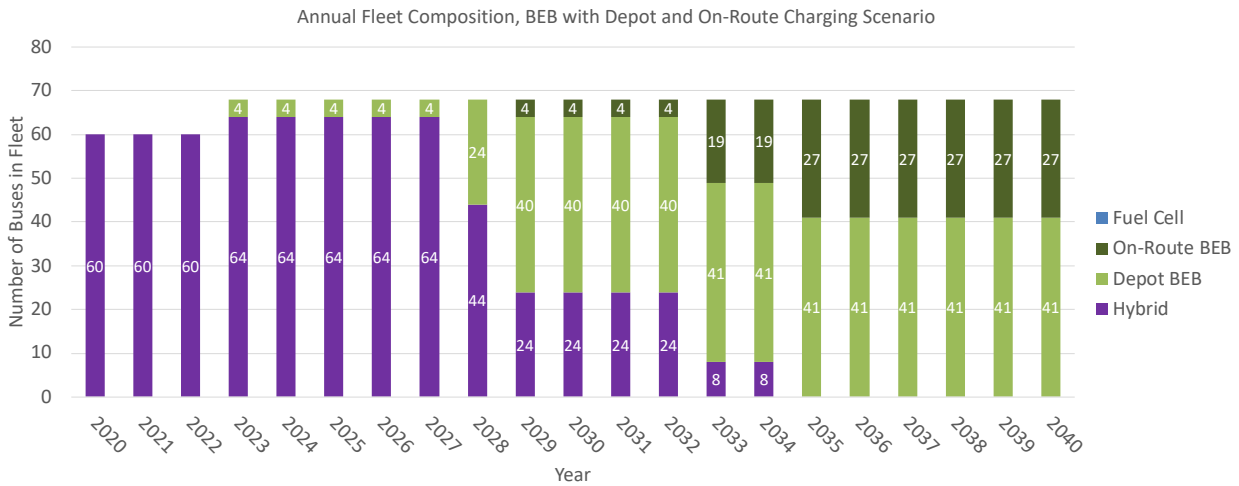

Figure 11 – Annual Fleet Composition, BEB Only Scenario

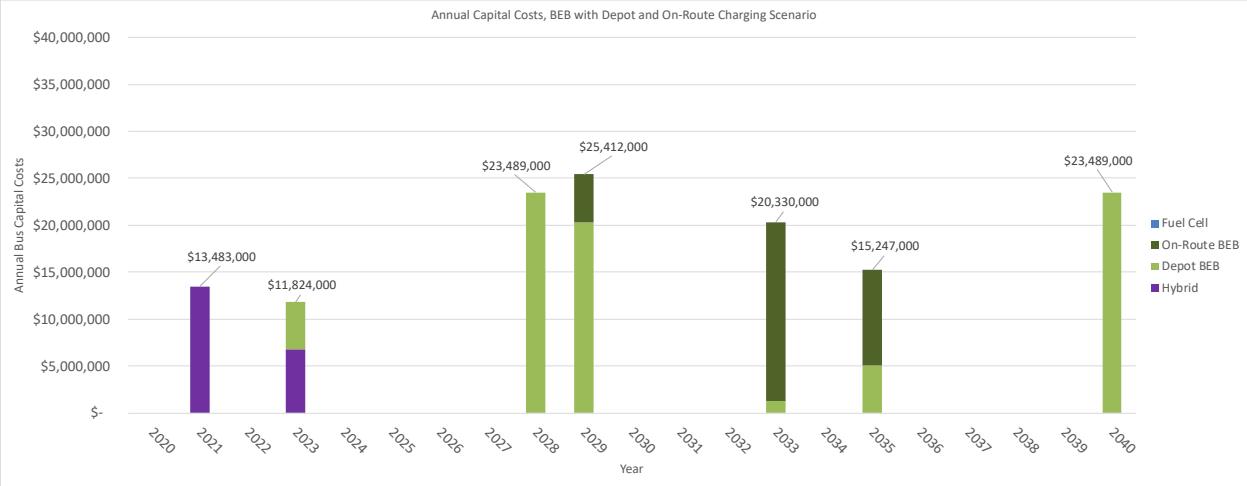

Figure 12 – Annual Capital Costs, BEB Only Scenario

Mixed Fleet: BEB and FCEB

In the Mixed Fleet: BEB and FCEB scenario, LAVTA operates a mixed-technology depot and fleet. The longest blocks are run by FCEBs, allowing LAVTA to take advantage of the greater range of FCEBs. BEBs are then able to run the less demanding routes. Under this approach, LAVTA only incurs the higher costs of FCEBs where necessary to maintain block achievability.

The figures below show projected purchases, annual fleet composition, and annual total capital costs for the Mixed Fleet: BEB and FCEB fleet.

By 2035, LAVTA would be able to replace 100% of its fleet with BEB and FCEBs.

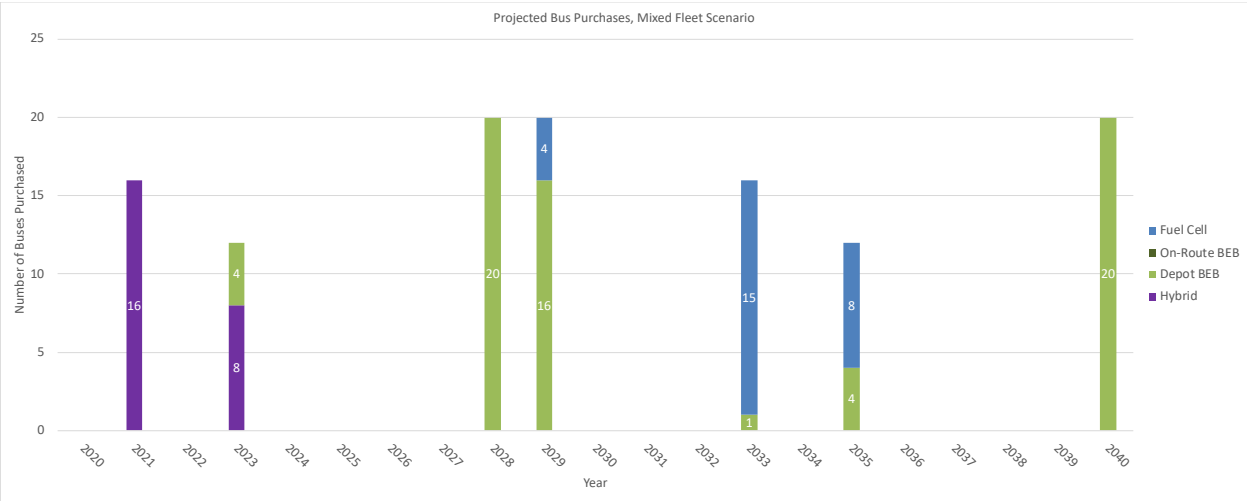

Figure 13 – Projected Bus Purchases, Mixed Fleet Scenario

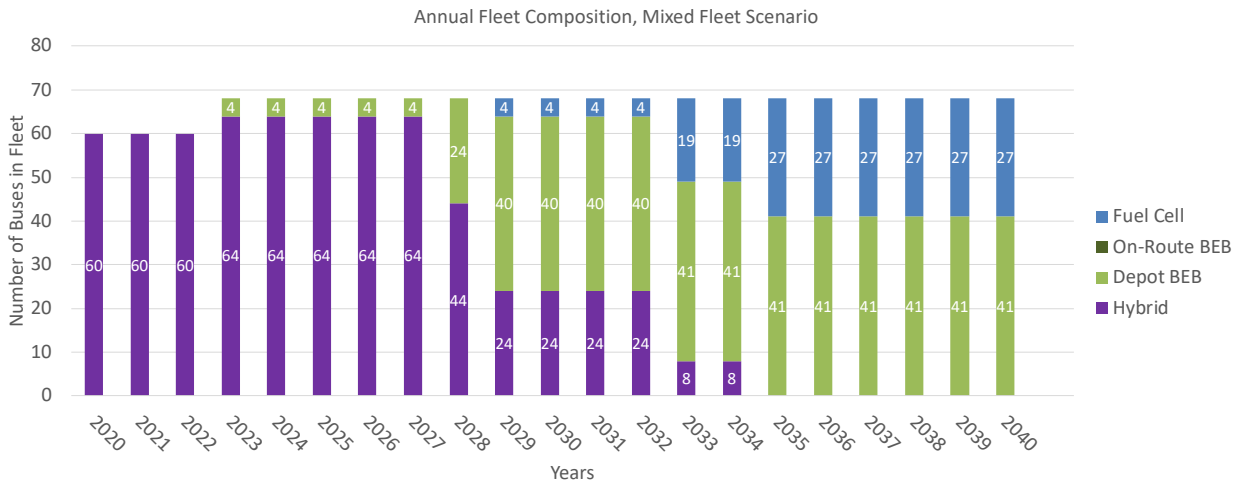

Figure 14 – Annual Fleet Composition, Mixed Fleet Scenario

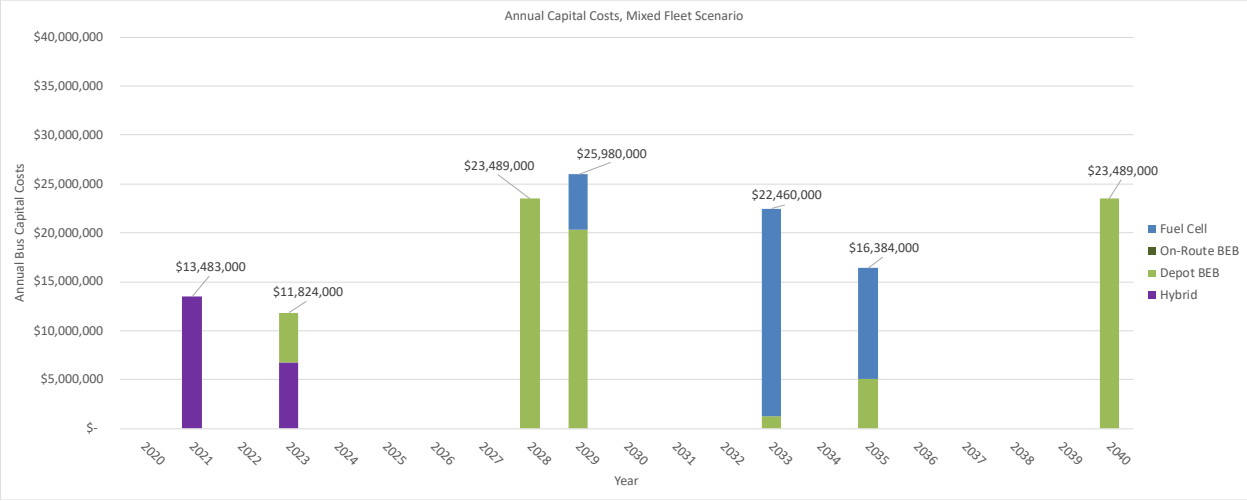

Figure 15 – Annual Capital Costs, Mixed Fleet Scenario

FCEB Only

FCEBs do not have the same range constraints as BEBs. FCEBs are assumed to be able to achieve any block that is up to 350 miles long. Analysis results show that all of LAVTA's blocks can be served by an FCEB on a one-for-one replacement basis to diesel-hybrids by the end of the transition period.

The figures below show projected purchases, annual fleet composition, and annual total capital costs for the FCEB Only scenario.

By 2035, LAVTA is able to replace 100% of its fleet with FCEBs. An accelerated purchasing schedule that illustrates purchasing only FCEBs in 2023 and the additional costs incurred can be found in **Addenda –** Accelerated FCEB Purchase Cost Information.

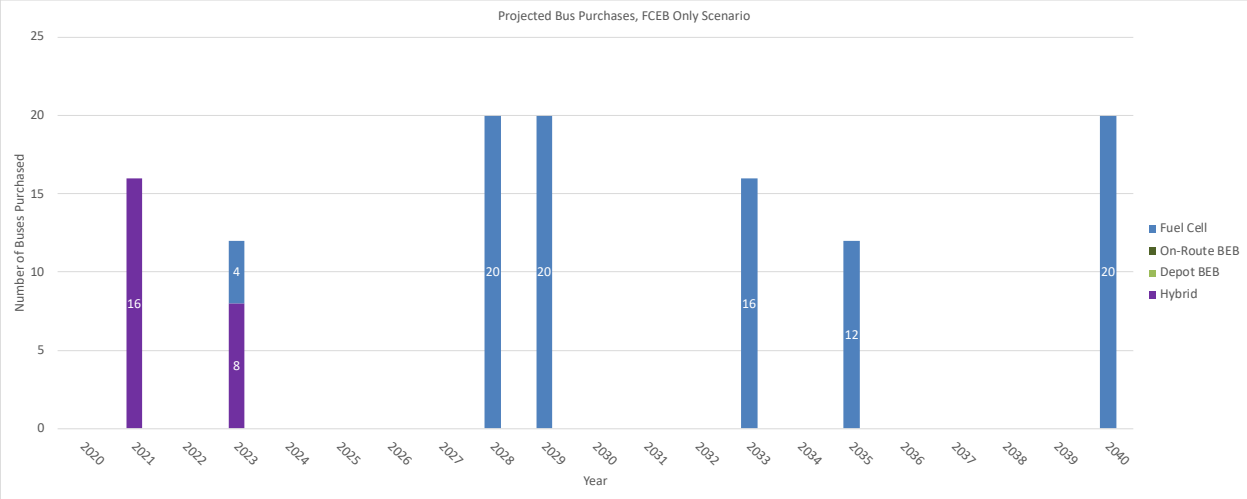

Figure 16 – Projected Bus Purchases, FCEB Only Scenario

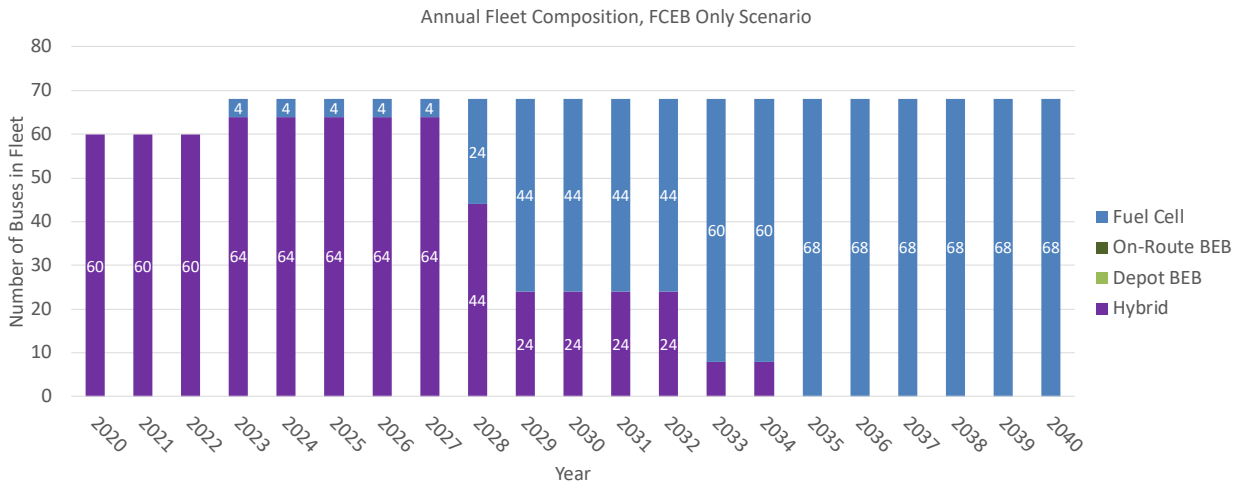

Figure 17 – Annual Fleet Composition, FCEB Only Scenario

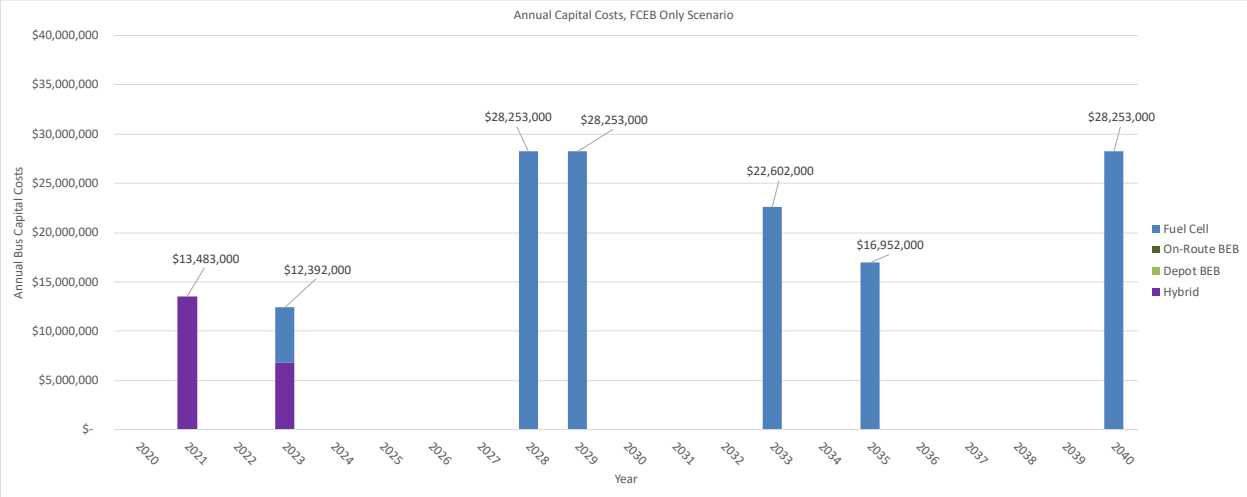

Figure 18 - Annual Capital Costs, FCEB Only Scenario

Fleet Assessment Cost Comparison

The transition and fleet composition schedules were used to develop the total capital cost for bus purchases through the transition period. **Figure 19** shows the cumulative bus purchase costs for each scenario.

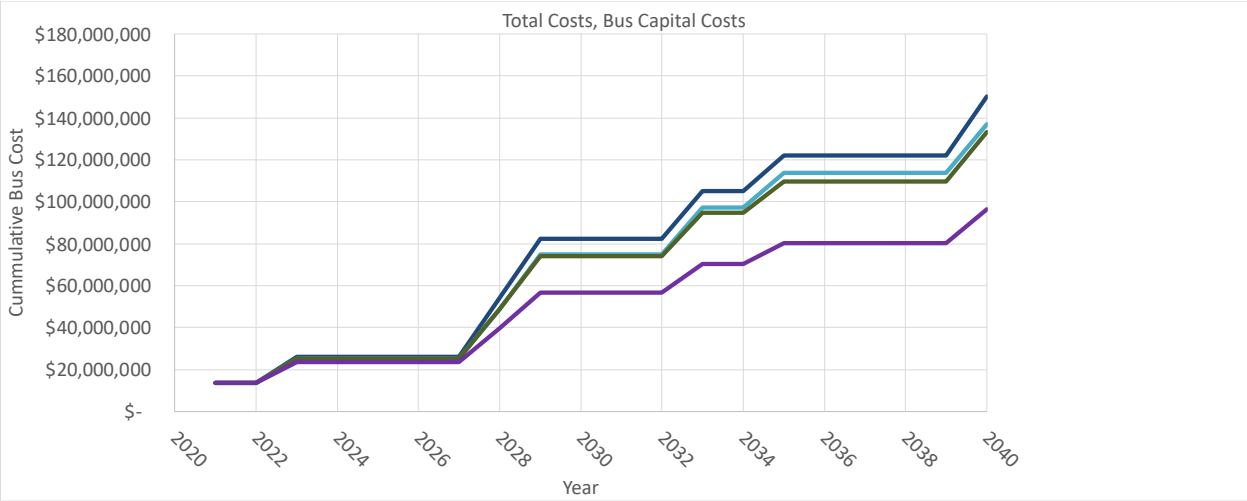

Figure 19 - Cumulative Bus Capital Costs, Fleet Assessment

By the end of the transition period, the cumulative bus costs vary substantially according to the technology selected, although all scenarios result in 100% of the fleet transitioning to zero-emission by 2040. **Table 12** provides the combined total costs for each transition scenario and the percentage of ZEBs present in the fleet in 2040 for the scenario.

Table 12 - Total Bus Capital Costs, Fleet Assessment

Scenario	Cost	% ZEB in 2040
Baseline	$ 95,503,000	0%
BEB Only	$ 133,271,000	100%
Mixed Fleet: BEB and FCEB	$ 137,105,000	100%
FCEB Only	$ 150,182,000	100%

6 Fuel Assessment

The Fuel Assessment estimates fuel consumption and cost for each of the fuel technologies—diesel, electric and hydrogen—studied in the relevant scenario. This assessment calculates fuel costs using 2020 prices.

Using ZEB performance data from the route simulation, CTE analyzed expected bus performance on each block in LAVTA's service catalog to calculate daily fuel required to complete that block. CTE completed this analysis for each of the four fleet scenarios, estimating the fuel costs unique to each fleet projection throughout the transition period.

The Fuel Assessment includes operation and maintenance costs for fueling infrastructure for both BEBs and FCEBs. Fuel cost estimates are based on the assumptions shown in **Table 13** below.

Table 13 – Fuel Cost Assumptions

Fuel	Cost	Source
Diesel	$2.24/DGE	LAVTA-contracted rate
Hydrogen (trucked)	$7.95/kg	Contracted rate at OCTA
Electricity	Varies	PG&E Commercial EV Tariff Schedule

The primary source of energy for a BEB comes from the local electrical grid. Utility companies typically charge separate rates for total electrical energy used (kilowatt-hours (kWh) or megawatt-hours (MWh)) and for peak power demand (kilowatts (kW) or megawatts (MW)) on a monthly basis. Peak demand is defined as the maximum amount of energy that a customer pulls from the grid for any 15-minute window within a month. Demand charges are then applied on a per kW basis to that maximum demand in addition to per kWh costs for energy consumption. As a transit agency adds more buses and chargers, the agency's energy consumption and the peak power demand both increase. Rates also vary throughout the year and throughout the day, making costs highly variable if charging is not managed. Charge management includes strategies like charging buses during times of day at which rates are lower, avoiding demand charges, and spreading out the number of buses charging at once to minimize increases in peak power demand.

Table 14 shows a summary of the PG&E Commercial EV rate schedule used in the Fuel Assessment to estimate electrical costs for BEBs. These rates are averaged from monthly rates and are a summarized version of PG&E's full rate schedule. Since this is a time-of-use (TOU) rate, the rate per kWh changes based on the time of day and year that the kWh was consumed. Since it is assumed that depot charged buses would fuel entirely in the Off-Peak hours between 9:00pm and 9:00am, the depot charge rate is the same as the Off-Peak rate. Since the On-Route charged buses operate partially in the On-Peak period, the On-Route per kWh rate is slightly higher. Most TOU rates also include a demand charge, which is dependent on the maximum demand that the meter measures in a given month. For PG&E's Commercial EV Rate, however, there is a subscription fee of $95.56/50kW of demand, which would apply to the demand at the depot, as well as at each of the On-Route charging stations. The depot charge rate and on-route charge rate included in the table represent the average cost per kilowatt-hour (kWh) rate expected for LAVTA.

Table 14 – PG&E Rate Schedule

Electric Utility Rates	Per meter charge	NA		
		summer	winter	annual
	On Peak (per kWh)	$0.35	$0.35	$0.35
	Off-Peak (per kWh)	$0.14	$0.14	$0.14
	Super Off (per kWh)	$0.11	$0.11	$0.11
	Depot charge rate	$0.14		
	On-Route charge rate	$0.19		
	Depot Demand Charge (per 50kW/month)	$95.56		
	On-Route Demand charge (per 50kW/month)	$96.56		

Charging Analysis

To accurately estimate energy consumption, peak power demand, and resulting costs, charging simulations at the depot for each year of the transition were conducted. Electrical energy consumption and peak power demand were estimated based on current block schedules and projections of BEB purchases. CTE then used PG&E tariff schedules to calculate the annual cost of charging. This annual cost is evaluated for each year of the study (2020–2040) to obtain a total charging cost of BEBs with depot charging for the transition period. This estimate of total charging cost is used as the total fuel cost for the BEB Only scenario and is used in the other

fleet scenarios, where relevant, in addition to on-route charging costs, hydrogen fuel costs, or fossil-fuel costs.

The local utility, PG&E, calculates total energy costs, measured per kWh, using a time-of-use rate (TOU), as shown in **Table 14**. Ideally, buses would all charge exclusively in the least expensive Super Off-Peak and Off-Peak times for the lowest overall cost, which the buses at LAVTA should be able to achieve by charging at night.

Hydrogen Pricing Sensitivity Analysis

Although CTE assumes pricing remains at 2020 levels throughout the ZEB transition period, a sensitivity analysis was conducted for LAVTA regarding hydrogen pricing because it is widely believed that these prices will fall over time. The high end of the expected price is the current price paid by OCTA ($7.95/kg) and the bottom rate was estimated based on NREL and DOE projections at $5.50.[4,5] This pricing sensitivity is shown in the summary and total estimates for the fuel cell scenarios in **Figure 35**.

Low Carbon Fuel Standard Credits

For the zero-emission fleet scenarios, CTE included an estimation of the fuel cost reductions LAVTA would receive if it engages in CARB's Low Carbon Fuel Standard (LCFS) credit program. The LCFS program aims to reduce carbon emissions by setting carbon emissions intensity goals for the transportation sector and then reducing that limit over time. The current program extends through 2030 but is expected to be renewed within the next few years. In the LCFS program, one credit is equivalent to one metric ton of carbon dioxide reduction. Although this program is optional, these credits would allow LAVTA to greatly reduce their expected fuel costs. A graph illustrating an estimate of the potential for each scenario to generate LCFS credits will follow the Fuel Assessment graphs for each scenario; however, since the exact credit revenue would be difficult to predict at this stage, especially considering the uncertainty of potential hydrogen fuel pathways for LAVTA, only the initial Fuel Assessment values were included in the Total Cost Analysis. The discussion of LCFS credits is included illustrate the financial impact participating in the LCFS credit trading program could have on LAVTA's fuel costs and the state incentives related to zero-emission technology deployments.

Baseline

Figure 20 depicts energy consumption by fuel type over the transition period for the Baseline scenario. In this scenario, the fleet remains composed of only diesel-hybrid buses. Fleet energy use remains constant over the entire period at around 0.4 million DGE.

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[4] Melaina, M. and Penev, M. 2013. Hydrogen Station Cost Estimates Comparing Hydrogen Station Cost Calculator Results with Recent Estimates. Golden, CO: National Renewable Energy Laboratory. NREL/TP-5400-56412 https://www.nrel.gov/docs/fy13osti/56412.pdf

[5] Hydrogen Production Tech Team Roadmap. 2017. U.S. DRIVE (Driving Research and Innovation for Vehicle efficiency and Energy sustainability). Washington, DC: Department of Energy. https://www.energy.gov/sites/prod/files/2017/11/f46/HPTT%20Roadmap%20FY17%20Final_Nov%202017.pdf

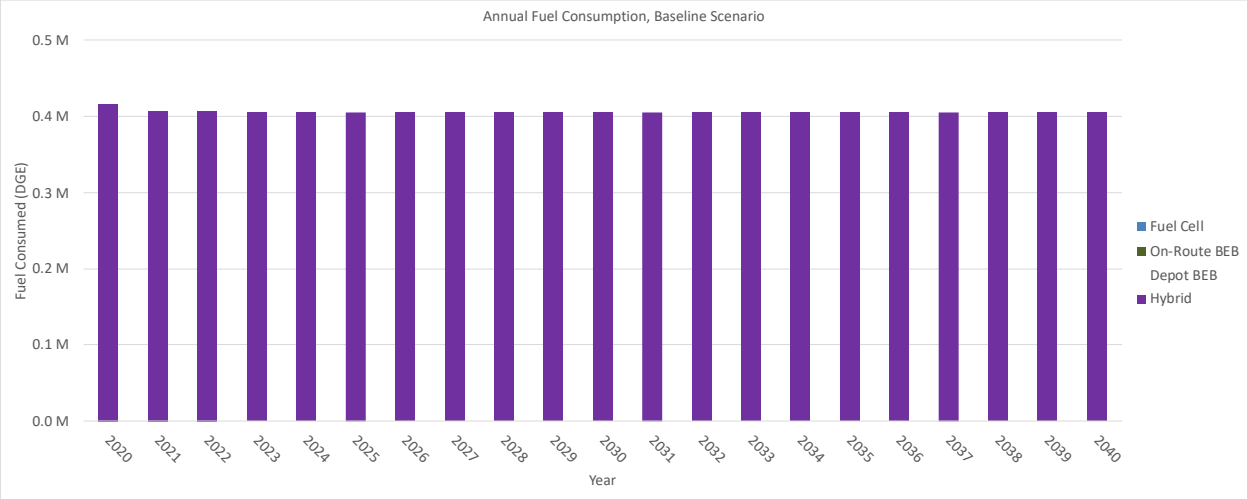


Figure 20 – Annual Fuel Consumption, Baseline Scenario

Figure 21 shows the annual fuel costs for each fuel type in the Baseline scenario, based on the consumption quantities shown in **Figure 20**. Total estimated fuel costs in 2040 are approximately $0.9 million. Since this scenario uses only diesel hybrids, the Baseline scenario fleet would not be eligible for LCFS credits.

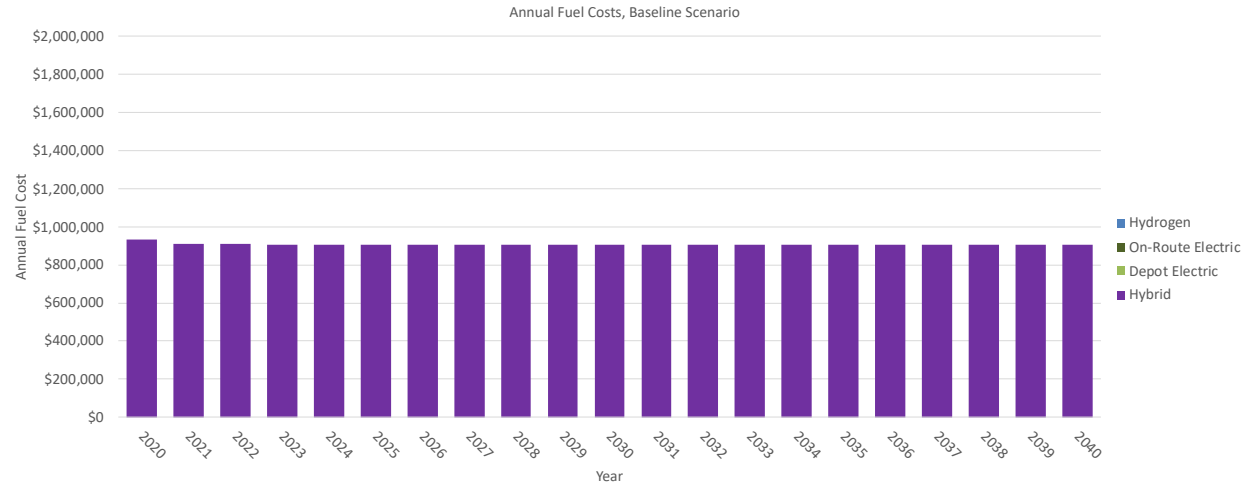


Figure 21 – Annual Fuel Costs, Baseline Scenario

BEB Only

The BEB Only scenario models a transition to an all-BEB fleet that employs depot-charging and on-route charging to extend bus range. The fuel costs for the BEB Only scenario are based on three key assumptions:

1. The total number of buses in the fleet does not increase.
2. The buses that are charged on-route incur additional demand charges and operate partially during peak time-of-use rates, resulting in on-route energy charges that are higher than depot energy charges.
3. The buses are assumed to charge fully at the depot and only require enough charging on-route to make up the difference between the battery capacity and the block demand. The rate for on-route energy consumption is only applied to the portion of the block's energy demand that exceeds the battery capacity of the bus.

Because bus replacements are based on block achievability, there may be instances where block coverage is insufficient and depot-charged BEBs cannot meet service requirements. In this scenario, on-route chargers are used to supplement depot charging to extend the range of buses, thus allowing the achievability of a 100% ZEB fleet. On-route charging allows an agency to add energy to buses while in service, providing the additional energy necessary to complete a block without having to travel the extra distance and take the extra time to return to a depot for charging.

Figure 22 depicts energy consumption for each fuel type over the transition period, assuming a combination of depot-charged and on-route charged BEBs. Legacy fuels are phased out as electricity consumption increases, reflecting an increasing number of BEBs in the fleet. Fleet energy use is reduced from about 0.4 million DGE in 2020 to just over 0.1 million DGE in 2040, an approximately 75% decrease.

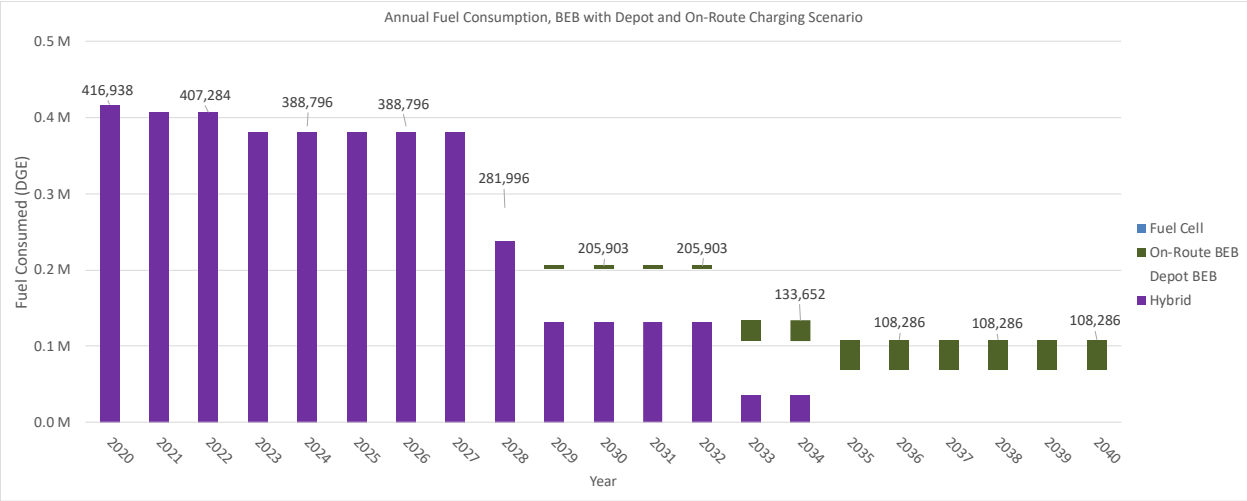


Figure 22 – Annual Fuel Consumption, BEB Only Scenario

Figure 23 shows the annual costs for each fuel type based on the quantities in **Figure 22**. Total estimated fuel costs in 2040 are approximately $1.15 million. The buses charged on-route incur additional demand charges and electricity use costs are slightly higher for on-route charging. These additional costs have been included in the figure below.

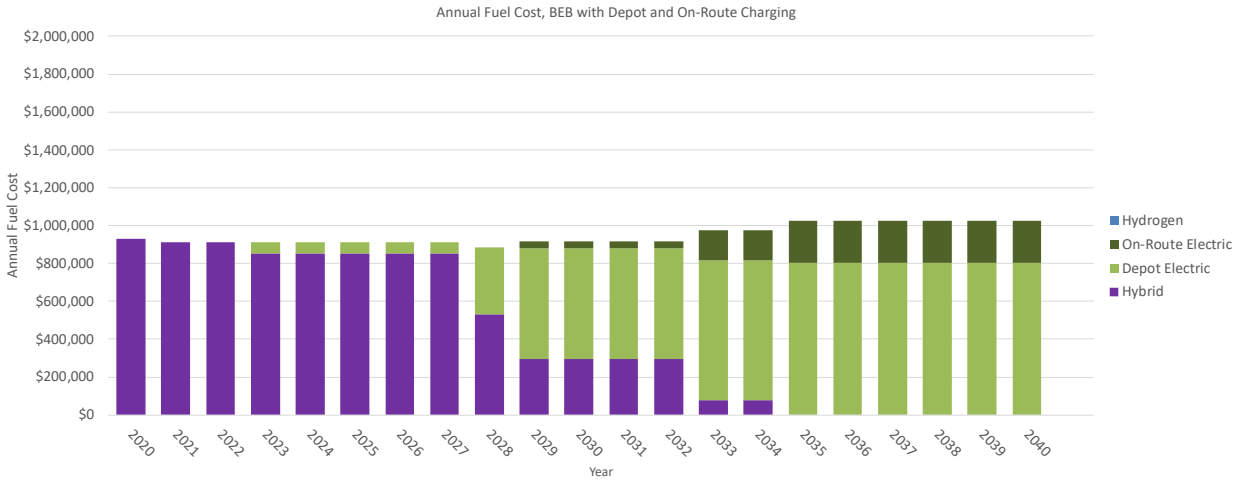


Figure 23 – Annual Fuel Costs, BEB Only Scenario

Operating BEBs would also make LAVTA eligible for LCFS credits. Procuring electricity from 100% renewable energy would generate the most credits for LAVTA. Purchasing Renewable Energy Credits (RECs) is one pathway to obtaining renewable energy and would enable LAVTA to qualify for LCFS credits while still receiving its energy from PG&E. **Table 15** below illustrates the credit revenue estimates through 2030.

Table 15 – LCFS Credit Revenue Estimates by Year, BEB Only Scenario

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of BEBs in Fleet	0	0	4	4	4	4	4	24	44	44
LCFS Credit Gross Value per BEB	$28,000	$27,000	$26,000	$25,000	$25,000	$24,000	$23,000	$22,000	$21,000	$21,000
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$97,000	$93,000	$90,000	$87,000	$84,000	$487,000	$862,000	$832,000

In this table, the LCFS credit gross value is calculated at an estimated 2% per year reduction rate from current credit pricing. Within this model, a broker service fee of 10% was subtracted from the gross credit value. Finally, although the current LCFS credit program only extends through

2030, speculating on how the pricing will trend after the program renewal is challenging. Therefore, in **Figure 24** below, 2030 the per bus LCFS credit revenue remains at 2030 values.

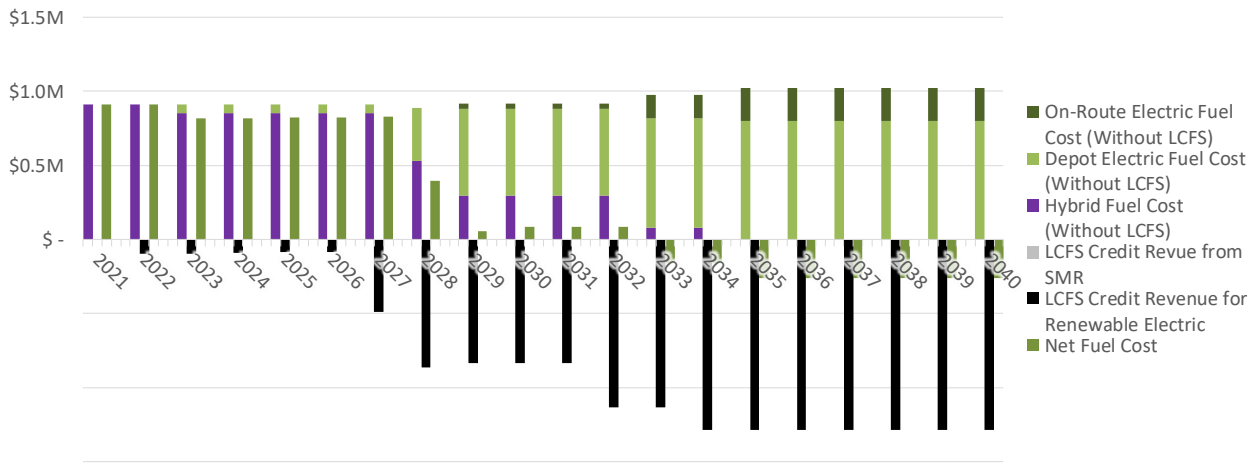


Figure 24 - Potential LCFS Credit Revenue for 100% Renewable Electric, BEB Only Scenario

Mixed Fleet BEB and FCEB

In the Mixed Fleet: BEB and FCEB scenario, BEBs replace diesel-hybrid buses on all achievable blocks. FCEBs supplement the BEB fleet to cover the blocks that are not achievable with battery electric technologies. Building the fleet in this way ensures that all routes are achievable while minimizing the higher costs of FCEBs.

Figure 25 depicts energy consumption for each fuel type over the transition period for the Mixed Fleet: BEB and FCEB scenario. Legacy fuels are phased out as electricity and hydrogen consumption increases, reflecting an increasing number of BEBs and FCEBs in the fleet. Fleet energy use is reduced from about 0.4 million DGE in 2020 to just under 0.15 million DGE in 2040, an approximately 63% decrease.

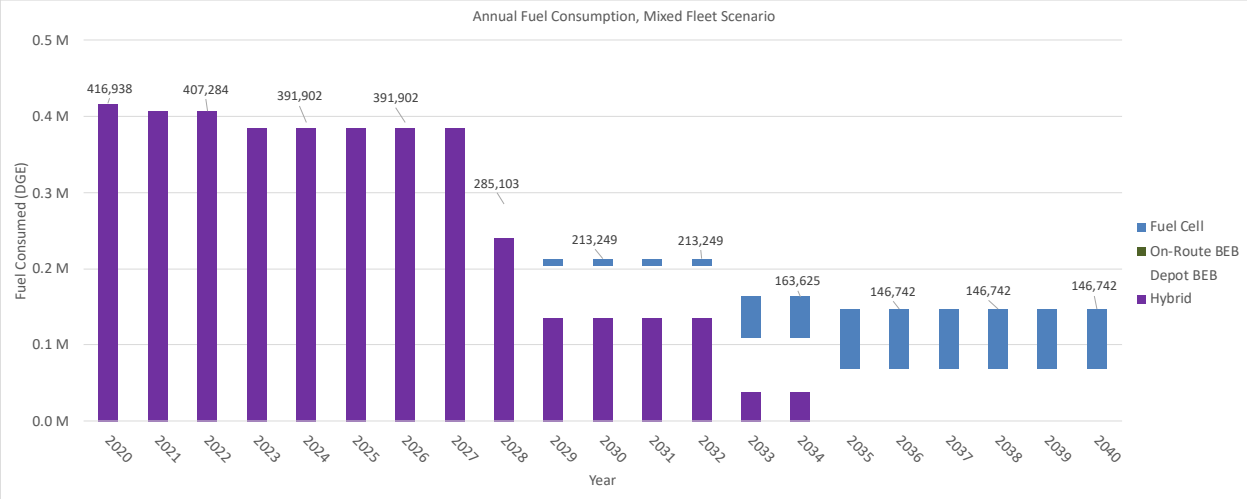


Figure 25 – Annual Fuel Consumption, Mixed Fleet Scenario

Figure 26 shows the estimated annual costs for each fuel type based on the quantities consumed, as shown in **Figure 25**. Total estimated fuel costs in 2040 are approximately $1.26 million, which are incurred from electricity use for BEBs and hydrogen fuel for FCEBs. Although the total amount of energy consumed decreases over the ZEB transition period (**Figure 25**), the total fuel costs increase over that timeframe. These trends reflect hydrogen's greater efficiency but also its higher costs compared to diesel fuel.

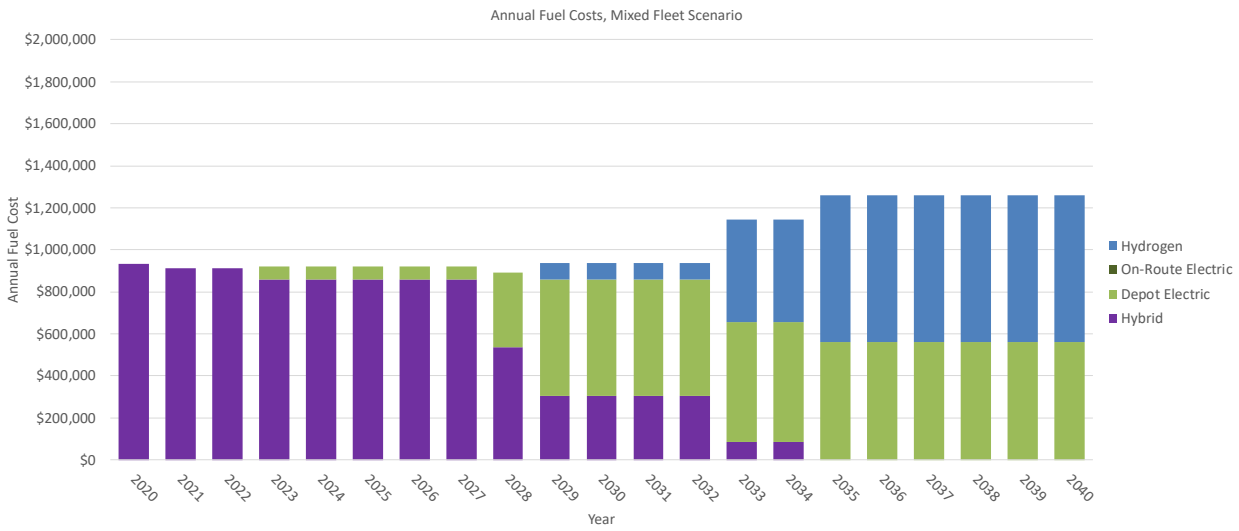


Figure 26 – Annual Fuel Costs, Mixed Fleet Scenario

The Mixed Scenario is also eligible for participation in the LCFS Credit Program; however, revenue potential for hydrogen is highly variable depending on how the fuel is produced. CTE therefore explored three potential hydrogen fuel production pathways for LCFS credits. The first pathway, fossil steam methane reformation (SMR), is currently the most common but, given that fossil fuels are used as to produce the hydrogen, this method is not very lucrative on the LCFS market. The second pathway, electrolysis using 100% renewable energy, generates a significant number of LCFS credits. The third pathway, dairy gas SMR, has a negative carbon intensity and would therefore generate the most LCFS credits of any of the pathways explored. For all the hydrogen fuel pathways explored in the Mixed Fleet Scenario, the LCFS credits that would be generated by the BEBs in the fleet remain constant because only the 100% renewable pathway was explored.

Table 16 – LCFS Credit Revenue Estimates by Year for Fossil Fuel SMR Hydrogen, Mixed Fleet Scenario

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of BEBs in Fleet	0	0	4	4	4	4	4	24	40	40
Number of FCEBs in Fleet	0	0	0	0	0	0	0	0	4	4
LCFS Credit Gross Value per BEB	$28,000	$27,000	$26,000	$25,000	$25,000	$24,000	$23,000	$22,000	$21,000	$21,000
LCFS Credit Gross Value per FCEB - SMR	$1,392	$1,136	$887	$647	$419	$198	$-	$-	$-	$-
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$97,000	$93,000	$90,000	$87,000	$84,000	$487,000	$784,000	$756,000

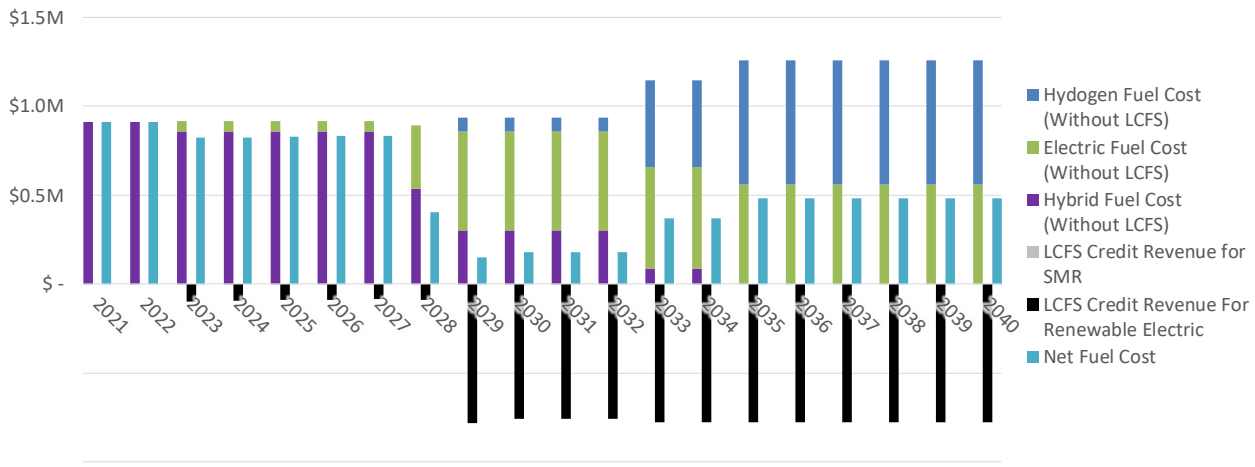


Figure 27 - Potential LCFS Credit Revenue for Fossil Fuel SMR Hydrogen, Mixed Fleet Scenario

Table 17 – LCFS Credit Revenue Estimates by Year for 100% Renewable Electrolysis Hydrogen, Mixed Fleet Scenario

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of BEBs in Fleet	0	0	4	4	4	4	4	24	40	40
Number of FCEBs in Fleet	0	0	0	0	0	0	0	0	4	4
LCFS Credit Gross Value per BEB	$28,000	$27,000	$26,000	$25,000	$25,000	$24,000	$23,000	$22,000	$21,000	$21,000
LCFS Credit Gross Value per FCEB - Electrolysis	$16,000	$15,000	$15,000	$14,000	$13,000	$13,000	$13,000	$12,000	$12,000	$11,000
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$97,000	$93,000	$90,000	$87,000	$84,000	$487,000	$827,000	$798,000

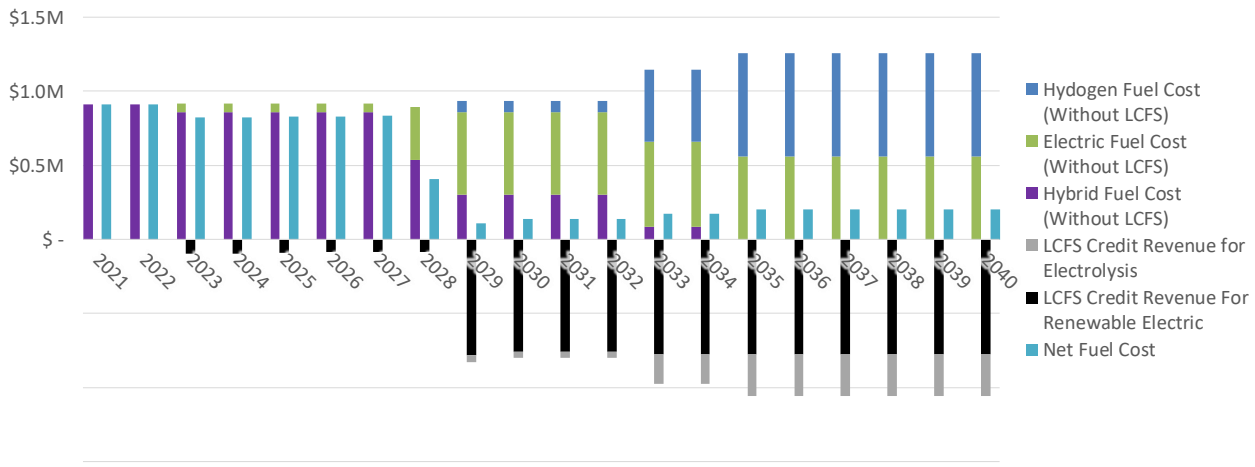


Figure 28 - Potential LCFS Credit Revenue for 100% Renewable Electrolysis Hydrogen, Mixed Fleet Scenario

Table 18 – LCFS Credit Revenue Estimates by Year for Dairy Gas SMR Hydrogen, Mixed Fleet

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of BEBs in Fleet	0	0	4	4	4	4	4	24	40	40
Number of FCEBs in Fleet	0	0	0	0	0	0	0	0	4	4
LCFS Credit Gross Value per BEB	$28,000	$27,000	$26,000	$25,000	$25,000	$24,000	$23,000	$22,000	$21,000	$21,000
LCFS Credit Gross Value per FCEB – Dairy Gas	$42,000	$41,000	$40,000	$39,000	$38,000	$37,000	$36,000	$35,000	$34,000	$33,000
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$97,000	$93,000	$90,000	$87,000	$84,000	$487,000	$906,000	$875,225

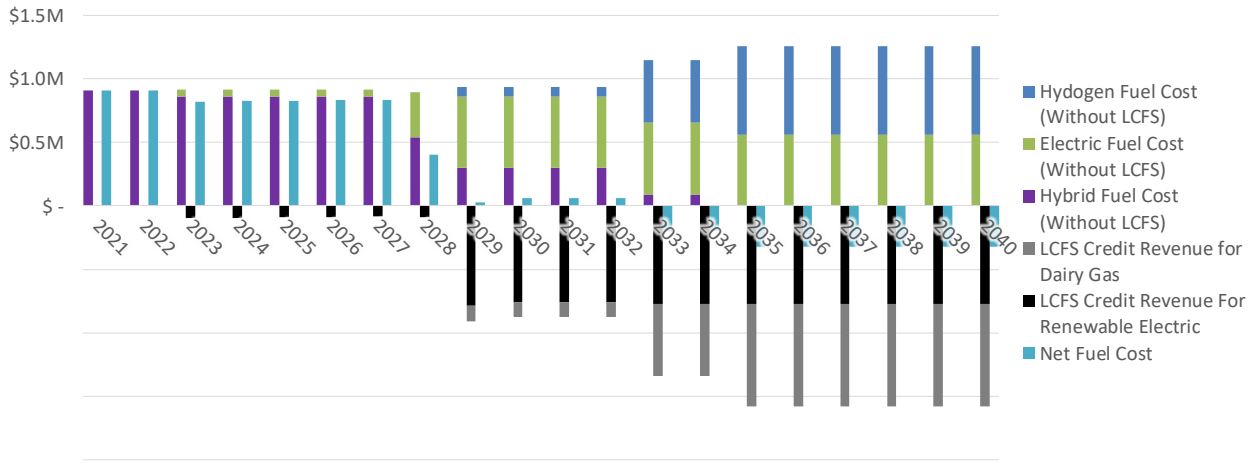


Figure 29 - Potential LCFS Credit Revenue for Dairy Gas SMR Hydrogen, Mixed Fleet Scenario

FCEB Only

Fuel cell electric buses are able to complete all of LAVTA's blocks by the end of the transition period in 2040. **Figure 30** depicts fuel consumption for each fuel type over the transition period for the FCEB Only scenario. Legacy fuels are phased out as hydrogen consumption increases, reflecting an increasing number of FCEBs in the fleet. Fleet energy use is reduced from about 0.4 million DGE in 2020 to just over 0.2 million DGE in 2040, an approximately 50% decrease.

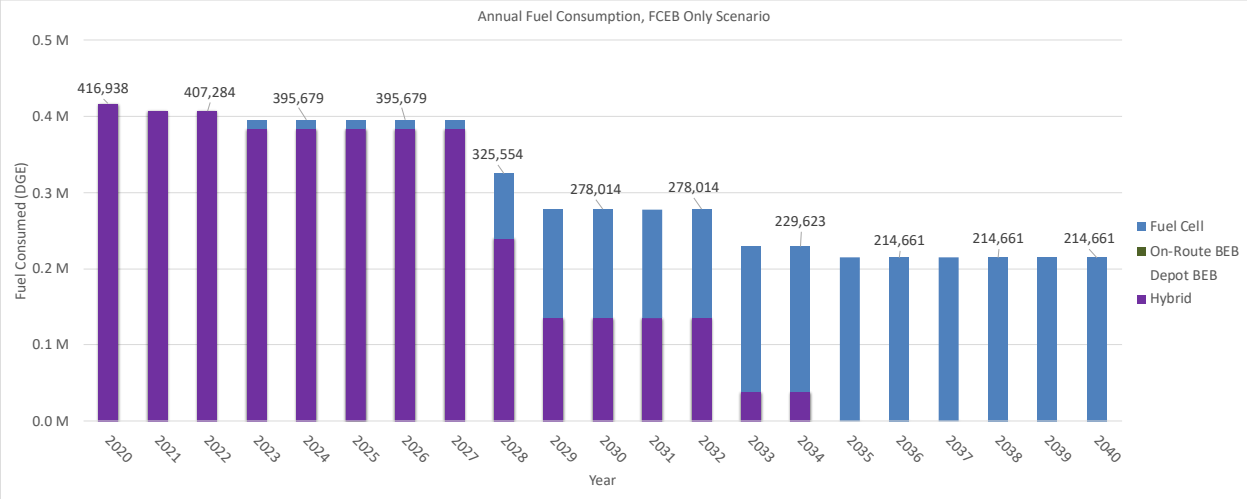


Figure 30 – Annual Fuel Consumption, FCEB Only Scenario

Figure 31 shows estimated annual costs for each fuel type based on the quantities consumed, as shown in **Figure 30**. Total estimated fuel costs, entirely from hydrogen fuel, in 2040 are approximately $2 million. As in the Mixed Fleet Scenario, the fuel costs increase over the transition period while the DGE consumption decreases. These trends reflect hydrogen's greater efficiency but also its higher costs compared to diesel fuel.

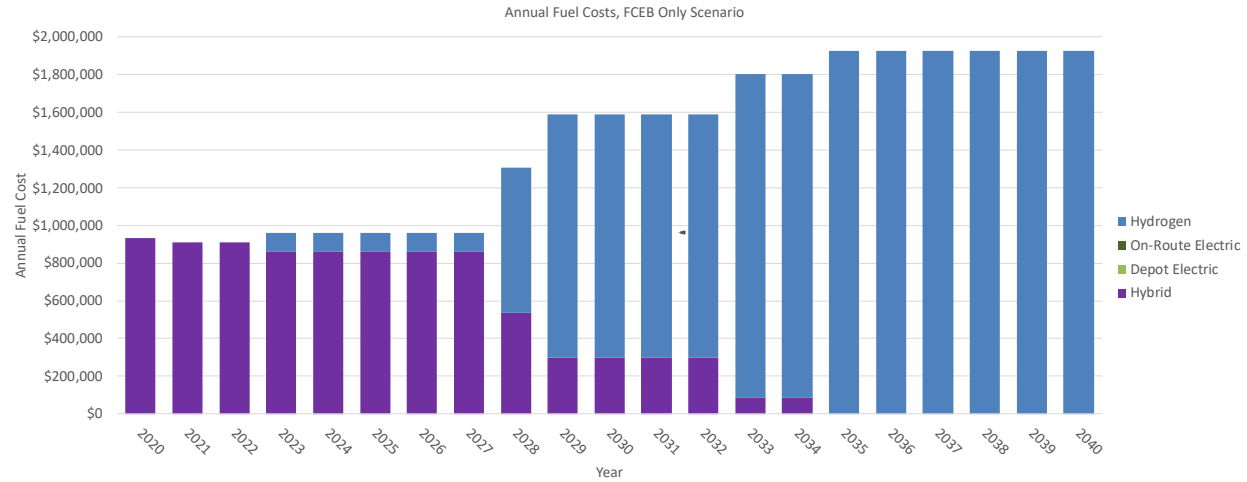


Figure 31 – Annual Fuel Costs, FCEB Only Scenario

The LCFS credit revenue in this scenario also depends largely on the method of hydrogen production for the fuel that LAVTA purchases. Fossil fuel SMR generates the least LCFS credits, and dairy gas SMAR generates the most.

Table 19 – LCFS Credit Revenue Estimates by Year for Fossil Fuel SMR Hydrogen, FCEB Only Scenario

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of FCEBs in Fleet	0	0	4	4	4	4	4	24	44	44
LCFS Credit Gross Value per FCEB - SMR	$1,392	$1,136	$887	$647	$419	$198	$-	$-	$-	$-
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$3,000	$2,000	$1,000	$700	$ -	$ -	$ -	$ -

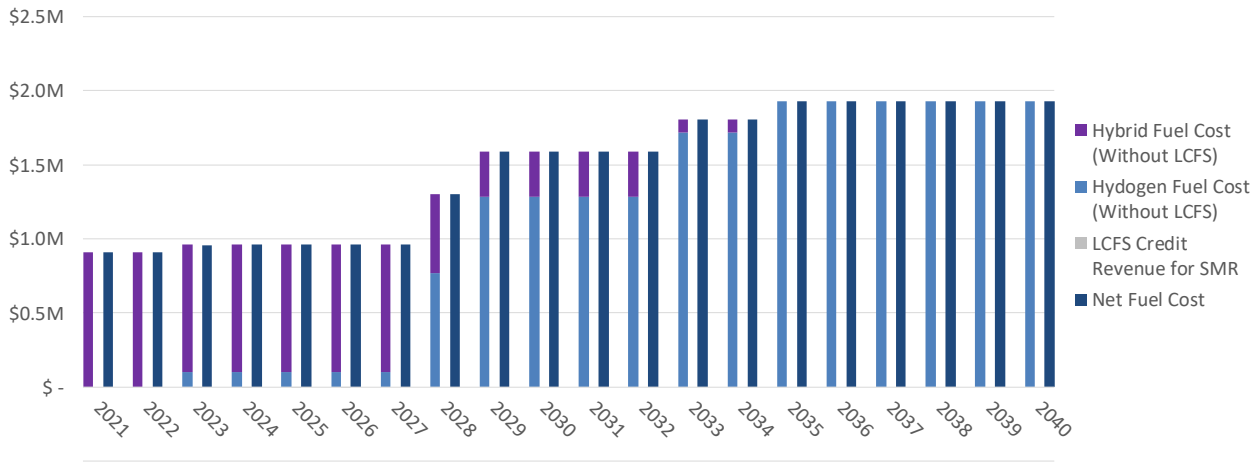


Figure 32 - Potential LCFS Credit Revenue for Fossil Fuel SMR Hydrogen, FCEB Only Scenario

Table 20 – LCFS Credit Revenue Estimates by Year for 100% Renewable Electrolysis Hydrogen, FCEB Only Scenario

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of FCEBs in Fleet	0	0	4	4	4	4	4	24	44	44
LCFS Credit Gross Value per FCEB - Electrolysis	$16,000	$15,000	$15,000	$14,000	$13,000	$13,000	$13,000	$12,000	$12,000	$11,000
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$54,000	$52,000	$50,000	$48,000	$47,000	$271,000	$479,000	$462,000

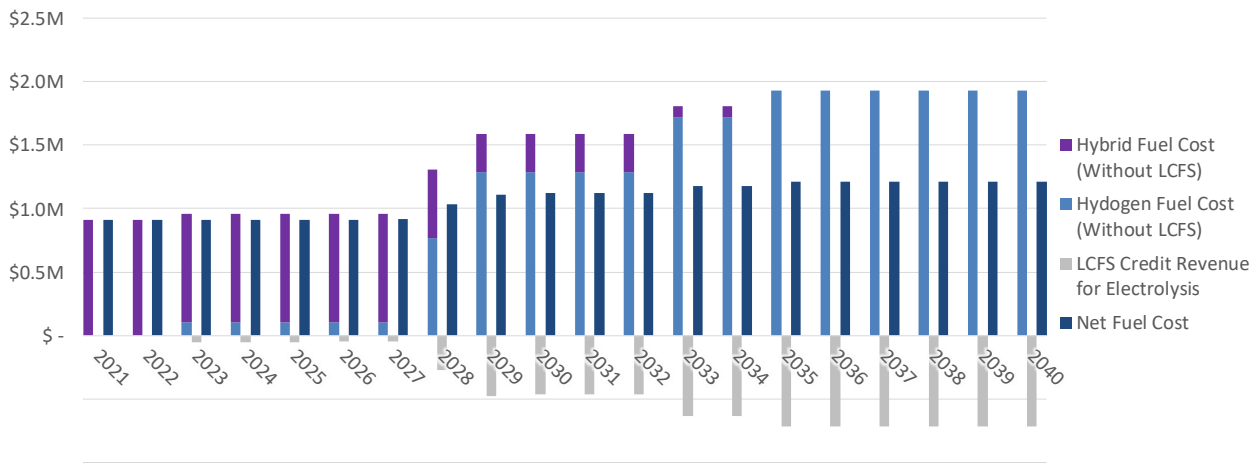


Figure 33 - Potential LCFS Credit Revenue for 100% Renewable Electrolysis Hydrogen, FCEB Only Scenario

Table 21 – LCFS Credit Revenue Estimates by Year for Dairy Gas SMR Hydrogen, FCEB Only Scenario

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of FCEBs in Fleet	0	0	4	4	4	4	4	24	44	44
LCFS Credit Gross Value per FCEB – Dairy Gas	$42,000	$41,000	$40,000	$39,000	$38,000	$37,000	$36,000	$35,000	$34,000	$33,000
Credit Processing Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
LAVTA LCFS Credit Revenue	$ -	$ -	$143,000	$139,000	$135,000	$132,000	$129,000	$752,000	$1,343,000	$1,308,000

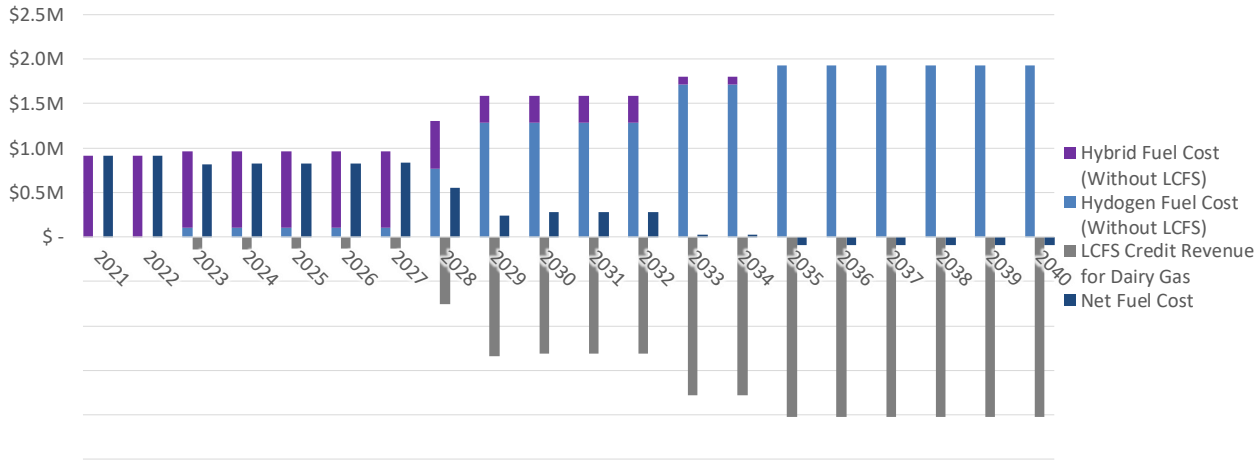


Figure 34 – Potential LCFS Credit Revenue for Dairy Gas SMR Hydrogen, FCEB Only Scenario

Fuel Assessment Cost Comparison

The Fuel Assessment includes all fuel costs over the transition for each scenario. **Figure 35** shows the cumulative fuel costs for each scenario over a twenty-year period. **Table 22** - Total Fuel Costs Over Entire Transition Period, Fuel Assessment shows the combined total costs and the percentage of the fleet that is zero-emission in 2040.

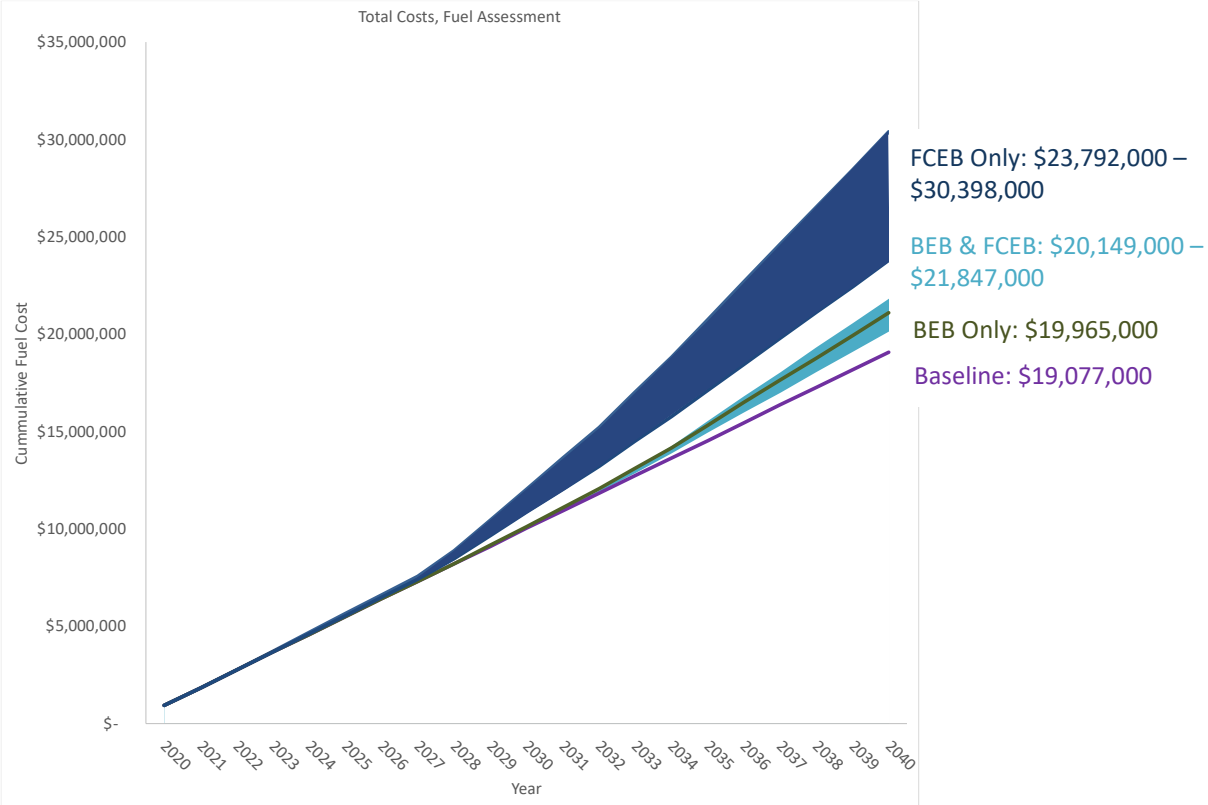


Figure 35 – Total Costs, Fuel Assessments

Table 22 - Total Fuel Costs Over Entire Transition Period, Fuel Assessment

Scenario	Cumulative Fuel Cost	Average Annual Fuel Cost	% ZEB in 2040
Baseline	$ 19,077,000	$ 954,000	0%
BEB Only	$ 19,965,000	$ 1,025,000	100%
Mixed Fleet: BEB and FCEB	$ 20,149,000 – $ 21,833,000	$ 1,007,000 – $ 1,092,000	100%
FCEB Only	$ 23,792,000 – $ 30,398,000	$ 1,190,000 – $ 1,520,000	100%

7 Maintenance Assessment

One of the anticipated benefits of operating a BEB or FCEB fleet is reduced maintenance costs. Early adopters of ZEB technologies have reported that a transit agency may attain 30% to 50% in maintenance cost savings for a BEB compared to an ICE vehicle. These savings result from there being fewer fluids to replace (no engine oil or transmission fluid), fewer brake changes due to regenerative braking, and far fewer moving parts than in an internal combustion engine. The savings in traditional maintenance costs may be offset by the cost of battery or fuel cell replacements over the life of the buses. These costs, however, may be covered by extended warranties.

Diesel-hydrid bus labor and maintenance costs were provided by LAVTA for their current fleet. BEB labor and maintenance costs were estimated as a 35% reduction on the diesel-hybrid cost, which was based on industry expectations and labor and maintenance costs from King County as reported by the U.S. DOE National Renewable Energy Laboratory (NREL).[6] Hydrogen maintenance costs were based on OCTA's reported labor and maintenance costs. It should be noted that this FCEB maintenance per mile value is based on the costs for the first year of service at OCTA. Therefore, this cost is likely higher than expected over time since this is a first generation vehicle.

In addition to labor and materials, this study also estimates the cost impact of midlife overhauls for major components for each type of bus. **Table 23** shows the assumed costs of scheduled and unscheduled labor and maintenance used in this analysis.

Table 23 – Labor and Materials Cost Assumptions

Type	Estimate (Per Mile)	Source
40' Hybrid	$ 0.38	LAVTA
40' BEB	$ 0.25	U.S. DOE & NREL
40' FCEB	$ 0.59	OCTA price used

Assumptions used in this analysis are given in **Table 24.** Cost assumptions for fossil-fuel buses are based on LAVTA data. Midlife battery overhaul cost estimates for BEBs are based on extended warranty costs provided by bus OEMs, and the FCEB battery warranty cost is a prorated estimate of that rate based on battery storage capacity.

[6] Eudy, Leslie and Matthew Jeffers. 2019. Foothill Transit Agency Battery Electric Bus Progress Report: Data Period Focus: Jul.2018 through Dec. 2018. Golden, CO: National Renewable Energy Laboratory. NREL/PR-5400-72209. https://afdc.energy.gov/files/u/publication/foothill_transit_beb_progress_rpt_5-2019.pdf.

Table 24 - Midlife Overhaul Cost Assumptions

Type	Overhaul Scope	Estimate	Source
Diesel	Engine/Transmission Overhaul	$50k per bus	LAVTA
BEB	Warranty Cost	$75k per bus	Bus OEM
FCEB	Battery Replacement Warranty Fuel Cell Overhaul	$16.7k per bus $40k per bus	Estimate Based on Bus OEM Fuel Cell OEM

Note that there are spikes in the expected maintenance costs six years after a large number of buses are purchased, such as 2021 and 12 years later when those buses are replaced in 2033. The 12-year replacement cycle creates a cyclical pattern in maintenance costs in midlife years because the diesel-hybrids would be expected to incur a midlife overhaul at that time. Since this scenario represents a fleet that stays entirely composed of diesel-hybrid buses, the peaks consistently repeat every 12 years at the midlife of large purchases. In non-midlife years, the annual price is around $780,000 and, in the years, where up to 20 buses are expected to reach the midlife in the same year, the price increases to $1.78 million. **Figure 36** shows the combined labor, materials, and midlife overhaul costs for the Baseline scenario for each year of the transition, in 2020 dollars.

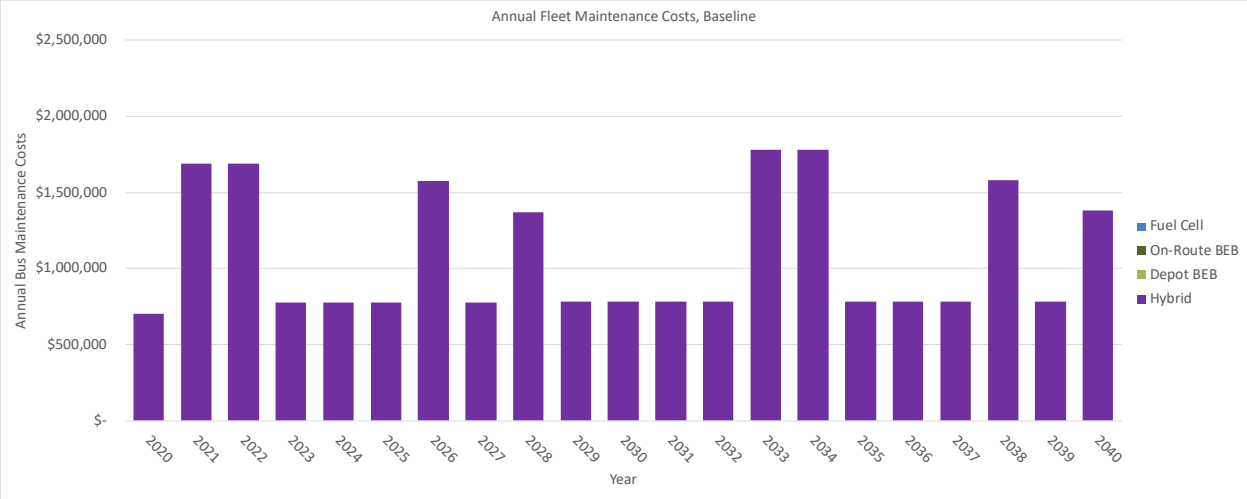


Figure 36 - Annual Fleet Maintenance Costs, Baseline

BEB Only

Figure 37 shows the combined labor, materials, and midlife overhaul costs for the BEB Only scenario for each year of the transition, in 2020 dollars. For the Depot with On-Route Charging scenario, warranty costs are used in place of the midlife battery replacement, so there are spikes in the expected maintenance costs the same years that a large number of buses are purchased, such as 2028. In this scenario, the 12-year replacement cycle shifts the cyclical

pattern in maintenance costs from non-purchasing years to purchasing years. Comparing 2020 to 2032—a non-purchasing and non-midlife year when the fleet is composed of only hybrids compared to when the fleet is mostly BEBs—the annual maintenance drops from around $780,000 to around $500,000. Despite the $75,000 for the warranty exceeding the $50,000 expected for the midlife overhaul of the hybrids, the reduced per mile maintenance expected for the BEBs results in a 4% reduction of maintenance costs for this scenario compared to the Baseline.

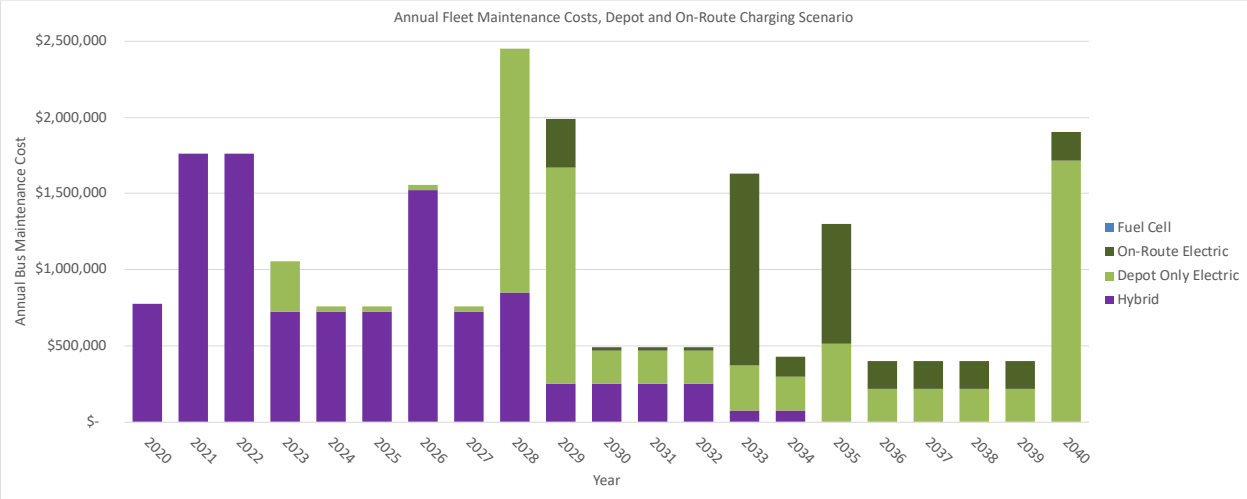


Figure 37 - Annual Fleet Maintenance Costs, BEB Only Scenario

Mixed Fleet: BEB and FCEB

Figure 38 shows the combined labor, materials, and midlife overhaul costs for the Mixed Fleet: BEB and FCEB scenario for each year of the transition, in 2020 dollars. Unlike in the BEB Only scenario, the FCEB scenarios have their largest maintenance costs at the midlife overhaul. These events coincide because the FCEBs have a smaller warranty cost—$16,700 as opposed to $75,000 for BEBs because FCEBs have a significantly smaller battery on board— that applies to their purchase year. Their fuel cells, however, are expected to be replaced midlife—six years after purchasing. This timing results in the years with the highest expected maintenance amounts being years that are at the buses' midlife. Comparing 2020 to 2032 shows a slight decrease in expected maintenance costs per mile due to the fact that the per-mile maintenance cost for the BEBs is lower than that of the diesel-hybrids.

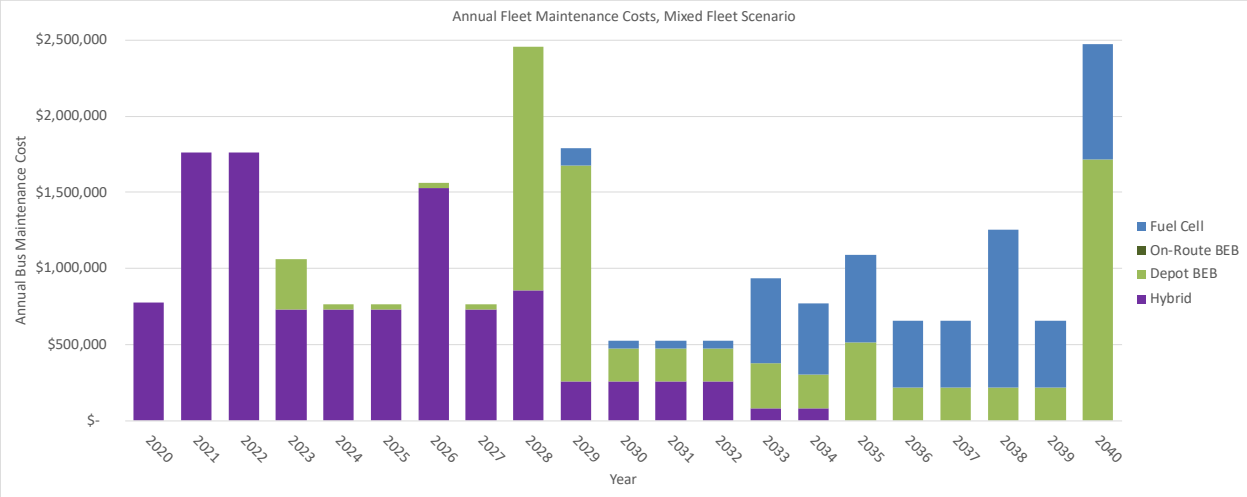


Figure 38 - Annual Fleet Maintenance Costs, Mixed Fleet Scenario

FCEB Only

Figure 39 shows the combined labor, materials and midlife overhaul costs for the FCEB Only scenario for each year of the transition, in 2020 dollars. As discussed with the Mixed Fleet scenario, FCEB's have significant maintenance costs at their midlife when the fuel cells are expected to be replaced. Comparing 2020 to 2032 reveals a slight increase in expected maintenance costs per mile compared to the Baseline or the BEB Only scenarios. This increase is a result of using OCTA's reported maintenance cost, which was used to estimate the maintenance costs for FCEBs in this study; OCTA's reported costs were higher than the estimates used for the diesel-hybrids or BEBs.

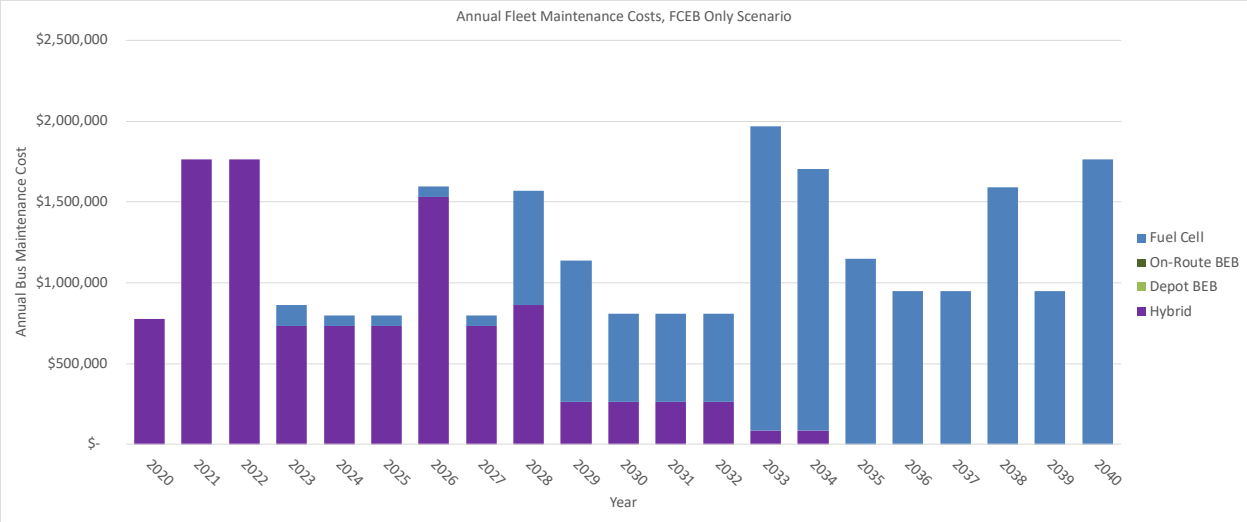


Figure 39 - Annual Maintenance Costs, FCEB Only Scenario

Maintenance Assessment Cost Comparison

The Maintenance Assessment includes all labor, materials and, overhaul costs over the transition for each scenario. **Figure 40** shows the cumulative maintenance costs for each scenario.

Table 25 shows the total maintenance costs for each scenario. All of these scenarios are within $3 million of each other at the end of the 20-year period. The FCEB Only scenario incurs the most maintenance costs while the BEB Only incurs the least. The fact that the FCEB Only scenario was more expensive than the BEB Only Scenario —despite the difference in the $75,000 for the BEB battery warranty and the $56,700 for the FCEB fuel cell replacement and battery warranty cost—shows that the differential in the per-mile maintenance cost of $0.25 per mile for BEBs and $0.59 per mile for FCEBs had a larger impact on the overall annual maintenance costs for the technologies than the warranties costs. It should also be noted that the BEB Depot and On-Route Charging scenario cost about $1 million less than the Baseline scenario over the 20-year transition period.

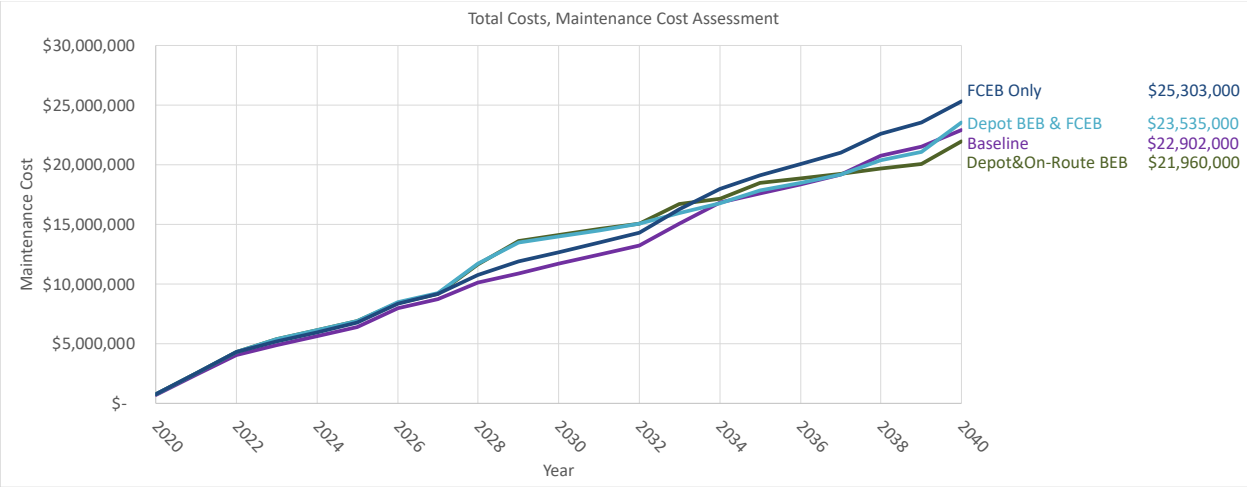


Figure 40 - Total Costs, Maintenance Assessments

Table 25 - Total Costs, Maintenance Assessments

Scenario	Cost	% ZEB
Baseline	$ 22,902,000	0%
BEB Only	$ 21,960,000	100%
Mixed Fleet: BEB and FCEB	$ 23,535,000	100%
FCEB Only	$ 25,303,000	100%

8 Facilities Assessment

The Facilities Assessment determines the scale of supporting infrastructure—charging infrastructure for BEBs and hydrogen infrastructure for FCEBs—necessary to meet the projected energy use estimated in the Fleet and Fuel Assessments. Facilities costs are then estimated based on the assessed infrastructure requirements for the given fleet. This section is divided between battery-electric infrastructure and hydrogen fueling infrastructure, which are further subdivided by their relevant assessment scenarios. Also, since the Baseline assumes that LAVTA already has the facilities necessary to support their diesel hybrid fleet, the Baseline was not included in the facilities assessment. Since LAVTA will be moving their depot from Rutan Court to their new facility at Atlantis Court, the BEB scenarios will include charging infrastructure at Rutan Court for the initial four bus deployment before the full facility build out occurs at the Atlantis Court facility. The charging infrastructure at Rutan Court would be put in place to support BEBs deployed prior to the shift in depots. Some of the costs of the electrical upgrades may be offset by PG&E's EV Fleet Program. If one of the BEB scenarios is pursued by LAVTA, the agency should apply to participate in this program. Similarly, since the permanent FCEB infrastructure cannot be scaled down to the level of four buses, the FCEB Only Scenario would involve a mobile fueler at Rutan Court before there is permanent infrastructure installed at the Atlantis Court facility.

Battery-Electric Charging Scenarios Depot Infrastructure

Scaling to a fleetwide BEB deployment requires a significantly different approach to charging and substantial infrastructure upgrades compared to smaller pilot deployments. With small BEB pilot deployments, charging requirements are met relatively easily with a handful of plug-in pedestal chargers and minimal infrastructure investment. For fleetwide BEB transitions, plug-in charging is impractical as charger dispenser cables can create hazards in the bus yard. Instead, the preferred approach is to use overhead pantograph or reel dispensers attached to gantries installed above bus parking lanes.

In addition to the installation of charging stations, improvements to existing electrical infrastructure, such as upgrades to switchgear or service connections, are required to support deployment of BEBs. Planning and design work, including development of detailed electrical and construction drawings required for permitting, is necessary once specific charging equipment has been selected. To define the installation timeline and costs for charging equipment, the scope of work is broken into four key project types: planning, structural, power upgrades, and charger installation. These projects are typically sized and scheduled to meet near-term charging requirements rather than immediately building out all necessary infrastructure for a full fleet transition.

CTE and AECOM developed estimates for components of each project type to build up a total cost estimate by project type. Assumptions used for BEB infrastructure are shown in **Table 26**. Conceptual layouts for the BEB Only Scenario, prepared by AECOM, are provided in **Appendix A1** – LAVTA Depot Site Plans, **.** As previously mentioned, when LAVTA begins its ZEB transition in 2023, the depot and administrative facilities will still be located at the Rutan Court facility, but will be moving to a new facility on Atlantis Court before its next ZEB purchase in 2028. In

the BEB scenarios, LAVTA elected to pursue installation of two pedestal chargers at the Rutan facility to support the initial four buses, but the full BEB facility buildout will take place at the Atlantis Court location. AECOM did note that deploying the initial four BEBs from Rutan Court will likely require a transformer upgrade unless the existing load on the transformer is below 60kVA but did not identify any other factors that might impede the four-bus deployment.

AECOM also supplied a report including the power requirements, equipment and raceway routing, gantries, and phasing for Atlantis Court as an electric charging depot for both the BEB Only Scenario and the Mixed Fleet: BEB and FCEB Scenario.

For both the BEB Only Scenario and the Mixed Fleet Scenario, AECOM expects that, in 2027, gantries and chargers are installed for the next 40 buses at Atlantis Court. This installation will require a contractor lay-down area to cover the existing driveway and use of temporary access driveways to the north of the existing driveway. At this stage, there will be hybrid parking on the north half of the parking lot, with BEB parking on the southern half. This stage of the project also encompasses phase 1 of the power upgrade phasing outlined by AECOM. To accommodate the demand resulting from the addition of this series of 120kW chargers, a new 480 volt, 3-phase service and a new 2500kVA transformer will be required. See Appendix A1 – LAVTA Depot Site Plans, Depot and On-Route Charging Scenario Phase 1 - 2027 and **A5** for 2027 phasing plan.

In the BEB Only Scenario, the remaining hybrid parking will be converted to additional BEB parking in 2032. This project will require the contractor lay-down area to shift to the north and cover one of the temporary access driveways. At this stage, lot access is also possible through the primary driveway, as well as one of the temporary driveways. At this stage, the second phase of the power upgrade phasing is scheduled to occur in order to accommodate the 13 chargers being added to charge the 24 additional buses. This will require a 2000kVA transformer, as well as a switchboard rated for 2500A at 480V, three-phase. See **Appendix A2** for 2032 phasing plan.

In that same year for the Mixed Fleet Scenario, the same BEB infrastructure projects and service upgrades would be needed. This is also the time when the hydrogen fueling infrastructure will be installed. See **Appendix A6** for 2032 phasing plan.

The final site plans for the completed transition can be seen in the 2035 site layouts in **Appendix A3** for Depot and On-Route Charging Scenario and **A7** for the Mixed Fleet.

Although some of the costs that AECOM supplied such as the power upgrade costs, were estimated as part of CTE's analysis included in this Master Plan, it is recommended that more detailed cost analysis be done before build and or funding obligation based on AECOM's recommendations.

Table 26 – BEB Infrastructure Project Cost Assumptions

Project	Cost Estimate Metrics	Source
Infrastructure Planning	$200k per project	Engineer's estimate
Structural Projects (Gantries, Conduit, duct banks, etc.)	Design/Construction: avg. $117k per bus	Engineer's estimate, includes 20% contingency
Power Upgrade Projects	Design, Construction, & Equip: $96k per MW	Engineer's estimate, includes 20% contingency
Charging Projects	Charging Equipment & Installation: $89k per bus	Quotes and estimates, includes 20% contingency

Key assumptions applied in LAVTA's Facilities Assessment are as follows:

- Gantry structures are used at each depot;
- One plug-in reel or overhead pantograph per bus;
- Two buses per 120 kW charger;
- Two charge windows, i.e. no more than half the buses charge at any given moment;
- Off-peak, overnight charging with automated charge management software; and
- Dispenser capacity to serve up to 80% of the fleet at a time; no movement of buses overnight.

On-Route Charging Infrastructure

The BEB Only scenario has on-route charging infrastructure in addition to the depot charging infrastructure already developed and presented in the previous section. The addition of on-route charging supports deployment and on-route charging of 27 electric buses in addition to 41 depot-only charged buses before 2040. In this section, the on-route infrastructure costs are summarized along with the depot infrastructure costs.

Although it is not always the case, on-route chargers may not require additional support structures, such as gantries, to be built and may not require any structural project planning, as depot chargers do. Required infrastructure projects for on-route chargers include planning, power upgrade, and charger purchase and installation, which can be summarized as design costs and equipment costs. **On-route** chargers were assumed to be located at transit hubs, the Livermore Transit Center and The East Dublin Pleasanton BART station already planned for and utilized in LAVTA's service.

shows the cost assumptions used in the following sections to estimate costs for on-route charging infrastructure. This study did not include the costs of land acquisition for on-route charging sites. On-route chargers were assumed to be located at transit hubs, the Livermore

Transit Center and The East Dublin Pleasanton BART station already planned for and utilized in LAVTA's service.

Table 27 – On-Route Infrastructure Project Cost Assumptions

Project	Cost Estimate Metrics	Source
Structural Projects (Gantries, Conduit, duct banks, etc.)	Design/Construction: avg. 30k per bus	Engineer's estimate, includes 20% contingency
Power Upgrade Projects	Design, Construction, & Equip: $264k per MW	Engineer's estimate, includes 20% contingency
Charging Projects	Charging Equipment & Installation: $39k per bus	Quotes and estimates, includes 20% contingency

BEB Only On-Route Charging Projects

It is assumed that each on-route charging project will cost around $2.7 million per site. The number of on-route projects occurring in a given year are shown in **Figure 41**, below. A total of two on-route charging sites will be required to serve the additional 27 on-route-charged buses, which is expected to cost around $5.4 million. The East Dublin Pleasanton BART Station and the Livermore Transit Center have been identified as potential sites for on-route stations. Site designs for the two identified potential on-route station sites can be found in **Appendix A9**.

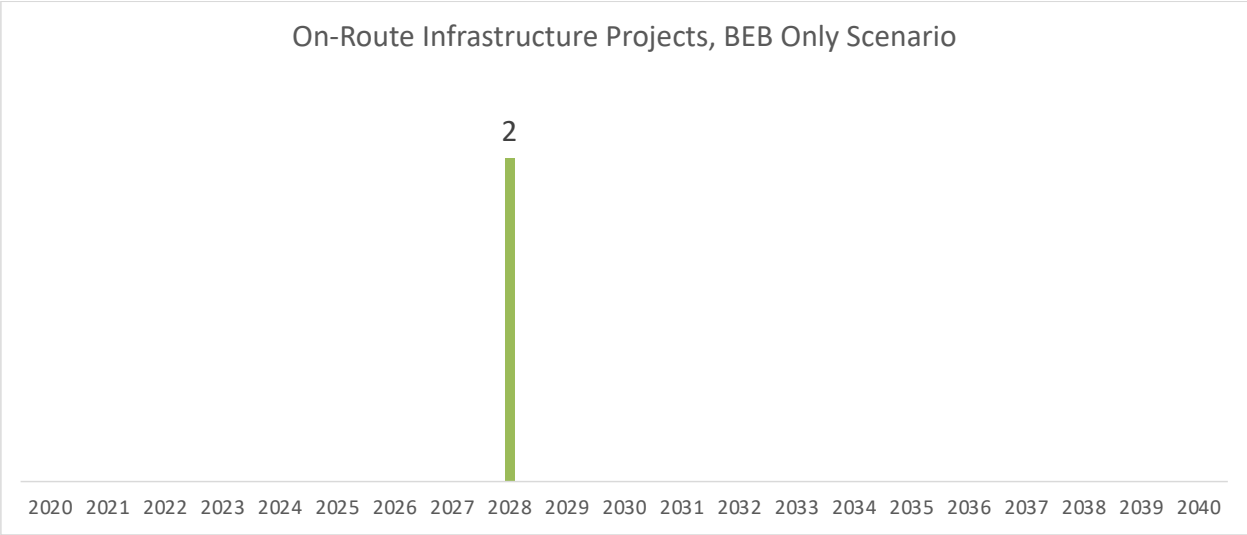


Figure 41 - On-Route Infrastructure Projects, BEB Only Scenario

BEB Only Depot Planning Projects

In addition to on-route charger projects, the Depot and On-Route Scenario also requires infrastructure planning at the depot. Planning is estimated to cost $200,000 at each depot. One $200,000 project is therefore planned for LAVTA over the transition period.

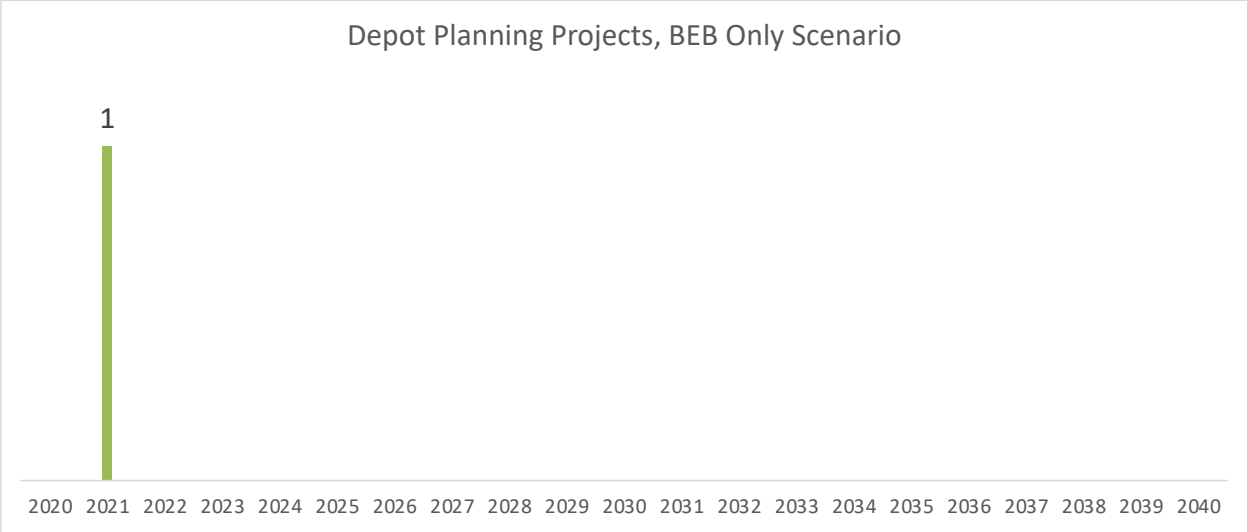


Figure 42 - Depot Planning Projects, BEB Only Scenario

BEB Only Depot Structural Projects

Structural projects include (1) trenching and build out duct banks from the switchgear to the charger pads, (2) construction of charger pads (i.e. foundation for charging equipment), (3) construction of gantry foundations and overhead gantry structures that hold the dispensers, and (4) installation of conduit from switchgear to charger pads and gantries. **Table 28** shows the detailed cost assumptions for structural projects. These cost assumptions also apply to other projection scenarios. Duct bank cost is incurred only once per depot, other costs are on a per gantry basis.

Table 28 – Structural Project Cost Assumptions

Item	Cost	Unit
Initial Duct/Bank	$ 300,000	per depot
Gantry & Foundation	$ 450,000	per gantry
Incremental Duct Bank/Conduit	$ 22,000	per gantry
Charger Pad (3 chargers per gantry)	$ 25,000	per gantry
Contingency	20%	on project costs
Design Engineering	6%	on project costs and contingency

Each bar in the figure below indicates a structural project to add overhead gantry capacity to the depot. **Figure 43** shows the number of gantries added in a given year. Each gantry can serve up to six buses. A total of 12 gantries will be needed at LAVTA's Atlantis depot.

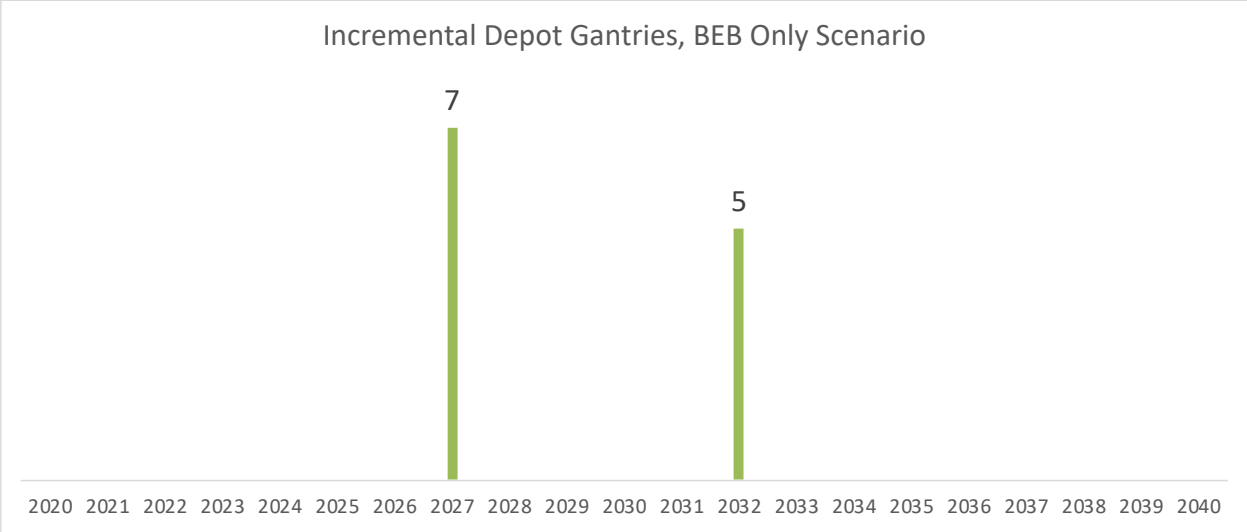


Figure 43 –Incremental Depot Gantries, BEB Only Scenario

Figure 44 shows the total annual costs of structural projects by depot for the BEB Only scenario. These costs include the initial duct bank costs, gantry and foundation costs, incremental duct bank/conduit costs, and charger pad costs per gantry, sequenced in accordance with the costs in the table above. On top of these costs, 20% contingency and 6% engineering costs are added.

Figure 44 – Annual Depot Structural Projects Cost, BEB Only Scenario

BEB Only Power Upgrade Projects

Power upgrade projects include construction of transformer foundations and installation of transformers. It is assumed that transformers will be modular, and incremental power requirements are met over time. The table below shows the estimated costs for depot power upgrade projects.

Table 29 – Depot Power Upgrade Cost Assumptions, BEB Only Scenario

Transformer/Switchback Pad	Cost	Unit
Transformer	Covered by PG&E	
Trench and Ductbank	$ 30,000	per project
Construction, Equipment (1 MW)	$ 125,000	per project
Construction, Equipment (2 MW)	$ 125,000	per project
Construction, Equipment (4 MW)	$ 250,000	per project
Contingency	20%	on project costs
Design Engineering	6%	on project costs and contingency

Figure 45 shows incremental required electrical demand, in megawatts, for each depot. Each entry indicates the minimum amount of power that must be added in a given year to meet the growing demand at a given facility as more BEBs are purchased.

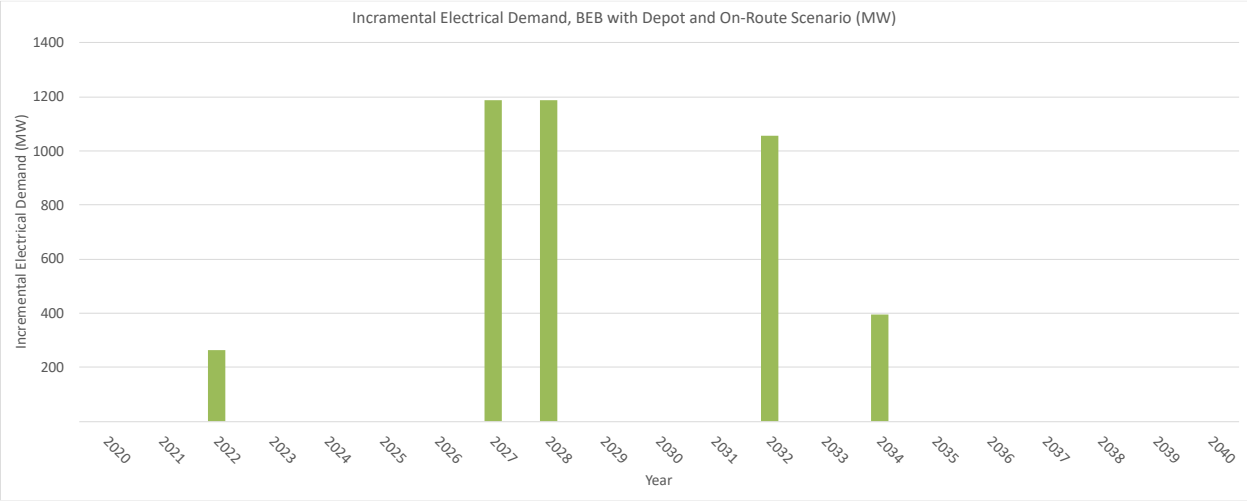


Figure 45 – Incremental Depot Electrical Demand, BEB Only Scenario (MW)

Power upgrades are consolidated to occur in selected years, in accordance with the required demand in **Figure 45.** These recommended upgrades are shown in **Figure 46**. LAVTA will need to add an additional estimated 6 MW of capacity to its system by 2040 to accommodate charging for 68 BEBs.

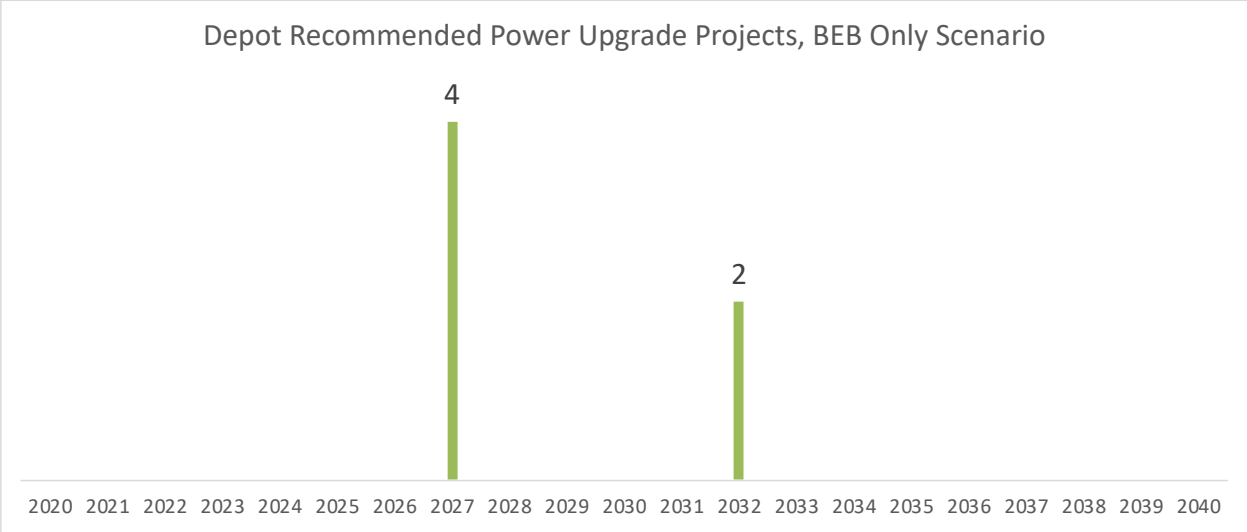


Figure 46 – Depot Recommended Power Upgrade Projects, BEB Only Scenario (MW)

The total cumulative cost of power upgrade projects at the depot, in 2020 dollars, is provided in Error! Reference source not found.. Total estimated power upgrade costs over the project life are approximately $0.57 million.

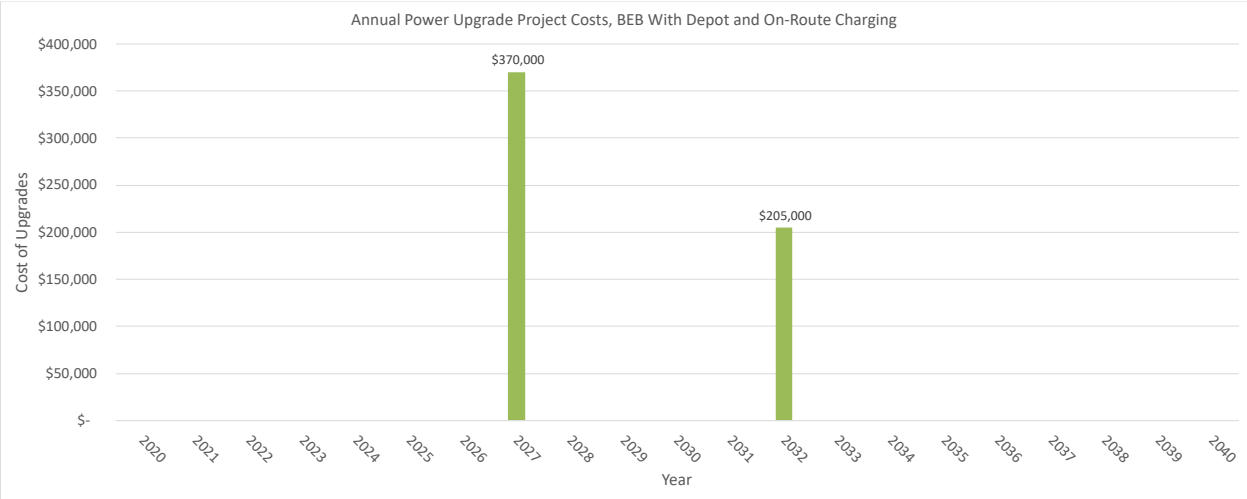


Figure 47 – Depot Annual Power Upgrade Project Costs, BEB Only Scenario

BEB Only Depot Charger Installation Projects

Charging projects include purchase and installation of 120 kW chargers and dispensers. Each bus will require one dispenser. Every two buses (40-foot and larger) will require one charger. Dispensers are expected to be either overhead reel or pantograph style. **Table 30** provides the costs assumed for charger and dispenser installs. As seen in **Figure 48** and **Figure 49**, in total, this scenario would require 33 chargers (66 dispensers) at LAVTA's Atlantis site.

Table 30 - Dispenser and Charger Project Cost Assumptions

Item	Cost	Unit
Charger	$ 120,000	per 120 kW charger
Charger Installation	$ 12,000	per 120 kW charger
Dispenser/Pantograph	$ 10,000	per dispenser
Dispenser Installation	$ 5,000	per dispenser
Contingency	20%	on project costs

Figure 48 and **Figure 49** show the annual dispensers and charger installations by depot for each year of the project.

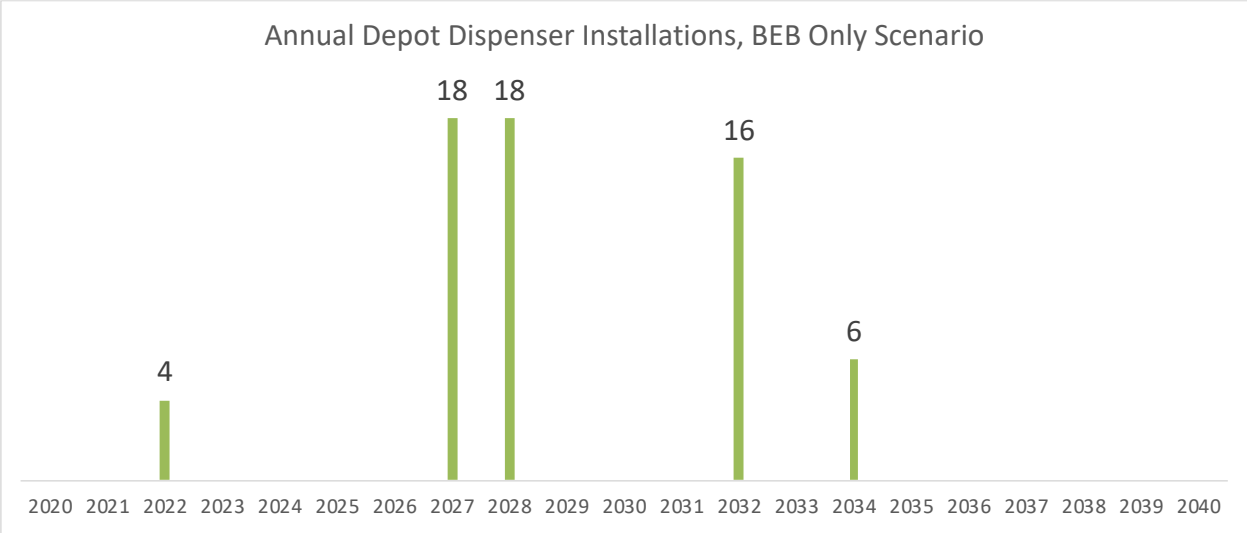


Figure 48 – Annual Depot Dispenser Installations, BEB Only Scenario

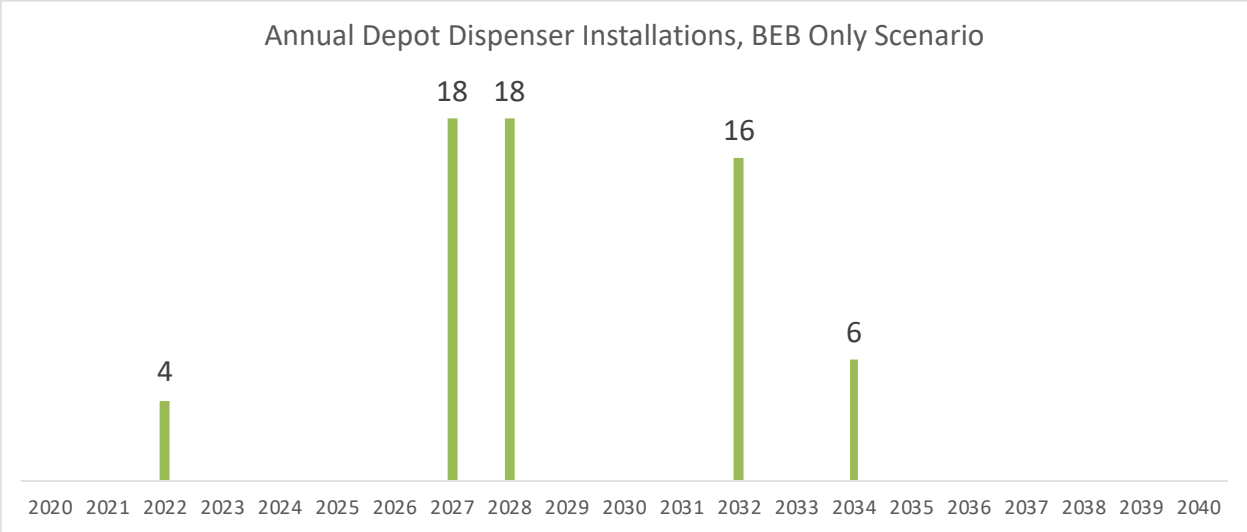


Figure 49 – Annual Depot Charger Installations, BEB Only Scenario

Figure 50 shows the annual cost of charger and dispenser installations based on these cost assumptions and the above estimated charger and dispenser quantities.

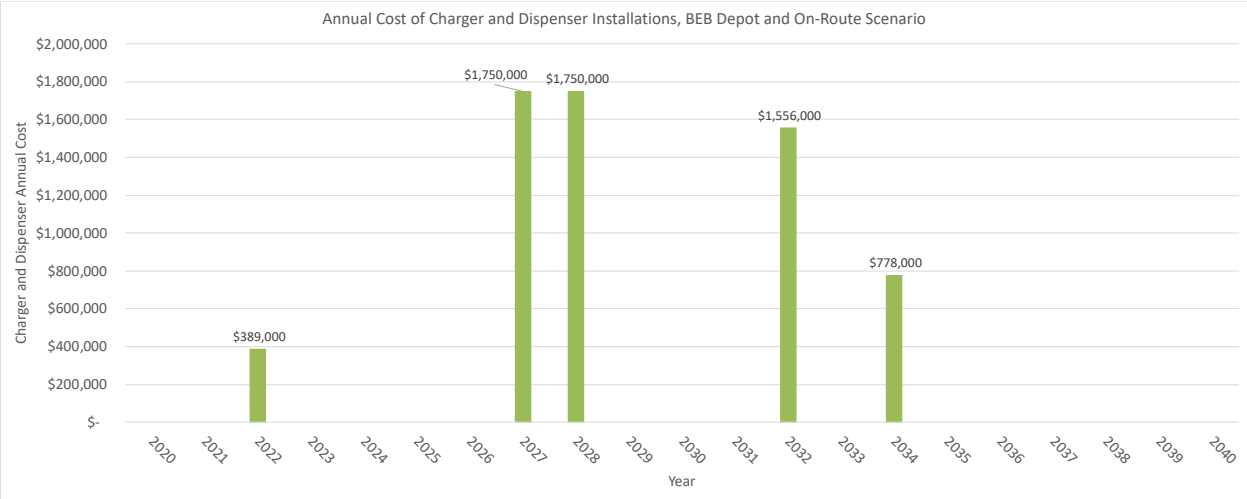


Figure 50 - Annual Cost of Depot Charger and Dispenser Installations, BEB Only Scenario

BEB Only (with Depot and On-Route Charging) Infrastructure Cost Summary

Table 31 summarizes all costs for charging infrastructure for the BEB Only scenario. **Figure 51** - Cumulative Total Infrastructure Costs, BEB Only Scenario shows the cumulative total cost breakdown. The estimated total infrastructure costs for the BEB Only scenario is approximately $20 million. This total cost includes all gantry structural projects, all power upgrade projects, all charger and dispenser installations, all planning projects, design engineering costs and the added 20% contingency on all costs, as well as the design and equipment costs for on-route charging infrastructure.

Table 31 - Total Infrastructure Costs, BEB Only Scenario

Depot	Cost
Atlantis	$ 14,387,000
On-Route	$ 5,370,000
Total	**$ 19,757,000**

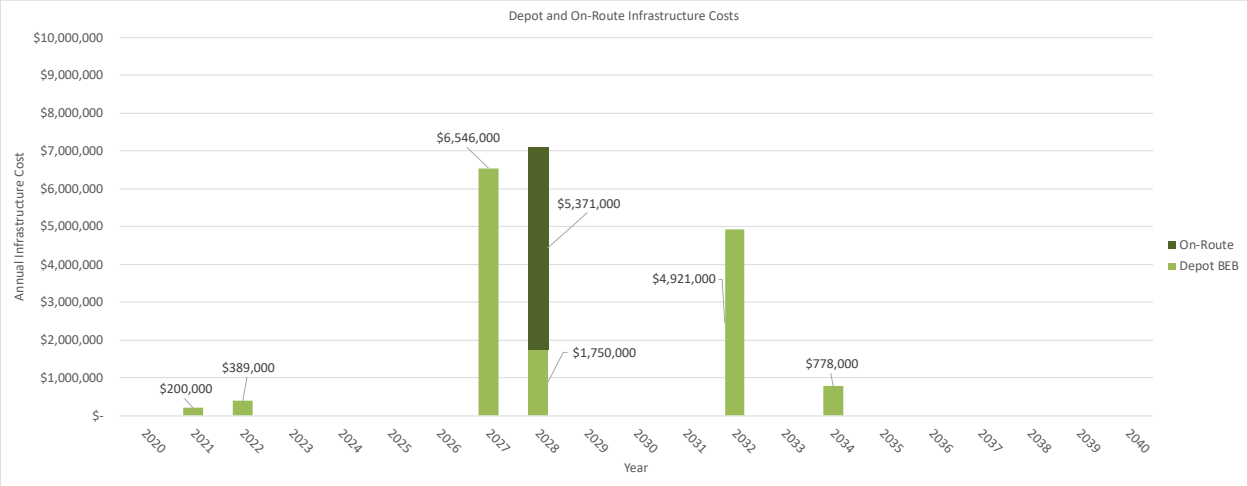


Figure 51 - Cumulative Total Infrastructure Costs, BEB Only Scenario

Mixed Fleet: BEB and FCEB Scenario – BEB Facility

Mixed Fleet Charging Scenario Depot Planning Projects

In the Mixed Fleet Scenario, BEB infrastructure planning will be required at the depot. Planning is estimated to cost $200,000 for planning the infrastructure transition at the Atlantis depot. One $200,000 project is therefore planned for LAVTA over the transition period.

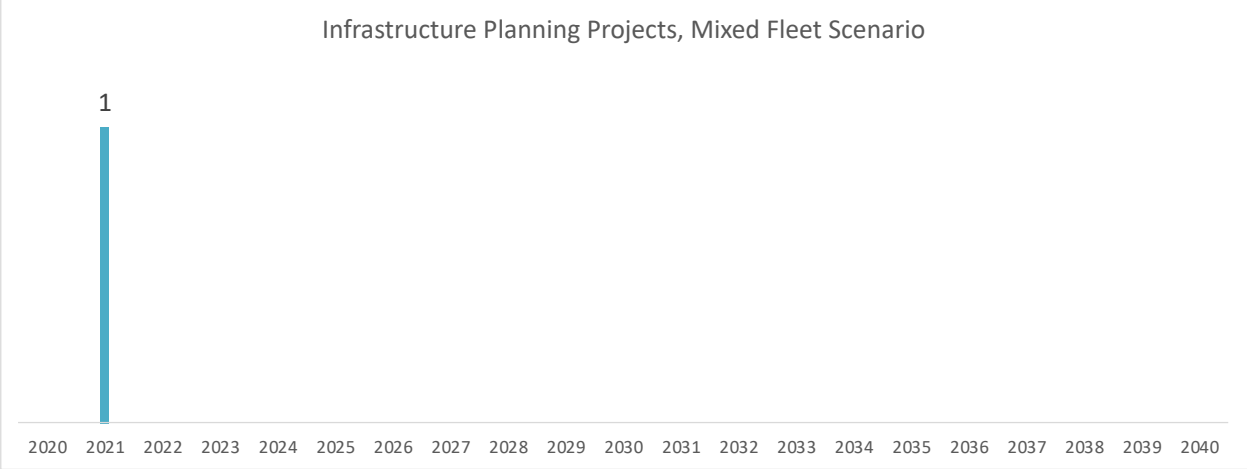


Figure 52 - Planning Projects, Mixed Fleet Charging Scenario

Mixed Fleet Charging Structural Projects

Structural projects include (1) trenching and build out duct banks from the switchgear to the charger pads, (2) construction of charger pads (i.e., foundation for charging equipment), (3) construction of gantry foundations and overhead gantry structures that hold the dispensers, and (4) installation of conduit from switchgear to charger pads and gantries. See **Table 32** for

the detailed cost assumptions for structural projects. Duct bank cost is incurred only once per depot, other costs are on a per gantry basis.

Table 32 - Structural Project Cost Assumptions

Item	Cost	Unit
Initial Duct/Bank	$ 300,000	per depot
Gantry & Foundation	$ 450,000	per gantry
Incremental Duct Bank/Conduit	$ 22,000	per gantry
Charger Pad (3 chargers per gantry)	$ 25,000	per gantry
Contingency	20%	on project costs
Design Engineering	6%	on project costs and contingency

Each entry in the table below indicates a structural project to add overhead gantry capacity to the depot. **Figure 53** shows the number of gantries added in a given year at the depot. Each gantry can serve up to eight buses. A total of 7 gantries will be needed at LAVTA to support BEB charging in this scenario.

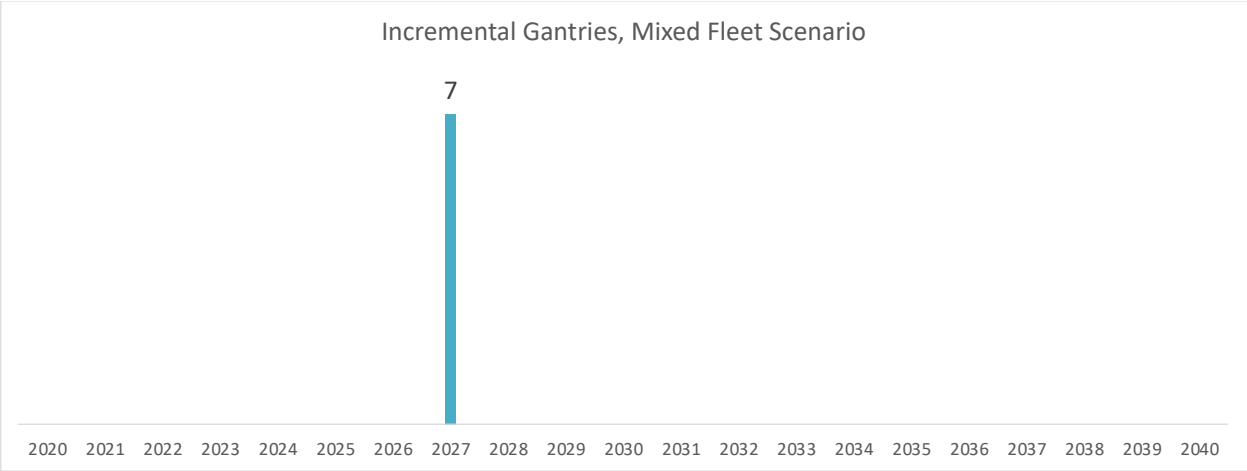


Figure 53 – Incremental Gantries, Mixed Fleet Charging Scenario

Figure 54 – Annual Structural Projects Cost, Mixed Fleet Scenario shows the total annual costs of structural projects by depot for the Mixed Fleet Charging scenario. These costs include the initial duct bank costs at each depot, plus gantry and foundation costs, incremental duct bank/conduit costs and charger pad costs per gantry, sequenced in accordance with the above tables. On top of these costs, 20% contingency and 6% engineering costs are added.

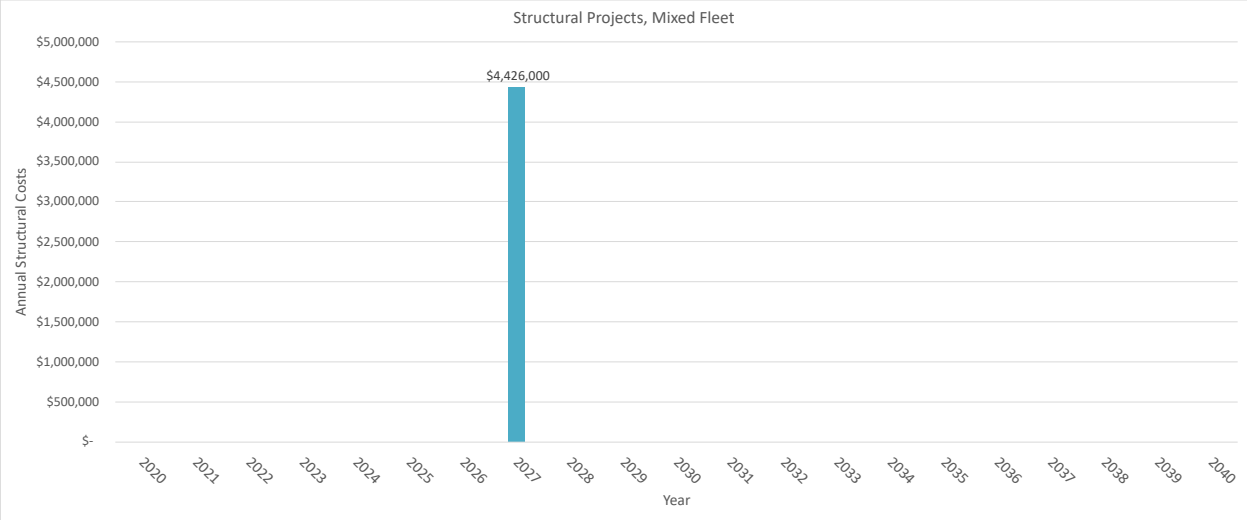


Figure 54 – Annual Structural Projects Cost, Mixed Fleet Scenario

Mixed Fleet Power Upgrade Projects

Power upgrade projects include construction of transformer foundations and installation of transformers. It is assumed that transformers will be modular, and incremental power requirements are met over time. **Table 29** shows the estimated costs for depot power upgrade projects.

Figure 55 shows incremental required electrical demand, in megawatts, for each depot. Each entry indicates the minimum amount of power that must be added in a given year to meet the growing demand at a given facility as more BEBs are purchased.

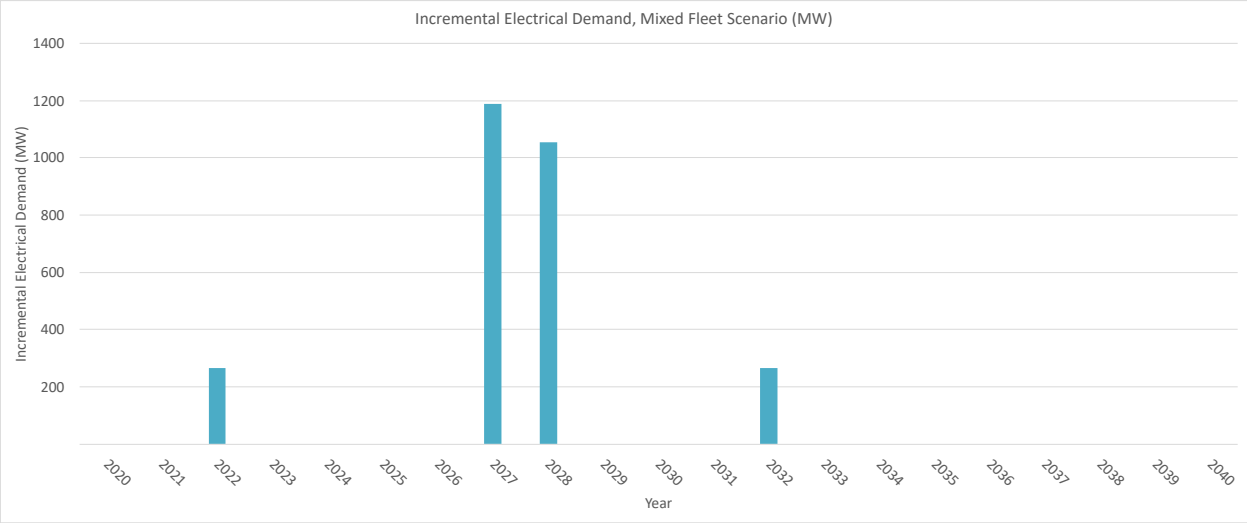


Figure 55 – Incremental Electrical Demand, Mixed Fleet Scenario (MW)

Power upgrades are consolidated to occur in selected years, in accordance with the required demand in **Figure 55.** These recommended upgrades are shown in **Figure 56**. LAVTA will need to add an additional estimated 4 MW of capacity to its system by 2040 to accommodate charging for 41 BEBs.

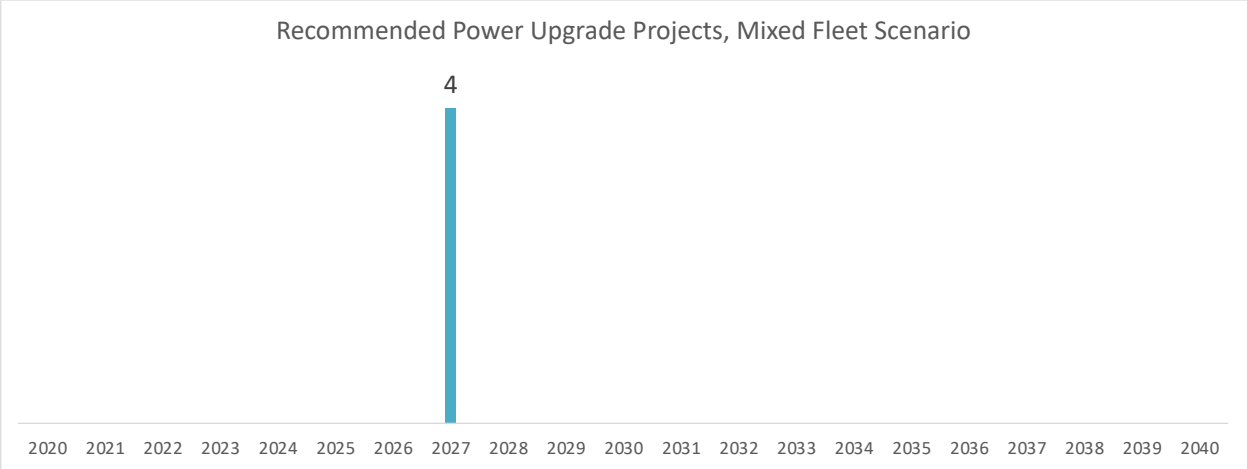


Figure 56 – Recommended Power Upgrade Projects, Mixed Fleet Charging Scenario (MW)

The total cumulative cost of power upgrade projects at the depot, in 2020 dollars, is provided in **Figure 57** – Annual Power Upgrade Project Costs, Mixed Fleet Charging Scenario. Total estimated power upgrade costs over the project life are approximately $0.3 million.

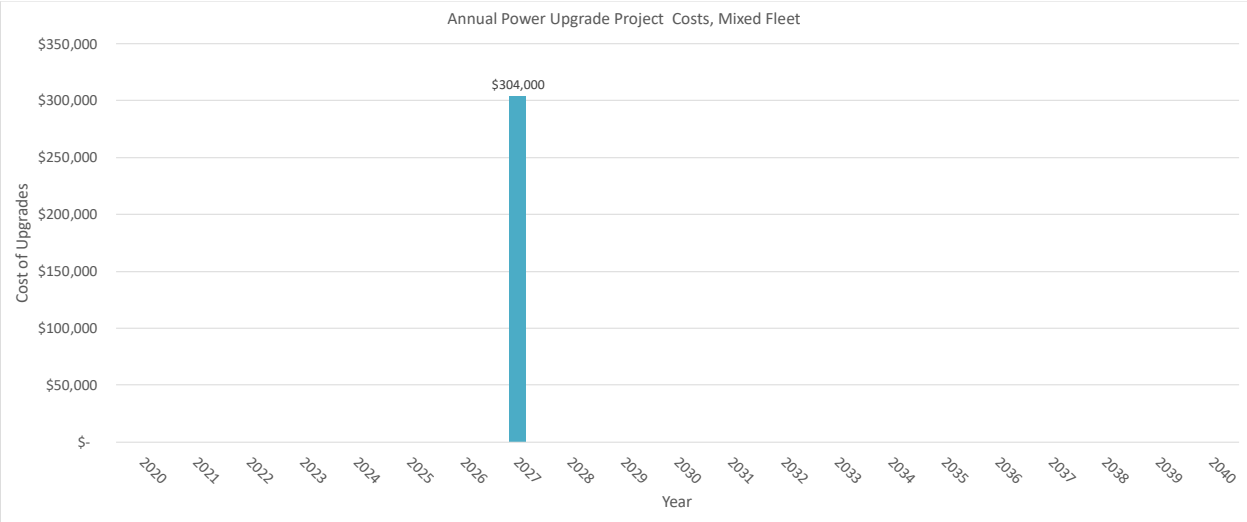


Figure 57 – Annual Power Upgrade Project Costs, Mixed Fleet Charging Scenario

Mixed Fleet Charger Installation Projects

Charging projects include purchase and installation of 120 kW chargers and dispensers. Each bus will require one dispenser. Every two buses (40-foot and larger) will require one charger with two dispensers. Dispensers are expected to be either overhead reel or pantograph style.

Table 30 above provides the costs assumed for charger and dispenser installs. As seen in **Figure 58** – Annual Dispenser Installations, Mixed Fleet Charging Scenario **and Figure 59** – Annual Charger Installations, Mixed Fleet Charging Scenarioin total, this scenario would require 21 chargers (42 dispensers) at LAVTA.

Figure 58 – Annual Dispenser Installations, Mixed Fleet Charging Scenario **and Figure 59** – Annual Charger Installations, Mixed Fleet Charging Scenarioshow the annual dispensers and charger installations by depot for each year of the project.

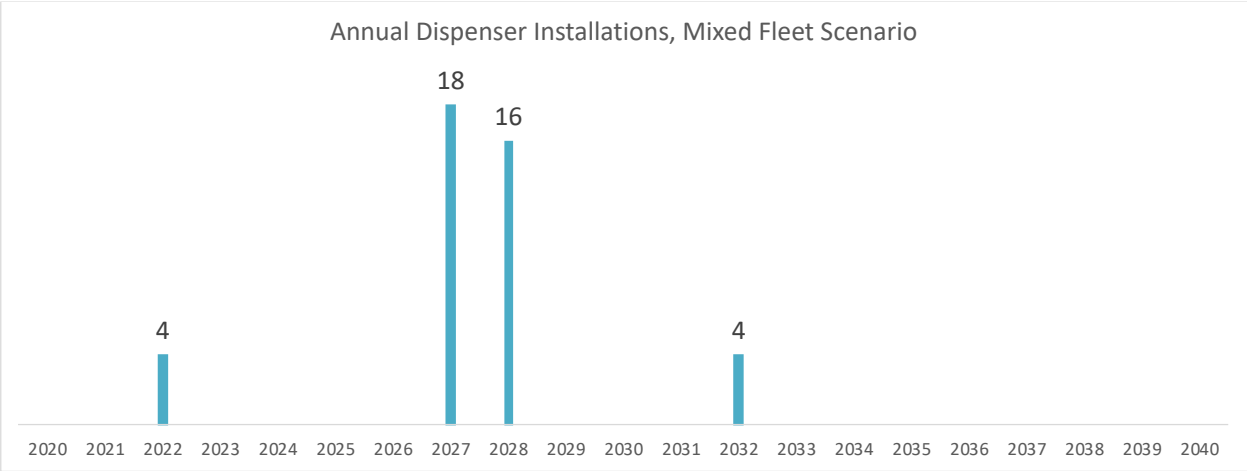


Figure 58 – Annual Dispenser Installations, Mixed Fleet Charging Scenario

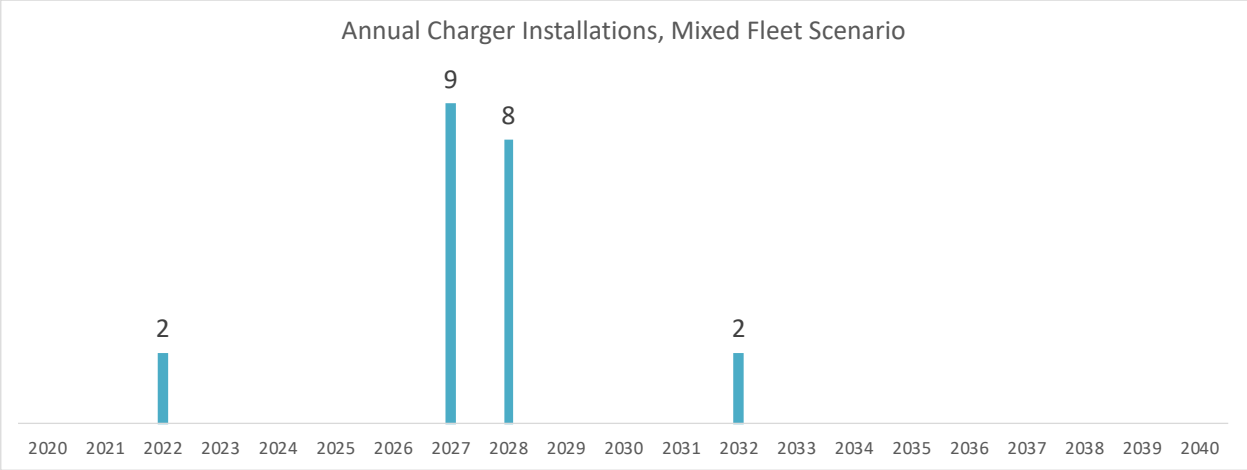


Figure 59 – Annual Charger Installations, Mixed Fleet Charging Scenario

Figure 60 shows the annual cost of charger and dispenser installations based on these cost assumptions and the above estimated charger and dispenser quantities.

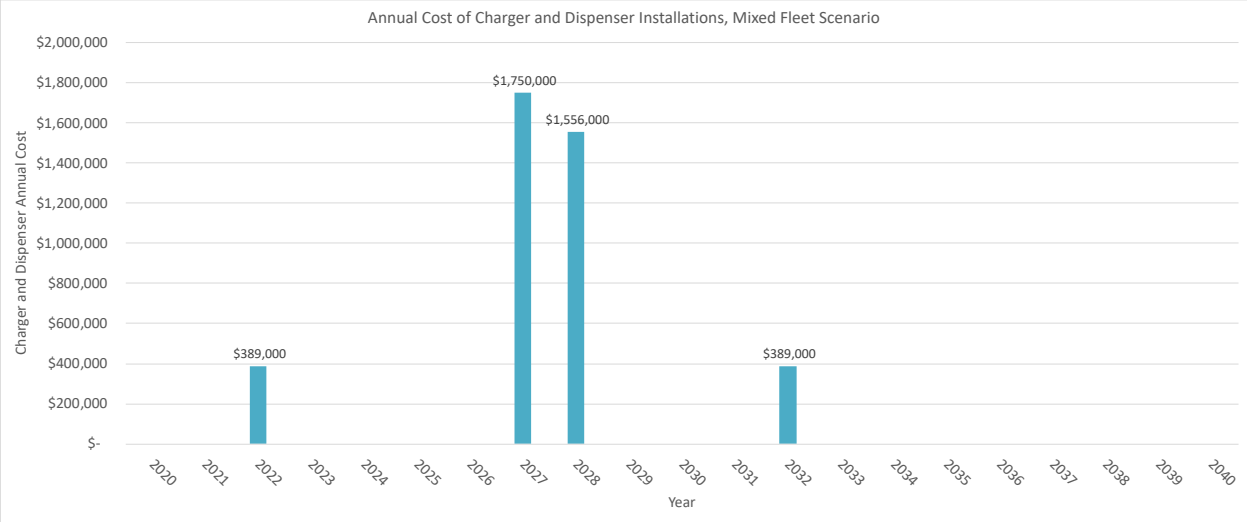


Figure 60 - Annual Cost of Charger and Dispenser Installations, Mixed Fleet Charging Scenario

Mixed Fleet Charging Infrastructure Cost Summary

Table 33 summarizes all costs for charging infrastructure for the Mixed Fleet scenario. **Figure 61** shows the cumulative total cost breakdown for the BEBs in the fleet. The estimated total BEB infrastructure costs for the Mixed Fleet scenario are approximately $9.0 million. This total cost includes all gantry structural projects, all power upgrade projects, all charger and dispenser installations, all planning projects, design engineering costs and the added 20% contingency on all costs, as well as the design and equipment costs for on-route charging infrastructure.

Table 33 - Total BEB Infrastructure Costs, Mixed Fleet Scenario

Depot	Cost
Atlantis	$ 9,011,000
Total	**$9,011,000**

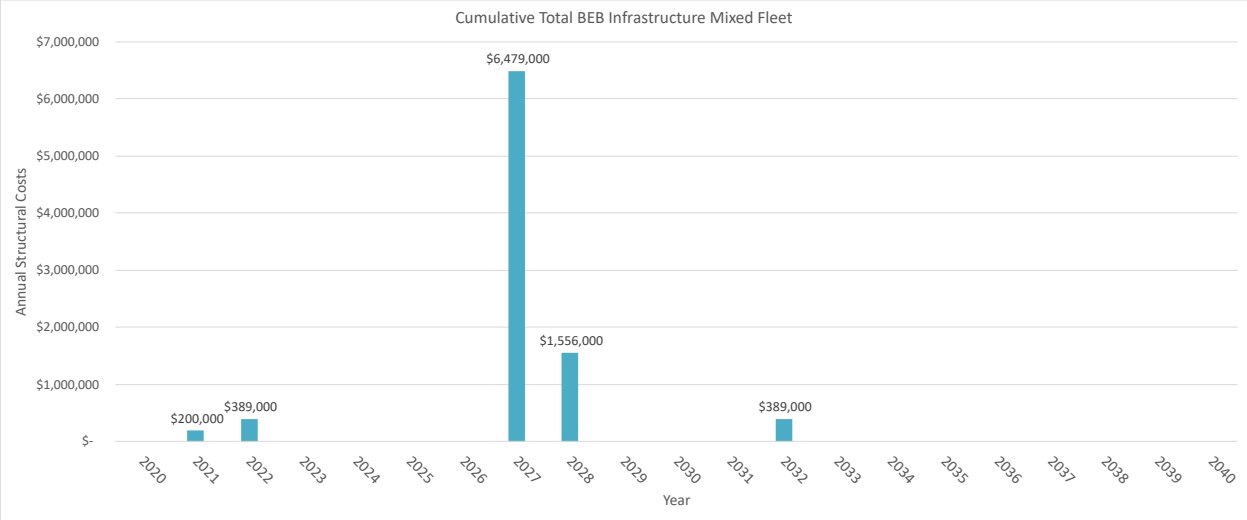


Figure 61 - Cumulative Total BEB Infrastructure Costs, Mixed Fleet Scenario

Hydrogen Fuel Cell Infrastructure Scenarios

To define the timeline and costs to build hydrogen fueling infrastructure, CTE breaks the scope of work into four key project types: (1) planning, (2) structural, (3) maintenance bay upgrades, and (4) fueling. Rather than building out the infrastructure all at once, projects are sized and scheduled to meet near-term fueling requirements.

50-Bus Mechanical Projects

For hydrogen fueling equipment, it is economical to package projects in 50-bus increments with all necessary mechanical and fueling components included except for liquid hydrogen storage tanks. Storage tanks can be added in a modular fashion as demand increases, separately from other fueling components. The 50-bus mechanical projects include:

1. Two dispensers (additional dispensers may be added);
2. All mechanical process equipment and hydrogen wetted components;
3. Design, engineering, and permitting;
4. Construction;
5. Demolition of existing pavement, and excavation;
6. Installation of new equipment foundations;
7. All electrical conduit, conductors, and termination;
8. Emergency shut down and notification system;
9. Mechanical installation; and
10. Electrical utilities and switchgear.

For LAVTA, Fiedler Group conducted an assessment of the FCEB infrastructure requirements at this facility for the Mixed Fleet: BEB and FCEB scenario and the FCEB Only Scenario. Fiedler

Group has over 60 years of experience working on innovative engineering and design projects and is widely viewed as the industry expert on hydrogen fueling station design.

Since both of the scenarios involving FCEBs had several years where there would only be four or five FCEBs in the yard, in the Mixed Scenario and the FCEB Only Scenario respectively, Fiedler Group recommends using a mobile fueler until the number of FCEBs meets or exceeds 19 buses. The infrastructure for a mobile fueler is expected to cost around $72,000 per year. In the Mixed Scenario, that cost is incurred for four years and in the FCEB Only Scenario, it is incurred for five years. When the permanent station is installed, the 50-bus incremental design cost is estimated at around $4.2 million with the incremental capacity expected at $300,000. The other major cost of hydrogen infrastructure is the maintenance bay upgrades required to make the bays hydrogen safety compliant. Upgrading all 14 of the bays at Atlantis Court is estimated at $1.9 million. This cost also assumes that some gas detection equipment will already be installed in the Atlantis Court maintenance bays during construction.

Hydrogen storage must comply with safety distance requirements outlined by the National Fire Protection Association (NFPA). These requirements are primarily outlined in NFPA 2 8.3.2.3.1.6(A) and NFPA 2 8.3.2.3.1.6(B) and are designed to prevent ignition of the hydrogen. Fiedler Group reviewed these hydrogen storage requirements, including siting location with consideration of physical protection minimum distances and alternate minimum distances, as well as hydrogen dispensing requirements and selected a location for the hydrogen storage and fueling infrastructure that complies with these regulations. This site layout can be seen in **Appendix A5-A7** for the Mixed Fleet Scenario and **A8** for the final FCEB Only Layout.

For the assessment of the permanent fueling facility, Fiedler Group assumed liquid hydrogen would be trucked in and stored on site in an above-ground tank. According to Fiedler Group's estimates, for each 50-bus increment, a 15,000-gallon tank will be needed. In the Mixed Scenario, that tank is expected to be installed in 2033 when there are 19 FCEBs in the fleet. In the FCEB Only Scenario, it will be installed when the capacity for the full 68 bus transition is reached in 2028. The size of these tanks allows for storage of four service days' worth of fuel. Two dispensers will be required, both to allow for all the buses to be fueled within an eight-hour window and for the purpose of redundancy.

Fiedler Group worked with AECOM to integrate hydrogen fueling infrastructure into the BEB project design phasing. These designs can be seen in **Appendix A5-A7**. The FCEB Only Scenario site design can be seen in **Appendix A8**.

The cost estimates that Fiedler Group provided for FCEB infrastructure were integrated into CTE's Facilities Assessment and are summarized in **Table 34.** These estimates are based on the 50-bus increments employed by Fiedler Group.

Table 34 – FCEB Infrastructure Planning Assumptions

Project	Cost Estimate	Source
Infrastructure Planning	$200,000 per depot	Engineer's estimate
50-Bus Incremental Mechanical Equipment and Installation Package	Varies by facility; Includes design, permitting, and installation for two (2) dispensers; all mechanical process equipment; electrical utilities and switchgear. Excludes storage tanks.	Engineer's estimate, vendor quotes
Incremental Addition of 15,000 Liquid Hydrogen Tank	$300,000 per tank for installation	Engineer's estimate, vendor quotes
Maintenance Upgrades	Electrical, Lighting, Ventilation, and Gas Detection - $191,500 to upgrade all of LAVTA's maintenance bays	Engineer's estimate

Storage Capacity Projects

Storage capacity projects include the incremental addition of one or more 15,000-gallon liquid hydrogen storage tanks. Tanks are sized at 15,000 gallons to accommodate one truckload of liquid hydrogen, or approximately 3,000 kilograms. Storage capacity projects are planned in conjunction with bus mechanical projects to reduce disruptions for construction projects. This practice is standard and has been successfully implemented at OCTA and AC Transit and was recommended by Fiedler Group to San Diego Metropolitan Transit System and Long Beach Transit. The required capacity of hydrogen storage at a given depot is sized to accommodate an approximately four-day supply of average daily fuel use.

Mixed Fleet: BEB and FCEB Scenario – FCEB Facilities

In the Mixed Fleet: BEB and FCEB scenario, charging infrastructure is required to service a total of 41 BEBs while additional hydrogen fueling infrastructure services 27 FCEBs. All buses transition to zero-emission in this scenario.

In addition to BEB charging, hydrogen fueling is required to support the Mixed Fleet: BEB and FCEB scenario. For the FCEB fueling costs, the scope of work is broken into four key project types: (1) planning, (2) structural, (3) maintenance bay upgrades, and (4) fueling. Infrastructure is built out over time as necessary to support FCEB deployment.

Planning Projects

The building of hydrogen infrastructure will require planning at the depot. It is assumed that a planning project costs $200,000, occurring as shown in the table below, and occurs only once per depot. The total cost of planning projects for the one depot is therefore approximately $200,000.

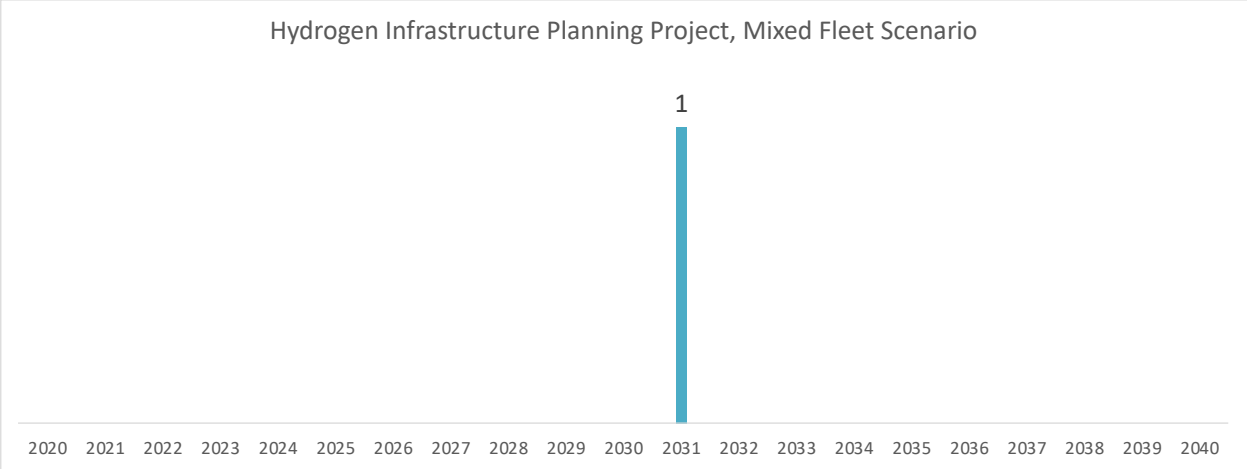


Figure 62 - Planning Projects, Mixed Fleet Scenario

Figure 63 shows the estimated mechanical projects by year. Costs vary per project in a given year due to the scale of the implementation at each depot. Building mechanical infrastructure is grouped into one phase to minimize disruption of service and capital expenses. The total cost of mechanical projects to support the Mixed Fleet scenario is approximately $4.1 million for the one project expected in this scenario.

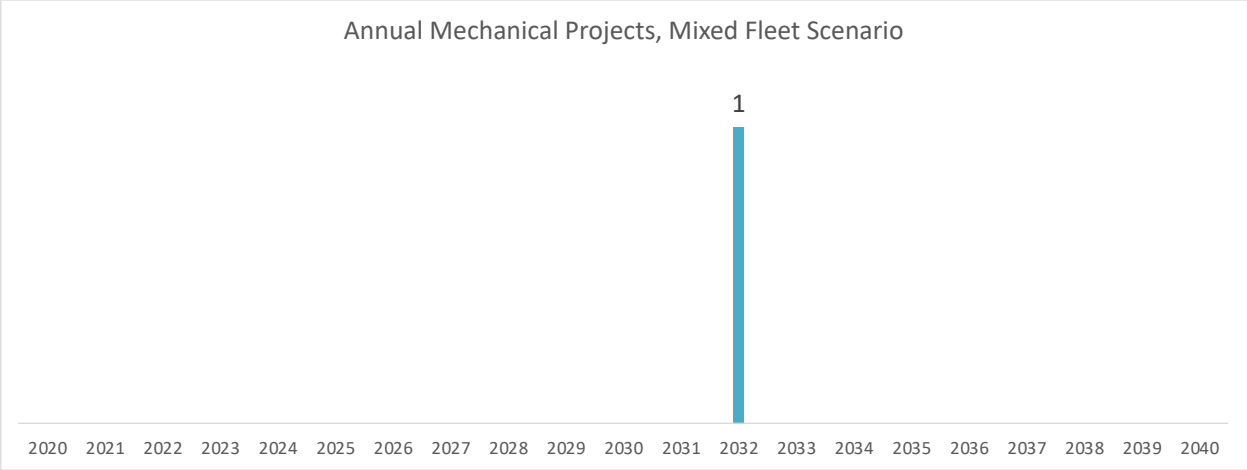


Figure 63 - Mechanical Projects, Mixed Fleet Scenario

Storage Capacity Projects

Figure 64 shows the planned storage capacity project and costs by year. The total storage capacity projects costs approximately $300,000 over the life of the study with one project in 2028 at LAVTA.

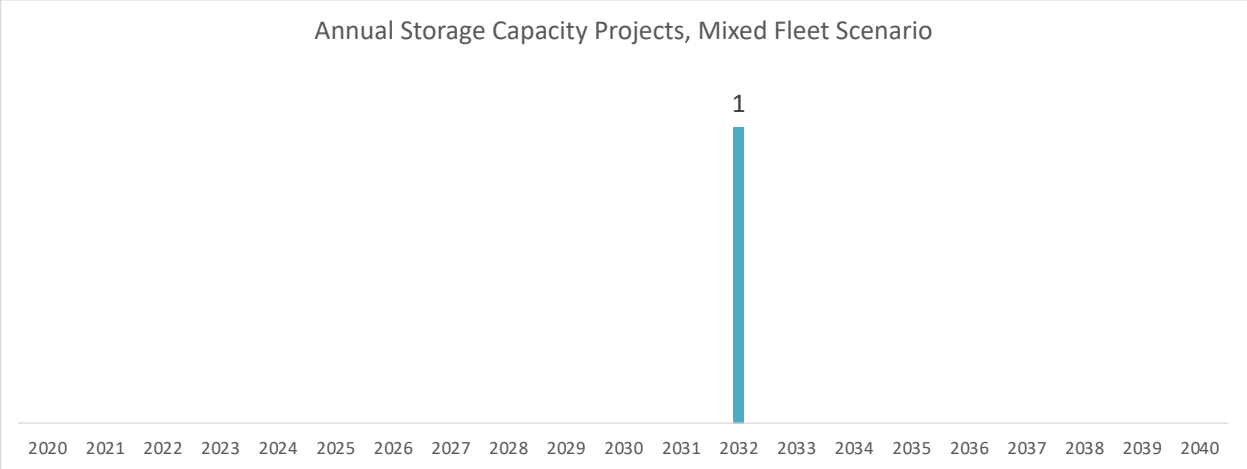


Figure 64 - Storage Capacity Projects, Mixed Fleet Scenario

Maintenance Bay Upgrade Projects

Maintenance bays at each depot require hydrogen detection and exhaust equipment to ensure safety. **Figure 65** indicates the timing and location of upgrade projects, as well as the number of bays that require upgrades at each depot. All 14 maintenance bays will require upgrades so that all bays will be able to service FCEBs.

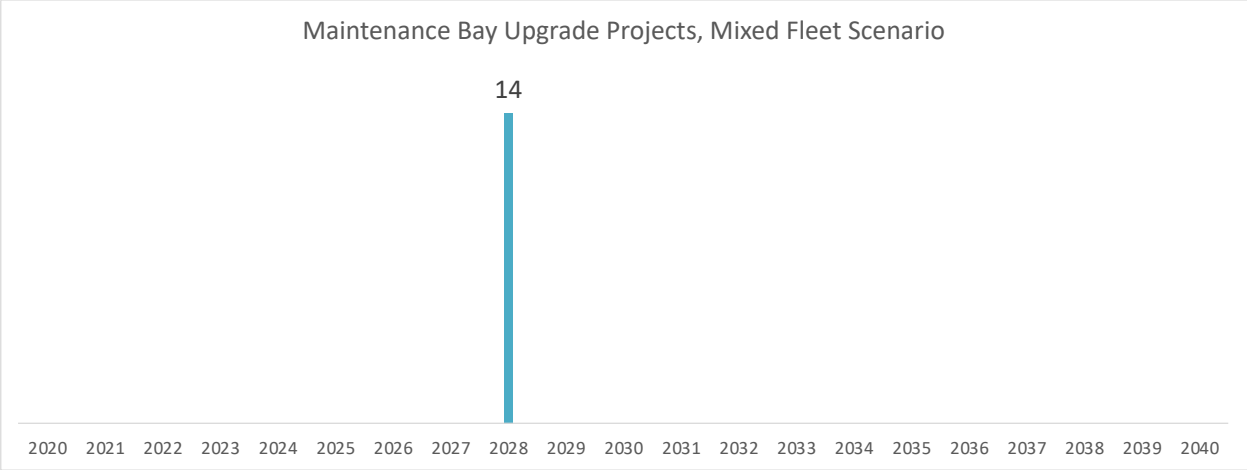


Figure 65 - Hydrogen Maintenance Bay Upgrade Projects, Mixed Fleet Scenario

At LAVTA, CTE assumed nearly $14,000 per bay for the required upgrades. This cost comes from the requirement of additional ventilation systems necessary for hydrogen detection. Since LAVTA is in the process of building a new facility, these costs are reduced from what they would usually be for upgrading a diesel maintenance bay, because designing the bays for servicing FCEBs will be less expensive than retrofitting an existing bay. For maintenance bay upgrade projects, CTE estimates a total cost of $1,900,000 at LAVTA in 2028.

Mixed Fleet FCEB Infrastructure Summary

Figure 61 provides the total infrastructure costs for the Mixed Fleet scenario for the entire transition period. The total build of required FCEB infrastructure will cost approximately $5.1 million for the FCEB Only scenario. It is important to note that this scenario also includes procurement of 41 BEBs between 2023 and 2033, which will require additional charging infrastructure, as outlined in the BEB infrastructure section. The cost of these projects combined would be around $19.8 million. **Figure 67** shows a cumulative summary of infrastructure costs by year.

Annual costs for the FCEB infrastructure portion of the mixed fleet are provided in **Figure 66**. The total combined infrastructure costs for the Mixed Fleet Scenario can be seen in **Figure 67** - Cumulative Infrastructure Costs, Mixed Fleet: BEB and FCEB Scenario**.**

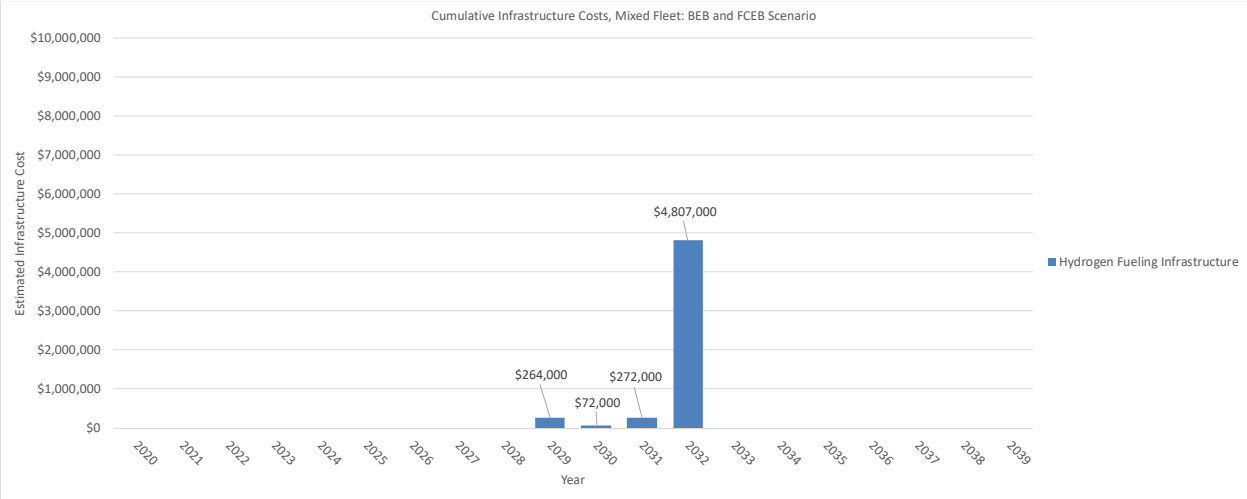


Figure 66 - Annual FCEB Infrastructure Costs, Mixed Fleet: BEB and FCEB Scenario

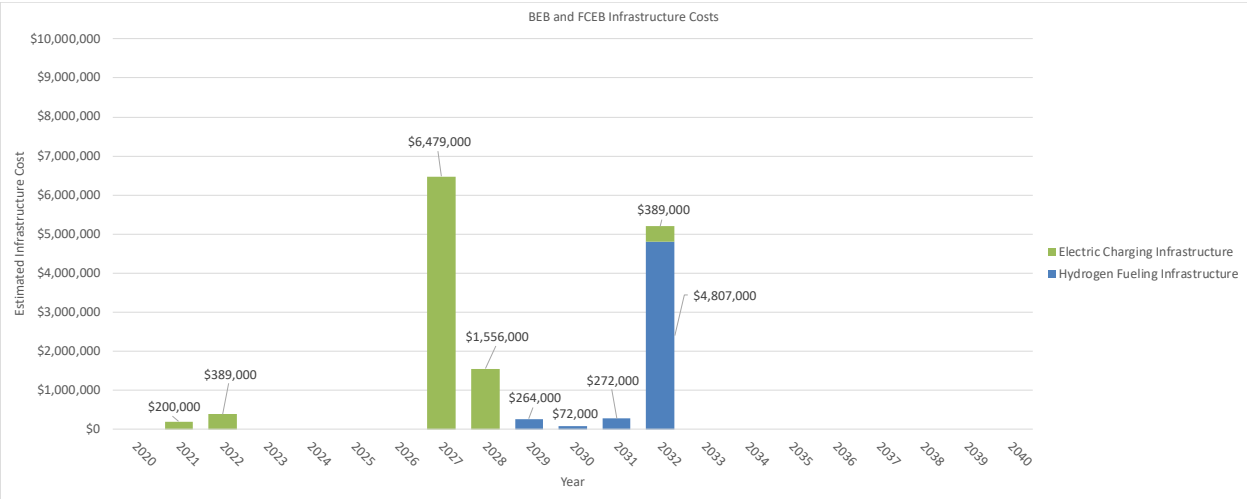


Figure 67 - Cumulative Infrastructure Costs, Mixed Fleet: BEB and FCEB Scenario

FCEB Only

The FCEB Only scenario assumes that FCEBs are utilized to run all of LAVTA's routes by 2035. The following estimates calculate necessary hydrogen infrastructure costs to support a fleet of 68 FCEBs by 2035.

Planning Projects

The building of permanent hydrogen infrastructure will require planning at each depot. It is assumed that each planning project will cost $200,000, occurring as shown in the graph below, and only once per depot. The total cost of planning projects for the one depot is therefore approximately $200,000.

Figure 68 – Planning Projects, FCEB Only Scenario

Figure 69 shows the estimated mechanical projects by year. Costs vary per project in a given year due to the scale of the implementation at each depot. Building mechanical infrastructure at each depot are grouped into no more than two phases to minimize disruption of service and capital expenses. The total cost of mechanical projects to support the FCEB Only scenario is approximately $4.2 million, and the project is scheduled in 2027.

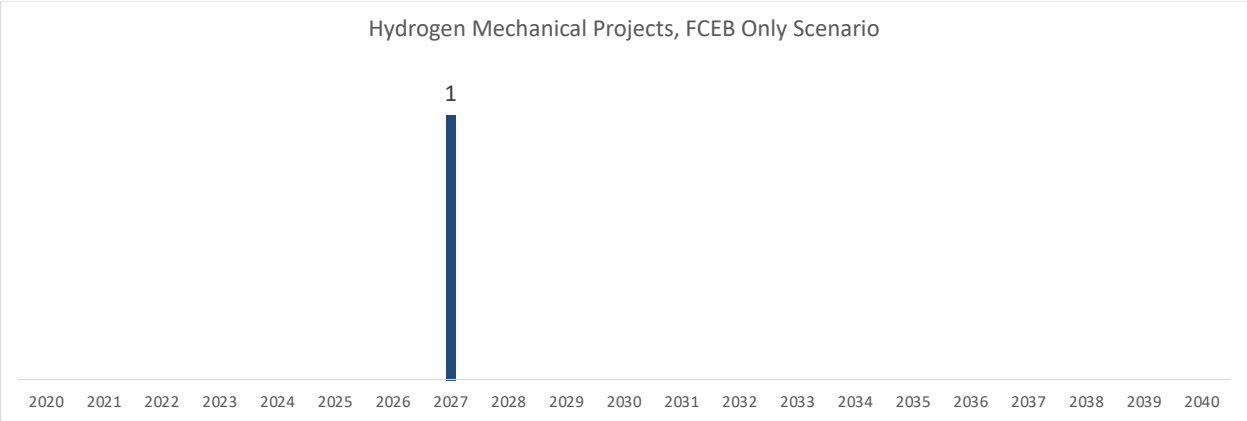


Figure 69 – Hydrogen Mechanical Projects, FCEB Only Scenario

Storage Capacity Projects

Figure 70 - Hydrogen Storage Capacity Projects, FCEB Only Scenarioshows the planned storage capacity projects and costs by year and depot. The total storage capacity projects will cost approximately $0.6 million over the life of the study. There will be a single project in 2027 that will add the capacity for the initial 50-bus capacity tank, as well as the additional capacity for the 18 additional buses required in the full fleet transition.

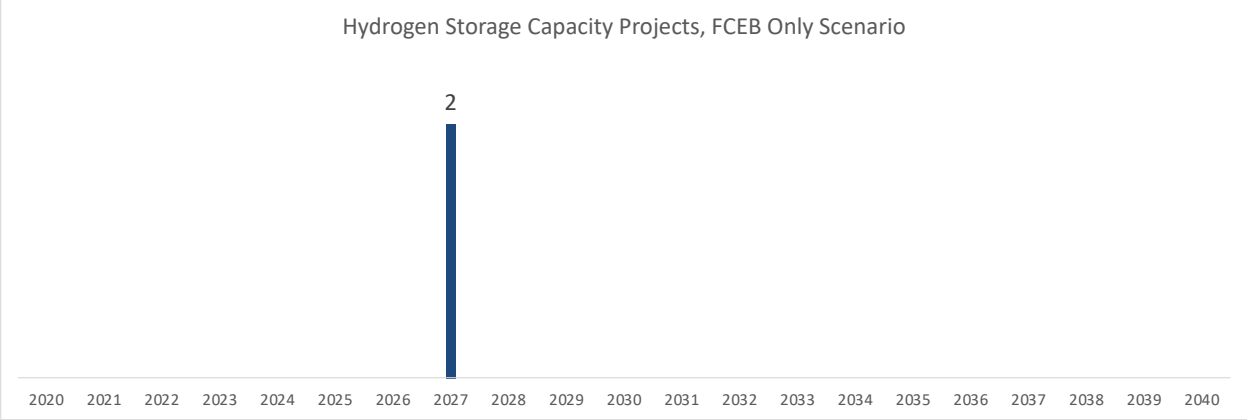


Figure 70 - Hydrogen Storage Capacity Projects, FCEB Only Scenario

Maintenance Bay Upgrade Projects

Maintenance bays at each depot will require hydrogen detection and exhaust equipment to ensure safety. **Figure 71** indicates the timing and location of upgrade projects, as well as the number of bays that require upgrades. A total of 14 maintenance bays will require upgrades.

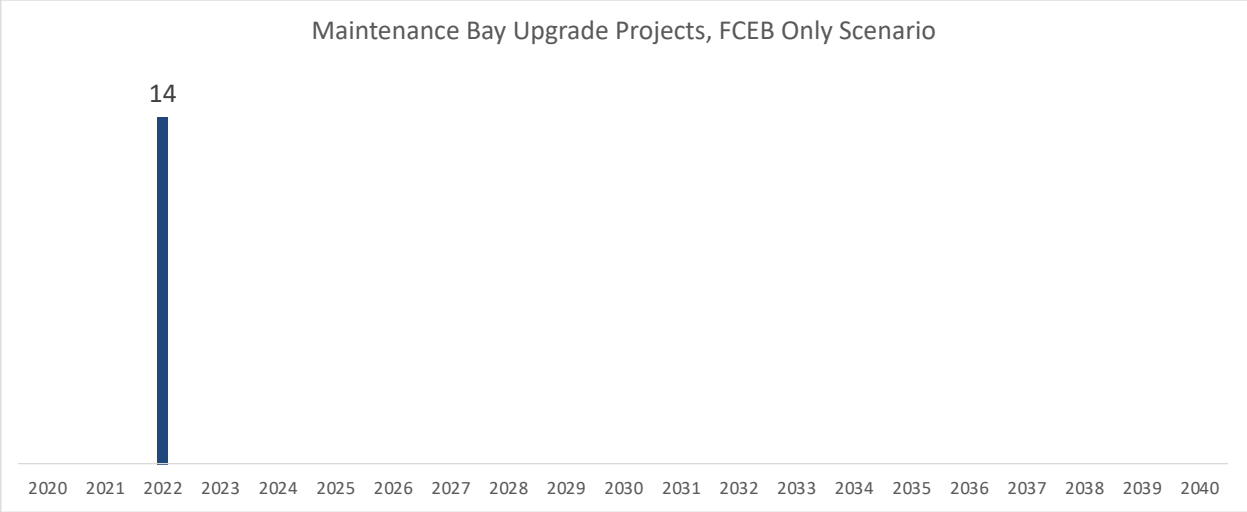


Figure 71 - Hydrogen Maintenance Bay Upgrade Projects, FCEB Only Scenario

CTE assumed $13,600 per bay for the required upgrades. This cost comes from the requirement of additional ventilation systems. For maintenance bay upgrade projects, CTE estimates a total cost of $1,900,000 for LAVTA in 2022.

FCEB Only Infrastructure Summary

Table 35 provides the total infrastructure costs for the FCEB Only scenario for the entire transition period. The total build of required FCEB infrastructure will require approximately $9.8 million for the FCEB Only scenario. **Figure 72** shows a cumulative summary of infrastructure costs by year at the depot including the cost of the mobile fuelers prior to the install of the permanent infrastructure in 2027.

Table 35 – Total Infrastructure Costs, FCEB Only Scenario

Depot	Cost
Atlantis	$ 9,752,000
Total	**$ 9,752,000**

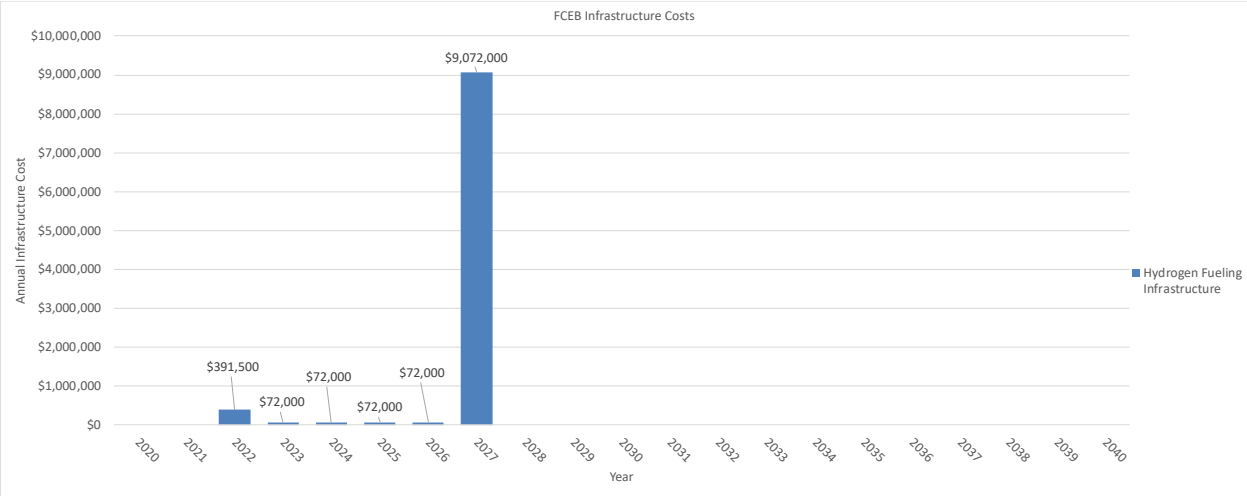


Figure 72 - Cumulative Infrastructure Costs, FCEB Only Scenario

Facilities Assessment Cost Comparison

The Facilities Assessment includes all infrastructure-related costs over the transition for each scenario. **Figure 73** shows the cumulative infrastructure costs for each scenario. **Table 36** shows the combined total costs and percentage of ZEBs in the fleet in 2040.

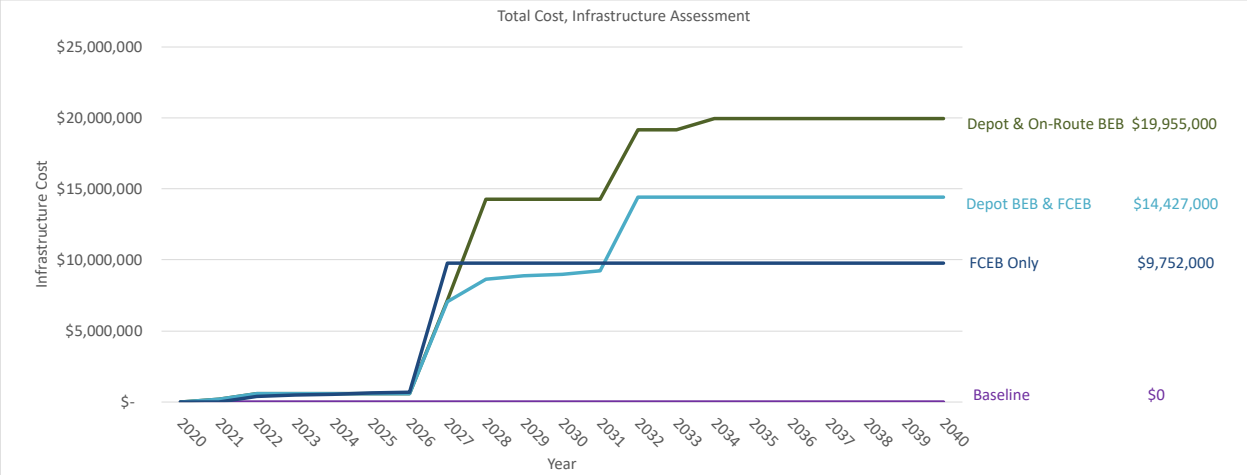


Figure 73 - Total Cumulative Costs, Facilities Assessment

Table 36 - Total Cumulative Costs, Facilities Assessment

Scenario	Cost	% ZEB in 2040
Baseline	$ 0	0%
BEB Only	$ 19,955,000	100%
Mixed Fleet: BEB and FCEB	$ 14,427,000	100%
FCEB Only	$ 9,752,000	100%

9 Total Cost of Ownership Assessment

The Total Cost of Ownership Assessment compiles the results from the Fleet, Fuel, Facilities, and Maintenance Assessments to show cumulative and annual costs throughout the transition period for each scenario. It includes selected capital and operating costs of each fleet scenario over the transition timeline. Other costs may be incurred (e.g. incremental operator and maintenance training) during a fleet transition; however, these four assessment categories are the key drivers in ZEB transition decision-making.

This study assumes no cost escalation or any cost reduction due to economies of scale for ZEB technology because there is no historical basis for these assumptions. Future changes to LAVTA's service level, depot locations, route alignments, block scheduling, or other operations are unknown. The analyses below provide best estimates using the information currently available and the assumptions detailed throughout this report.

Costs by Scenario

The following sections show total costs per scenario, broken down by assessment type.

Baseline

Figure 74 shows the combined fleet, fuel, facilities, and maintenance costs for the Baseline scenario in 2020 dollars. Since bus capital costs represent the most expensive cost examined, the peaks in these expenses occur during large purchasing years. Compared to bus costs, the fluctuations in fueling and maintenance cost are minimal and appear fairly stable from one year to the next. Since this scenario assumes that the necessary infrastructure is already present at the depot, there are no infrastructure costs associated with the Baseline scenario. The total combined cost is approximately $138 million over twenty years from 2020 to 2040. This scenario estimates a total of 68 diesel-hybrids in service in 2040.

Figure 74 – Total Costs by Type, Baseline Scenario

BEB Only

Figure 75 shows the combined fleet, fuel, facilities, and maintenance costs for the BEB Only scenario in 2020 dollars. The total combined cost is approximately $195 million over the length

of the transition, from 2020 to 2040. This scenario estimates a total of 68 total BEBs in service by 2040. The trends in the total cost fluctuations between years are largely the same as the Baseline and are also the result of bus capital costs being the main component of yearly costs. Infrastructure costs factor in towards the beginning of the project and maintenance and fueling costs remain relatively stable from year to year.

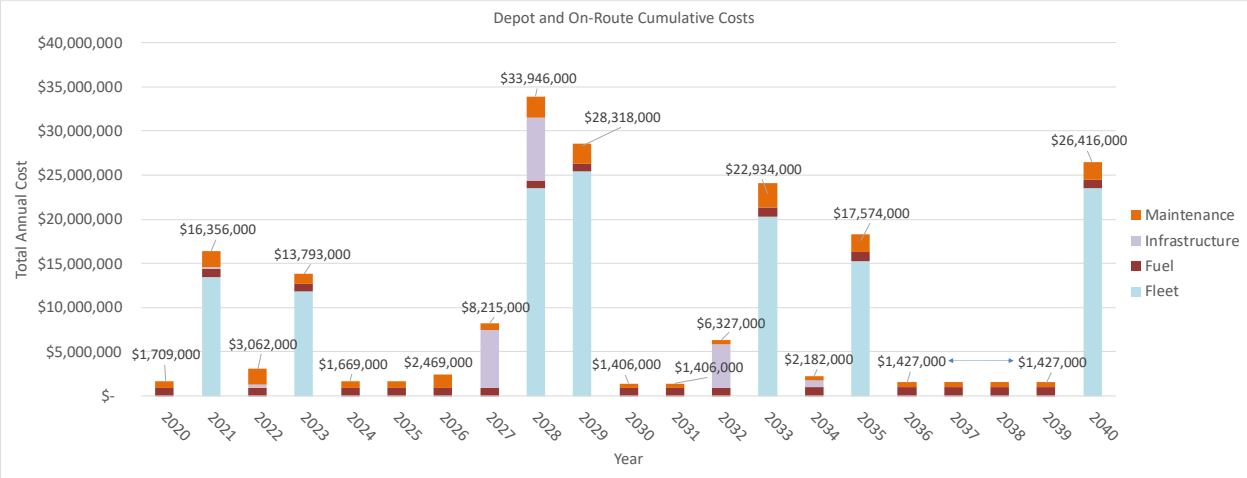


Figure 75 – Total Costs by Type, Depot and On-Route Charging Scenario

Mixed Fleet: BEB and FCEB

Figure 76 shows the combined fleet, fuel, facilities, and maintenance costs related to the Mixed Fleet: BEB and FCEB scenario in 2020 dollars. The total combined cost is approximately $197 million over the length of the transition, from 2020 to 2040. This scenario estimates a total of 41 BEBs and 27 FCEBs (68 total ZEBs) in service by 2040. The patterns of this scenario's bus purchasing, maintenance costs, and fueling costs are similar to those of the previously discussed scenarios with the infrastructure costs being even more isolated towards the beginning of the project.

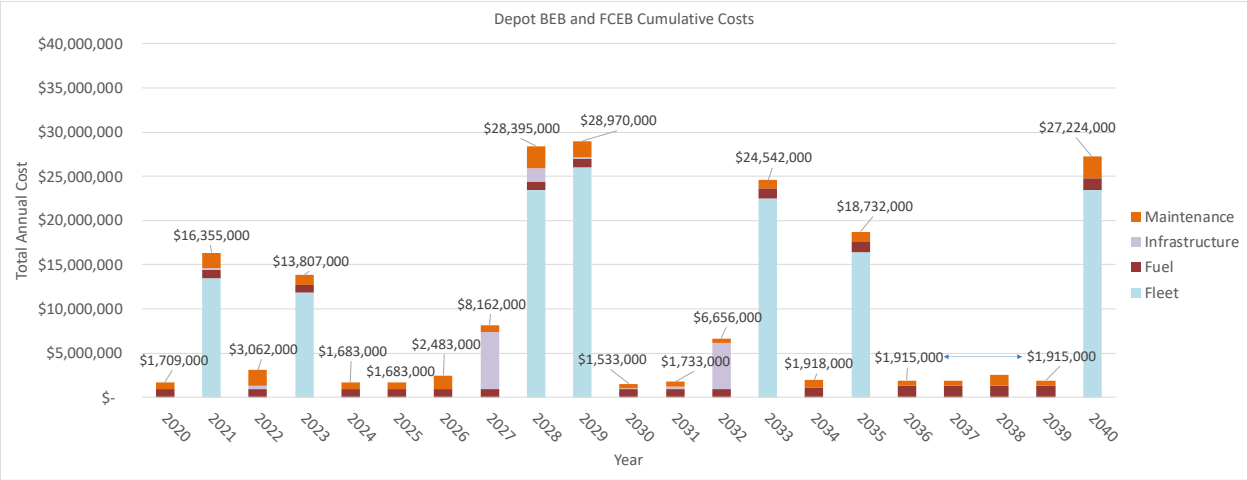


Figure 76 – Total Costs by Type, Mixed Fleet: BEB and FCEB Scenario

FCEB Only

Figure 77 shows the combined fleet, fuel, facilities, and maintenance costs related to the FCEB Only scenario in 2020 dollars. The total combined cost is approximately $216 million over the length of the transition, from 2020 to 2040. This scenario estimates a total of 68 FCEBs in service by 2040. The general trends of this scenario are similar to the previous two ZEB scenarios discussed although this scenario has the highest overall expense of any of the scenarios; however, because the infrastructure costs for FCEBs are significantly lower than the costs for FCEBs, this scenario's annual expenses never exceed $32 million, whereas the two scenarios with BEBs both have years that exceed $33 million.

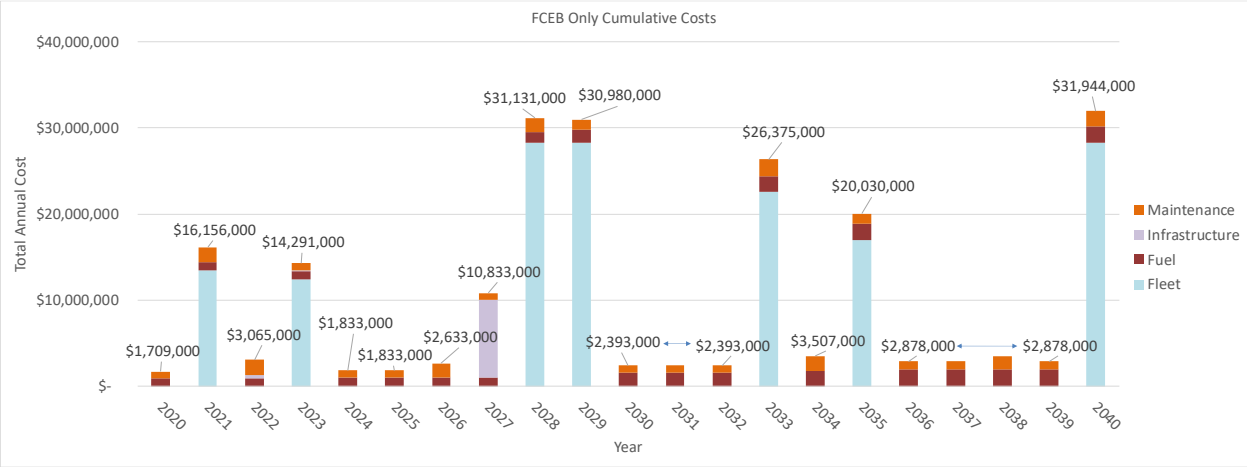


Figure 77 – Total Costs by Type, FCEB Only Scenario

Total Estimated Costs

Figure 78 shows the combined total costs from the assessments above, broken down by scenario. **Table 37** shows the detailed cost totals.

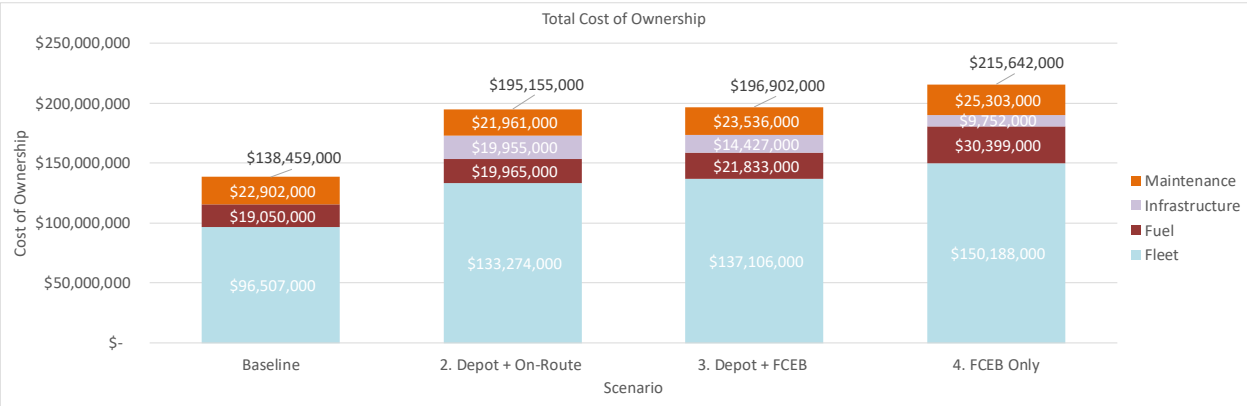


Figure 78 – Total Cost of Ownership, by Scenario

Table 37 – Total Cost of Ownership, by Scenario

Assessment Type	Baseline	BEB Only	Mixed Fleet: BEB and FCEB	FCEB Only
Fleet	$ 96,507,000	$ 133,274,000	$ 137,106,000	$ 150,188,000
Fuel*	$ 19,050,000	$ 19,965,000	$ 21,833,000	$ 30,399,000
Infrastructure	$ 0	$ 19,955,000	$ 14,427,000	$ 9,752,000
Maintenance	$ 22,902,000	$ 21,961,000	$ 23,536,000	$ 25,303,000
Total	**$ 138,459,000**	**$ 195,155,000**	**$ 196,902,000**	**$ 215,642,000**
% ZEB in 2040	**0%**	**100%**	**100%**	**100%**

*Excludes any potential LCFS credit revenue

10 Conclusions and Recommendations

ZEB technologies are in a period of rapid development and change. While the technologies have been proven in many pilot deployments, they are not yet matured to the point where they can easily replace current fossil-fuel technologies on a large scale. BEBs require significant investment in facilities and infrastructure and may require changes to service and operations to manage their constraints. On the other hand, FCEBs can provide an operational equivalent to diesel or CNG buses; however, the cost of buses, fueling infrastructure, and fuel are a significant hurdle.

CARB's ICT regulation is an achievement toward addressing the challenges of climate change and improving local air quality with a goal of 100% zero-emission transit fleets by 2040. However, as demonstrated in this analysis, there will be substantial costs and technical challenges to overcome. Transit agencies may be challenged to meet this goal while maintaining the same level of passenger service.

In an all-BEB strategy, total ZEB transitional costs are likely to be around $195 million not including LCFS credit revenue to offset fuel costs. By adding on-route charging, LAVTA could achieve a transition to a 100% battery-electric fleet without increasing fleet size or sacrificing block achievability. The difference in cost between this scenario and the Baseline scenario is largely the result of the price difference between diesel-hybrid buses and BEBs. Both 40-foot and 60-foot BEBs have completed Altoona testing and are acceptable under the CARB ICT regulation. The BEB Only scenario meets the CARB ICT regulation.

The Mixed Fleet: BEB and FCEB scenario achieves the transition of LAVTA's fleet to 100% zero-emission by 2040 with an estimated total cost of $197 million (not including LCFS credit revenue on fuel). This total cost falls between the BEB-only strategy on the low-cost end and the FCEB-only strategy on the high-cost end. Though the costs are considerably less for a mixed fleet deployment than the FCEB Only scenario, managing a mixed fleet through a transition presents its own complexities, such as installing new BEB infrastructure and installing new FCEB fueling infrastructure in a time frame that does not disrupt service. In this scenario, the depot would also need to have the capacity to fit both kinds of fueling infrastructure. LAVTA may also experience additional benefits as a result of the transition to ZEBs; one commonly cited benefit of ZEBs in the reduction in maintenance requirements. Less maintenance for ZEBs may result in the need for fewer maintenance bays.

If LAVTA selects an FCEB Only strategy, total ZEB transitional costs are estimated at approximately $216 million (not including LCFS credit revenue on fuel) for replacement of 100% of the fleet with FCEBs by 2040. FCEB technology would allow service to continue unaltered without increasing fleet size. A primary assumption for the FCEB analysis is that FCEB buses will be available for all bus types and lengths during the transition period. Due to the lack of market diversity of FCEBs and hydrogen available in the United States, fuel costs and bus capital costs remain high. These costs are expected to come down in the future as more buses are deployed; however, more data is needed to understand how much they may fall. Additionally, data for FCEB maintenance costs reflect higher costs than what might be expected as agencies become

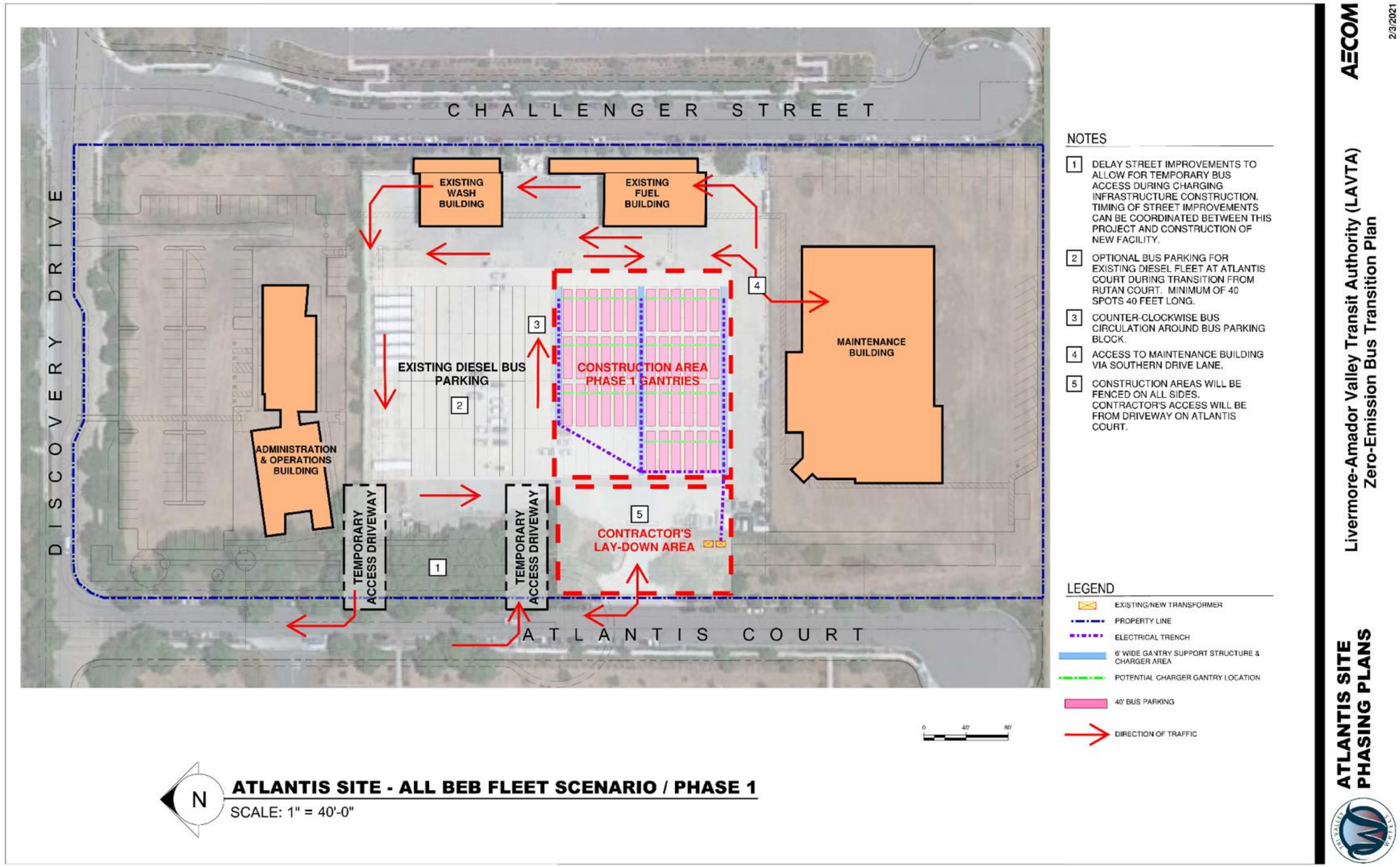
more familiar with the technology. As such, there are more unknowns associated with costs for the FCEB Only scenario, and costs are more subject to change.

Given these considerations, the recommendations for LAVTA are as follows:

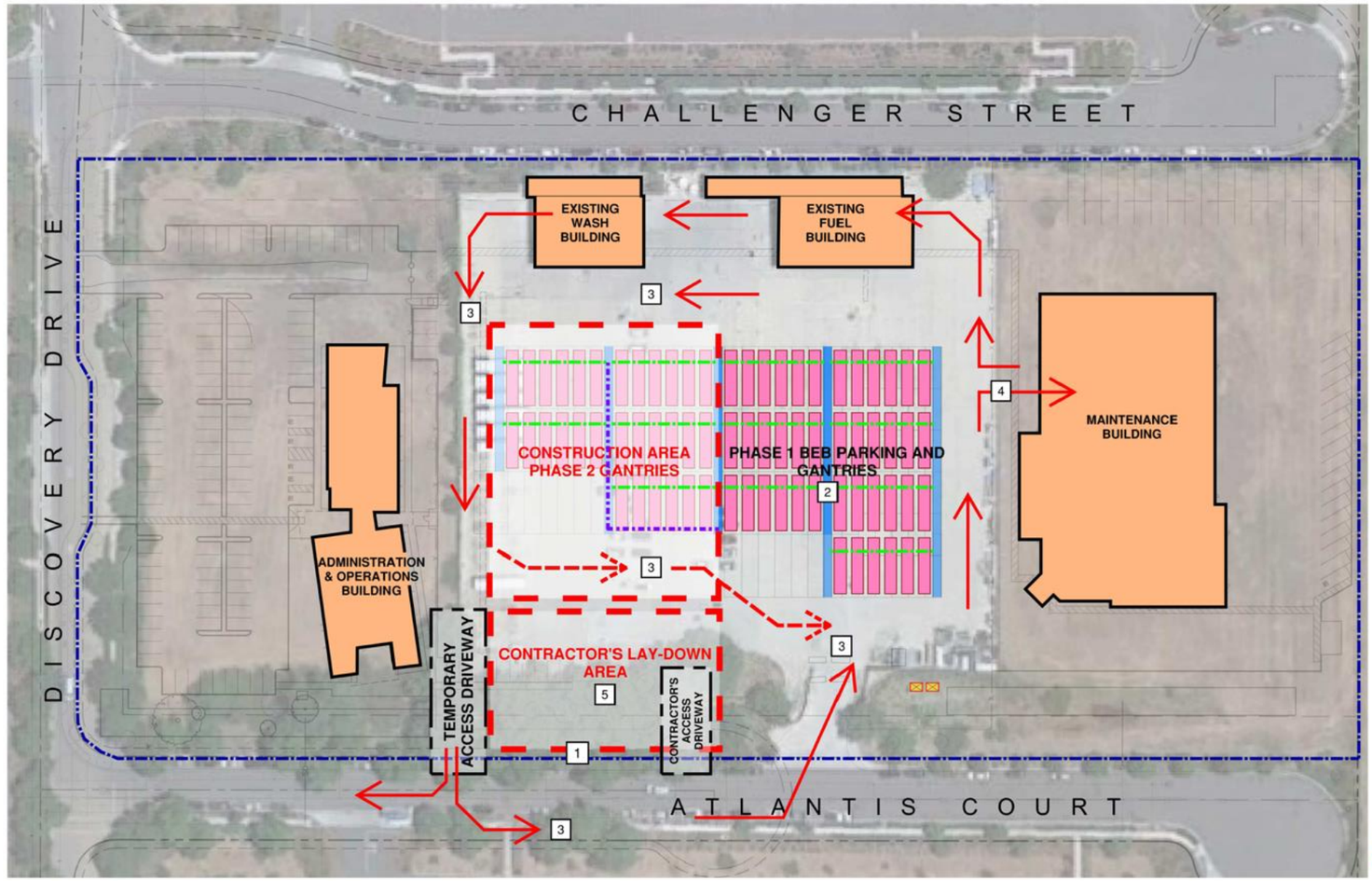
1. **Remain proactive with ZEB deployments:** For successful fleetwide deployment, BEBs will require charge management software, hardware, and standards to manage the fleetwide transition. For FCEB deployment to be competitive, lower fuel costs that will evolve over time with the production of hydrogen at scale will be required. LAVTA should move forward thoughtfully, taking advantage of various grant and incentive programs to offset the incremental cost for ZEB deployment. Incentive programs may be eliminated in future years as ZEB procurements are required instead of being optional.
2. **Target specific routes and blocks for early ZEB deployments:** LAVTA should consider the strengths of given ZEB technologies and focus those technologies on routes and blocks that take advantage of their efficiencies and minimize the impact of the constraints related to the respective technologies. For example, depot-charged BEBs for shorter routes and blocks, on-route charged BEBs for mid-range routes with layovers at a transit center, and FCEBs for long routes or routes with higher speeds and/or heavier loads, is recommended. These technologies cannot follow a one-size-fits-all approach from either a performance or cost perspective. Matching the technology to the service will be a critical best practice. Results from the ZEB Pilot Program will help to inform these decisions.

The transition to ZEB technologies represents a paradigm shift in bus procurement, operation, maintenance, and infrastructure. It is only through a continual process of deployment with specific goals for advancement that the industry can achieve the goal of economically sustainable, zero-emission public transit.

Appendix A1 – LAVTA Depot Site Plans, Depot and On-Route Charging Scenario Phase 1 - 2027



Appendix A2 – LAVTA Depot Site Plans, Depot and On-Route Charging Scenario Phase 2 - 2032



NOTES

1. STREET IMPROVEMENTS TO BE COMPLETED AFTER CHARGING INFRASTRUCTURE CONSTRUCTION IS FINISHED.
2. COMPLETED BUS PARKING & CHARGING FOR 35 NEW BEBs. REMAINING EXISTING DIESEL FLEET TO BE BASED AT RUTAN COURT DURING PHASE 2 CONSTRUCTION.
3. COUNTER-CLOCKWISE BUS CIRCULATION AROUND BUS PARKING BLOCK AND CONSTRUCTION AREA. BUSSES LEAVING FUEL/WASH AND MAINTENANCE FACILITIES WILL EITHER TRAVEL THROUGH CONSTRUCTION AREA, AT CONTRACTOR'S OPTION, OR CYCLE OUT ON ATLANTIS COURT THEN RE-ENTER SITE IN ORDER TO PARK UNDER CHARGING GANTRIES.
4. ACCESS TO MAINTENANCE BUILDING VIA COUNTER-CLOCKWISE YARD DRIVE LANE.
5. CONSTRUCTION AREAS WILL BE FENCED ON ALL SIDES. HOWEVER, CONTRACTOR MAY ALLOW BUS THROUGH TRAFFIC DURING AGREED UPON HOURS. CONTRACTOR'S ACCESS WILL BE FROM DRIVEWAY ON ATLANTIS COURT.

LEGEND

- EXISTING/NEW TRANSFORMER
- PROPERTY LINE
- ELECTRICAL TRENCH
- 6' WIDE GANTRY SUPPORT STRUCTURE & CHARGER AREA
- POTENTIAL CHARGER GANTRY LOCATION
- 40' BUS PARKING
- DIRECTION OF TRAFFIC

0 40' 80'

N

ATLANTIS SITE - ALL BEB FLEET SCENARIO / PHASE 2

SCALE: 1" = 40'-0"

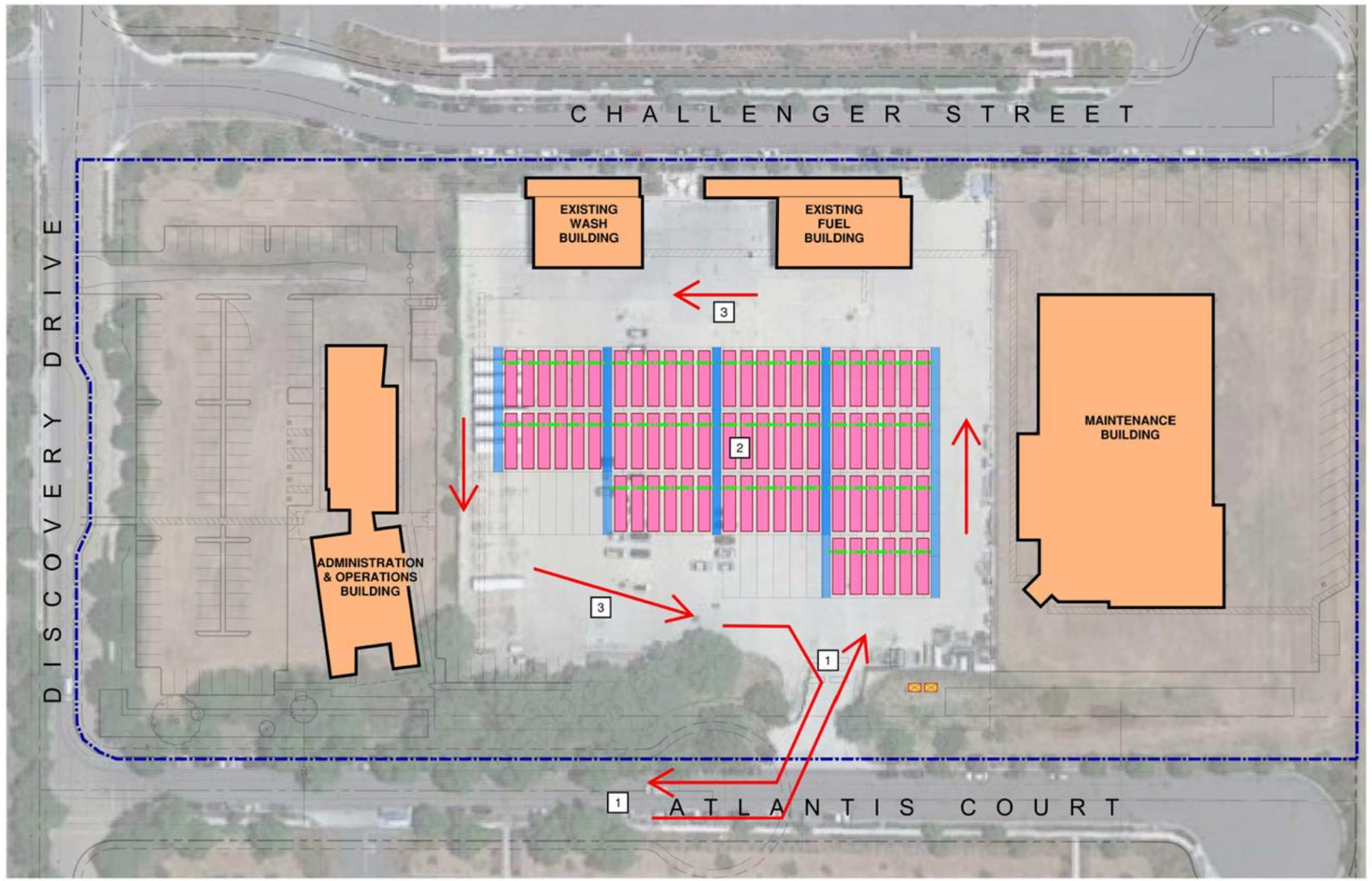
AECOM

2/3/2021

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

ATLANTIS SITE
PHASING PLANS

Appendix A3 – LAVTA Depot Site Plans, Depot and On-Route Charging Scenario Phase 3 - 2035



NOTES

1. ALL BUS YARD ACCESS FROM ATLANTIS CT.
2. BATTERY ELECTRIC BUS (BEB) PARKING: 72 MAXIMUM CHARGING SPOTS 40 FEET LONG.
3. COUNTER-CLOCKWISE BUS CIRCULATION AROUND BUS PARKING BLOCK.

LEGEND

- EXISTING/NEW TRANSFORMER
- PROPERTY LINE
- ELECTRICAL TRENCH
- 6' WIDE GANTRY SUPPORT STRUCTURE & CHARGER AREA
- POTENTIAL CHARGER GANTRY LOCATION
- 40' BUS PARKING
- DIRECTION OF TRAFFIC

0 40' 80'

N

ATLANTIS SITE - ALL BEB FLEET SCENARIO / BUILD-OUT

SCALE: 1" = 40'-0"

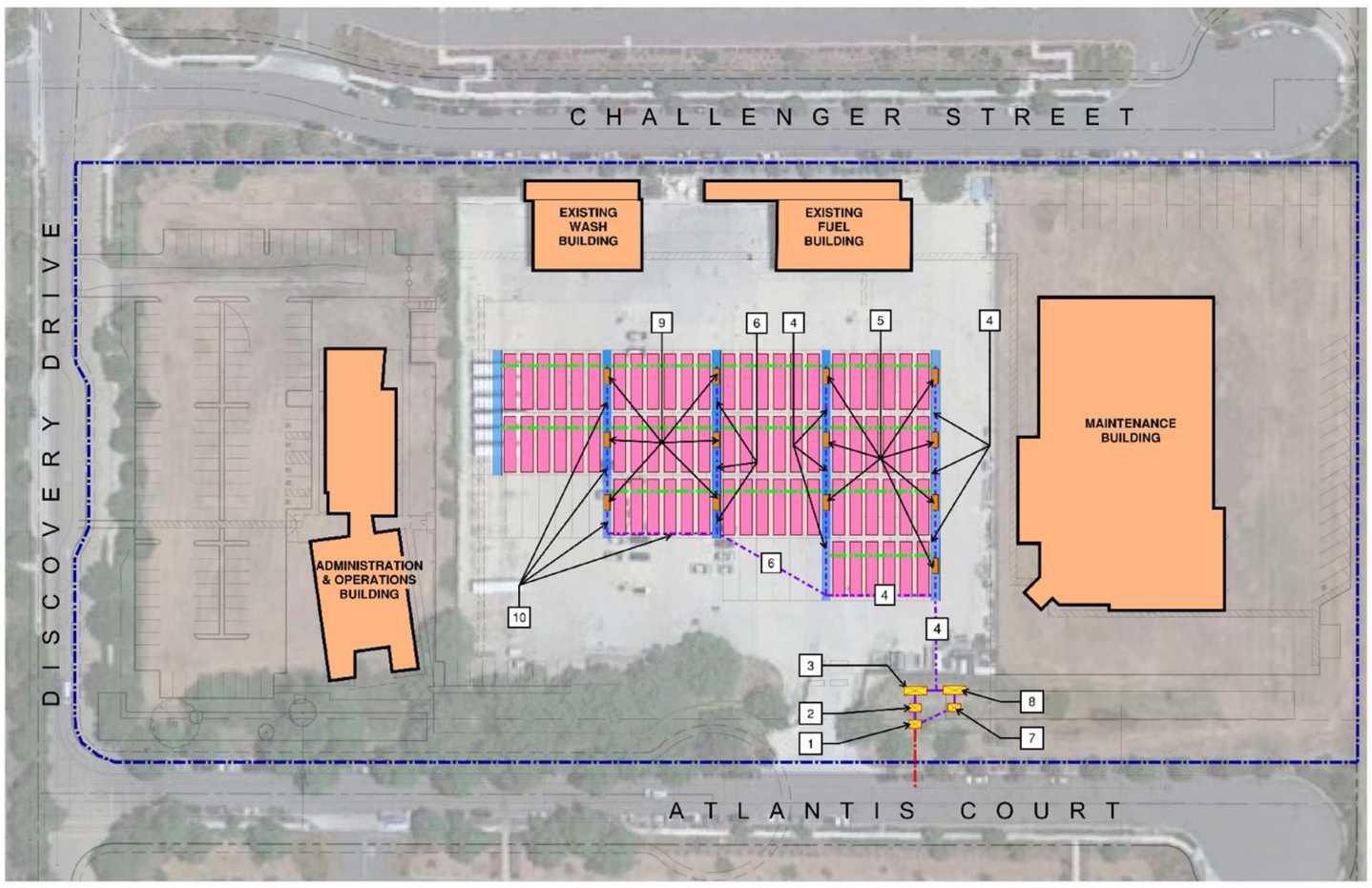
AECOM

2/3/2021

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

ATLANTIS SITE PHASING PLANS

Appendix A4 – LAVTA Depot Site Plans, Depot and On-Route Charging Scenario Electrical Phasing



GENERAL ELECTRICAL NOTES

1) FEEDER ROUTE FROM UTILITY TO BE DETERMINED BY UTILITY.
2) REVENUE METERING TO BE DONE AT 480V SWITCHGEAR UNLESS UTILITY REQUIRES CONSOLIDATED METERING AT DISTRIBUTION VOLTAGE.

NOTES

PHASE 1 ELECTRICAL WORK

1. NEW UTILITY-OWNED PMH-9 SWITCH (OR EQUIVALENT)
2. PROPOSED NEW PAD MOUNTED TRANSFORMER, 2500KVA, 480/277V SECONDARY
3. NEW 4000A, 480/277V, 4W SWITCHBOARD "A", NEMA 3R
4. NEW UNDERGROUND CONDUIT DUCT BANK, CONCRETE ENCASED
5. (3) CHARGING CABINETS AT EA. GANTRY (DISPENSERS/PANTOGRAPHS ARE MOUNTED ON OVERHEAD GANTRY), TYP.
6. NEW UNDERGROUND CONDUIT DUCT BANK, TO FUTURE CHARGERS IN PHASE 2. CONDUCTORS, CHARGERS, AND DISPENSERS/PANTOGRAPHS WILL BE INSTALLED DURING PHASE 2.

PHASE 2 ELECTRICAL WORK

7. PROPOSED NEW PAD MOUNTED TRANSFORMER, 2500KVA, 480/277V SECONDARY
8. (N) 2000A, 480/277V, 4W SWITCHBOARD "B", NEMA 3R
9. (3) CHARGING CABINETS AT EA. GANTRY (DISPENSERS/PANTOGRAPHS ARE MOUNTED ON OVERHEAD GANTRY), TYP.
10. NEW UNDERGROUND CONDUIT DUCT BANK, CONCRETE ENCASED

LEGEND

- EXISTING/NEW TRANSFORMER OR SWITCH
- PROPERTY LINE
- ELECTRICAL FEED FROM PG&E
- ELECTRICAL TRENCH
- 6' WIDE GANTRY SUPPORT STRUCTURE & CHARGER AREA
- POTENTIAL CHARGER GANTRY LOCATION
- 40' BUS PARKING

N

ATLANTIS SITE - ALL BEB FLEET SCENARIO / PHASES 1 & 2

SCALE: 1" = 40'-0"

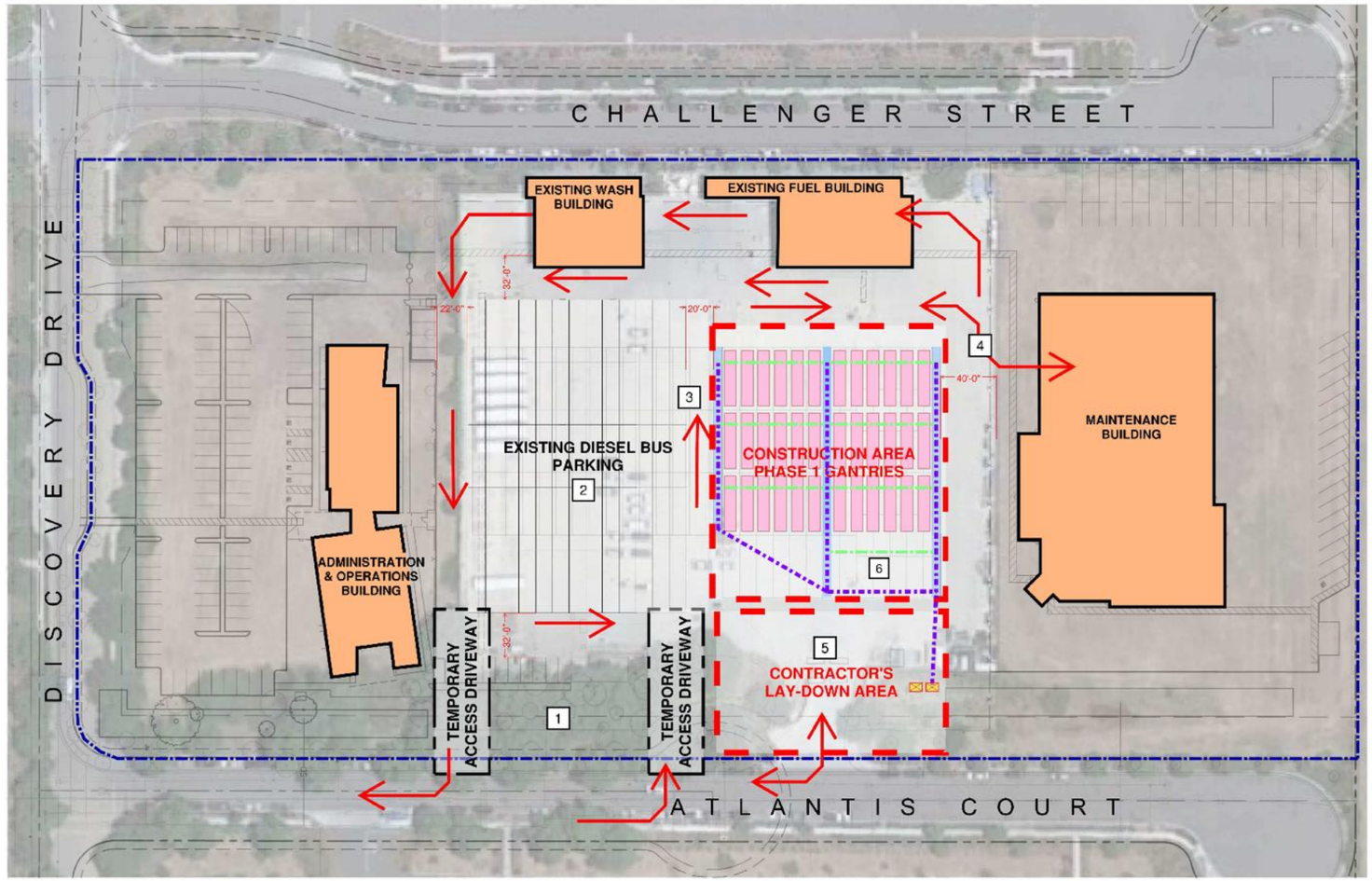
AECOM

2/3/2021

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

ATLANTIS SITE
CHARGING INFRASTRUCTURE
MASTER PLAN

Appendix A5 – LAVTA Depot Site Plans, Mixed Fleet Scenario Phase 1 - 2027



NOTES

1. DELAY STREET IMPROVEMENTS TO ALLOW FOR TEMPORARY BUS ACCESS DURING CHARGING INFRASTRUCTURE CONSTRUCTION. TIMING OF STREET IMPROVEMENTS CAN BE COORDINATED BETWEEN THIS PROJECT AND CONSTRUCTION OF NEW FACILITY.
2. OPTIONAL BUS PARKING FOR EXISTING DIESEL FLEET AT ATLANTIS COURT DURING TRANSITION FROM RUTAN COURT. MAXIMUM OF 65 SPOTS 40 FEET LONG. (TIGHT)
3. COUNTER-CLOCKWISE BUS CIRCULATION AROUND BUS PARKING BLOCK.
4. ACCESS TO MAINTENANCE BUILDING VIA SOUTHERN DRIVE LANE.
5. CONSTRUCTION AREAS WILL BE FENCED ON ALL SIDES. CONTRACTOR'S ACCESS WILL BE FROM DRIVEWAY ON ATLANTIS COURT.
6. CONSTRUCTION OF PHASE 2 GANTRY ONLY DURING PHASE 1, ALONG WITH ELECTRICAL CONDUIT. CABLES, CHARGERS, AND DISPENSERS/PANTOGRAPHS TO BE INSTALLED DURING PHASE 2.

LEGEND

- EXISTING/NEW TRANSFORMER
- PROPERTY LINE
- ELECTRICAL TRENCH
- 6' WIDE GANTRY SUPPORT STRUCTURE & CHARGER AREA
- POTENTIAL CHARGER GANTRY LOCATION
- 40' BUS PARKING
- DIRECTION OF TRAFFIC

N

ATLANTIS SITE - MIXED BEB-FCEB FLEET SCENARIO / PHASE 1

SCALE: 1" = 40'-0"

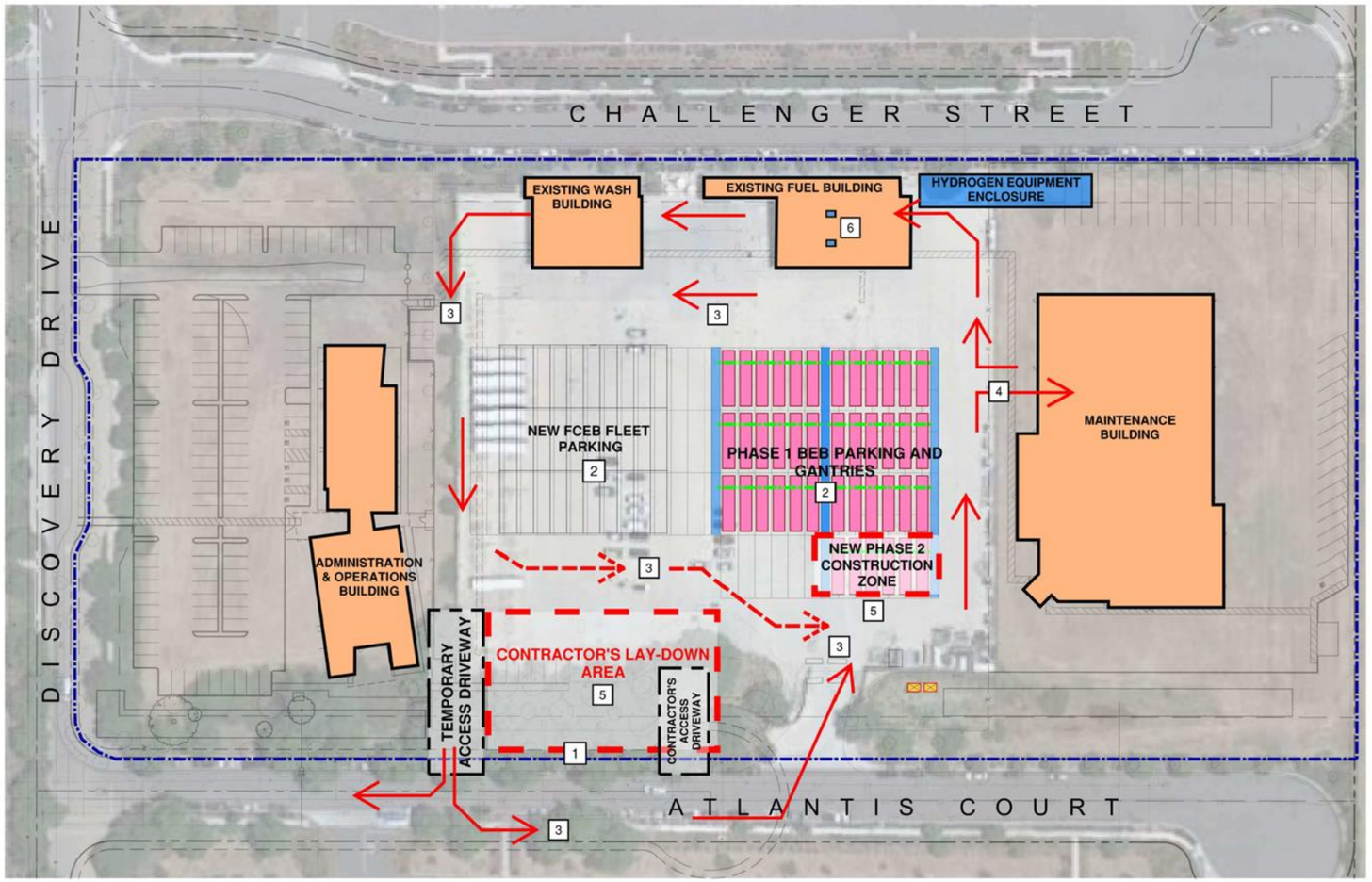
AECOM

2/3/2021

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

ATLANTIS SITE PHASING PLANS

Appendix A6 – LAVTA Depot Site Plans, Mixed Fleet Scenario Phase 2 - 2032



NOTES

1. STREET IMPROVEMENTS TO BE COMPLETED AFTER CHARGING INFRASTRUCTURE CONSTRUCTION IS FINISHED.
2. BUS PARKING FOR NEW HYDROGEN FCEBs. MINIMUM OF 40 SPOTS 40 FEET LONG.
3. COUNTER-CLOCKWISE BUS CIRCULATION AROUND BUS PARKING BLOCKS AND CONSTRUCTION AREA. BUSSES LEAVING SERVICE AND MAINTENANCE FACILITIES WILL EITHER TRAVEL THROUGH CONSTRUCTION AREA, AT CONTRACTOR'S OPTION, OR CYCLE OUT ON ATLANTIS COURT THEN RE-ENTER SITE IN ORDER TO PARK UNDER CHARGING GANTRIES.
4. ACCESS TO MAINTENANCE BUILDING VIA COUNTER-CLOCKWISE YARD DRIVE LANE.
5. CONSTRUCTION LAY-DOWN AREA WILL BE FENCED ON ALL SIDES. PHASE 2 CHARGER/DISPENSER INSTALLATION AREA WILL NOT BE FENCED, ALLOWING BEBs TO DRIVE UNDER GANTRY TO ACCESS SOUTHERNMOST CHARGING GANTRIES. CONSTRUCTION ACTIVITIES ON PHASE 2 GANTRY WILL BE LIMITED TO COMMUTE HOURS WHILE MOST BEBs WILL BE OUT OF THE YARD.
6. HYDROGEN FUELING DISPENSER ON ISLANDS UNDER CANOPY.

LEGEND

- EXISTING/NEW TRANSFORMER
- PROPERTY LINE
- ELECTRICAL TRENCH
- 6' WIDE GANTRY SUPPORT STRUCTURE & CHARGER AREA
- POTENTIAL CHARGER GANTRY LOCATION
- 40' BUS PARKING
- DIRECTION OF TRAFFIC

0 40' 80'

N

ATLANTIS SITE - MIXED BEB-FCEB FLEET SCENARIO / PHASE 2

SCALE: 1" = 40'-0"

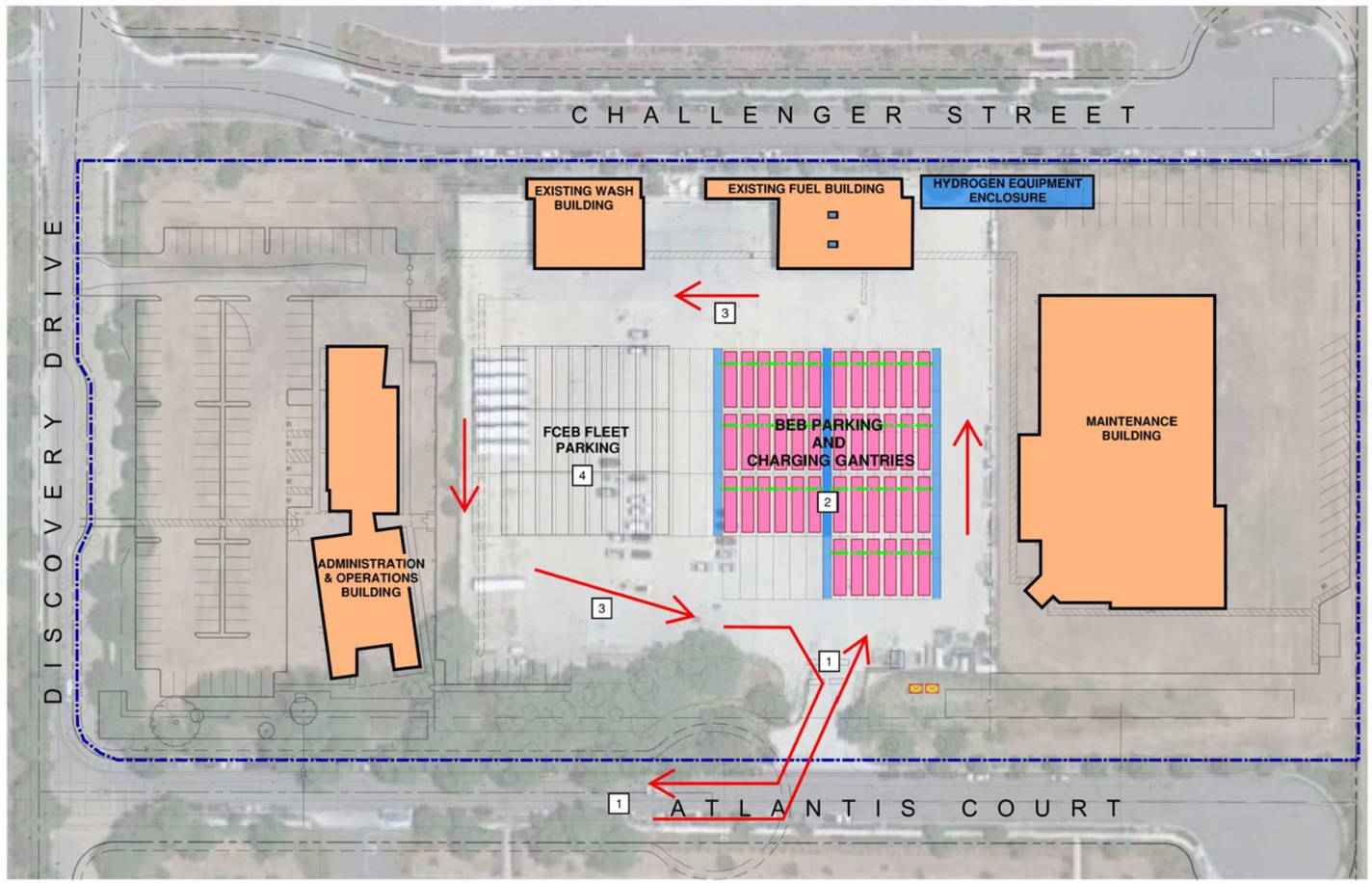
AECOM

2/3/2021

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

ATLANTIS SITE PHASING PLANS

Appendix A7 – LAVTA Depot Site Plans, Mixed Fleet Scenario Phase 3 - 2035



NOTES

1. ALL BUS YARD ACCESS FROM ATLANTIS CT.
2. BATTERY ELECTRIC BUS (BEB) PARKING: 42 MAXIMUM CHARGING SPOTS 40 FEET LONG.
3. COUNTER-CLOCKWISE BUS CIRCULATION AROUND BUS PARKING BLOCK.
4. HYDROGEN FUEL CELL ELECTRIC BUS (FCEB) PARKING: 30 SPOTS 40 FEET LONG.

LEGEND

- EXISTING/NEW TRANSFORMER
- PROPERTY LINE
- ELECTRICAL TRENCH
- 6' WIDE GANTRY SUPPORT STRUCTURE & CHARGER AREA
- POTENTIAL CHARGER GANTRY LOCATION
- 40' BUS PARKING
- DIRECTION OF TRAFFIC

0 40' 80'

N

ATLANTIS SITE - MIXED BEB-FCEB FLEET SCENARIO / BUILD-OUT

SCALE: 1" = 40'-0"

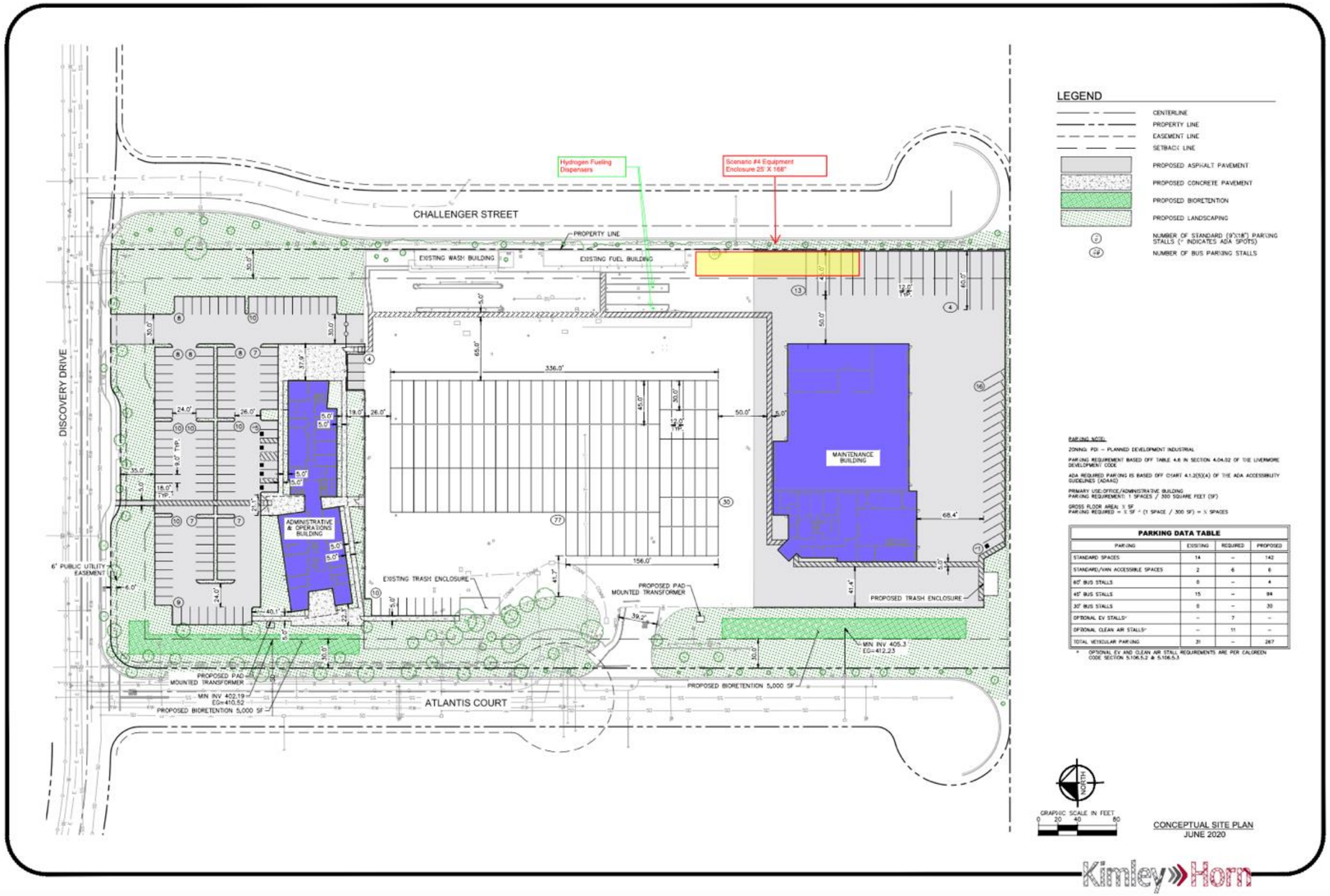
AECOM

2/3/2021

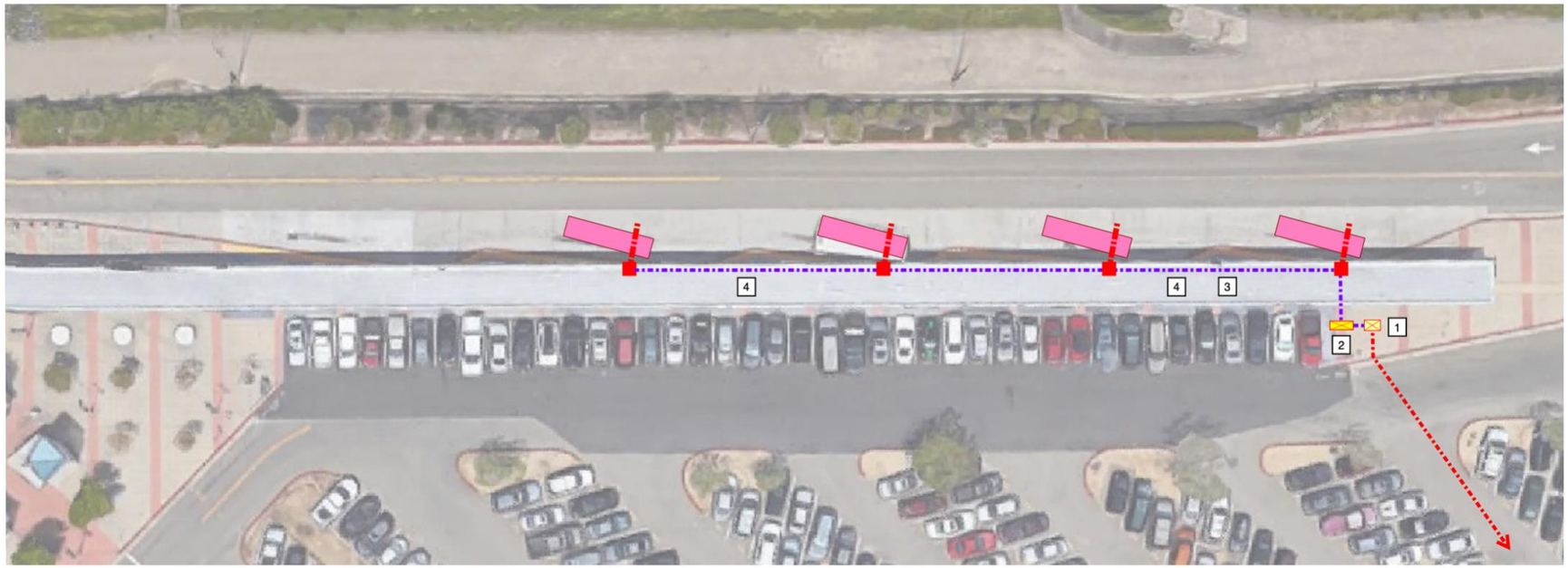
Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

ATLANTIS SITE
PHASING PLANS

Appendix A8 – LAVTA Depot Site Plans, FCEB Only Scenario Final - 2035



Appendix A9 – LAVTA On-Route Charging Site Plans, Depot and On-Route Charging Scenario – East Dublin/Pleasanton BART



N

SITE PLAN

SCALE: 1" = 30'-0"

NOTES

1. PROPOSED NEW PAD MOUNTED TRANSFORMER, 500KVA, 480/277V SECONDARY (IN ENCLOSURE).
2. NEW 800A, 480/277V, 4W SWITCHBOARD "A", NEMA 3R (IN ENCLOSURE).
3. NEW UNDERGROUND CONDUIT DUCT BANK, CONCRETE ENCASED.
4. CHARGING CABINETS BETWEEN PANTOGRAPH COLUMN PAIRS (UNDER CANOPY).

0 30' 60'

LEGEND

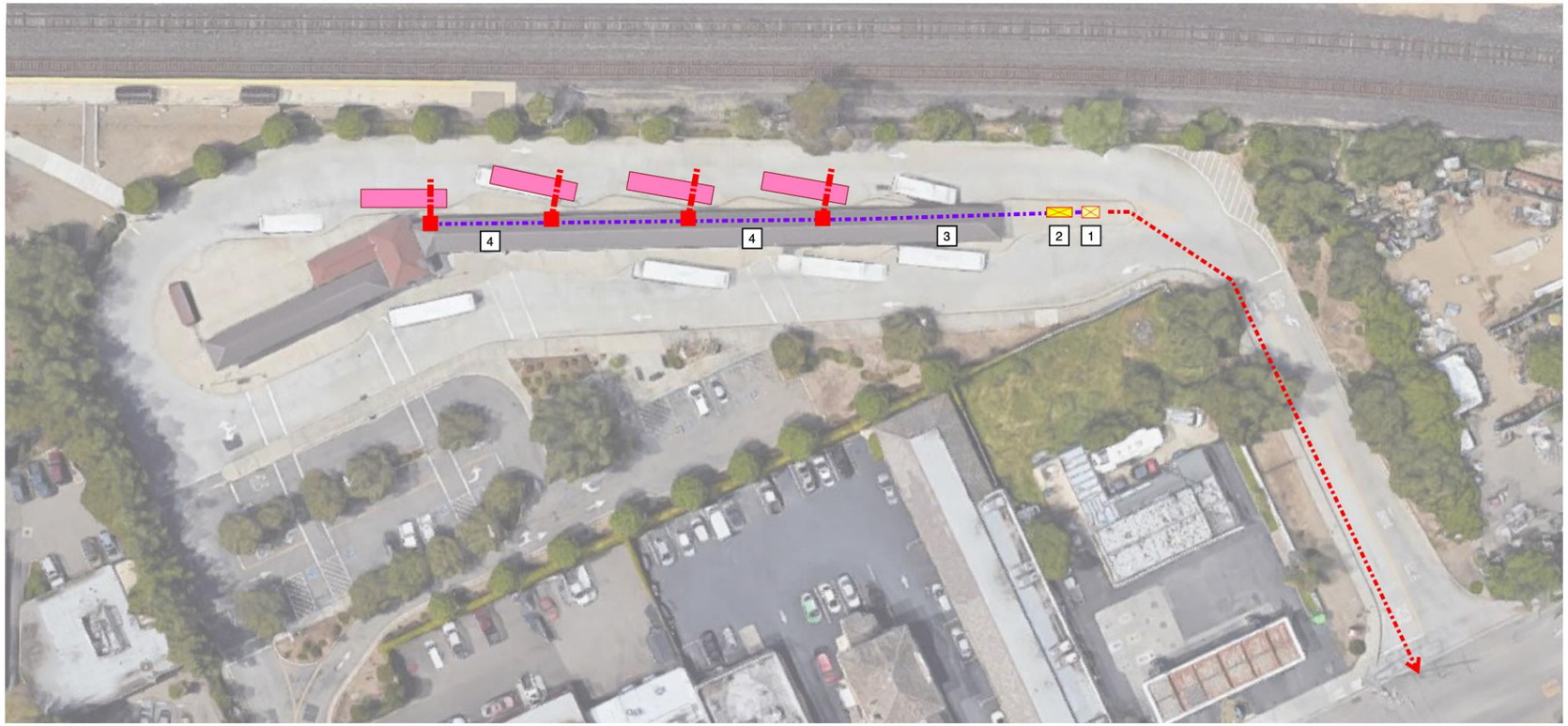
- NEW TRANSFORMER OR SWITCH
- ELECTRICAL FEED FROM PG&E
- ELECTRICAL TRENCH
- PROPOSED PANTOGRAPH CHARGER LOCATION
- 40' BUS PARKING

AECOM

BART TRANSIT CENTER
CHARGING INFRASTRUCTURE PLAN

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

Appendix A10 - LAVTA On-Route Charging Site Plans, Depot and On-Route Charging Scenario – Livermore Transit Center



N

SITE PLAN

SCALE: 1" = 30'-0"

NOTES

1. PROPOSED NEW PAD MOUNTED TRANSFORMER, 500KVA, 480/277V SECONDARY (IN ENCLOSURE).
2. NEW 800A, 480/277V, 4W SWITCHBOARD "A", NEMA 3R (IN ENCLOSURE)A.
3. NEW UNDERGROUND CONDUIT DUCT BANK, CONCRETE ENCASED, TYPICAL.
4. CHARGING CABINETS BETWEEN PANTOGRAPH COLUMN PAIRS (UNDER CANOPY).

0 30' 60'

LEGEND

- NEW TRANSFORMER OR SWITCH
- ELECTRICAL FEED FROM PG&E
- ELECTRICAL TRENCH
- PROPOSED PANTOGRAPH CHARGER LOCATION
- 40' BUS PARKING

AECOM

Livermore-Amador Valley Transit Authority (LAVTA)
Zero-Emission Bus Transition Plan

LIVERMORE TRANSIT CENTER
CHARGING INFRASTRUCTURE PLAN

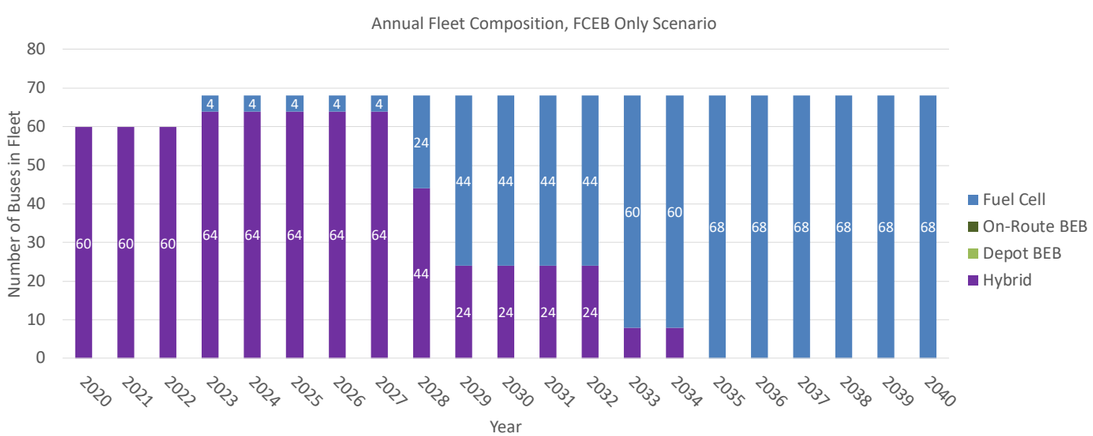
Addenda – Accelerated FCEB Purchase Cost Information

In the event that LAVTA chooses to purchase 12 FCEBs in 2023 rather than the previously projected 4 FCEBs and 8 Hybrids, additional costs would be incurred in 2023 for the capital cost of the bus purchases that year. Additionally, since there would be 8 additional FCEBs in the fleet from 2023-2035 compared to the original scenario (as demonstrated in **Addenda Figure 79:** Original Scenario (4 FCEB/8 Hybrid Purchased in 2023) Addenda Figure 1b: Accelerated 2023 FCEB Purchase Scenario (12 FCEB/0 Hybrid Purchased in 2023)**and 1b**), the maintenance and fuel costs would also differ from the 4 FCEB/8 Hybrid scenario since those additional FCEBs would be incurring slightly higher fuel and maintenance costs over their lifespan. However, since no additional infrastructure would be required by LAVTA if 4 or 12 FCEBs were purchased in 2023 due to the ability to easily scale the mobile fueler to accommodate and service 8 more FCEBs than modeled in the previous projections, there are no added infrastructure costs if 12 FCEBs are purchased in place of 4 FCEBs and 8 Hybrids.

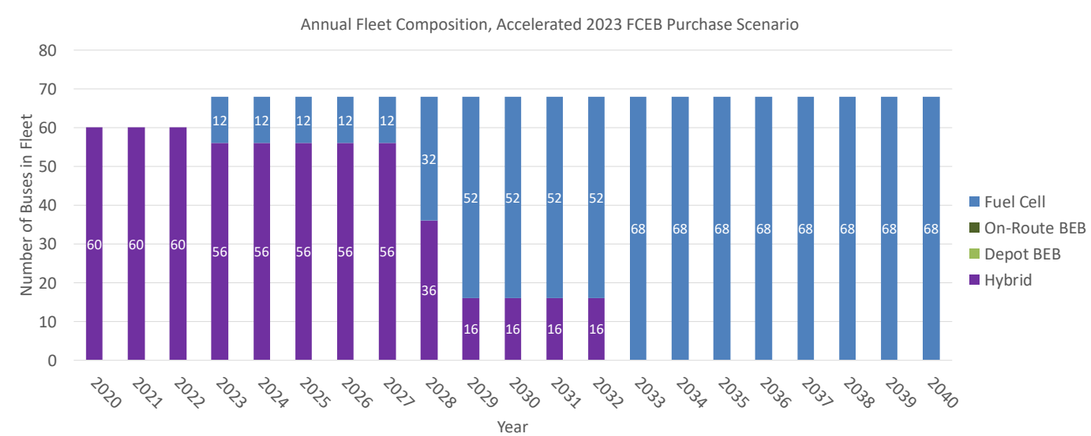
The additional costs that would be incurred by purchasing 12 FCEBs in 2023 as opposed to 4 FCEBs and 8 Hybrids are outlined below. Additional costs incurred are summarized as incremental relative to the original scenario and as the cumulative total for the accelerated 2023 FCEB Purchase Scenario:

	Costs incurred in 4 FCEB/8 Hybrid 2023 Purchase Scenario	Additional costs incurred 12 FCEB/0 Hybrid 2023 Purchase Scenario	Total Cumulative Costs Incurred 12 FCEB/0 Hybrid 2023 Purchase Scenario
Fleet	$150,188,000	$4,560,000	$154,748,000
Fuel	$30,399,000	$1,492,000	$31,890,000
Maintenance	$25,303,000	$617,000	$25,920,000
Facilities	$9,752,000	No additional cost	$9,752,000
TOTAL	**$215,642,000**	**$6,669,000**	**$222,310,000**

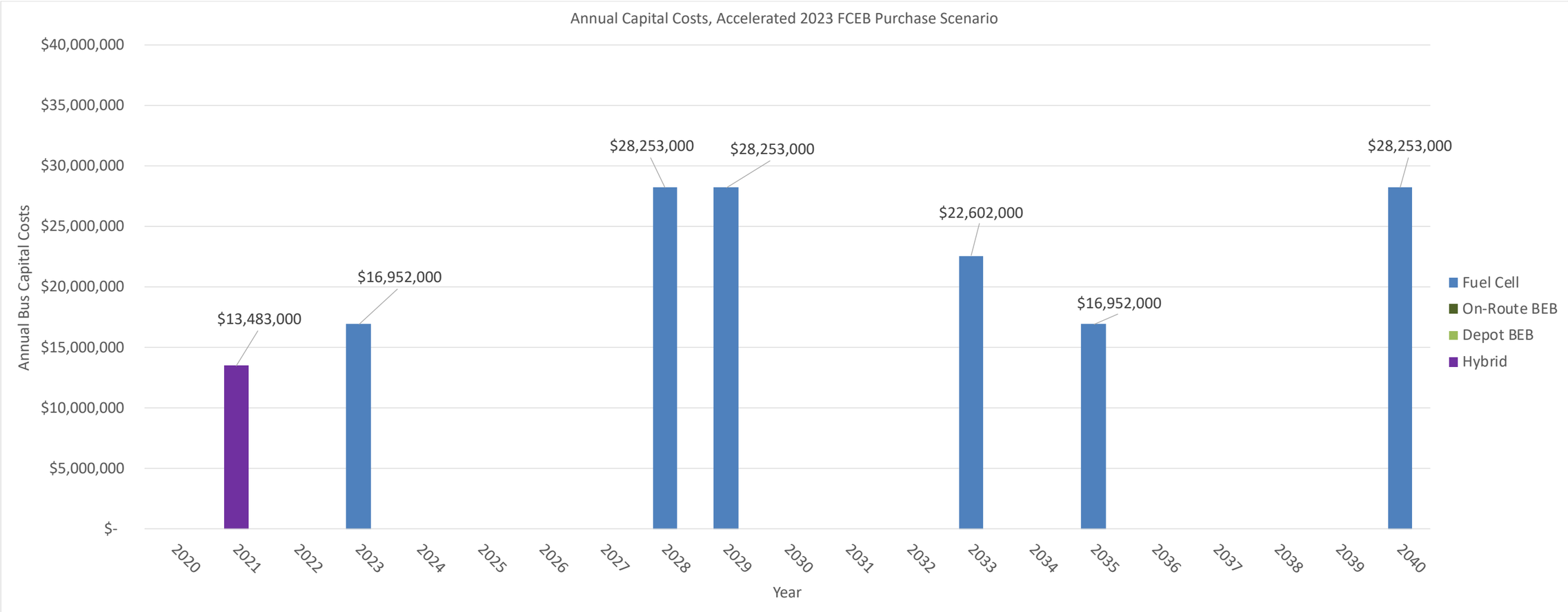
In summary, purchasing an additional 8 FCEBs instead of 8 hybrids in 2023, would incur an additional $6,669,000 over the lifetime of those vehicles.



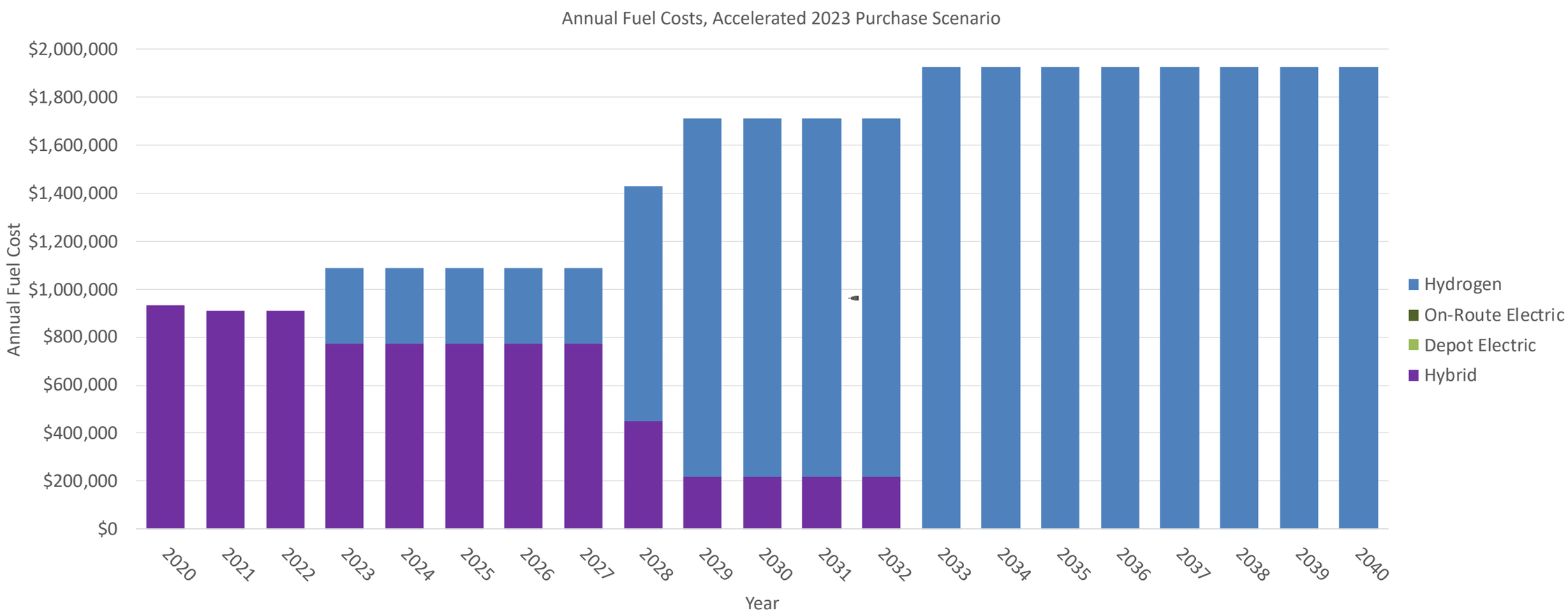
Addenda Figure 79: Original Scenario (4 FCEB/8 Hybrid Purchased in 2023)



Addenda Figure 1b: Accelerated 2023 FCEB Purchase Scenario (12 FCEB/0 Hybrid Purchased in 2023)



Addenda Figure 2: Annual Bus Capital Costs, Accelerated 2023 FCEB Purchase Scenario



Addenda Figure 3: Annual Fuel Costs, Accelerated 2023 FCEB Purchase Scenario

Addenda Figure 4: Annual Bus Maintenance Costs, Accelerated 2023 FCEB Purchase Scenario

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 10.1**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Donald Hester, Acting Administrative Services Director

SUBJECT: Supplemental materials received prior to the meeting.

RECOMMENDED ACTION

SUMMARY

These materials were posted online and made available to the public at the same time that they were distributed to the City Council.

6.1	Hearing to consider approving an Amended and Restated Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC to develop a four-story hotel on the southeast corner of Railroad Avenue and South Livermore Avenue, which includes a site acquisition loan for 2205 Railroad Avenue LLC to develop a parking facility on 2080 Railroad Avenue; to declare that the parcels to be transferred from the City to 2205 Railroad Avenue LLC are identified for disposition for the development of a hotel in the Livermore Successor Agency's Long Range Property Management Plan and are exempt surplus land; and authorizing a supplemental appropriation of $1,923,750 from the General Fund for the site acquisition loan. Materials: Public Comment Received, Revised Resolutions and Exhibits, and PowerPoint Presentation
7.1	Oral report from the Director of Emergency Services regarding the COVID-19 emergency, its impacts, and the governmental operations in response to that emergency, as well as discussion and direction regarding the City's emergency operations in response to that emergency. Material: PowerPoint Presentation
7.2	Comprehensive General Plan and Housing Element Update – Draft Vision Statement and Guiding Principles Material: PowerPoint Presentation
7.3	Discussion and direction on Livermore's preferred approach regarding the Livermore Amador Valley Transit Authority's draft Zero Emission Bus Fleet Transition Study. Material: PowerPoint Presentation

8.0	Council Committee Reports and Matters Initiated by City Manager, City Attorney, Staff, Council Members. Material: Council Members' Reports.

DISCUSSION

ATTACHMENTS

1. Supplemental Materials

Prepared by: Debbie Elam
Deputy City Clerk

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

From: W Schaefer
To: Cityclerk - Livermore
Subject: Downtown Hotel parking lot loan
Date: Thursday, January 6, 2022 4:37:24 PM

City of Livermore Clerk,

I appose loaning Livermore Tax Dollars to a Private Company for the purchase of land for a parking lot.
The land purchase should be the hotels responsibility not ours. What if the hotel owners default, who will end up
with the bill?

This is a bad decision.

Sincerely,

Wolf Schaefer

From: Mark Sobrepena
To: Cityclerk - Livermore
Subject: No to the $1.9 million loan
Date: Monday, January 10, 2022 4:23:23 PM

Hello,

Remember the inflationary 1980's and the incredible rising cost of material and resources. The prices we see now at the supermarket is just the beginning. Not only is this parking garage a bad plan but a waste of taxpayer money when Livermore needs to keep the general fund fully stocked for this oncoming inflation cost. What about affordable housing, taking care of our community, and infrastructure repairs. These cost will certainly increase soon. We cannot expect continuous federal bailouts like the American Rescue Plan Act of 2021 (ARPA) of $4.97M into our funds.

We need to stop this "loan expenditure" which leaves the city at risk holding the bag on a loan that may not recoup the principal due to cost overruns. There are many reasons to stop this building - born from closed door meetings - but another reason is the financial risk to Livermore and its services. As voters we need to tell the city council to have financial foresight and not just give away our future into bad debt.

Regards,

Mark Sobrepena

From:	Rich Buckley
To:	Cityclerk - Livermore
Cc:	Rich Buckley
Subject:	My Public Input on Agenda Item 6.1 City Council
Date:	Monday, January 10, 2022 10:55:03 AM
Attachments:	Letter on Agenda Item 6.1 Jan 10, 2022.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Clerk,

Please include my attached letter in any correspondence allowed read into the public record on agenda item 6.1 of City Council.

Thank you

Rich Buckley

--
Rich Buckley Realty
411 So L St, Ste C
Livermore, CA 94550
Listings: www.BuckleyRealty.com
email: RichBuckley7@gmail.com
925-443-1122 Off
925-216-4378 Cel
925-215-2058 Fax
DRE Lic. #00336569
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From the desk of: Rich Buckley. Bkr Lic 00336569
www.BuckleyRealty.com

Rich Buckley Realty
Office: 925-443-1122
Cell: 925-216-4378
Fax: 925-215-2058

January 10, 2022

ATTEN: PLEASE CITY CLERK
Honorable Mayor and City Council
City of Livermore
1052 South Livermore Ave
Livermore, CA 94550

Re: Item 6.1 City Council Agenda Packet,
Request my comments be made part of the public participation record on item 6.1

Instead of loaning $1.9-million to the hotel developer to buy and build on the old Livermore Pool and Spa Site (Bordoni-Site), it seems a better use robotic parking (at least in part of the structure) to be built on the old Kentucky Fried Chicken (KFC-Site) site already owned by the City of Livermore. The community has been waiting for the 500 car proposing parking on the KFC-Site for many years.

Engineering planning conducted on the KFC-Site, indicates that a 650 parking space robotic parking structure could be built for around $20.1-million nearly $14.4-million less than the 500 space long awaited KFC-Site parking structure. Part of the KFC-Site parking structure could be dedicated to valet parking. Surprisingly when I drive from your proposed hotel site across South Livermore Avenue along Veterans Way to the 500-car KFC-Site area, I save on average 3-minutes per trip over maneuvering down Railroad Avenue where you are proposing to lend money to build valet parking and use up a valuable street facing lot.

Every 100 valet parked cars is 200 valet trips or wasted 10 hours. These are use delays paid by the hotel quests. Additionally the Valet parking you are proposing on the Bordoni-Site falls 49-parking stalls short of stalls your studies show are required for the 135 room hotel!

Design layouts for 650 robotic parking space garage (with plenty of parking for the 135 room hotel) can be done more compactly yielding nearly a full story of reduced height for all street facing sides including Veterans Way, over the currently proposed 48-foot high proposed KFC-Site 500-car parking.

Very truly yours,
RICH BUCKLEY REALTY

Rich Buckley

Rich Buckley Realty
411 So. L St.
Livermore, CA 94550
Email: richbuckley7@gmail.com

LIVERMORE
CALIFORNIA

INTEROFFICE MEMORANDUM

Date: January 10, 2022

To: Honorable Mayor and City Council

From: Paul Spence, Community Development Director

Subject: January 10, 2022 Item 6.1: Hearing to consider approving an Amended and Restated Disposition, Development and Loan Agreement to develop a four-story hotel

Item 6.1 is a proposed Disposition Development and Loan Agreement with 2205 Railroad Avenue LLC for a Downtown Hotel that includes a site acquisition loan for 2080 Railroad Avenue. Presidio has asked the City to update the agreement to reflect that the signatory for 2205 Railroad Avenue LLC will be PresidioCo Bay Area LLC to reflect the realignment of its hotel interests between its holding companies.

Presidio does business throughout Northern California through two holding companies, PresidioCo Holdings LLC and PresidioCo Bay Area LLC and occasionally realigns its interests between the two holding companies for business purposes. Based on the request, staff has updated the Disposition Development and Loan Agreement and related resolutions to reflect that the requested change and attached them to this Supplemental Memorandum. The developer for the project was, is, and continues to be 2205 Railroad Avenue LLC, but the change reflects that PresidioCo Bay Area LLC is the affiliate signing on behalf of 2205 Railroad Avenue LLC.

Revised resolutions, and their exhibits, reflecting that change are attached. The Disposition Development and Loan Agreement has been signed on behalf of the developer.

Attachments:
1. Resolution
2. Exhibit A – Plat and Legal Description Hotel Parcel
3. Exhibit B – City Council Resolution 2018-155
4. Exhibit C – City Council Resolution 2018-156
5. Resolution
6. Exhibit A – Amended and Restated Disposition, Development and Loan Agreement

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION DECLARING THAT TWO CITY-OWNED PARCELS ARE EXEMPT SURPLUS LAND PURSUANT TO GOVERNMENT CODE SECTION 54221

The City of Livermore is the owner in fee simple of two parcels of land; Parcel A (hereinafter "Parcel A") and Subsurface Parcel C (hereinafter "Parcel C") of Parcel Map 9999 both as more particularly described in Exhibit A, and formerly known as APN 098-0407-029-02 and APN 09800407-013-00) (collectively "Hotel Properties").

On September 23, 2013, the Livermore Successor Agency adopted Resolution No. 2013-02 approving the Long Range Property Management Plan ("LRPMP").

On September 25, 2013, the Oversight Board to the Livermore Successor Agency approved the LRPMP.

Upon request of the Department of Finance, minor amendments were made to the LRPMP and approved by the Oversight Board on December 3, 2014 (Oversight Board Resolution No. OB-021), June 17, 2015 (Oversight Board Resolution No. OB-029), and December 16, 2015 (Oversight Board Resolution No. OB-033). The Department of Finance approved the LRPMP on December 28, 2015.

Concurrent with the approval of the LRPMP, the Oversight Board also approved the transfer of the Hotel Properties on June 17, 2015 (Oversight Board Resolution No. OB-030) and again on December 16, 2015 (Oversight Board Resolution No. OB-034).

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement with PresidioCo Holdings LLC to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of the Hotel Properties for the purpose of building a boutique hotel. The Exclusive Negotiating Rights Agreement was extended by Council on January 23, 2017, May 22, 2017, and November 13, 2017.

On January 29, 2018, the City Council approved a plan for the Downtown Core, which included a boutique hotel with 125-135 rooms on the southeast corner of Railroad Avenue and South Livermore Avenue.

On February 26, 2018, the City Council authorized the execution of a Hotel Term Sheet with PresidioCo Holdings LLC to lay out the terms that would be included in the Disposition and Development Agreement for the development of the Hotel Properties.

On August 7, 2018, the Livermore Planning Commission considered the disposition of approximately 3.8 acres of real property located generally between North L Street, Railroad Avenue, First Street, and the Bankhead Theater, known as the Downtown Core Catalyst site for the purposes of implementing the Downtown Core Concept to be consistent with the General Plan in accordance with Government Code section 65402.

On September 10, 2018, the City Council adopted Resolution No. 2018-156 authorizing the execution of a Disposition and Development Agreement with 2205 Railroad Avenue LLC, which was formed and controlled by PresidioCo Holdings LLC, for the disposition of the Hotel Properties for the development of a boutique hotel. At this same meeting, the City Council adopted Resolution No. 2018-155 to approve the Downtown Design Review No. 18-015 for the site design and architecture for the boutique hotel, including a public underground parking garage.

On October 3, 2018, the City of Livermore recorded Parcel Map No. 9999 creating Parcel A and Parcel C from the Hotel Properties.

On December 1, 2018, as provided for in the Development Agreement, PresidioCo Holdings LLC assigned its right, title, and interest in that agreement to PresidioCo Bay Area LLC, and the designation of 2205 Railroad Avenue LLC as the Developer remains unchanged.

The City Council has determined that Parcel A and Parcel C are not necessary for City use as set forth in Resolution No. 2018-155 approving Downtown Design Review for a four-story,133-room hotel on the southeast corner of Railroad and South Livermore Avenue, attached hereto as Exhibit B, and as set forth in Resolution No. 2018-156 authorizing execution of a Disposition and Development Agreement between the City of Livermore and 2205 Railroad Avenue LLC for the conveyance of City-owned Parcels A and C to 2205 Railroad Avenue LLC for the development of a boutique hotel attached hereto as Exhibit C.

The Hotel Properties are designated in the LRPMP for the development of a hotel, and for disposition to the City to in turn dispose of them to a developer. The LRPMP was approved by both the Oversight Board and the Department of Finance. The surplus property legislation provides that its requirements do not apply to former redevelopment property designated in a Long Range Property Management Plan when an agreement for the property's disposition was executed before either September 30, 2019, or December 31, 2020, and the final disposition is completed before December 31, 2022. Here, the agreements between the City, PresidioCo Holdings LLC, and 2205 Railroad Avenue LLC as the Developer were entered into prior to those dates, and the disposition is scheduled to be completed before December 31, 2022.

The Amended and Restated Disposition, Development and Loan Agreement amends and restates the 2018 Disposition and Development Agreement so that the conveyance of Hotel Properties can be completed. For the reasons stated above, the conveyance of Hotel Properties is exempt from the Surplus Land Act in accordance with Government Code section 54221.

On December 21, 2021, staff notified the California Department of Housing and Community Development ("HCD") that it determined that Parcel A and Parcel C were exempt from the Surplus Land Act and supported such determination with written findings.

Staff recommends that the City Council declare that the Hotel Properties are exempt surplus land pursuant to Government Code section 54221.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. The conveyance of the Hotel Properties, consisting of Parcel A and Parcel C of Parcel Map 9999, from the City to 2205 Railroad Avenue LLC were analyzed by, and the project is consistent with, the August 2, 2018 Addendum to the Downtown Specific Plan 2009 Supplemental Environmental Impact Report and Downtown Specific Plan Environmental Impact Report dated February 9, 2004, adopted by the City Council on September 10, 2018, by Resolution No. 2018-153.

No new or more severe significant impacts were identified for the project that was not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR.

2. The following two parcels identified herein as the Hotel Properties, consisting of Parcel A and Parcel C of Parcel Map 9999, and as more particularly described in Exhibit A, are exempt surplus land as defined in Government Code section 54221.

a. Real property situated in the City of Livermore, County of Alameda, State of California, and more particularly described as follows: Being all of Parcel A and Subsurface Parcel C, of Parcel Map No. 9999, recorded October 3, 2018, in book 340 of Maps at Pages 86-89, Alameda County Records. Parcel A containing 53,126 square feet of land more or less and Subsurface Parcel C containing 50, 963 square feet of land more or less.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED AS TO FORM:

_____

Marie Weber
City Clerk

/s/ Jason R. Alcala

Jason R. Alcala
City Attorney

Exhibit A – Plat and Legal Description of Parcels A and C
Exhibit B – Resolution No. 2018-155
Exhibit C – Resolution No. 2018-156

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

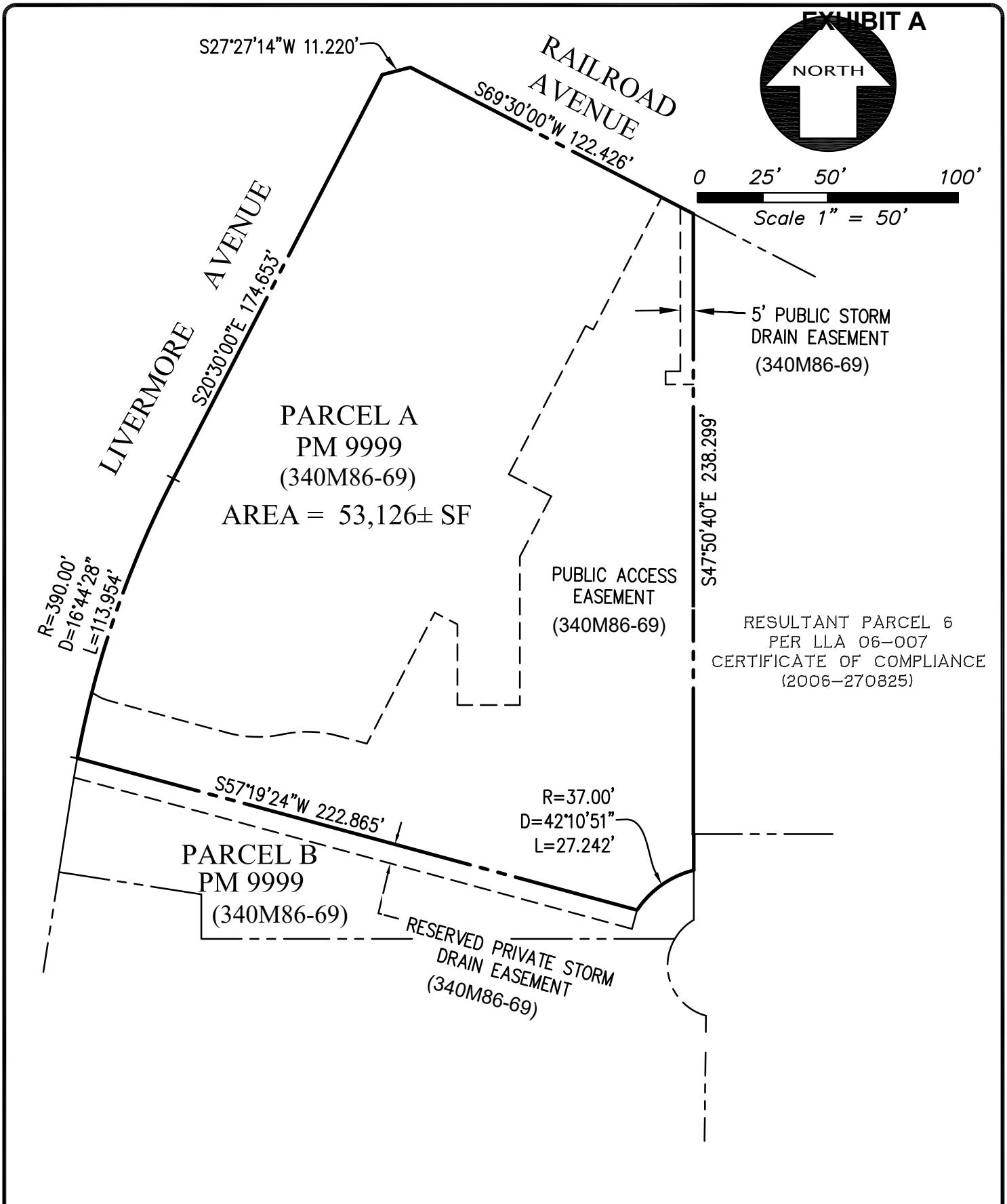
REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A

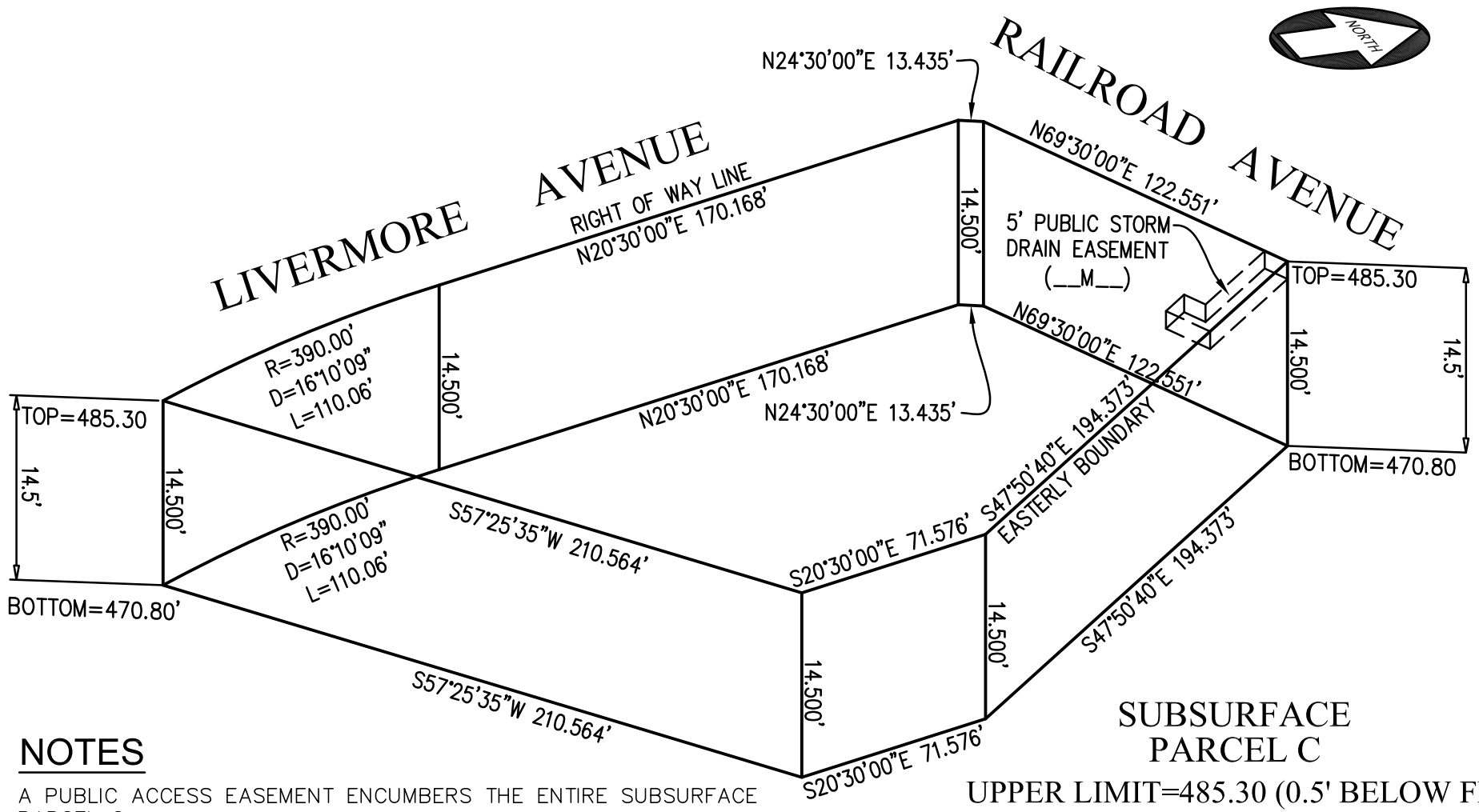


KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A-1



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
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Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C

PARCEL MAP 9999

LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING DOWNTOWN DESIGN REVIEW 18-015

An application for Downtown Design Review ("DDR") 18-015 was initiated by Presidio Companies to develop a four-story, 133-room hotel on the southeast corner of Railroad Avenue and South Livermore Avenue (the "Project"). The Project also includes a public underground parking garage, new street frontage and median improvements, a new public street, public surface parking with public ADA accessible stalls, storm water treatments, and landscaping.

The Planning Commission reviewed the Project and determined it is consistent with the Livermore General Plan and related policies. After their review on August 7, 2018, the Planning Commission, by its Resolution No. 30-18, attached hereto as Exhibit A, recommended approval of the Project.

This Council held a public hearing on September 10, 2018, and considered the recommendations of the Planning Commission, together with pertinent drawings, documents, Conditions of Approval, and testimony.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore hereby finds, on the basis of the whole record before it evaluating the environmental impacts of the Project, that the Project is consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report, approved by City Council on September 10, 2018 and City staff is directed to prepare and file a Notice of Determination with the Alameda County Clerk within five days of the adoption of this resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore:

1. Finds the Project consistent with the General Plan.

2. Is satisfied with the decision and record of the Planning Commission and adopts by reference the findings contained in Planning Commission Resolution No. 30-18, attached hereto as Exhibit A, and approves the Project subject to the Conditions of Approval, attached hereto as Exhibit B.

The documents that constitute the record of proceedings upon which this decision is based can be found in the City Clerk's office, 1052 S. Livermore Avenue, in Livermore California.

On motion of Council Member Spedowfski, seconded by Council Member Carling, the foregoing Resolution was passed and adopted on September 10, 2018, by the following vote:

AYES: Council Members Carling, Coomber, Spedowfski, Vice Mayor Woerner, Mayor Marchand
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Sarah Bunting
City Clerk

APPROVED AS TO FORM:

Catrina Fobian
Assistant City Attorney

Date: September 11, 2018

Exhibit A - Planning Commission Resolution 30-18
Exhibit B - Conditions of Approval

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVAL OF

Downtown Design Review (DDR) 18-015

A request to develop a four-story, 133-room hotel on the southeast corner of Railroad Avenue and South Livermore Avenue. The project also includes a public underground parking garage, new street frontage and median improvements, a new public street, public surface parking with public ADA accessible stalls, storm water treatments, and landscaping.

Location: 2205 Railroad Avenue

The City received an application for Downtown Design Review (DDR) 18-015.

A courtesy mailing was mailed to neighboring property owners and published in a newspaper of local circulation.

The Planning Commission held a meeting on August 7, 2018, considered the staff recommendation for approval subject to conditions, and heard public testimony.

NOW, THEREFORE, BE IT RESOLVED that, based on the whole record before it, the Planning Commission of the City of Livermore recommends the City Council find the environmental impacts of Downtown Design Review (DDR) 18-015 were analyzed by and are consistent with the 2018 Addendum to the Downtown Specific Plan 2009 Supplemental Environmental Impact Report.

BE IT FURTHER RESOLVED that the Planning Commission finds the following based upon the information presented for Downtown Design Review (DDR) 18-015:

The project is in conformance with the Specific Plan's standards and guidelines; or project-specific mitigation measures or conditions of approval have been incorporated into the project to ensure it is in conformance.

Finding: Based on the design review of the project, as documented in the Planning Commission staff report, the proposed project conforms to the applicable standards and guidelines for commercial buildings in the Downtown Specific Plan (DSP). The architectural quality of the structure and site plan reflect the intent of the DSP Design Standards and Guidelines to create a high quality and active urban fabric in Downtown Livermore.

BE IT FURTHER RESOLVED by the Planning Commission of the City of Livermore that, based on the above finding, Downtown Design Review (DDR) 18-015 is recommended to the City Council for approval, subject to the Conditions of Approval dated August 7, 2018, which are necessary to protect the public health, safety, and general welfare.

The documents that constitute the record of proceedings upon which this decision is based can be found in the Community Development Department, 1052 S. Livermore Avenue, in Livermore, California.

On the motion by Commissioner Pann, seconded by Planning Commissioner Bonanno, the foregoing Resolution was adopted at the Planning Commission meeting of August 7, 2018, by the following vote:

AYES: BONANNO, BJORKLUND, KASKEY, AND PANN.
NOES: NONE.
ABSENT: NONE.
RECUSED: FAGUNDES.

Erik Bjorklund, Chairperson

by Steve Stewart, Planning Manager
Secretary to the Planning Commission

CONDITIONS OF APPROVAL

Downtown Design Review (DDR) 18-015

A request to develop a four-story, 133-room hotel on the southeast corner of Railroad Avenue and South Livermore Avenue. The project also includes a public underground parking garage, new street frontage and median improvements, a new public street, public surface parking with public ADA accessible stalls, storm water treatments, and landscaping.

Location: 2205 Railroad Avenue

Recommended for Approval by Planning Commission: August 7, 2018
Approved by the City Council: September 10, 2018

A. PROJECT AUTHORIZATION

1. The project shall be in conformance with all City Ordinances, rules, regulations, and policies. The conditions listed below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

2. The Downtown Design Review permit shall expire upon the expiration or termination of Development Agreement 18-003, unless an extension is submitted and approved prior to the expiration of the Development Agreement.

B. PROJECT SPECIFIC CONDITIONS

The applicant shall respond in writing to all conditions contained in this document and its attachments. Responses shall describe how the condition has been met and shall, where applicable, direct the plan checker to the page and/or drawing detail that demonstrates compliance with the condition. A copy of these responses shall be provided with each set of improvement plans.

1. Provide a photometric plan for review and approval by the Community Development Department that shows lighting will minimize off-site glare and meet the illumination requirements of the Security Ordinance (Municipal Code, Chapter 15.18).

2. This Downtown Design Review approval does not include the approval of the signs shown on the development plans. All signs are subject to review and approval by the Community Development Department of a separate Downtown Design Review application.

3. The design and location of 30 bicycle parking stalls are subject to review and approval by the Community Development Department prior to submittal for building permits. The stalls may be dispersed among the underground garage, new road, I Street parking facility.

4. Assess the health of the existing street trees along South Livermore and replace them if found to be in poor health, and/or likely to experience stress during hotel construction.

5. Provide trees, landscaping and furnishings that are consistent with the palette for the Downtown Plan Concept Plan Landscape Design Guidelines reviewed by the Planning Commission on August 21, 2018. The City Council will review these Guidelines on September 24, 2018.

6. Coordinate the street tree planting, paving, and landscape improvements along both sides of South Livermore Avenue (along the hotel frontage and Stockmen's Park/Blacksmith Square frontage) to provide a unified and aesthetic entry into the Downtown Core.

7. Include irrigation and planters that are consistent with the City's current standards and specifications.

8. Exterior backflow preventers shall be screened from public view with landscape.

9. Livermore Municipal Code section 12.51 establishes a public art requirement for all projects. For this project, the developer has elected to provide public art on-site. The applicant shall comply with the following conditions regarding public art:

    a. The proposed art is subject to review and approval by the Commission for the Arts prior to receiving a building permit.
    b. A certificate of occupancy shall not be issued until the approved work(s) of art has been installed.
    c. The developer or owner shall execute a restrictive covenant, which shall be recorded against the project site and shall run with the land for a period of 30 years from the installation date.
    d. In the event the public art is stolen, destroyed or vandalized within the 30-year period, the developer or owner must replace or repair the public art pursuant to the Livermore Municipal Code.

10. Prior to occupancy, the applicant shall demonstrate compliance with Municipal Code Section 13.25.060 (Landscape Installation Certification Package).

11. The project is subject to applicable mitigation measures of the 2018 Addendum to the Downtown Specific Plan Amendment 2009 Supplemental Environmental Impact Report.

C. GENERAL CONDITIONS OF APPROVAL

1. Development shall conform to the map designated by the City as Exhibit B-1. Exhibit B-1 plans shall include but are not limited to subdivision, landscape, and architectural plans reviewed and approved by the Planning Commission and City Council and amended by the applicant to reflect any changes indicated above in the Project Specific Conditions or required by the City in the approval process.

2. For all proposed projects, Bay Area Air Quality Management District (BAAQMD; "Air District") recommends requiring the implementation of all Basic Construction Mitigation Measures, listed in Table 8-1 of the BAAQMD CEQA Guidelines, whether or not construction-related emissions exceed applicable Thresholds of Significance. These basic construction stage recommendations are incorporated below into these Conditions of Approval as project requirements.

    a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
    b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
    c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
    d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
    e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
    f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
    g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
    h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

3. Any awnings over windows shall be maintained as an integral architectural feature, in an attractive, serviceable state throughout the life of the project.

4. The development impact fees (e.g., traffic impact, housing in-lieu, park dedication in-lieu,) and project processing fees due in connection with this permit shall be based upon the fees in effect at the time the fee is paid.

5. The Community Development Department may approve minor amendments to the permit, provided that the permit is still in substantial conformance with the original approval.

6. Prior to receiving a building permit for excavation, grading or construction on development site, the applicant shall contact the Alameda County Vector Control Services District to determine if any pre-baiting requirements are necessary to control migration of vermin to adjacent property.

7. To the extent permitted by law, the project applicant shall defend, indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorney's fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

8. Approval of the Downtown Design Review permit is not an authorization to commence construction. Building construction, alterations, repairs, sign erection, or occupancy shall not be permitted without prior approval of the Building Division through issuance of any required permits.

9. Several bioretention areas designed to facilitate stormwater infiltration and treatment are an integral part of the site's utility functioning and any proposed changes to physical design or function shall be subject to prior review and approval by the City Engineer.

D. ENGINEERING DIVISION

1. Development shall conform to the attached Engineering Considerations, dated July 25, 2018.

E. BUILDING DIVISION

1. The project shall comply with currently adopted California Building Standards Code - including Part 11 - the Green Building Standards Code.

F. MAINTENANCE DIVISION

1. All landscaping shall be privately owned, irrigated, and maintained.

2. All proposed sidewalk, pedestrian curb ramps, and driveways shall be installed in accordance with current ADA Access Board Guidelines and City of Livermore Standards.

3. Applicant shall review all sidewalk and pedestrian ramps adjacent to the property for compliance with ADA standards. Any deficiencies shall be corrected prior to issuance of a Certificate of Occupancy.

4. All existing trees along Livermore Avenue and Railroad Avenue that are to remain will need to be inspected by a qualified Arborist through the Contractor. If trees are deemed structurally deficient and/or unhealthy, the existing trees need to be removed and replaced with a more suitable tree species.

G. WATER RESOURCES DIVISION

The Water Resources Division has the following comments regarding this project:

1. All restaurants/food service facilities incorporated within this project shall comply with Livermore Municipal Code 13.32.330, which states the following: "Food Preparation Facilities. All facilities where food is prepared or served shall be equipped with an oil and grease interceptor with a minimum size capacity of 750-gallons. The interceptor shall be connected to the sanitary sewer, and all kitchen generated wastewater with the exception of dishwasher and garbage disposal drainage, shall discharge through the interceptor."

2. Swimming Pool: A drain to the sanitary sewer shall be provided which allows for the proper discharge of draining the pool and/or back-flushing of pool filter equipment to the sanitary sewer.

H. FIRE DEPARTMENT

1. On sheet C5.0, revise plan to show a two 2 ½ inch hose connections, piped off of the sprinkler system, on the east side of the building at a location to be approved by the LPFD.

2. Consult with the LPFD concerning the placement of ground ladder pads.

I. POLICE DEPARTMENT

1. The project shall be required to conform to the provisions of the security section of the Livermore City Code.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LIVERMORE AND 2205 RAILROAD AVENUE LLC FOR THE DISPOSITION OF CITY OWNED PARCELS AND DEVELOPMENT OF A BOUTIQUE HOTEL

(APN'S 098-0407-029-02, 098-0289-013-11, 098-0407-013-00)

On January 29, 2018, the City Council approved a plan for the Downtown Core, which includes a boutique hotel with 125-135 rooms on the southeast corner of Railroad Avenue and South Livermore Avenue.

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement with PresidioCo Holdings LLC to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of certain property for the purpose of building a boutique hotel. The Exclusive Negotiating Rights Agreement was extended by Council on January 23, 2017, May 22, 2017 and November 13, 2017.

On February 26, 2018, City Council authorized the execution of a Hotel Term Sheet with PresidioCo Holdings LLC to lay out the terms that would be included in the Disposition and Development Agreement. (Resolution No. 2018-024)

The City and 2205 Railroad Avenue LLC, a company formed and controlled by PresidioCo Holdings LLC, desire to enter into an agreement to sell the City-owned property to 2205 Railroad Avenue LLC for the construction of a 133-room hotel with an approximately 3,300 square foot bar/lounge, a 1,500 square foot meeting space, fitness center, outdoor pool, open courtyard, patio, and underground parking garage with approximately 120 parking spaces.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore finds that the Disposition and Development Agreement is consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report approved by City Council on September 10, 2018.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore authorizes the City Manager to execute the Disposition and Development Agreement with 2205 Railroad Avenue LLC attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore authorizes the City Manager to execute any documents, with prior approval as to form by the City Attorney, required to effectuate the purpose of the Disposition and Development Agreement, including but not limited to, the parcel map, minor revisions to the schedule of performance, agreements contemplated by the material terms attached as exhibits to the Disposition and Development Agreement, and grant deeds.

On motion of Council Member Spedowfski, seconded by Council Member Carling, the foregoing Resolution was passed and adopted on September 10, 2018, by the following vote:

AYES:	Council Members Carling, Coomber, Spedowfski, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

Sarah Bunting
City Clerk

APPROVED AS TO FORM:

Gabrielle Janssens
Assistant City Attorney

Date: September 11, 2018

Exhibit A – Disposition and Development Agreement

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT THAT INCLUDES A SITE ACQUISITION LOAN IN THE AMOUNT OF $1,923,750 FOR THE ACQUISITION OF 2080 RAILROAD AVENUE, WITH 2205 RAILROAD AVENUE LLC FOR DEVELOPMENT OF A BOUTIQUE HOTEL AND PARKING FACILITY; AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF $ 1,923,750 FROM THE GENERAL FUND TO BE DIRECTED TO THE SITE ACQUISITION LOAN DESCRIBED IN THE DDLA

(APNs 098-0407-031-00, 098-0407-033-00, 098-0282-009-00)

On July 27, 2016, the City entered into an Exclusive Negotiating Rights Agreement with PresidioCo Holdings LLC to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of certain property for the purpose of building a boutique hotel. The Exclusive Negotiating Rights Agreement was extended by Council on January 23, 2017, May 22, 2017, and November 13, 2017.

On January 29, 2018, the City Council approved a plan for the Downtown Core, which includes a boutique hotel with 125-135 rooms on the southeast corner of Railroad Avenue and South Livermore Avenue.

On February 26, 2018, City Council authorized the execution of a Hotel Term Sheet with PresidioCo Holdings LLC to lay out the terms that would be included in the Disposition and Development Agreement.

On or about September 5, 2018, PresidioCo Holdings LLC, formed 2205 Railroad Avenue LLC, which is under the control of PresidioCo Holdings LLC.

On September 10, 2018, the City Council authorized the execution of a Disposition and Development Agreement with 2205 Railroad Avenue LLC for the disposition of City-owned parcels and development of a boutique hotel. At this same meeting, the City Council approved Downtown Design Review No. 18-015 for the site design and architecture for the boutique hotel, including a public underground parking garage.

On December 1, 2018, as provided for in the Development Agreement, PresidioCo Holdings LLC assigned its right, title, and interest in that agreement to PresidioCo Bay Area LLC, and the designation of 2205 Railroad Avenue LLC as the Developer remains unchanged.

The City and 2205 Railroad Avenue LLC desire to enter into an amended agreement to sell the City-owned property to 2205 Railroad Avenue LLC for the construction of a 125-135-room hotel and related amenities, a joint solid waste facility, and include a short-term site acquisition loan to acquire an off-site private property to develop a parking facility.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore finds that the Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC is consistent with, and analyzed by, the addendums to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that were adopted by City Council on September 10, 2018, by Resolution No. 2018-153, May 13, 2019, by Resolution No. 2019-064, and October 26, 2020, by Resolution No. 2020-178, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, and the 2004 Downtown Specific Plan Environmental Impact Report.

No new or more severe significant impacts were identified for the project that was not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR. The City Council of the City of Livermore directs the City Clerk to file a Notice of Determination with the Alameda County Clerk

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that:

1. The City Manager is authorized to execute on behalf of the City of Livermore the Amended and Restated Disposition, Development and Loan Agreement that includes a site acquisition loan in the amount of $1,923,750, with 2205 Railroad Avenue LLC for development of the Downtown boutique hotel and parking facility, attached hereto as Exhibit A.

2. The amount of $1,923,750 is hereby appropriated from the City of Livermore's General Fund to be directed to the Site Acquisition Loan described in the Amended and Restated Disposition, Development and Loan Agreement.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on January 10, 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Amended and Restated Disposition, Development and Loan Agreement

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

by and between

CITY OF LIVERMORE

and

2205 RAILROAD AVENUE LLC

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS. 8
Section 1.1 Definitions. 8
Section 1.2 Exhibits. 14
ARTICLE 2. PREDISPOSITION REQUIREMENTS. 15
Section 2.1 City's Conditions Precedent to Close of Escrow 15
Section 2.2 Developer's Conditions Precedent to Close of Escrow. 16
Section 2.3 Access for Investigations 17
ARTICLE 3. DISPOSITION OF THE PROPERTY AND CONSTRUCTION OF JOINT SOLID WASTE FACILITY. 18
Section 3.1 Purchase and Sale. 18
Section 3.2 Purchase Price 18
Section 3.3 Opening Escrow; Costs of Escrow 18
Section 3.4 Closing and Closing Deliverables 18
Section 3.5 Close of Escrow 19
Section 3.6 Additional Escrow Instructions 20
Section 3.7 Condition of the Property. 20
Section 3.8 Real Estate Commissions 22
Section 3.9 Joint Solid Waste Facility. 22
Section 3.10 Challenge to this Agreement or the Entitlements. 23
Section 3.11 Revival of 2018 Disposition and Development Agreement 23
ARTICLE 4. DESIGN REQUIREMENTS. 24
Section 4.1 Design in Conformance with Project Documents 24
Section 4.2 Additional Permits and Approvals. 24
Section 4.3 City Review 24
ARTICLE 5. PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION. 24
Section 5.1 Conditions Precedent to Commencement of Construction 24
Section 5.2 City Fees 24
Section 5.3 Execution and Recordation of Pre-Construction Documents 24
Section 5.4 Joint Solid Waste Facility Agreement 25
Section 5.5 Building Permits 25

Section 5.6 Updates to Title Policy 25
Section 5.7 Hotel Standard Approval. 26
ARTICLE 6. CONSTRUCTION OF THE IMPROVEMENTS AND PUBLIC IMPROVEMENTS. 26
Section 6.1 Commencement of Construction 26
Section 6.2 Completion of Construction 26
Section 6.3 Construction of Public Improvements 26
Section 6.4 Construction Pursuant to Scope and Plans. 26
Section 6.5 Mechanics' Liens 27
Section 6.6 Compliance with Applicable Law 27
Section 6.7 Progress Reports 27
Section 6.8 Entry by City 28
Section 6.9 Non-Discrimination During Construction; Equal Opportunity 28
ARTICLE 7. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION. 29
Section 7.1 Hotel Use 29
Section 7.2 Community Facility Maintenance District for Downtown Core Improvements 29
Section 7.3 Maintenance 29
Section 7.4 Developer to Indemnify City. 29
Section 7.5 Hazardous Materials. 30
Section 7.6 No Liability for Breaches of Security 32
Section 7.7 Non-Discrimination. 32
Section 7.8 CFMD Assessment. 32
Section 7.9 Hotel Parking Requirements 32
ARTICLE 8. ASSIGNMENT AND TRANSFERS. 33
Section 8.1 Definitions 33
Section 8.2 Purpose of Restrictions on Transfer 33
Section 8.3 Prohibited Transfers 33
Section 8.4 Permitted Transfers 33
Section 8.5 Effectuation of Permitted Transfers. 36
ARTICLE 9. SECURITY FINANCING AND RIGHTS OF HOLDERS. 36
Section 9.1 Encumbrances 36

Section 9.2 Holder Not Obligated to Construct 37
Section 9.3 Notice of Default and Right to Cure. 37
Section 9.4 Cure of Developer Defaults 38
Section 9.5 Failure of Holder to Complete Improvements or Public Improvements 39
Section 9.6 Right of City to Cure 39
Section 9.7 Right of City to Satisfy Other Liens 39
Section 9.8 Holder to be Notified 39
Section 9.9 Modifications 40
Section 9.10 Estoppel Certificates 40
Section 9.11 Participation in Insurance and Condemnation Proceedings 40
Section 9.12 Multiple Encumbrance Holders 40
ARTICLE 10. DEFAULT AND REMEDIES 41
Section 10.1 Application of Remedies 41
Section 10.2 Fault of City. 41
Section 10.3 Fault of Developer. 41
Section 10.4 Right of Reverter. 42
Section 10.5 Rights and Remedies Cumulative 44
Section 10.6 Survival 44
ARTICLE 11. GENERAL PROVISIONS. 44
Section 11.1 Identity of Developer 44
Section 11.2 Notices, Demands and Communications 45
Section 11.3 Non-Liability of Officials, Employees and Agents 45
Section 11.4 Enforced Delay. 46
Section 11.5 Delegation of Authority 46
Section 11.6 Submittals and Approvals 46
Section 11.7 Inspection of Books and Records 46
Section 11.8 Title of Parts and Sections 47
Section 11.9 Applicable Law 47
Section 11.10 Severability. 47
Section 11.11 Legal Actions. 47
Section 11.12 Binding Upon Successors; Covenants to Run with Land 47
Section 11.13 Parties Not Co-Venturers 47

Section 11.14 Entire Understanding of the Parties 48
Section 11.15 Counterparts 48
Section 11.16 Amendments 48
Section 11.17 Recordation of Memorandum of DDLA 48
Section 11.18 Standard of Approval 48
Section 11.19 Effectiveness of Agreement 48
Section 11.20 Interpretation. 48
Section 11.21 No Gift or Dedication 48
ARTICLE 12. SITE ACQUISITION LOAN. 48
Section 12.1 Loan amount 48
Section 12.2 Use of Loan Funds 48
Section 12.3 Loan term 49
Section 12.4 Interest 49
Section 12.5 Default Interest Rate 49
Section 12.6 Loan conditions to Disbursement 49
Section 12.7 Security 49
Section 12.8 Use of the Parking Parcel 49
Section 12.9 Requirements 49
Section 12.10 Disbursement 50
Section 12.11 Loan repayment 50
Section 12.12 Maintenance and Damage; Hazardous Materials 50
Section 12.13 Event of Default – Site Acquisition Loan 51
Section 12.14 Notice and Cure Procedure 52
Section 12.15 Specific Remedies for Site Acquisition Loan Event of Default 53
Section 12.16 City Right's Upon Default 53
Section 12.17 Non-Recourse 54
Section 12.18 Affiliate Assignment and Assumption 54
Section 12.19 Survival 55

AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (this "Agreement") is made as of ____, 2022, by and between the City of Livermore, a municipal corporation (the "City"), and 2205 Railroad Avenue LLC, a Delaware limited liability company (the "Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. The City is the owner of the City-owned parcels located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (APNs: 098-0407-031-00; 098-0407-033-00 (hereinafter "Hotel Parcel")). Developer desires to purchase the Hotel Parcel from the City. The Hotel Parcel includes Parcel A and Parcel C on Parcel Map 9999 as more particularly described in Exhibit A. Prior to the Close of Escrow, an updated Parcel Map will be recorded for the Hotel Parcel to eliminate Parcel C and to include a deed restriction for a rooftop public open space on the Hotel and a right of way easement for a public roadway.

C. The Developer desires to construct on the Hotel Parcel a four story approximately 65,000-75,000 square foot Hotel, constructed to a standard comparable to one of the Brands identified in the Hotel Standards and containing between 125-135 hotel rooms, approximately 1,400-2,000 square feet of economically viable meeting space, a roof-top deck, and related hotel amenities and improvements.

D. No later than the Close of Escrow, the Hotel Parcel will be burdened by a deed restriction for a rooftop public open space and a reservation of right of way easement over the Hotel Parcel for Public Improvements including but not limited to a roadway, sidewalks, stormwater improvements, landscaping, and public parking.

E. Prior to the Close of Escrow, the Developer shall enter into a Temporary Parking Lease for the Hotel Parcel with the City wherein the Hotel Parcel will be used for public parking until the commencement of construction on the Hotel Parcel.

F. The Developer shall design, construct and own a Joint Solid Waste Facility that will provide garbage, organics, and recyclable services for the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema. The Joint Solid Waste Facility shall replace the temporary solid waste facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West). The Developer shall be responsible for developing a solid waste disposal plan to govern the service, operation, repair, maintenance, replacement and insurance of the Joint Solid Waste

Facility. Such plan shall be embodied in a Joint Solid Waste Facility Agreement to be entered into prior to commencement of construction of the Project.

G. Upon satisfaction of specified predisposition conditions set forth in Article 2 of this Agreement, the City will convey its fee estate in the Property and Appurtenances to the Developer, subject to the permitted exceptions, for the consideration and upon the terms set forth in this Agreement, and the Developer shall, subject to this Agreement, construct and cause the Project to be operated in the manner specified in this Agreement.

H. The City has concluded that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

I. The City and Developer's Affiliate, PresidioCo Holdings LLC, a Delaware limited liability company, previously entered into that certain Exclusive Negotiating Rights Agreement dated as of July 27, 2016, as amended, and that certain Hotel Term Sheet dated as of March 2, 2018, which contemplated the negotiation and consummation of the Disposition and Development that was entered into by the parties on October 1, 2018 (the "2018 Disposition and Development Agreement"). PresidioCo Holdings LLC assigned its interest in this agreement and 2205 Railroad Avenue LLC to PresidioCo Bay Area LLC. On and effective as of the Effective Date, this Agreement supersedes the 2018 Disposition and Development Agreement, except as provided for in Section 3.11.

J. The Developer is in contract to purchase the parcel located on the northwest corner of Railroad Avenue and North K Street in downtown Livermore and commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) (hereinafter "Parking Parcel."). Developer intends to use the Parking Parcel as a valet parking lot to meet the City's parking requirements for the Hotel.

K. The City desires to provide a short-term Site Acquisition Loan to the Developer to assist in financing the Developer's acquisition of the Parking Parcel. The City expects Developer to pay the principal and interest due on the loan the earlier of the date that the Developer converts predevelopment costs or construction costs into permanent financing for the Project, or December 31, 2025, whichever occurs first.

L. As soon as practicable after Developer obtains title to the Parking Parcel, the Developer and the City shall enter into a Lease and Operating Agreement for the Parking Parcel. Pursuant to the terms of Lease and Operating Agreement for the Parking Parcel, the City may use the Parking Parcel for public parking for a period of up to three years from the Effective Date of the Lease Agreement or until construction of the Hotel is at least 40% complete, whichever is earlier. However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024.

M. Pursuant to CEQA, the City (in its capacity as "lead agency") has approved on, September 2018, an Addendum to the 2009 Subsequent Environmental Impact Report, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, Subsequent Environmental Impact Report dated March 2009, and Downtown Specific Plan Environmental Impact Report dated February 9, 2004.

NOW, THEREFORE, the City and the Developer agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" means any Person which directly or indirectly through one or more intermediaries, (i) Controls, or (ii) is Controlled by, or (iii) is under common Control with, Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition, Development and Loan Agreement.

(c) "Appurtenances" shall mean all rights, privileges and easements appurtenant to the Property, including, without limitation (to the extent in existence), all minerals, oil, gas, and other hydrocarbon substances on or under the Property, as well as development rights, air rights, riparian rights and water rights which the City may own and which relate to the Property and any rights-of-way or other appurtenances affecting the Property.

(d) "Building Permit" shall mean an excavation, foundation or other building permit issued by the City in connection with the construction of the Improvements.

(e) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.

(f) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Hotel.

(g) "City" shall mean the City of Livermore.

(h) "City Event of Default" shall mean any default by the City as set forth in Section 10.2.

(i) "City Fees" shall mean the estimated fees listed in Exhibit B, which fees are estimates only and will be finally determined at the issuance of the Building Permit.

(j) "Close of Escrow" shall have the meaning ser forth in Section 3.5.

(k) "Community Facility Maintenance District for the Downtown Core Improvements" (hereinafter "CFMD") shall mean the maintenance district or districts created to fund the maintenance of the Stockmen's Park and other designated downtown public facilities, in accordance with Section 7.2.

(l) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(m) "Deed of Trust" shall mean the Deed of Trust executed by the Developer to secure its obligation to repay the Site Acquisition Loan for the Parking Parcel. A form of the Deed of Trust is attached to this Agreement as Exhibit C.

(n) "Developer" shall mean 2205 Railroad Avenue LLC, a Delaware limited liability company, or any transferee of the Developer in accordance with Section 8.4.

(o) "Developer Event of Default" shall mean any default by the Developer as set forth in Section 10.3, subject to any applicable notice and cure rights set forth therein.

(p) "Effective Date" shall mean the date which is the later of (i) the date this Agreement is executed by the Developer and (ii) the date this Agreement is approved and executed by the City.

(q) "Entitlements" shall mean, collectively, zoning approvals, conditional use permit and any other discretionary approvals required for construction of the Project. For purposes of this Agreement, "Entitlements" do not include demolition, grading, building or other ministerial permits or approvals.

(r) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 3.

(s) "Escrow Holder" shall mean the Developer's title company or other mutually agreed upon title company.

(t) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City for the construction of the Improvements and final drawings for the construction the Public Improvements required under this Agreement.

(u) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Property and Appurtenances to the Developer. The Grant Deed shall include a deed restriction for a rooftop public open space on the Hotel and a reservation of right of way easement for a public roadway on the Property. A form of the Grant Deed is attached to this Agreement as Exhibit D.

(v) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials;

(4) Any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Property, as heretofore or hereafter amended; and

(5) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or equipment, food service or preparation equipment or materials or janitorial supply products or equipment customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a hotel and its supporting parking structure, to the extent which the same are used and stored in accordance with all applicable environmental ordinances and regulations.

(w) "Hazardous Materials Laws" shall mean environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(x) "Hotel" shall mean a four story approximately 65,000-75,000 square foot hotel containing between one hundred twenty-five (125) to one hundred thirty-five (135) hotel rooms, approximately 1,400 - 2,000 square feet of economically viable meeting space, a roof-top deck, and related hotel amenities and improvements on the Hotel Parcel.

(y) "Hotel Parcel" shall mean that certain parcel shown on Parcel Map 9999 as Parcel A and Parcel C as more particularly described in Exhibit A. Prior to the Close of Escrow, an updated Parcel Map will be recorded for the Hotel Parcel which will eliminate Parcel C and include a deed restriction for a rooftop public open space on the Hotel and a right of way easement for a public roadway.

(z) "Hotel Standard" shall mean a boutique hotel that meets or exceeds the standard of "Upscale" or "Upper Upscale" under the STR, Inc. Chain Scales Rating system or similar industry recognized rating system as more particularly described in Exhibit E.

(aa) "Improvements" shall mean collectively the Parking Parcel, the Joint Solid Waste Facility, the Hotel, and all other improvements on the Hotel Parcel, except for the On-site Public Roadway.

(bb) "Joint Solid Waste Facility" shall mean a trash facility located in close proximity to the Hotel sized to serve the solid waste produced by the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema.

(cc) "Joint Solid Waste Facility Agreement" shall mean a solid waste disposal agreement, reasonably acceptable to Developer, as may be amended by agreement of the parties thereto, among the Developer, the City, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema, that will include a solid waste disposal plan, performance obligations of the parties, and a license or lease from the City to allow the performance of the obligations under the agreement, substantially in conformance with the Material Terms contained in Exhibit F.

(dd) "Lease and Operating Agreement for the Parking Parcel" shall mean the agreement between the City and the Developer for the lease, operation, and maintenance of the Parking Parcel, in substantial conformance with the Lease and Operating Agreement attached as Exhibit G.

(ee) "Loan Documents" shall mean this Agreement, the Promissory Note, the Deed of Trust, and any other document or agreement evidencing the Site Acquisition Loan for the Parking Parcel.

(ff) "Memorandum of DDLA" shall mean the memorandum of this Agreement, substantially in the form of Exhibit H.

(gg) "Official Records" shall mean the Official Records of Alameda County.

(hh) "Outside Date" shall mean the last date for the commencement of construction as set forth in the Schedule of Performance.

(ii) "Parcel B" shall mean the parcel designated as Parcel B on the Parcel Map 9999 recorded October 3, 2018, recorded series 2018192226.

(jj) "Parcel Map" shall mean Parcel Map No. 9999, attached as Exhibit I. Prior to the Close of Escrow, an updated Parcel Map will be recorded for the Hotel Parcel which shall include a deed restriction for a public open space on the Hotel and a right of way easement for a public roadway.

(kk) "Parking Parcel" shall mean the parcel located on the northwest corner of Railroad Avenue and North K Street in downtown Livermore and commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) that Developer will purchase and use as a valet parking lot to meet the hotel's parking requirement, which is more particularly described in Exhibit J attached to this Agreement.

(ll) "Parties" shall mean the City and the Developer.

(mm) "Party" shall mean either the City or the Developer depending on the context.

(nn) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

(1) the lien of any non-delinquent property taxes and assessments;

(2) all existing easements over, under and across the Property for ingress and egress and public utilities, which do not preclude Developer's intended use of the Property;

(3) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Property;

(4) applicable building and zoning laws and regulations;

(5) the provisions of this Agreement;

(6) a deed restriction for a rooftop public open space on the Hotel and a reservation of right of way easement for the public roadway on the Property;

(7) the Temporary Parking Lease;

(8) other matters created by, through or under Developer; and

(9) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(oo) "Person" or "Persons" shall mean any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(pp) "Pre-Construction Documents" shall mean collectively the final, fully executed forms of the Public Improvement Agreement, the Irrevocable Offer of Dedication for the Public Roadway, and the Joint Solid Waste Facility Agreement.

(qq) "Pro Forma" shall mean the preliminary sources and uses for the development of the Project delivered by the Developer under separate confidential cover.

(rr) "Project" shall mean (i) the Property and (ii) collectively, the Improvements, and the Public Improvements, as more fully set forth in the Scope of Development.

(ss) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements, together with and all conditions of approval associated with the Entitlements.

(tt) "Promissory Note" shall mean the Promissory Note executed by the Developer to satisfy the Site Acquisition Loan for the Parking Parcel under the terms set forth in this Agreement. A form of the Promissory Note is attached to this Agreement as Exhibit K.

(uu) "Property" shall mean the City-owned Hotel Parcel located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore, as more particularly described as Parcel A and Parcel C in Exhibit A attached to this Agreement. "Property" and "Hotel Parcel" shall be used interchangeably throughout this Agreement.

(vv) "Public Improvements" shall collectively mean the Roadway and Frontage Improvements to S. Livermore Avenue, the On-site Public Roadway, and the Railroad Avenue Improvements as more particularly described in Exhibit L.

(ww) "Public Improvement Agreement" shall be the agreement between the City and the Developer in which the City requires as a condition precedent to the construction of the Project, the dedication of streets and public ways on the Hotel Parcel and the construction of certain on-site and off-site public improvements, substantially in conformance with the form attached as Exhibit M.

(xx) "Purchase Price" shall have the meaning set forth in Section 3.2.

(yy) "Schedule of Performance" shall mean the schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Property to the Developer and the construction of the Project, as the same or components of the same may be extended pursuant to this Agreement. The Schedule of Performance is attached to this Agreement as Exhibit N.

(zz) "Scope of Development" shall mean the description of the Project contained in the approved Entitlements and all conditions of approvals associated with the Entitlements. The Scope of Development is attached to this Agreement as Exhibit O.

(aaa) "Security Financing Interests" shall have the meaning set forth in Section 9.1.

(bbb) "Site Acquisition Loan" shall have the meaning set forth in Article 12.

(ccc) "Temporary Parking Lease" shall mean that certain Lease for Temporary Parking for the Hotel Parcel between the City of Livermore and Developer in substantial conformance with the Temporary Parking Lease Agreement attached as Exhibit P.

(ddd) "Title Company" shall mean the title company agreed to by the Parties.

(eee) "Title Policy" has the meaning set forth in Section 2.2(i).

(fff) "Transaction Documents" shall mean, collectively, the Parcel Map, the Lease and Operating Agreement for the Parking Parcel, the Grant Deed, the Memorandum of DDLA, the Public Improvement Agreement, and the Temporary Parking Lease for the Hotel Parcel.

(ggg) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Section 8.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A.	Legal Description and Plat of the Hotel Parcel
Exhibit B.	City Fees
Exhibit C.	Deed of Trust
Exhibit D.	Grant Deed
Exhibit E.	Hotel Standard
Exhibit F.	Joint Solid Waste Facility Agreement Material Terms
Exhibit G.	Lease and Operating Agreement for the Parking Parcel
Exhibit H.	Memorandum of DDLA
Exhibit I.	Parcel Map
Exhibit J.	Parking Parcel
Exhibit K.	Promissory Note

Exhibit L. Public Improvements

Exhibit M. Public Improvement Agreement

Exhibit N. Schedule of Performance

Exhibit O. Scope of Development

Exhibit P. Temporary Parking Lease for the Hotel Parcel

Exhibit Q. Terms and Conditions of the Deed Restriction

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.1 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions depends on performance by the Developer. Only the City can waive satisfaction of the conditions in this Section 2.1.

(a) The Developer has provided the City with the preliminary development Pro Forma setting forth the Developer's current estimate of sources and uses of funds for development of the Improvements. The Pro Forma is intended to serve as a guide for the review of the Developer's financing commitments. The Pro Forma and the information contained therein are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. No later than the time specified in the Schedule of Performance, the Developer has submitted a true copy of each letter of interest or letter of intent, which may be binding or non-binding, from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary, together with the funds of Developer, to fully finance the projected costs of development of the Improvements.

(b) The Developer and the City have entered into a Lease and Operating Agreement for the Parking Parcel, in accordance with Section 12.6 of this Agreement and in substantial conformance with the Lease and Operating Agreement attached as Exhibit G.

(c) The City and Developer have entered into a Temporary Parking Lease for the Hotel Parcel wherein the Hotel Parcel will be available for public parking until the commencement of construction of the Project, in substantial conformance with the Temporary Parking Lease Agreement attached as Exhibit P."

(d) The Developer has obtained all Entitlements.

(e) No later than the time specified in the Schedule of Performance, the Developer has obtained written approval from the City for the Draft Hotel Interior Design Proposal demonstrating comparable quality to the brands identified in the Hotel Standard.

(f) The Developer has deposited an executed counterpart of the Lease and Operating Agreement for the Parking Parcel with the Escrow Holder.

(g) The Developer has deposited an executed counterpart of the Temporary Parking Lease Agreement for the Hotel Parcel with Escrow Holder.

(h) The Developer has submitted the Developer's organizational documents to the City and the City has approved Developer's organizational structure.

(i) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Project.

(j) There shall exist no condition, event or act which would constitute a Developer Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Developer Event of Default.

Section 2.2 Developer's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.2 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions in Sections 2.2(e) and 2.2(f) depends on performance by the City. Only the Developer can waive satisfaction of the conditions contained in this Section 2.2.

(a) The Developer and the City have entered into a Lease and Operating Agreement for the Parking Parcel in accordance with Section 12.6 of this Agreement and in substantial conformance with the form attached as Exhibit G.

(b) The City and Developer have entered into a Temporary Parking Lease for the Hotel Parcel, in substantial conformance with Exhibit P wherein the Hotel Parcel will be available for public parking until the commencement of construction of the Project.

(c) The Developer has obtained all Entitlements.

(d) The Developer has obtained written approval from the City for the Draft Hotel Interior Design Proposal demonstrating comparable quality to the brands identified in the Hotel Standard.

(e) The City has deposited an executed counterpart of the Lease and Operating Agreement for the Parking Parcel with the Escrow Holder.

(f) The City has deposited an executed counterpart of the Temporary Parking Lease Agreement for the Hotel Parcel with the Escrow Holder.

(g) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Project.

(h) There shall exist no condition, event or act which would constitute a City Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a City Event of Default.

(i) The Title Company is irrevocably and unconditionally committed to issue to Developer the Title Policy, free and clear of all liens, and subject only to the Permitted Encumbrances, within thirty (30) days of Close of Escrow. As used in this Agreement, the term "Title Policy" shall mean an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring fee simple title to the Property, subject only to the Permitted Encumbrances.

Section 2.3 Access for Investigations. Prior to Close of Escrow and subject to the rights of any tenants occupying the Property including, the City grants to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting geotechnical and environmental studies and investigations. Such entry shall be made only during regular business hours and upon not less than five (5) business days' advance telephonic, email, or written facsimile notice to the City's Community Development Director. Prior to exercise of the right of entry, the Developer shall provide the City with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies in a manner acceptable to the City in its reasonable discretion. The Developer shall indemnify and defend the City of Livermore and its council members, officers, employees, and agents (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges to the extent such arise out of or are in any way directly related to any entry by the Developer or the Developer's agents upon the Property, but only to the extent such matters do not arise from the gross negligence or willful misconduct of the City or other Indemnified Party, from pre-existing conditions of the Property, or from Developer's discovery of any information potentially having a negative impact on the Property. The foregoing obligation of the Developer shall survive the expiration or termination of this Agreement. The City shall cooperate with the Developer in obtaining, for the benefit of the Developer, reliance letters from the appropriate parties with respect to any third-party reports or studies commissioned or obtained by the City with respect to the Property.

ARTICLE 3.
DISPOSITION OF THE PROPERTY AND CONSTRUCTION OF JOINT SOLID WASTE FACILITY

Section 3.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 2 and the additional closing conditions set forth in Section 3.4 have been satisfied or waived, the City shall sell to the Developer, and the Developer shall purchase from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 Purchase Price. The purchase price for the Property shall be $71,521. The Developer shall pay a ten (10) percent deposit at the Close of Escrow and the remainder shall be paid no later than December 31, 2025.

Section 3.3 Opening Escrow; Costs of Escrow. To accomplish the transfer and conveyance of the Property from the City to the Developer, by the date specified in the Schedule of Performance, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement. The City shall pay or cause to be paid (i) one half (½) of any escrow fee charged by the Escrow Holder and (ii) any and all City and County real estate documentary transfer taxes. The Developer shall pay (a) one half (½) of any escrow fee charged by the Escrow Holder, (b) all costs of the Title Policy (and any endorsements) issued based thereon, and (c) any recording fees. Each Party shall be responsible for the payment of its own attorney's fees, copying expenses and other costs incurred in connection with the negotiation of this Agreement and the consummation of the transaction contemplated hereunder. Any other closing costs and all prorations (if any) shall be split and accounted for as customary in Alameda County, California, for commercial real estate transactions.

Section 3.4 Closing and Closing Deliverables. Subject to the satisfaction or waiver of the closing conditions and predisposition conditions to the Close of Escrow set forth in Section 2.1 and Section 2.2, the Close of Escrow shall occur and the City shall convey, and the Developer shall accept conveyance of, fee simple title to the Property and Appurtenances, subject only to permitted exceptions, pursuant to the Grant Deed. At or before Close of Escrow, the City and the Developer, as applicable, shall deliver to the Title Company and Escrow Holder the following:

(a) The Developer shall deposit: (i) the Purchase Price, (ii) originals of each of the Transaction Documents executed and acknowledged (as applicable) by the Developer, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

(b) The City shall deposit: (i) originals of each of the Transaction Documents executed and acknowledged (as applicable), (ii) a FIRPTA Certificate, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in

Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

Section 3.5 Close of Escrow. Subject to the satisfaction or waiver of the closing conditions and predisposition conditions to the Close of Escrow set forth in Sections 2.1 and 2.2 and provided that all of the documents and other items set forth in Section 3.4 have been deposited with Escrow Holder, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Transaction Documents, including the effective dates thereof;

(b) Attach to all applicable Transaction Documents final and accurate legal descriptions consistent with the Title Policy;

(c) Deliver copies of fully executed originals of the Transaction Documents to the appropriate parties, including certified copies of the recordable Transaction Documents showing recording information; and

(d) Cause to be recorded or distributed (as set forth below) the following documents:

(1) Record in the Official Records the Grant Deed conveying the Property to the Developer with a deed restriction for a rooftop public open space on the Hotel and a reservation of right of way easement for a public roadway. The terms and conditions of the deed restriction shall be in substantial conformance with those set forth in Exhibit Q.

(2) Record in the Official Records the Memorandum of DDLA;

(3) Record in the Official Records the Offsite Hotel Stormwater Improvement Easement;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Deliver the FIRPTA Certificate, if any, to the Developer;

(6) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date and information endorsed thereon to the extent applicable;

(7) Issue the Title Policy to Developer or irrevocably and unconditionally commit to issue the Title Policy to the Developer within thirty (30) days of Close of Escrow; and

(8) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder completes the recordation of all of the recordable documents listed in this Section 3.5 shall be the "Close of Escrow".

Section 3.6 Additional Escrow Instructions. The Parties shall execute such further or additional escrow instructions as Escrow Holder may require or that any such Party desires. Such further or additional escrow instructions shall not require the imposition of any additional obligations or liabilities on a Party, unless agreed to by the Party, and shall not modify the provisions of this Agreement (unless the Parties otherwise expressly provide for such modification in such further or additional escrow instructions).

Section 3.7 Condition of the Property.

(a) "As Is" Conveyance.

(1) **THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) EXPRESS OR IMPLIED, FROM CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR THEIR OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND**

MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of City. Except with respect to the obligations of the City under this Agreement, the Transaction Documents and the Pre-Construction Documents, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or their suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. The release set forth in Section 3.7(a)(2) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to such causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Developer's Initials: _____

(b) Survival. The provisions of this section shall survive the termination of this Agreement.

Section 3.8 Real Estate Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement other than what is contemplated in the Term Sheet for the Marketing and Sale of Property; Exclusive Authorization to Sell executed by the City, Colliers International, and DTZ, and dated June 22, 2015. The Developer represents that it has not obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

Section 3.9 Joint Solid Waste Facility.

(a) The Developer shall be responsible for the design, construction and ownership of the Joint Solid Waste Facility that will provide garbage, organics and recyclable services for the Hotel, Bankhead Theater, First Street Mixed Use Commercial Projects (East and West), Livermore Valley City Center Plaza, and the Livermore Cinema. Developer shall be responsible for all service, maintenance, operation, repair, replacement and insurance of the Joint Solid Waste Facility. Developer shall be responsible for all coordination efforts with the participating property owners for the development of a solid waste disposal plan for the Joint Solid Waste Facility. The solid waste disposal plan shall be subject to approval by the City's Community Development Director.

(b) Developer is responsible for securing the participation of the users stated above in subparagraph (a) to join the Joint Solid Waste Facility Agreement to satisfy their individual solid waste disposal needs consistent with state, county and local requirements. If after reasonable due diligence, the Developer is unable to secure all users agreement for the Joint Solid Waste Facility, the Developer shall be responsible to ensure that the Joint Solid Waste Facility provides waste disposal for all users stated above in subparagraph (a), including any users that are not parties to the Joint Solid Waste Facility Agreement, and that it is properly serviced, maintained, operated, repaired and replaced, as necessary.

(c) The Joint Solid Waste Facility shall replace the temporary facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West). The Developer shall maintain access to the temporary solid waste facility during the construction of the Project until such time as the Joint Solid Waste Facility is completed and operational. Once

the Joint Solid Waste Facility is operational, the Developer shall remove the temporary solid waste facility and install new landscape and irrigation connected to the City's irrigation system at the location of the former temporary solid waste facility.

Section 3.10 Challenge to this Agreement or the Entitlements.

(a) Stay of Schedule of Performance. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing any entitlements for the Project, the Schedule of Performance set forth in Exhibit N shall be stayed for the duration of litigation, as set forth in Section 11.4 or by mutual agreement of the Parties, or by other provisions in this Agreement.

(b) Election Not to Proceed. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing the Entitlements for the Project, which claim proves successful, or in the event a referendum is initiated with respect to the validity of this Agreement or to the City's action in issuing the Entitlements for the Project, which referendum proves successful, upon sixty (60) days prior written notice the Developer may elect to not proceed with the Project. If Developer elects not to proceed with the Project pursuant to the preceding sentence, promptly following delivery of such written notice Developer will convey the Property to the City and the City will reacquire the Property and acquire the Developer's interest in Project related work product by paying the Purchase Price and Project-related development costs and expenses incurred and reasonably documented by or on behalf of the Developer up to a maximum amount of Three Hundred Thousand Dollars ($300,000). Upon the required payment by the City, the Developer will assign its interest in the plans and specifications for the Improvements and all engineering and architect contracts to the City, without representation or warranty.

Section 3.11 Revival of 2018 Disposition and Development Agreement. The Property is identified and approved for disposition pursuant to the Long Range Property Management Plan approved by the Oversight Board for the former Redevelopment Agency of the City of Livermore, and approved by the California Department of Finance, that approved the disposition of the Property for a hotel. This Agreement is intended to fulfill and complete the agreements executed by the parties prior to September 30, 2019, and to complete disposition of the Property before December 31, 2022. In the event that a court of competent jurisdiction determines that the exceptions in Government Code section 54234(a) do not apply to this Agreement, or determines that a decision by the California Department of Housing and Community Development should be upheld to prevent the transfer of the Property pursuant to this Agreement, the Parties hereby express intent that either of those decisions will work to automatically revive the 2018 Disposition and Development Agreement that this Agreement intended to amend and restate. The Parties expressly state the intent of this Agreement relative to the Property is to amend and restate the 2018 Disposition and Development Agreement so that the transaction can b44e completed.

ARTICLE 4.
DESIGN REQUIREMENTS

Section 4.1 Design in Conformance with Project Documents. In designing and constructing the Project, the Developer shall cause all subsequent design documents prepared by the Developer to be substantially consistent with the Scope of Development attached as Exhibit O and the Project Documents. The Scope of Development and the Project Documents shall establish the baseline design standards from which the Developer shall prepare the Final Construction Drawings.

Section 4.2 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties or by other provisions of this Agreement), Developer shall obtain all permits and approvals necessary to construct the Improvements and Public Improvements. All applications for such permits and approvals shall be consistent with the approved Project Documents. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process. The City shall provide reasonable assistance to the Developer in securing such permits and approvals.

Section 4.3 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Improvements and Public Improvements, including, but not limited to, the design of the Improvements and Public Improvements, the quality and suitability of the Project Documents related to the Improvements and Public Improvements, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City under this Agreement, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements or Public Improvements.

ARTICLE 5.
PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION

Section 5.1 Conditions Precedent to Commencement of Construction. As conditions precedent to the commencement of construction for the Project, the conditions set forth in this Article must first be satisfied. Satisfaction of these conditions depends on the performance by the Developer. Only the City can waive satisfaction of the conditions in this Article.

Section 5.2 City Fees. All applicable City Fees have been paid.

Section 5.3 Execution and Recordation of Pre-Construction Documents. As a condition to commencement of construction of the Project, each Pre-Construction Document shall have been agreed to by all applicable parties, and executed, acknowledged (as applicable) and delivered by all applicable parties, and recorded (as applicable) in the Official Records. The

City and Developer shall, as of the date or dates set forth in the Schedule of Performance, cooperate in good faith to agree upon, execute, acknowledge (as applicable), deliver, and record (as applicable) each Pre-Construction Document. The Parties acknowledge and agree that, except with respect to the Joint Solid Waste Facility Agreement, the material terms of each Pre-Construction Document are set forth in the applicable Exhibits to this Agreement, and that the Parties shall not deviate from such material terms in connection with the completion of the final forms of such Pre-Construction Documents. In the event that, through no fault of Developer, any Pre-Construction Document is not agreed upon, executed, acknowledged (as applicable), delivered, and recorded (as applicable) by date or dates set forth in the Schedule of Performance, all subsequent dates in the Schedule of Performance shall be extended, day-for-day until such Pre-Construction Document is agreed upon, executed, acknowledged (as applicable), delivered, and recorded (as applicable).

(a) Public Improvement Agreement. Prior to the commencement of construction of the Project, Developer and City shall enter into a Public Improvement Agreement for the dedication of streets and public ways on the Hotel Parcel and for the construction of on-site and off-site public improvements in substantial conformance with the Public Improvement Agreement attached as Exhibit M. A fully executed Public Improvement Agreement shall be recorded in the Official Records prior to the commencement of construction of the Project.

(b) Irrevocable Offer of Dedication for Public Roadway. Developer shall grant City an irrevocable offer of dedication of a right of way easement for the public roadway generally shown on Exhibit I. An executed Irrevocable Offer of Dedication for Public Roadway, including the updated Parcel Map, shall be recorded in the Official Records prior to the commencement of construction of the Project.

Section 5.4 Joint Solid Waste Facility Agreement. Prior to commencement of construction of the Project, Developer shall provide City with a fully executed Joint Solid Waste Facility Agreement. The Joint Solid Waste Facility Agreement shall include, but not be limited to, the solid waste disposal plan, performance obligations of the parties to the agreement, and a license or lease agreement from the City allowing access to the Joint Solid Waste Facility.

Section 5.5 Building Permits. Building Permits to enable the Project to be constructed have been issued by the City or are ready to issue.

Section 5.6 Updates to Title Policy. It is anticipated that, prior to commencing construction of the Project, Developer will obtain updates to the Title Policy necessary to reflect Security Financing Instruments and other encumbrances contemplated by this Agreement, placed in connection with the construction of the Improvements and Public Improvements. The City shall cooperate with Developer in connection with such updates to the Title Policy and any such title policies for Encumbrance Holders, including, without limitation, delivering such documents as may be reasonably requested by the Title Company with respect to the same.

Section 5.7 Hotel Standard Approval.

(a) As a condition to commencement of construction of the Project, the Developer shall provide to the City Final Hotel Interior Design Proposal, demonstrating compliance with the Hotel Standard requirements of this Agreement, meaning that the hotel meets or exceeds the standard of "Upscale" or "Upper Upscale" under the STR, Inc. Chain Scales Rating system or similar industry recognized rating system as more particularly described in Exhibit E.

(b) The City shall retain a hotel consultant to provide a written recommendation to the City on Developer's compliance with the Hotel Standard requirements under this Agreement to ensure that the interior design quality of the Hotel shall meet or exceed the quality of the Hotel Brands identified in Exhibit E. The Developer shall be solely responsible for any and all costs associated with the hotel consultant, including but not limited to, retention of the consultant, any coordination with the City and the Developer, and any written documentation provided by the hotel consultant.

ARTICLE 6.
CONSTRUCTION OF THE IMPROVEMENTS AND PUBLIC IMPROVEMENTS

Section 6.1 Commencement of Construction. The Developer shall commence construction of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on the date physical work on the Property starts pursuant to a valid Building Permit from the City.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of the Improvements, and shall complete construction of the Improvements within the time set forth in the Schedule of Performance. The Developer shall be solely responsible for the construction of the Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.3 Construction of Public Improvements. The Developer shall diligently prosecute to completion the construction of the Public Improvements, as more particularly described in Exhibit L and shall complete construction of the Public Improvements within the time set forth in the Schedule of Performance. Developer shall be solely responsible for the construction of the Public Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.4 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements and Public Improvements in accordance with the Scope of Development, the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for the City approval any proposed change in the Final Construction Drawings which materially changes the size,

location, or elevations of the Improvements or the Public Improvements, including the landscape and/or hardscape, or signage of the Improvements or the Public Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements or Public Improvements, or which would require an amendment to any Entitlements prior to making such change. The City shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City for any changes which are eligible for staff level approval. Any changes requiring Planning Commission or City Council review and approval will be subject to the City's standard public hearing process. If the City rejects the proposed material change and upon the Developer's request, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.5 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements, or the Public Improvements, by the Developer. This indemnity obligation shall survive the issuance of a Certificate of Occupancy by the City and the termination of this Agreement.

Section 6.6 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements and Public Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in the work of constructing the Improvements and Public Improvements.

Section 6.7 Progress Reports. Until a Certificate of Occupancy has been issued by the City, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

While the Public Improvements are being constructed, the Developer shall hold regular coordination meetings with the City.

Section 6.8 Entry by City. Until a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice, through its officers, agents, or employees, to enter the Property during normal business hours to inspect the work of construction to determine that such work is in substantial conformity with the Scope of Development and the approved Final Construction Drawings or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section 6.8 are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 6.9 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 6.9, the term "Developer" shall include Developer's contractors), for itself, its successors and assigns, and transferees agrees that in the construction of the Project provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, actual and perceived, medical condition, age, marital status, sex, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS), actual or perceived, or retaliation for having filed a discrimination complaint ("Nondiscrimination Factors"). The Developer will take affirmative steps to ensure that applicants are employed by the Developer or its applicable contractor or Hotel operator, and that its employees are treated without regard to the Nondiscrimination Factors during employment including, but not limited to, activities of: upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer or its applicable contractor or Hotel operator shall post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) The Developer will ensure that its or its applicable contractor's or Hotel operator's solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors.

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ARTICLE 7.
OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 7.1 Hotel Use. The Developer covenants to use the Hotel Parcel only for the operation of a hotel and related amenities meeting the Hotel Standard for a term of not less than thirty (30) years following the date of the issuance of the Certificate of Occupancy without the prior written approval of the City, which shall not be unreasonably withheld or delayed.

Section 7.2 Community Facility Maintenance District for Downtown Core Improvements. The Developer agrees to participate in a maintenance district or districts created to fund the maintenance of Stockmen's Park and other designated downtown public facilities. The Community Facility Maintenance District for Downtown Core Improvements shall be placed onto the Hotel Parcel no earlier than one (1) year following commencement of business operations of the Hotel, and shall be placed on the annual tax bill of the Hotel Parcel in the initial amount of $30,000 increasing annually at the percent year-over-year change in the Consumer Price Index for All Urban Consumers – San Francisco Area plus one percent (1%).

Section 7.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements and the Public Improvements, the Improvements and the Public Improvements shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Hotel is completed, the Improvements and the Public Improvements shall be maintained in accordance with industry standards as to both external and internal appearance of the buildings, and common areas. The Developer shall maintain or cause to be maintained the Hotel and Onsite and Offsite Hotel Stormwater Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways and landscaping, reasonable wear and tear excepted, and from time to time make all necessary and proper repairs, renewals, and replacements. The Developer shall not be responsible for the maintenance or replacement of the Public Improvements after permanent acceptance of the Public Improvements by the City, except as required under the conditions of approval associated with the Entitlements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 7.4 Developer to Indemnify City.

(a) The Developer shall indemnify, defend (with counsel approved by the City) and hold harmless the City and its officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines,

orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) approval of this Agreement and/or the Improvements or the Public Improvements prior to the City's acceptance for permanent maintenance; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the development, operation, maintenance or management of the Improvements or Public Improvements prior to the City's acceptance for permanent maintenance, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City.

(b) The Developer shall pay immediately upon the Indemnitees' demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees or, at the Indemnitees' choosing, to pay the Indemnitees' costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements. The Indemnitees shall have reasonable approval rights regarding decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement. Notwithstanding the foregoing, Developer's indemnification obligations set forth in this Section 7.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees, or any Claims arising from the activities of any Indemnitee on the Property, or any Claims arising from the breach by the City of any of its obligations under this Agreement, the Transaction Documents or the Pre-Construction Documents.

Section 7.5 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Property, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Property and Improvements or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property in violation of any applicable law;

(2) The Developer shall keep and maintain the Property and Improvements and each portion thereof in compliance with, and shall not cause or permit the Property and Improvements or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Property and Improvements pursuant to any applicable Hazardous Materials

Laws; (B) any and all claims made or threatened by any third party against the Developer or the Property and Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property and Improvements or Public Improvements or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property Improvements and Public Improvements under any Hazardous Materials Laws.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.4, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its board members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Property and Improvements at any time following the Close of Escrow or the Public Improvements prior to the City's acceptance for permanent maintenance; (2) the presence in, on or under the Property, Improvements, and Public Improvements prior to the City's acceptance for permanent maintenance, of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property; or (3) any activity carried on or undertaken on or off the Property and Improvements, subsequent to the Close of Escrow, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, Developer's indemnity under this Section 7.5(b) shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the City, its board members, officers, employees, or contractors.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 7.5(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Project and/or the presence within the Project of

any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 7.6 No Liability for Breaches of Security. The foregoing and anything to the contrary contained in this Agreement notwithstanding, the City and Developer shall have no liability to the other Party, or any obligation to indemnify the other Party for any third party claims, for any injury to person or property caused by the acts of third persons in connection with any alleged breach of or failure to provide reasonable security, including criminal acts or other losses, nor shall this Agreement establish any duty owed in tort to, or standard of care in tort as to, either Party or any third party.

Section 7.7 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Hotel Parcel or any part thereof, that there shall be no discrimination against or segregation of any person or persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Hotel Parcel shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Section 7.8 CFMD Assessment. Nothing in this Agreement is intended to prevent the Developer from passing-through all or a portion of any CFMD assessment applicable to the Property to guests or other patrons of the Hotel.

Section 7.9 Hotel Parking Requirements. The Developer's parking requirement will be satisfied through any combination of on-site parking and off-site valet parking at the parking parcel or other offsite parcels, consistent with the City's parking requirements and as approved through the City's entitlement process. If requested by Developer, the City will provide up to 30 parking spaces for use by the Hotel's valet parking service in other city parking facilities, provided the valet service is available for use by the general public and is not limited to hotel guests. The City may require Developer to include additional parking spaces in their valet service to meet the demands of the general public. If the Developer meets the City's parking requirements for the Hotel in accordance with the Downtown Specific Plan, through on-site parking, parking on the Parking Parcel, or off-site parking at other off-site parcels, Developer may propose an alternative use or development for the Parking Parcel. Any alternative use shall only be considered if the Parking Parcel is not needed to satisfy the parking requirements set

forth in Sections 12.6 and12.8 of this Agreement. Any alternative use or development of the Parking Parcel shall be subject to all City laws, regulations, plans or policies, including but not limited to, the Downtown Specific Plan and the City's entitlement process as they exist at the time a completed application for the alternative use or development is filed with the City.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article 8, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Property, or any part thereof or any interest therein or of the Project constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than a fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements and Public Improvements on the Property and its subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 8 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 8.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers. Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 8.5),

so long as such Transfer is permitted under, and accomplished in accordance with this Agreement:

(a) Any Transfer creating a Security Financing Interest (defined in Section 9.1).

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer resulting directly from the death or mental incapacity of an individual.

(d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Project.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer.

(g) Any Transfer contemplated by or permitted pursuant to any other provision of this Agreement,

(h) The lease of any space within the Hotel to a third-party operator of food or beverage services or of a gift or sundry shop.

(i) Any Transfer resulting in up to ninety percent (90%) in the aggregate of the direct or indirect ownership or beneficial interests in Developer, provided that, following such Transfer, PresidioCo Bay Area LLC, a Delaware limited liability company (or any Affiliate of such entity, "Presidio") (which is the sole member of Developer as of the Effective Date of this Agreement) remains in Control of Developer.

(j) A Transfer otherwise approved by the City. Developer acknowledges that the City has selected Developer to develop the Hotel Parcel based on: (1) Developer's experience, skill and reputation in the hotel industry, at all times in keeping with applicable law, regulations and best practices; and (2) Developer's financial resources on a local and/or corporate level to maintain the Hotel Standard and to support its indemnity provisions under this Agreement. Any transfer under this subsection (j) shall also comply with the following:

(1) Developer shall not enter into negotiations to assign it rights or delegate, subcontract or otherwise transfer any of Developer's obligations under this Agreement to any other person or entity for a period of three (3) years from the Effective Date of this Agreement without the consent of the City. Developer shall not assign its rights, nor delegate, subcontract or otherwise transfer any of Developer's obligations under this Agreement to any other person or entity without the prior consent of the City Council.

(2) Developer shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed transfer, and to review and finalize any documentation required as a condition for approving such transfer. An advance payment of one hundred thousand dollars ($100,000) towards expenses shall be paid to City prior to City consideration of any transfer request and Developer shall be responsible for paying all costs incurred by City in considering a request for transfer, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the transfer.

(3) Developer shall furnish City with audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.

(4) Developer shall furnish City with proof satisfactory to City: (i) that the proposed transferee has at least ten (10) years of hotel management experience on a scale equal to or exceeding the scale of operations conducted by Developer; (ii) that in the last five (5) years, the proposed transferee has not suffered any significant citations or other violations or censure from any federal, state or local agency having jurisdiction over hotel operations due to any significant failure to comply with state, federal or local applicable law and that the transferee has provided the City with a complete list of all citations, violations or censures; (iii) that the proposed transferee has conducted all hotel operations in accordance with sound management practices in full compliance with all federal, state, and local laws and (iv) that the proposed transferee's financial resources are sufficient to ensure its ability to meet all of Developer's obligations under this Agreement in a timely and effective manner.

(5) Developer shall provide the City with any and all additional information, records, and/or documentation which, in the City Manager's sole determination, would facilitate the review of the proposed transfer.

Under no circumstances shall City be obliged to consider any proposed transfer if Developer is in default at any time during the period of consideration. If, in the City Manager's sole discretion, there is any doubt regarding the compliance of the Developer with the Agreement, City may require an audit of the Developer's compliance and the costs of such audit shall be paid by the Developer, in advance of the performance of said audit.

The City may, in its sole discretion, waive one (1) or more of the above requirements. Should the City consent to any transfer request, such transfer shall not take effect until all conditions relating to the City's approval have been met.

As a condition of the City approval of a Transfer described in Section 8.4(f) and 8.4(g) above, the transferee must concurrently assume the obligations of the Developer under this Agreement. As a condition of the City's approval of a Transfer described in Section 8.4(f) above, the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is an Affiliate of the Developer. As a condition of the City's approval of a Transfer described in Section 8.4(i) above, the City must review and approve Developer's organizational documents for the purposes of determining that Presidio remains in Control.

Section 8.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 8.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Subject to the provisions of Section 11.6 of this Agreement, failure by the City to approve or disapprove the proposed Transfer within sixty (60) days after receipt of the Developer's written request shall be deemed to be approval of the proposed Transfer by the City.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not the City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Property and Improvements, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee; however, in the event of such an assumption of the indemnification obligation, Developer shall be released from all liability under such indemnity obligations.

ARTICLE 9.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 Encumbrances. Mortgages, deeds of trust, assignment of rents and security agreements, and other real and personal property security instruments to secure the funds necessary for acquisition of the Property, the construction and permanent financing of the Property, Improvements, and Public Improvements, and any other expenditures incurred in connection with the design, construction and operation of the Property, Improvements, and Public Improvements are permitted to be placed upon the Property or any personal property thereon or therein or the limited liability company interests in Developer. Such permitted security instruments and related interests shall be referred to as "Security Financing Interests". The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's fee simple interest in the Property or the limited liability company interests in Developer. The foregoing notwithstanding, until the Developer is entitled to issuance of a Certificate of Occupancy, the Developer may place Security Financing

Interests only for the purpose of securing acquisition of the fee interest and for development, construction and permanent financing. As used herein: (a) "Encumbrance Holder" shall mean the holder of record of any Security Financing Interest; (b) "Foreclosure Transfer" shall mean any transfer of all or a portion of the Property or of any associated personal property or limited liability company interests in Developer pursuant to any judicial or non-judicial foreclosure or other enforcement of remedies under or with respect to a Security Financing Interest, or by voluntary deed or assignment or other transfer in lieu thereof; and "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title in the Property or interest therein or of any associated personal property or of the limited liability company interests in Developer pursuant to a Foreclosure Transfer.

Section 9.2 Holder Not Obligated to Construct. No Encumbrance Holder or Foreclosure Transferee is obligated to construct or complete any Improvements or Public Improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such Encumbrance Holder or Foreclosure Transferee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. A Developer Event of Default or other breach will not defeat or render invalid any Security Financing Interest. No Encumbrance Holder or Foreclosure Transferee of any Security Financing Interest shall be personally liable for the performance or observance of any covenants or conditions to be performed by the Developer under this Agreement, any Transaction Document or any Pre-Construction Document unless and until such Encumbrance Holder or Foreclosure Transferee acquires the Developer's interest in the Property and at the election of Encumbrance Holder or Foreclosure Transferee enters into a new agreement with the City. The City agrees that such Encumbrance Holder or Foreclosure Transferee may sell, assign, or otherwise dispose of any interest to which it has so succeeded or which it has so acquired. Upon such sale, assignment or disposition, such Encumbrance Holder or Foreclosure Transferee shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement, any Transaction Document or any Pre-Construction Document from and after the date of such sale, assignment or disposition.

Section 9.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 10 delivers any notice to the Developer of the occurrence of a Developer Event of Default or any other matter which may give rise to a right of termination or other claim (a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) a Cure Notice describing the is provided to each and every then-existing Encumbrance Holder that has notified the City in writing of (i) its interest in receiving such a notice, and (ii) its address for the receipt of such notice; and (b) such Developer Event of Default remains uncured after the expiration of the applicable cure period set forth in Section 9.4. The Cure Notice shall be sent simultaneously with any similar notice or notices of a Developer Event of Default that the City may be required to provide to Developer pursuant to Article 10. An Encumbrance Holder shall have the right and the power to cure any Developer Event of Default specified in a Cure Notice within the cure periods set forth in Section 9.4 below, and, if such Developer Event of Default is so cured, this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to permit or authorize any Encumbrance Holder or Foreclosure Transferee to undertake or continue the

construction or completion of the Improvements or Public Improvements or any other work (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City under this Agreement. The Encumbrance Holder in that event must agree to complete, in the manner provided in this Agreement, the construction of the Improvements and the Public Improvements. Any such Encumbrance Holder properly completing construction of the Improvements and the Public Improvements pursuant to this Section 9.3 shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

Section 9.4 Cure of Developer Defaults. Developer Events of Default may be cured by any Encumbrance Holder in the following manner within the following time frames:

(a) For all Developer Events of Default, an Encumbrance Holder shall have (a) sixty (60) days after the later of (i) its receipt of the earliest Cure Notice issued by the City to such Encumbrance Holder setting forth such Developer Event of Default, or (ii) expiration of the applicable Cure Period set forth in Section 10.3(b) to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such sixty (60)-day period; or (b) if an Encumbrance Holder has promptly commenced to cure such Developer Event of Default within such applicable period and has been diligently prosecuting the same, but such Developer Event of Default cannot reasonably be cured by such Encumbrance Holder within such applicable period, then such Encumbrance Holder shall be provided with such additional time as is necessary to complete the cure, provided such Encumbrance Holder continues to diligently pursue such cure to completion.

(b) If a Developer Event of Default cannot practicably be cured by an Encumbrance Holder without the need for such Encumbrance Holder to obtain possession of the Property or any portion thereof or to obtain control of the Developer, or if a Developer Event of Default cannot be cured by an Encumbrance Holder (for example, the insolvency of Developer), then, in each case, if at least one Encumbrance Holder has delivered to the City within sixty (60) days after its receipt of a Cure Notice a written undertaking wherein such Encumbrance Holder agrees (1) that it will commence foreclosure proceedings forthwith, and (2) will cure or obtain an agreement from the Foreclosure Transferee that such Foreclosure Transferee will cure such Developer Event of Default (to the extent that it can be cured) upon completion of the foreclosure and the resultant Foreclosure Transfer, and if thereafter any such Encumbrance Holder actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, then the cure period shall not commence until completion of such foreclosure proceedings and the resultant Foreclosure Transfer; provided, that if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, then the cure period shall not commence until such stay, order, judgment or decree is released or reversed, and such foreclosure proceedings and the resultant Foreclosure Transfer are thereafter actually commenced and prosecuted thereafter with due diligence to completion. Upon completion of any such Foreclosure Transfer, the Foreclosure Transferee (whether such Foreclosure Transferee is the Encumbrance Holder or another party) shall have until the

expiration of the applicable cure periods set forth in this Section 9.4 to cure the Developer Event of Default giving rise to such Foreclosure Transfer, to the extent curable by such Foreclosure Transferee (unless such Developer Event of Default has already been cured), and any other Developer Events of Default that may then exist and be curable by such Foreclosure Transferee. The Encumbrance Holder shall have the right to terminate its foreclosure proceedings hereunder in the event of a cure of a Developer Event of Default giving rise to such foreclosure proceedings. If an Encumbrance Holder or a Foreclosure Transferee obtains possession through foreclosure proceedings and assumes obligations to construct Improvements, the Schedule of Performance will be extended as needed to account for the time expended by such Encumbrance Holder or Foreclosure Transferee to commence and then complete such foreclosure proceedings. Upon the curing of any Developer Event of Default by an Encumbrance Holder or Foreclosure Transferee within the time provided in this Section 9.4, the City's right to pursue any remedies for the cured Developer Event of Default shall terminate.

Section 9.5 Failure of Holder to Complete Improvements or Public Improvements. Subject to Section 10.3(b), in any case where after a default by the Developer in completion of construction of the Improvements or Public Improvements, under this Agreement, the Encumbrance Holder or Foreclosure Transferee, having first exercised its option to construct and also obtained possession of the Property or control of Developer, has not proceeded diligently with construction within six (6) months after obtaining possession of the Property, the City shall be afforded those rights against such Encumbrance Holder or Foreclosure Transferee it would otherwise have against the Developer under this Agreement.

Section 9.6 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of construction of the Improvements or Public Improvements, and if the Encumbrance Holder or Foreclosure Transferee has not exercised its option to complete the construction of the Improvements or the Public Improvements, the City may cure such default, provided that Developer is given ten (10) days prior notice of the City's intention to cure such default and does not thereafter immediately commence and continue with due diligence to complete to cure such default, and provided that City's right to cure shall be coterminous with the Developer's cure rights under the Security Financing Interest. In such event the City shall be entitled to reimbursement from the Developer of all reasonable costs and expenses incurred by the City in curing the default.

Section 9.7 Right of City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, which is not permitted under this Agreement, and has failed to do so, in whole or in part, the City shall, upon at least ten (10) days' prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall use good faith efforts to insert each applicable term contained in this Article 9

related to Security Financing Interest or the rights of Encumbrance Holders into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Encumbrance Holder prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.9 Modifications. If an Encumbrance Holder should, as a condition of providing financing or funding for development of all or a portion of the Improvements, Public Improvements, or other portions of the Project, request any modification of this Agreement, the Transaction Documents or any Pre-Construction Agreement in order to protect its interests in the Project, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement. In addition, the City agrees to cooperate reasonably with each Encumbrance Holder or prospective Encumbrance Holder in confirming or verifying the rights and obligations of each Encumbrance Holder under this Agreement, the Transaction Documents or the Pre-Construction Documents.

Section 9.10 Estoppel Certificates. Either Party, at any time and from time to time following Close of Escrow, within fifteen (15) days of receipt of a written request from the other Party, shall execute and deliver to such Party a written statement that, to the knowledge of the certifying Party (i) this Agreement, the Transactions Documents and the Pre-Construction Documents are in full force and effect and binding obligation of the Parties, (ii) this Agreement, Transaction Documents and the Pre-construction Documents have not been amended or modified, or if so amended or modified, identifying the amendments or modifications, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

Section 9.11 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any other provision of this Agreement to the contrary, that, at all times while a Security Financing Interests remains in effect, all policies of insurance required to be maintained by Developer under this Agreement or otherwise in effect for the Project contain a standard mortgagee protection endorsement, and the Encumbrance Holder shall be entitled to hold the originals of all such policies. The Encumbrance Holder shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Encumbrance Holder. In addition, at all times while a Security Financing Interests remains in effect, the Encumbrance Holder shall be entitled to participate in any settlement of or any stipulation of judgment with respect to any condemnation proceeds affected all or any portion of the Property or any agreement to sell all or any portion of the Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the specific consent in writing of such Encumbrance Holder.

Section 9.12 Multiple Encumbrance Holders. If at any time there is more than one Security Financing Interest constituting a lien on the Project or any interest therein, the lien of the Encumbrance Holder prior in time to all others shall be vested with the rights under this Article 9 to the exclusion of the holder of any other Security Financing Interest; provided, however, that if the holder of a senior Security Financing Interest fails to exercise the rights set forth in this Article 9, each holder of a junior Security Financing Interest shall succeed to the

rights set forth in this Article 9 only if the holders of all Security Financing Interests senior to it have failed to exercise the rights set forth in this Article 9.

ARTICLE 10.
DEFAULT AND REMEDIES

Section 10.1 Application of Remedies. The provisions of this Article 10 shall govern the Parties' remedies for breach of this Agreement.

Section 10.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in Section 10.2(b) below, each of the following events constitutes a "City Event of Default" and a basis for the Developer to take action against the City:

(1) The City fails to convey the Property as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages), including, without limitation, an action for specific performance.

Section 10.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in Section 10.3(b) below, each of the following events individually constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer does not attempt diligently and in good faith to cause satisfaction of the conditions in Article 2 benefiting the Developer within the reasonable control of the Developer by the time set forth in the Schedule of Performance.

(2) The Developer fails to construct the Improvements and Public Improvements, in accordance with Article 6 within the time set forth in the Schedule of

Performance, as set forth in Exhibit N, as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties.

(3) The Developer has breached its obligations under Section 7.1.

(4) Prior to the issuance of a Certificate of Occupancy for the Hotel, the Developer attempts or completes a Transfer except as permitted under Article 8.

(5) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency as evidenced by an entered decree by a court of competent jurisdiction; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) Following the Close of Escrow and prior to the issuance of a Certificate of Occupancy for the Hotel, the Developer defaults under any Security Financing Interest, has not cured such default within the applicable cure period contained in such agreement evidencing such Security Financing Interest and the applicable Encumbrance Holder has elected in writing to accelerate the debt secured by such Security Financing Interest.

(7) The Developer breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (excluding specific performance, punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 10.4 Right of Reverter. Following the Close of Escrow, if the Developer fails to commence the construction of the Improvements or Public Improvements by the Outside Date (as the Outside Date may be extended pursuant to Section 11.4 or other provisions of this Agreement), then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Property with all improvements on the Property, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Property subject

to the provisions set forth below. The City's rights under this Section 10.4 shall terminate and be of no further force and effect once the Developer commences construction of the Improvements.

The interest created pursuant to this Section 10.4 shall be a "Power of Termination" as defined in California Civil Code Section 885.010. The City's Power of Termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any Security Financing Instrument with respect to the Property; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

(c) Any leases affecting the Property as of the date of such termination.

Upon revesting in the City of title to the Property as provided in this Section 10.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law, to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing such improvements as are acceptable to the City in accordance with the uses specified for the Property and in a manner satisfactory to the City. Upon such resale of the Property the proceeds thereof shall be applied as follows:

(1) First to reimburse the City on its own behalf for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Property (but less any income derived by the City from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Property was not so exempt); any payments made or necessarily to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred with respect to the making or completion of the Property or any part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Purchase Price for the Property, plus the fair market value of the improvements the Developer has placed on the Property, less any funds paid by the City to remove any encumbrances or liens and gains or income withdrawn or made by the Developer from the Property, or the Improvements or Public Improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (2) shall not exceed the fair market value of the Property together with the Improvements and Public Improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the right of reverter.

(3) Third, any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 10.4 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 10.5 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 10.6 Survival. Upon termination of this Agreement under this Article 10, the following provisions of this Agreement shall survive: Section 2.3, Section 3.7, Section 3.8, Section 3.9, Section 6.5, Section 7.4, Section 7.5, Section 8.5, and Article 12. This Section 10.6 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 11.
GENERAL PROVISIONS

Section 11.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the Effective Date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to all applicable bankruptcy laws and laws affecting the rights of creditors generally.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. To the Developer's actual knowledge, there is no pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Property that would, if adversely determined, materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the Effective Date.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by Developer under any agreement materially related to the development or operation of the Property, Improvements, or Public Improvements, including but not limited any other partnership agreement, joint venture agreement, or loan agreement.

Until the Close of Escrow, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 11.1 not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 11.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City: City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attn: City Manager

Developer 2205 Railroad Avenue LLC
262 Glorietta Blvd.
Orinda, CA 94563
Attn: Rikesh Patel

With a copy to: Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850
Sacramento, CA 95814
Attn: Vincent Wong , Esq.

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 11.3 Non-Liability of Officials, Employees and Agents. No member, partner, beneficial interest holder, official, employee, officer, consultant, counsel, or agent of a Party

shall be personally liable to the other Party, or any successor in interest to the other Party, in the event of any default or breach or for any amount or on any obligation under the terms of this Agreement.

Section 11.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement or the Schedule of Performance shall be extended, where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics or pandemics, including the Covid-19 pandemic; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); litigation; unusually severe weather; inability to secure necessary labor, materials or tools; or acts or the failure to act of the City or any other public or governmental agency or entity including breaches by the City under this Agreement, any Transaction Document or Pre-Construction Agreement; or any other cause beyond the affected Party's reasonable control (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project) ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 11.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay.

Section 11.5 Delegation of Authority. Upon approval of this Agreement by the City Council, the City Manager is authorized to execute any and all Pre-Construction Documents and Transaction Documents on behalf of the City, including but not limited to the updated Parcel Map.

Section 11.6 Submittals and Approvals. Various submittals are required by the Developer pursuant to this Agreement. As expressly provided by this Agreement, the City shall approve or disapprove certain submittals from Developer within specified timeframes or else such submittal shall be deemed approved by the City. Notwithstanding the provisions for deemed approval, no submittal or matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION __ OF THE DDLA THAT FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN __ DAYS SHALL BE DEEMED AN APPROVAL.

Section 11.7 Inspection of Books and Records. The City has the right at all reasonable times and upon five (5) business days prior written notice to inspect the books, records and all

other documentation of the Developer pertaining to its obligations under this Agreement. Such books, records and documentation are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations, and other proprietary non-public information.

Section 11.8 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision. References to "Articles" and "Sections" are to sections of this Agreement, unless otherwise specifically provided.

Section 11.9 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.10 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 11.12 Binding Upon Successors; Covenants to Run with Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in under the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Property, or the applicable portion of the Property, from the requirements of this Agreement.

Section 11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.14 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 11.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 11.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 11.17 Recordation of Memorandum of DDLA. The Parties consents to the recordation of the Memorandum of DDLA in the Official Records against the Developer's interest in the Property.

Section 11.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 11.19 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 11.20 Interpretation. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto.

Section 11.21 No Gift or Dedication. Except as otherwise specified in the Parcel Map or deed restriction requiring a rooftop public open space on the Hotel, this Agreement shall not be deemed to be a gift or dedication of any portion of the Property to the general public, for the general public, or for any public use or purpose whatsoever. Except as otherwise specified above, Developer shall have the right to prevent or prohibit the use of or access to any portion of the Hotel by any member of the general public.

ARTICLE 12.
SITE ACQUISITION LOAN

Section 12.1 Loan amount. The City shall make a loan to the Developer in the principal amount of $1,923,750 ("Site Acquisition Loan"). The Site Acquisition Loan shall be evidenced by the Promissory Note and a Deed of Trust, in the forms attached as Exhibit K and Exhibit C.

Section 12.2 Use of Loan Funds. The Developer is assuming the Site Acquisition Loan to fund the acquisition of the Parking Parcel to help satisfy a portion of the parking requirements in the conditions of approval for the Hotel. All loan funds transferred or provided for the Site Acquisition Loan shall be used exclusively for Developer to acquire the Parking Parcel. The

Developer understands that any other use of the Site Acquisition Loan funds shall be deemed an Event of Default under Section 12.13 of this Agreement and subjects the Developer to all legal remedies.

Section 12.3 Loan term. The term of the loan shall start on the date of loan dispersal and terminate no later than December 31, 2025.

Section 12.4 Interest. The Site Acquisition Loan shall bear annual simple interest at rate of 3.5%, except that the Default Interest rate shall be the amount set forth in Section 12.5 shall apply in a Loan Event of Default defined in Section 12.13.

Section 12.5 Default Interest Rate. In the event of a Loan Event of Default as set forth in Section 12.13, the principal balance of the Site Acquisition Loan will bear interest at the default interest rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law as set forth in the Promissory Note (the "Default Interest Rate").

Section 12.6 Loan conditions to Disbursement. Developer agrees to lease the Parking Parcel to the City at no cost for use as a temporary overflow public parking lot for a period of up to three years from the execution of the Lease and Operating Agreement for the Parking Parcel, or until construction of the Hotel is at least 40 percent complete, whichever is earlier. However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024. The City may relinquish its use of the Parking Parcel prior to this time if it is no longer needed for temporary overflow parking. Once the City's right to use the property has lapsed, Developer may at any time submit a written notice to the City that the lease will be terminated within 30 days to allow Developer to begin construction of permanent parking improvements.

Section 12.7 Security. The Developer shall secure its obligation to repay the Site Acquisition Loan, as evidenced by the Promissory Note, by executing the Deed of Trust and recording it as a lien against the Parking Parcel.

Section 12.8 Use of the Parking Parcel. The Developer agrees to use the Parking Parcel to satisfy a portion of the parking requirements identified in the conditions of approval for the Hotel.

Section 12.9 Requirements. The Deed of Trust shall be recorded against the Parking Parcel in the Official Records of Alameda County once this Agreement is executed and when all of the condition precedents are satisfied:

(a) There exists no act, failure, omission or condition that would constitute an event of default under this Agreement;

(b) Requested information has been furnished by the Developer to the City prior to the date of this Agreement;

(c) The Developer has executed and delivered to the City all other documents, instruments, and policies required under the Agreement;

(d) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing a 2017 ALTA Lender's Policy of insurance ensuring the priority of the Deed of Trust in the amount of the Site Acquisition Loan on the Parking Parcel subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require; and

(e) The undisbursed proceeds of the Site Acquisition Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the acquisition of the Parking Parcel, are not less than the amount that City determines is necessary to acquire the Parking Parcel.

Section 12.10 Disbursement. As instructed by the Developer, the City shall disburse the principal amount of the Site Acquisition Loan to help facilitate the Developer's acquisition of the Parking Parcel.

Section 12.11 Loan repayment. The Site Acquisition Loan shall be repaid as follows:

(a) Payments. Payments shall be in lawful money of the United States of America and delivered to the City at 1052 South Livermore Avenue, Livermore, California 94550, Attn: Community Development Director, or such other address and/or designee as the City may provide in writing. Any payments made by the Developer pursuant to this Section shall be applied first to pay current interest due, if any, then the cumulative interest owed, if any, then to reduce the principal amount of the Site Acquisition Loan.

(b) Payment Schedule. Developer shall make a lump sum payment of all principal and interest accrued within three months of the completion of Hotel construction, as determined by issuance of the certificate of occupancy, or by December 31, 2025, whichever is sooner.

(c) Prepayment. No prepayment penalty shall be charged to the Developer for payment of all or any portion of the Site Acquisition Loan amount prior to the end of the Term.

(d) Payment in Full. The Developer shall pay the entire outstanding principal balance of the Site Acquisition Loan, together with interest accrued thereon and all other sums accrued, no later than the Maturity Date defined in the Promissory Note. The City shall have the right to accelerate the Maturity Date and declare all sums payable under the Promissory Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of a Loan Event of Default defined in Section 12.13. All principal and accrued interest on the Site Acquisition Loan is due in full on the earlier to occur of (i) the date of any Transfer, as defined in Section 8.1, not authorized by City, (ii) the date of any default, or (iii) the expiration of the loan term.

Section 12.12 Maintenance and Damage; Hazardous Materials. During the term of the Site Acquisition Loan, and prior to its full repayment, the Developer shall maintain the Parking Parcel in good repair and in a neat, clean, and orderly condition. If there arises a condition in contravention of this requirement that has not been cured after notice from the City, then in addition to any other rights available to the City, the City shall have the right to perform all acts

necessary to cure such condition at the Developer's expense, and to establish or enforce a lien or other encumbrance against the Parking Parcel. The Developer's covenants and agreements for hazardous materials for the Property in Section 7.5 of this Agreement shall also apply to the Parking Parcel, and the Developer hereby makes those same covenants and agreements for the Parking Parcel.

Section 12.13 Event of Default – Site Acquisition Loan. In addition to the defaults and remedies in Article 10 of this Agreement for an event of default, the following events shall constitute an event of default under the Site Acquisition Loan or any Loan Documents (a "Loan Event of Default"):

(a) The Developer fails to pay when due the principal and interest payable under the Promissory Note, and such failure continues for ten (10) days after the City notifies the Developer thereof in writing;

(b) A transfer occurs in violation of Article 8;

(c) RESERVED;

(d) The Developer fails to pay prior to delinquency taxes or assessments due on the Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Developer fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially averse to the City;

(g) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), the Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(h) A court of competent jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent, (ii) approving as properly filed a

petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(i) The Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (g) or (h) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(j) The Developer shall have voluntarily suspended its business or the Developer shall have been dissolved or terminated;

(k) An event of default arises under any Loan Document and remains uncured beyond any applicable cure period.

(1) The Developer fails to make any payment required for the Site Acquisition Loan within ten (10) days after the date when due as set forth in section 12.11.

(2) Any representation or warranty made by the Developer in any document for the Site Acquisition Loan proves to have been incorrect in any material respect when made.

(3) Without the City's prior written consent, the Developer transfers, or authorizes the transfer of, funds in any account required or authorized by this Agreement.

(4) Either the Deed of Trust for the Site Acquisition Loan ceases to constitute a valid and indefeasible perfected lien on the Parking Parcel, or the Agreement ceases to constitute a valid and indefeasible perfected lien on the Property, subject only to permitted exceptions to title for the Parking Parcel and Permitted Exceptions for the Property.

Section 12.14 Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the remedies set forth in Sections 12.15 and 12.16.

Section 12.15 Specific Remedies for Site Acquisition Loan Event of Default. During the pendency of an uncured Event of Default for a Loan Document, the City may exercise any right or remedy available under this Agreement or any other Loan Document or at law or in equity, including taking possession of the Parking Parcel. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Promissory Note, together with default interest as provided in the Promissory Note and any other charges due under the Promissory Note and the other Loan Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Developer expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements or to release the Parking Parcel from the Deed of Trust, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Parking Parcel from the Deed of Trust upon terms and conditions satisfactory to the City in its sole discretion.

(c) The City may perform any of Developer's obligations in any manner, in the City's reasonable discretion.

(d) The City, either directly or through an agent or court-appointed receiver, may take possession of the Parking Parcel and enter into contracts and take any other action the City deems appropriate.

(e) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Developer's noncompliance with this Agreement for the Site Acquisition Loan for the Parking Parcel.

(f) Upon the occurrence of an Event of Default, the unpaid principal balance of the Promissory Note, together with default interest as provided in the Promissory Note and any other charges due under the Promissory Note and the other Loan Documents will become due and payable automatically.

(g) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Parking Parcel will be deemed to constitute a portion of the principal balance of the Promissory Note, even if it causes the principal balance to exceed the face amount of the Promissory Note, unless Developer reimburses the City within ten (10) days of the City's demand for reimbursement.

Section 12.16 City Right's Upon Default. If, in the City's sole discretion, the Developer fails to observe or perform any condition contained in Article 12, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default under the Site Acquisition Loan and the City shall be entitled, and in addition to all other

remedies provided by law or in equity, to compel specific performance by the Developer of its obligations under the Site Acquisition Loan, including taking possession of the Parking Parcel. Any investor limited partner of the Developer or Developer's assignee shall have the same notice and cure rights granted to the Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

Section 12.17 Non-Recourse. Except as provided in this subsection, neither the Developer, nor any director or indirect member or interest holder of or in the Developer, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Site Acquisition Loan. Following recordation of the Deed of Trust, the sole recourse of the City with respect to the principal of, and interest on, the Promissory Note and defaults by the Developer for the use of the Parking Parcel shall be to the Parking Parcel described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the City against Developer thereunder, or (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Promissory Note as demand for money against Developer within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note and the performance of the Developer's obligations under the Deed of Trust for the Parking Parcel, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its obligation to indemnify the City under any article or section of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Parking Parcel that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Parking Parcel.

Section 12.18 Affiliate Assignment and Assumption. The Developer's rights and obligations in this Agreement related to the Site Acquisition Loan, the acquisition of the Parking Parcel, and for the Lease and Operating Agreement for the Parking Parcel may be collectively assigned to and assumed by an Affiliate provided that: (i) the Affiliate is also an Affiliate of PresidioCo Bay Area LLC; (ii) the Affiliate acquires the Parking Parcel and becomes its owner of record; and (iii) the City Manager provides prior written approval for the Developer's assignment and the Affiliate's' assumption. In the event such assignment and assumption is approved in writing by the City Manager, then the identity of the Affiliate will be inserted in place of the Developer in the Deed of Trust, the Lease and Operating Agreement for the Parking Parcel, and the Promissory Note attached respectively as Exhibits C, G, and K to this Agreement. Even if an assignment and assumption is approved in writing by the City Manager, the Developer shall remain fully responsible for compliance by its Affiliate with all the terms of this Agreement including those related to the Site Acquisition Loan, Lease and Operating Agreement for the Parking Parcel, the Deed of Trust, and the Promissory Note, regardless of the terms of any agreement between Developer and its Affiliate.

Section 12.19 Survival. The foregoing obligations in this Article 12 shall survive the expiration or termination of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:
City of Livermore, a municipal corporation

Date: _____

By: _____
Marc Roberts
Its: City Manager

APPROVED AS TO FORM

By: _____
Sr. Assistant/City Attorney

Developer:
2205 Railroad Avenue LLC,
a Delaware limited liability company

By: PresidioCo Bay Area LLC,
a Delaware limited liability company,
its manager

Date: 1/10/22

By: _____

Name: Ricardo Pohl

Title: Manager

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

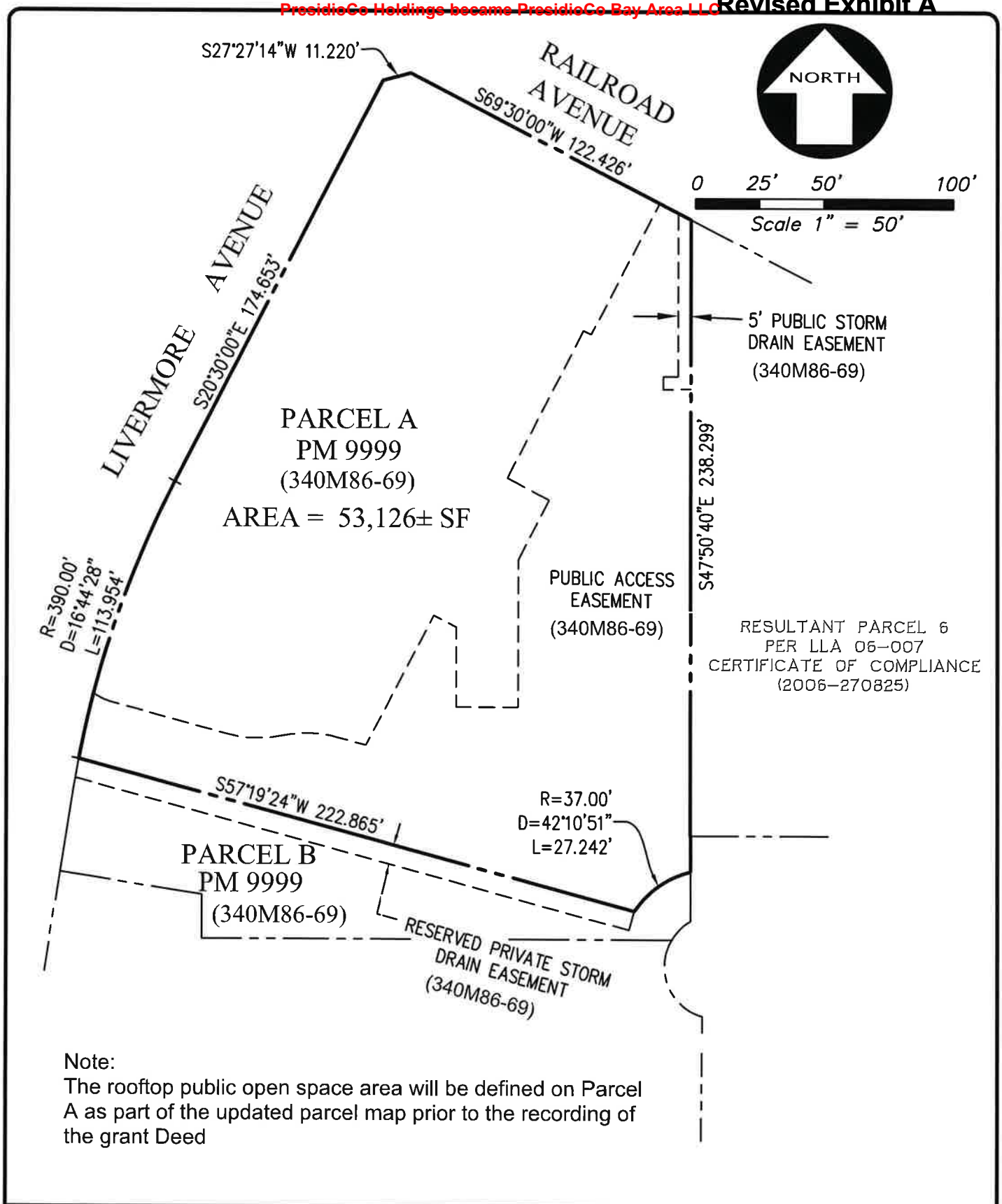
BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A SHEET 1 OF 3

NOTE: The only change in the document is:
~~PresidioCo Holdings became PresidioCo Bay Area LLC~~



Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

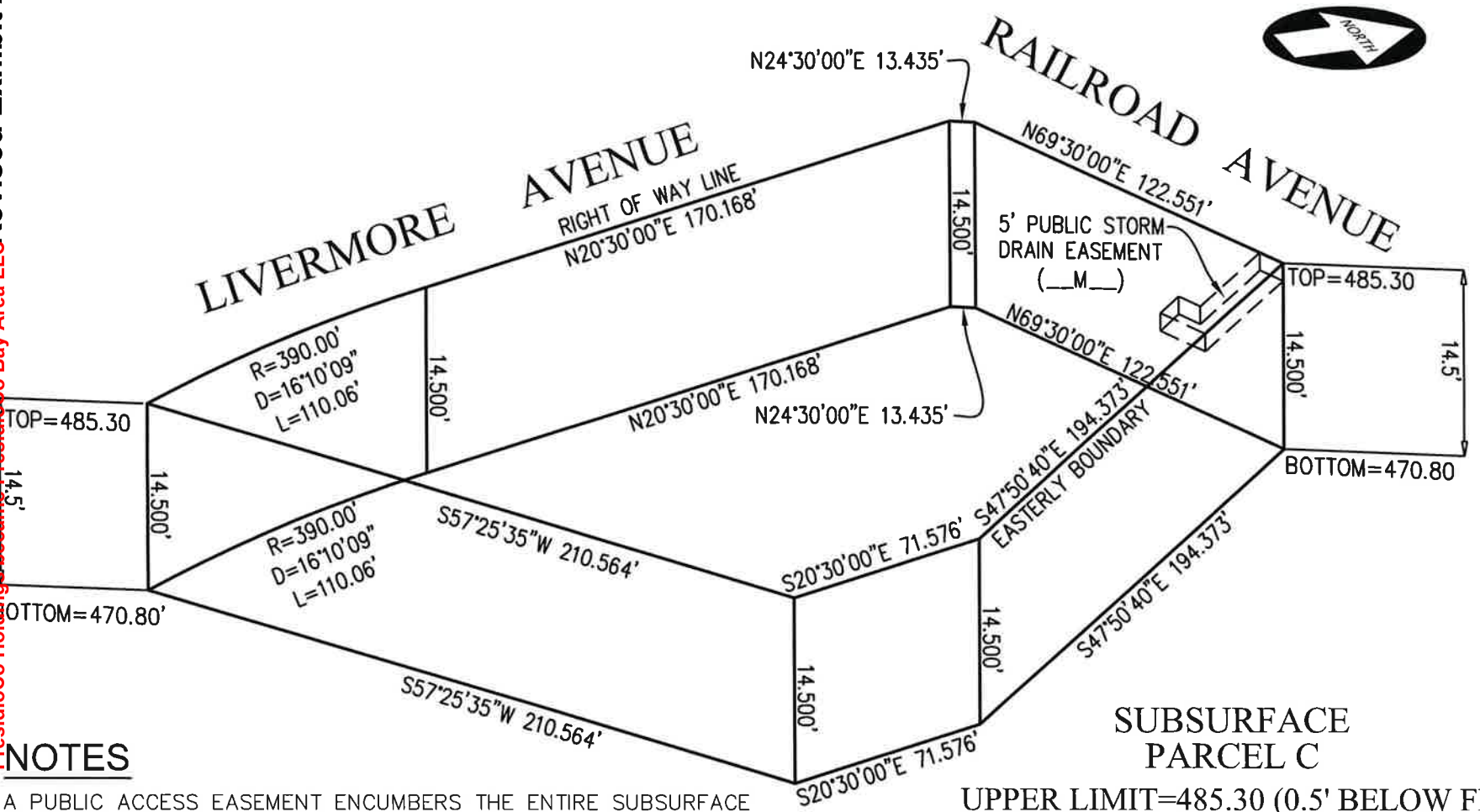
DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 2 OF 3

Item 6.1

Revised Exhibit A

NOTE: The only change in the document is: PresidioCo Holdings became PresidioCo Bay Area LLC



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 3 OF 3

Item 6.1

Revised Exhibit A

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

City Fees

Eastside Hotel Site
Thursday, December 2, 2021
Fee Estimate Only- Final fees to be determined at permit issuance

LOCATION: **Southeast Corner of South Livermore Ave and Railroad Avenue**
BUSINESS NAME: **Presidio Hotel Development**
APPLICANT: **City of Livermore**

PROJECT ASSUMPTIONS:

1. City fees based upon adopted Development Fees tables effective JULY 1, 2021
   Non-City fees based upon adopted Zone 7 fee tables effective January 1, 2021 and TVTD fees effective July 1, 2021
2. Estimated new impervious surface for entire site: 43,724 sf (stormwater plan submitted 7-19-2019)
3. New proposed Hotel 125-135 Rooms with 1,400-2,000 SF meeting space, roof top deck and other hotel amenities (65,000 SF - 75,000 SF) (used 72,000 SF for this estimate)
4. Not Used
5. Sanitary Sewer Fee is based upon the "Mixed Use Rate" because it is within Downtown Core Area
6. Water Service:
   a. 2205 Railroad Avenue has : 2 - 5/8" WM
7. Estimate does not include Cal Water connection and meter fees
8. Estimated credits based on existing uses.
9. TVTD fees based upon other use peak hour trips
   a. Per 9th Edition ITE Manual the average am/pm weekday peak hour trips is (.53 am + .60 pm = 1.13 total /2 = 0.565)
   b. total peak hour trips is (.565 avg am/pm peak hr trips/room x 135 rooms) = 76.275 avg am/pm peak hour trips
10. Social and Human Services Facility Fee based upon "other non-residential" use rate per 1,000 s.f. (KSF)
11. Estimate does not include Planning Entitlement and Processing Fees

PROJECT INFORMATION

a Final fee to be determined at Building Permit
b Downtown Revitalization Fee credit will be given for the agreed upon cost of First Street Improvements
  Currently $777,000 Downtown Revitalization Fee credits available on a first come first serve basis

  Credits may no longer be available at the time of Building Permit
c Based on meters shown on current plan set. Final WM fees to be determinded at building permit
d Based on SF for Mixed Use, Residential and Garage shown on plans
e Final fee to be determined at final map
f Assumed Building Construction type "VA" - Estimated Building Valuation - $14,146,122.00

East Side Hotel Site Development Impact Fee Estimate

	ITEM		Unit	Rate ($/unit)	Quantity	Fee ($)	*Credits ($)*	Net Fees
1	Storm Drain (City)	2	SF	$0.49	43,724	$21,424.76	*$18,874.31*	$2,550.45
2	Storm Drain (County)	2	SF	$1.00	43,724	$43,724.00	*$38,519.00*	$5,205.00
3	Sanitary Sewer Connection - 135 room Hotel	5	SF	$4.01	72,000	$288,720.00	*$16,978.34*	$271,741.66
3a	Not Used							
4	Park Facilities Fee - 133 Room Hotel		SF	$2.682	72,000	$193,104.00	*$11,355.59*	$181,748.41
5	City Water Connection	7				CAL WATER		
6a	ACWFC Zone 7 Connection - 2" - Displacement (80gpm restriction)	6	EA	$235,520.00	1	$235,520.00	*$58,880.00*	$176,640.00
6b	ACWFC Zone 7 Connection - 1" Irrigation		EA	$73,600.00	1	$73,600.00		$73,600.00
7	Traffic Impact Fee - 135 room hotel	8	room	$8,268.00	135	$1,116,180.00	*$54,906.51*	$1,061,273.49
8	Tri Valley Transportation Development	9	Trips	$5,620.00	76.275	$428,665.50	*$15,835.16*	$412,830.34
9	Low Income Housing Impact Fee - 135 room hotel		room	$949.00	135	$128,115.00	*$2,488.41*	$125,626.59
10	Social and Human Services Facility Fee	10	KSF	$5.00	72.00	$360.00	*$21.17*	$338.83
11	City Wide General Plan - Cost Recovery Fee	3	SF	$0.39	72,000	$28,080.00	*$1,651.26*	$26,428.74
12	Downtown Specific Plan	3	SF	$0.31	72,000	$22,320.00	*$1,312.54*	$21,007.46
13	Downtown Revitalization Fee - Retail	b	SF	$18.02	72,000	$1,297,440.00		$1,297,440.00
16b	School Fees - Hotel/Motel	3	SF	$0.316	72,000	$22,752.00	*$2,642.02*	$20,109.98
					Subtotal	**$3,900,005.26**	**$223,464.31**	**$3,676,540.95**

Building Permit Fees

17	Art in Public Places Fee	a	EA	$0.003	$ 14,126,122.00	$46,616.20		$46,616.20
18	Building Permit (Including BASRF)	a	LS	$44,215.000	1	$44,215.00		$44,215.00
19	Fire Sprinkler Inspection Fee	a	LS	$0.000	1	$0.00		$0.00
					Subtotal	**$90,831.20**	**$0.00**	**$90,831.20**

Engineering Map and Plan Check Fees

20	Parcel Map Check Fee		LS	$6,099.000	1	$6,099.00		$6,099.00
21	Improvement Plan Check Fee	e	LS	$0.000		$0.00		$0.00
22	Inspection Fee for off-site improvements	e	LS	$0.000		$0.00		$0.00
23	Encroachment Permit Processing Fee	e	LS	$0.000		$0.00		$0.00
					Subtotal	**$6,099.00**	**$0.00**	$6,099.00

Estimated Total Development Fees **$3,773,471.16**

	Available	Used	Remaining
Stormwater Credits			
	$ 18,874.31	$18,874.31	$ -
	$ 38,519.00	$38,519.00	$ -
Sewer Credits			
	$ 16,978.34	$16,978.34	$ -
Park Credits			
	$ 11,355.59	$11,355.59	$ -
Zone 7 Water Credits			
	$ 58,880.00	$58,880.00	$ -
Traffic Credits			
	$ 54,906.51	$54,906.51	$ -
TVTD Credits			
	$ 15,835.16	$15,835.16	$ -
Low Income Housing Credit			
	$ 2,488.41	$2,488.41	$ -
Social and Human Services Credits			
	$ 21.17	$21.17	$ -
Cost Recovery Credits			
	$ 1,651.26	$1,651.26	$ -
Downtown SP Credits			
	$ 1,312.54	$1,312.54	$ -
School Fee Credits			
	$ 2,642.02	$2,642.02	$ -

EXHIBIT B

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO

City of Livermore
1052 S. Livermore Avenue
Livermore, Ca. 94550-4899

Loan No.:

Space Above This Line for Recorder's Use Only

A.P.N.: 098-0282-009-00

DEED OF TRUST AND ASSIGNMENT OF RENTS
(Short Form)

THIS DEED OF TRUST, made this _____ , 2022 between

TRUSTOR: PresidioCo Bay Area LLC, a Delaware limited liability company on behalf of 2205 Railroad Avenue LLC, a Delaware Limited Liability Company whose address is 262 Glorietta Boulevard, Orinda, California 94563

TRUSTEE:

and BENEFICIARY: City of Livermore, a Municipal Corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Livermore, Alameda County, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of ONE MILLION NINE HUNDRED AND TWENTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY Dollars ($1,923,750), executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

EXHIBIT C SHEET 1 OF 5

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

A.P.N. - Deed of Trust File No.:

and Assignment of Rents (Short Form) - continued

County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page
Alameda	435	684	Imperial	1091	501	Merced	1547	538	San Benito	271	383	Siskiyou	468	181
Alpine	1	250	Inyo	147	598	Modoc	184	851	San Bernadino	5567	61	Solano	1105	182
Amador	104	348	Kern	3427	60	Mono	52	429	San Francisco	A332	905	Sonoma	1851	689
Butte	1145	1	Kings	792	833	Monterey	2194	538	San Joaquin	2470	311	Stanislaus	1715	456
Calaveras	145	152	Lake	362	39	Napa	639	86	San Luis Obispo	1151	12	Sutter	572	297
Colusa	296	617	Lassen	171	471	Nevada	305	320	San Mateo	4078	420	Tehama	401	289
Contra Costa	3978	47	Los Angeles	T2055	899	Orange	5889	611	Santa Barbara	1878	860	Trinity	93	366
Del Norte	78	414	Madera	810	170	Placer	895	301	Santa Clara	5336	01	Tulare	2294	275
El Dorado	568	456	Marin	1508	339	Plumas	151	5	Santa Cruz	1431	494	Tuolumne	135	47
Fresno	4626	572	Mariposa	77	292	Riverside	3005	523	Shasta	684	528	Venutra	2062	386
Glenn	422	184	Mendocino	579	530	Sacramento	4331	62	Sierra	29	335	Yolo	653	245
Humboldt	657	527				San Diego Series 2 Book 1961, Page 183887						Yuba	334	486

which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

FURTHERMORE, in the event of foreclosure or deed in lieu of foreclosure, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate-income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect. Any person (including successors or assigns thereto) receiving title to the Property through a foreclosure or deed in lieu of foreclosure shall receive title to the Property free and clear from such restrictions.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Signature of Trustor(s)

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By: PresidioCo Bay Area LLC,
a Delaware limited liability
company,
its manager

Dated: _____, 2022

By: _____

Name: _____

Title: _____

APN: 098-0282-009-00

EXHIBIT C SHEET 2 OF 5

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county In California, as stated in the foregoing Deed of Trust and incorporated by reference In said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire Insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay Immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee is such reconveyance may be described as "the person or persons legally entitled thereto. Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, Issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and In such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any Indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its titJe, estate, rights, powers and duties, must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust Is recorded and the name and address of the new Trustee.

(13) That this Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be party unless brought by Trustee.

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

----------DO NOT RECORD----------

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: _____, a California Corporation, **Trustee**

Dated: _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to:

_____

_____

_____

_____

_____

_____

By _____

By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.

Short Form
DEED OF TRUST
WITH POWER OF SALE
INDIVIDUAL

_____ **TITLE COMPANY, A CALIFORNIA CORPORATION**

APN: 098-0282-009-00

EXHIBIT C SHEET 5 OF 5

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

EXHIBIT A

Parking Parcel Description

(Legal Description of Parking Parcel to be provided by Developer upon purchase of property)

APN: 098-0282-009-00

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

RECORDING REQUESTED BY:
Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $ Government Agency
DOCUMENTARY TRANSFER TAX $ Acquiring Title
SURVEY MONUMENT FEE $ Tax Code §§ 11922
Computed on the consideration or value or property conveyed; OR
Computed on the consideration or value less liens or encumbrances remaining at time of sale.

APN 098-0407-031-00 & 098-0407-033-00

Exempt from filing fees per Government Code Section §§ 27383 & 6103

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a Municipal Corporation ("Grantor")

hereby Grant(s) in fee to
2205 Railroad Avenue LLC ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described in Exhibit A with the following restriction:

Grantee shall hereby grant to the City of Livermore (Grantor), public access and use to over and on said rooftop public open space described in Exhibit A. The rooftop public open space area shall include a minimum of 3,500 square feet of publicly accessible rooftop space with seating for at least 15 people. The rooftop public open space area shall be located on the southern side of the rooftop area and it shall be available for public use at least 6 days each week of the year from 11 a.m. to 8 p.m. In addition, public use of the rooftop open space shall be available each year from 9:00 a.m. to 10:00 p.m. on the Fourth of July, from 9:00 a.m. to 9:00 p.m. for the winter Holiday Parade event and the Rodeo Parade, and from 11 a.m. to 8 p.m. on all other holidays.

FOR LEGAL DESCRIPTION
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

City of Livermore, a municipal corporation

Signature:

Name: Title:

EXHIBIT D SHEET 1 OF 2

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

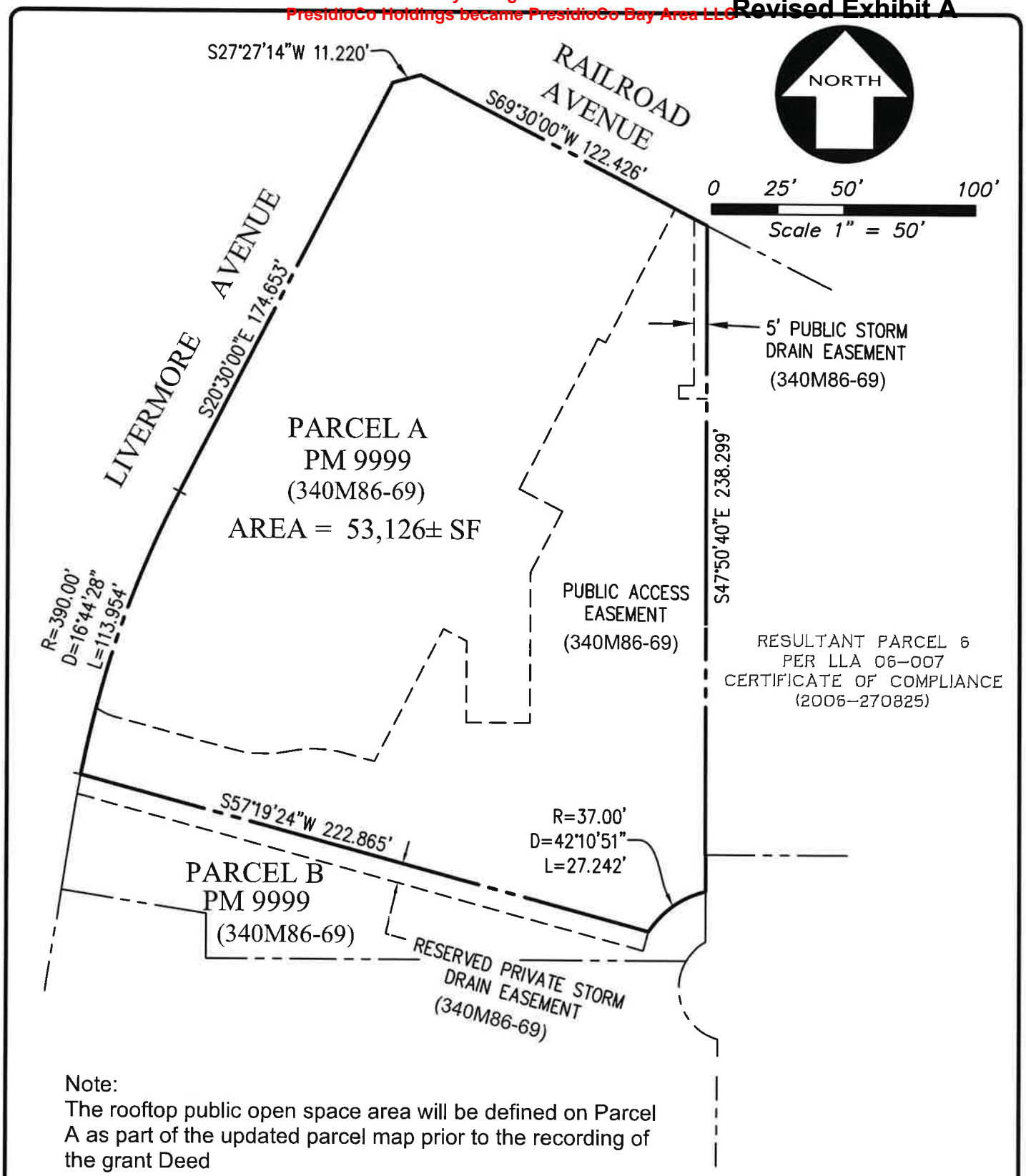
PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A SHEET 1 OF 3

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

Revised Exhibit A



Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

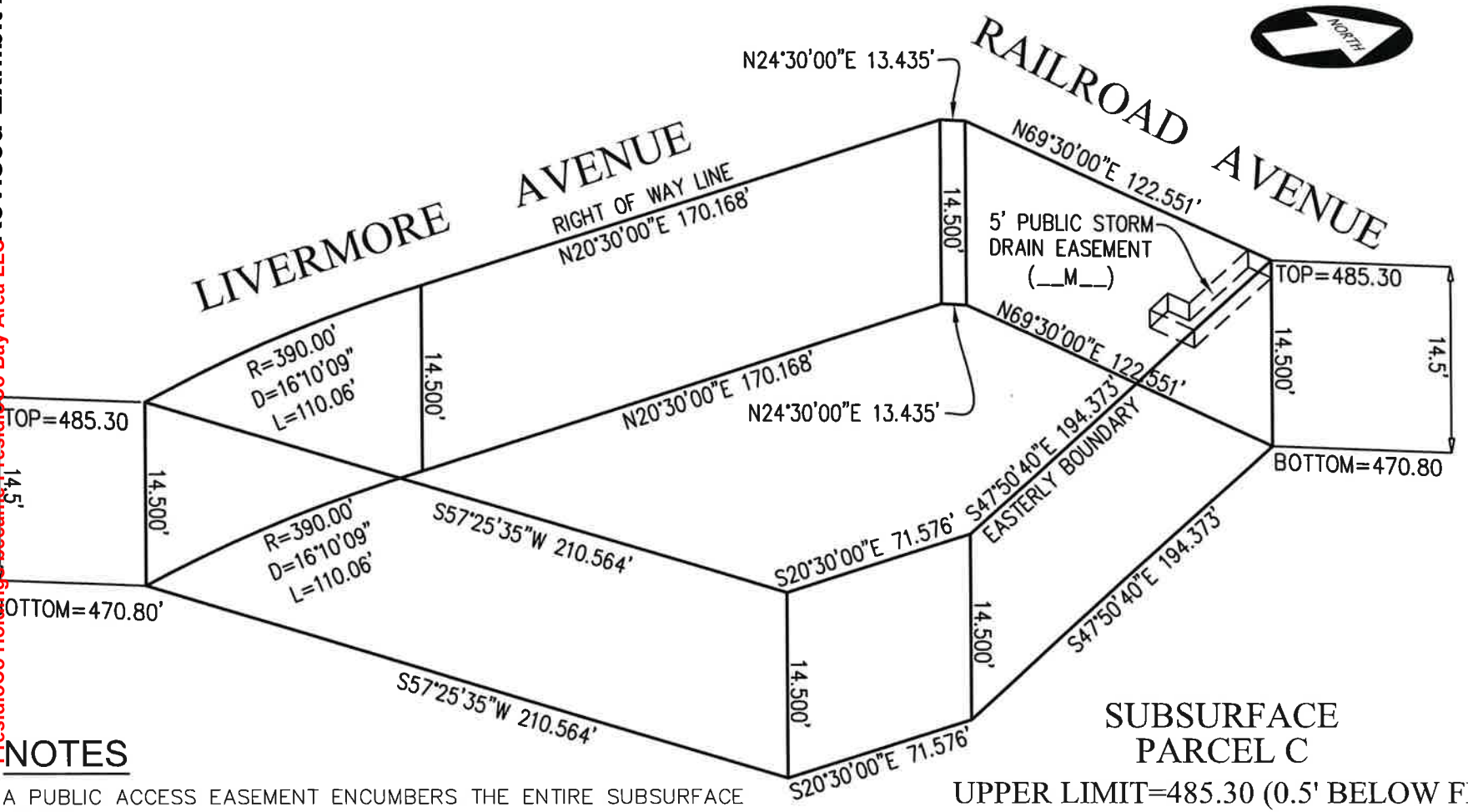
PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 2 OF 3

Revised Exhibit A

NOTE: The only change in the document is: PresidioCo Holdings became PresidioCo Bay Area LLC



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 3 OF 3

Hotel Standard

Developer shall develop a boutique hotel that meets or exceeds the standard of "Upscale" or "Upper Upscale" under the STR, Inc. Chain Scales Rating system or similar industry-recognized rating system. The Hotel is not required to be a branded hotel associated with a national chain and may instead be an independent hotel with a unique name and identity.

If the developer chooses to utilize a Brand for this Hotel, the choice of Brand is limited to those identified below, unless an alternative Brand is proposed in writing by the Developer and approved by the Livermore City Manager.

Hotel Brands

AC Hotels (Marriott)

Autograph Collection (Marriott)

Hilton Canopy

Curio Collection (Hilton)

Required Amenities

The amenities provided as part of the Hotel shall include a meeting room, roof-top open space/lounge area, swimming pool and interior bar/lounge, consistent with the entitlement approvals for this Project.

Interior Design Quality

The quality of the interior design of the hotel, including but not limited to the furnishings, beds, lighting, floor coverings, built in fixtures, linens, restrooms, bathtubs, showers, front desk, art, bar, other amenities and related components of the Hotel shall meet or exceed the quality and components provided by the Hotel Brands listed above as of the date of execution of this Agreement.

Required Review and Approval

Developer shall submit to the City a draft proposal demonstrating the quality of the interior design components proposed for the Hotel, no later than the date identified in the Schedule of Performance. This submittal shall include examples of the types of materials and components proposed for the Hotel interior and shall be comprised of a written description and photographic examples.

Prior to construction of the Hotel, and no later than the date specified in the Schedule of Performance, Developer shall submit to the City a Final Hotel Standards Proposal. This proposal shall provide detailed descriptions and photographic examples of the interior components of the Hotel, including but not limited to the furnishings, beds, lighting, floor

coverings, built in fixtures, linens, restrooms, bathtubs, showers, front desk, art, bar, other amenities and related components of the Hotel and shall demonstrate that they meet or exceed the quality demonstrated by the Hotel Brands listed above as of the date of the execution of this Agreement.

City shall select and contract with a Hotel consultant, whose fees shall be paid by Developer, to evaluate the components of the Final Hotel Standard Proposal and provide a finding as to whether the proposed Hotel components meet or exceed the standard of quality identified above. The consultant shall further provide recommendations on any changes that are needed to comply with these requirements.

If necessary, Developer shall revise and provide additional submittals until the City has determined, based on the recommendation of the Hotel consultant, that the Final Hotel Standards Proposal meets or exceeds the standard of quality identified above, demonstrated by the listed Hotel Brands as of the date of the execution of this Agreement. The Developer shall not begin construction of the Hotel until this condition has been satisfied.

JOINT SOLID WASTE FACILITY AGREEMENT MATERIAL TERMS

1. **Parties may include the following:** 2205 Railroad Avenue LLC ("Developer"), Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley City Center Plaza, the Livermore Cinema, and the City of Livermore ("City").

2. **Developer Responsibilities.**

(a) The Developer shall be responsible for the design, construction, and ownership of the Joint Solid Waste Facility that will provide garbage, organics, and recyclable services for the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley City Center Plaza, and the Livermore Cinema.

(b) Developer shall be responsible for all service, maintenance, operation, repair, replacement, and insurance of the Joint Solid Waste Facility.

(c) Developer shall be responsible for all coordination efforts with the participating property owners for the development of a solid waste disposal plan for the Joint Solid Waste Facility. The solid waste disposal plan shall be subject to approval by the City's Community Development Director.

(d) Developer is responsible for securing the participation of the users stated above in subparagraph (a) to join the Joint Solid Waste Facility Agreement to satisfy their individual solid waste disposal needs consistent with state, county, and local requirements. If after reasonable due diligence, the Developer is unable to secure all users agreement for the Joint Solid Waste Facility, the Developer shall be responsible to ensure that the Joint Solid Waste Facility provides waste disposal for all users stated above in subparagraph (a), including any users that are not parties to the Joint Solid Waste Facility Agreement, and that it is properly serviced, maintained, operated, repaired, and replaced, as necessary.

(e) The Joint Solid Waste Facility shall replace the temporary facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West).

(f) The Developer shall maintain access to the temporary solid waste facility during the construction of the Project until such time as the Joint Solid Waste Facility is completed and operational. Once the Joint Solid Waste Facility is operational, the Developer shall remove the temporary solid waste facility and install new landscape and irrigation connected to the City's irrigation system at the location of the former temporary solid waste facility.

3. **Term of Agreement.** The term of the Joint Solid Facility Agreement ("Agreement") will commence prior to construction of the Hotel and shall run with the land.

4. **Use of Facility.** The Facility will be available to provide garbage, organics, and recyclables service for the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema.

EXHIBIT F

LEASE AND OPERATING AGREEMENT
2080 RAILROAD AVENUE

(The Parking Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, is made and entered into by and between 2205 Railroad Avenue LLC, a Delaware Limited Liability Company ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. Lessor desires to construct a four story approximately 65,000-75,000 square foot hotel, containing between 125-135 hotel rooms on City-owned parcels located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (hereinafter "Hotel"). As part of the conditions of approval for the Hotel, Lessor is required to comply with the City's parking requirements for the Downtown Specific Plan.

B. Lessor owns that particular piece of real property located on the northwest corner of Railroad Avenue and North K Street in downtown Livermore commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) as more particularly described in Exhibit A, attached hereto and incorporated herein. At the time construction of the Hotel is complete, Lessor intends to use the property as a valet parking lot to satisfy a portion of the City's parking requirements for the Hotel (hereinafter "Parking Parcel").

C. On_____, the City and Lessor entered into a Disposition, Development and Loan Agreement (the "DDLA") wherein the City made a loan to Developer to fund the acquisition of the Parking Parcel. Lessor has agreed to lease the Parking Parcel to City at no cost for use as a temporary surface public parking lot or public valet parking lot for a period of three years from the effective date of this Lease Agreement or the date when construction of the Hotel is at least 40 percent complete, whichever is earlier. However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024. Upon satisfaction of these requirements, Lessor may terminate this Lease Agreement to allow Lessor to begin the construction of permanent parking improvements on the Parking Parcel.

D. Prior to the construction of permanent parking improvements on the Parking Parcel for the Hotel, City desires to lease from Lessor and Lessor desires to lease the Parking Parcel (hereinafter "Parking Parcel" or "Leased Premises") as more particularly shown as cross hatched on Exhibit A attached hereto and incorporated herein. The Leased Premises is approximately 33,695 square feet of vacant and undeveloped land.

E. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Leased Premises. Lessor leases to City and City leases from Lessor, the Leased Premises which consists of approximately 33,695 square feet of vacant and undeveloped land, as indicated on Exhibit A.

2. Possession; Delay in Delivery of Possession.

(a) Except as otherwise provided in this Lease, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Parking Parcel and/or the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the commencement date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. Rent. As a condition of the loan from City to Lessor to purchase the Parking Parcel, Lessor agrees to lease the Leased Premises to the City at no cost for use as a temporary surface public parking lot and/or public valet parking lot. The no cost lease is a condition of the loan the City has provided to Lessor for the purchase of the Parking Parcel through the DDLA. City shall be responsible for all costs associated with the City's construction and maintenance of the minor improvements on the Leased Premises as set forth in Sections 6 and 7 of this Lease Agreement.

4. Term. This Lease Agreement shall commence on [date], 2022 ("Commencement Date") and terminate three years from the effective date of this Lease Agreement or the date when construction of the Hotel is at least 40% complete, whichever is earlier ("Term"). However, at a minimum, the City shall be permitted to use the Parking Parcel until September 30, 2024. Upon satisfaction of these requirements, Lessor may terminate this Lease Agreement to allow Lessor to begin construction of permanent parking improvements on the Leased Premises. This Lease Agreement shall supersede and replace any other lease between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Leased Premises.

5. City's Use of Leased Premises.

(a) Use of Leased Premises. City shall only use the Leased Premises for the purpose of a temporary surface public parking lot, a public valet parking lot, or both.

(b) Rules Regarding Use. City shall observe and comply with the rules and regulations annexed to this Lease Agreement and, after notice of these rules, City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Parking Parcel or Leased Premises.

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) **Hazardous Materials.** City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Parking Parcel or Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Premises, of

any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

6. Minor Improvements. City may construct minor improvements on the Leased Premises which may include, but are not limited to, minor grading, installation of gravel or other suitable parking surface, driveway improvements, signage, and lighting necessary to provide a temporary surface public parking lot and/or public valet parking lot (the "Minor Improvements").

7. City Obligations.

(a) Services and Utilities. City shall provide basic electricity and power for the Leased Premises.

(b) Maintenance. Except as otherwise provided herein, City shall at its own cost and expense, maintain the Leased Premises and every part thereof, in good and sanitary order, condition, and repair. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

8. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary surface public parking lot and/or public valet parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

9. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Parking Parcel, and City will keep the Parking Parcel free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Parking Parcel, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, except for those set forth in Sections 6 and 7 above, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event

that Lessor provides City with written consent, City shall at its own cost comply with any and all Federal, State, or local laws and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

10. Destruction. If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood, earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

11. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, surface public parking lot and/or public valet parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

12. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for the temporary surface public parking lot and/or public valet parking lot. City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for Minor Improvements, construction and or repair work outside of the Lessor's obligations.

13. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Property or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

14. Taxes. Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Parking Parcel the Minor Improvements located on the Parking Parcel, personal property located on or in the Parking Parcel or Minor Improvements, and the leasehold interest created by this Lease Agreement.

15. Lessor Refinancing. City is aware that Lessor is leasing its interest in the Leased Premises to City and that Lessor's leasehold interest in the Leased Premises is related to an outstanding lease financing. City agrees that it will use best efforts to cooperate with Lessor in connection with a refinancing of the outstanding lease financing, including executing any estoppel, consent, and other similar documents requested by the Lessor.

16. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, the City's installation and maintenance of Minor Improvements on the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

17. Insurance. For the duration of this Lease Agreement, City shall procure and maintain, at its own cost, insurance in the amounts and under the terms set forth in Exhibit B attached hereto against claims for injuries to persons or damages to property which may arise from or in connection with this Lease Agreement.

18. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Parking Parcel, or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Parking Parcel and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

19. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

20. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

21. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease Agreement, except as to the payment of rent accepted.

22. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations, improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

23. Entry by Lessor. City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants; (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; and (x) responding to an emergency.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises

obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement.

24. Notices. Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

Lessor: 2205 Railroad Avenue LLC
A Delaware limited liability company

Attn:
262 Glorietta Boulevard
Orinda, California, 9456

25. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

26. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

27. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) **California Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) **Review of Lease.** Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) **Performance Excused.** The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) **Mutual Termination.** This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) **Headings.** The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) **Waiver.** A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) **Attachments.** All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) **Attorney's Fees and Costs.** If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

************Signatures and Attachment List On Next Page************

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

2205 Railroad Avenue LLC
A Delaware limited liability company

By: PresidioCo Bay Area LLC
A Delaware limited liability company
its manager

Lessor
By: _____ Dated: _____
[Signer's Name]
[Signer's Title]

City or Lessee

City of Livermore
A Municipal Corporation

By: _____ Dated: _____
Marc Roberts
City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

Attachments:
Exhibit A – Real Property Site Plan – Parking Parcel
Exhibit B – Insurance Requirements

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

EXHIBIT A

REAL PROPERTY SITE PLAN - PARKING PARCEL

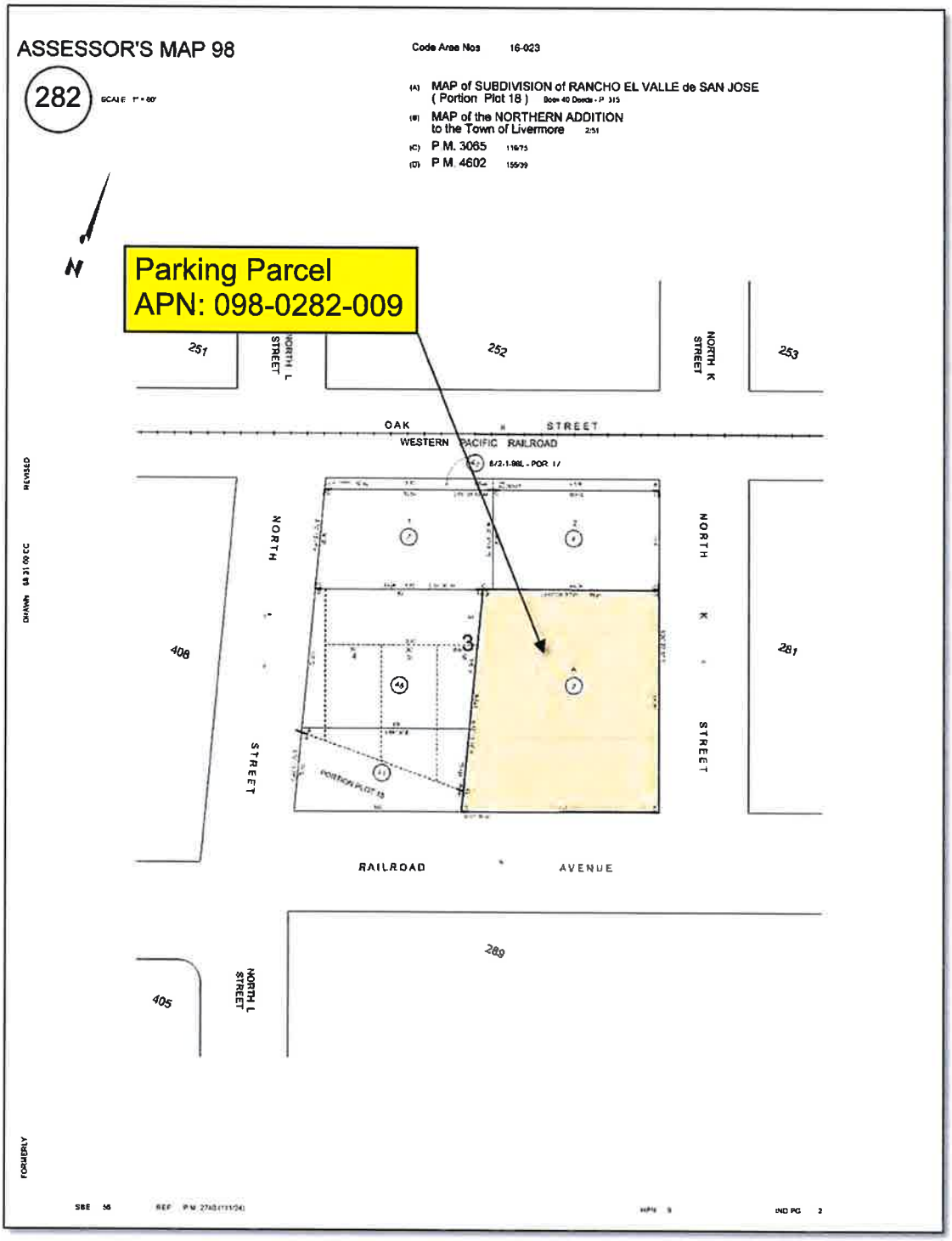


Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

PLEASE PLACE RECORDER LABEL BELOW THIS LINE

Recording Requested By &
Return to:

City of Livermore
City Clerk's Office
1052 So. Livermore Ave.
Livermore, CA 94550

No fee for recording
pursuant to Government
Code section 27383

A.P.N.: 098-0407-031-00, 098-0407-033-00, and 098-0282-009-00

MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("Memorandum") is made as of _____, 2022, by and between the 2205 Railroad Avenue LLC, a Delaware limited liability company (the "Developer"), and the City of Livermore (the "City"), to confirm that the City and Developer are parties to that certain Amended and Restated Disposition, Development and Loan Agreement between the City and the Developer dated as of _____, 2022, as may be amended from time-to-time (the "DDLA"). The DDLA concerns the sale of real property in Livermore, California, and a site acquisition loan for the purchase of property in Livermore, California, which property is described in the attached Exhibits A and J and the development of a four-story approximately 65,000-75,000 square foot hotel containing between 125-135 rooms, approximately 1,400-2,000 square feet of economically viable meeting space, a roof-top public open space and related hotel amenities and improvements (the "Project") on the Property identified in Exhibit A and the use of the Parking Parcel identified in Exhibit J to satisfy a portion of the parking requirements identified in the conditions for approval for the Project. (The Exhibits to this Memorandum have been marked to be consistent with the Exhibits to the DDLA.)

The DDLA is a public document and may be reviewed at and in the office of the City Clerk for the City of Livermore.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the DDLA, of which this is a memorandum. In the event, and to the extent that, that any of the terms or provisions of this Memorandum are inconsistent with the terms or provisions of the DDLA, the provisions of the DDLA shall govern and prevail.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum and the DDLA by duly authorized representatives, all on the date first written above.

DATE:

BORROWER:

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By:PresidioCo Bay Area LLC,
a Delaware limited liability company,
Its: Manager

By: _____

Name: _____

Title: _____

DATE:

CITY:

CITY OF LIVERMORE,
a municipal corporation

By: _____

Name: Marc Roberts

Title: City Manager

APPROVED AS TO FORM:

By: _____
Assistant/City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

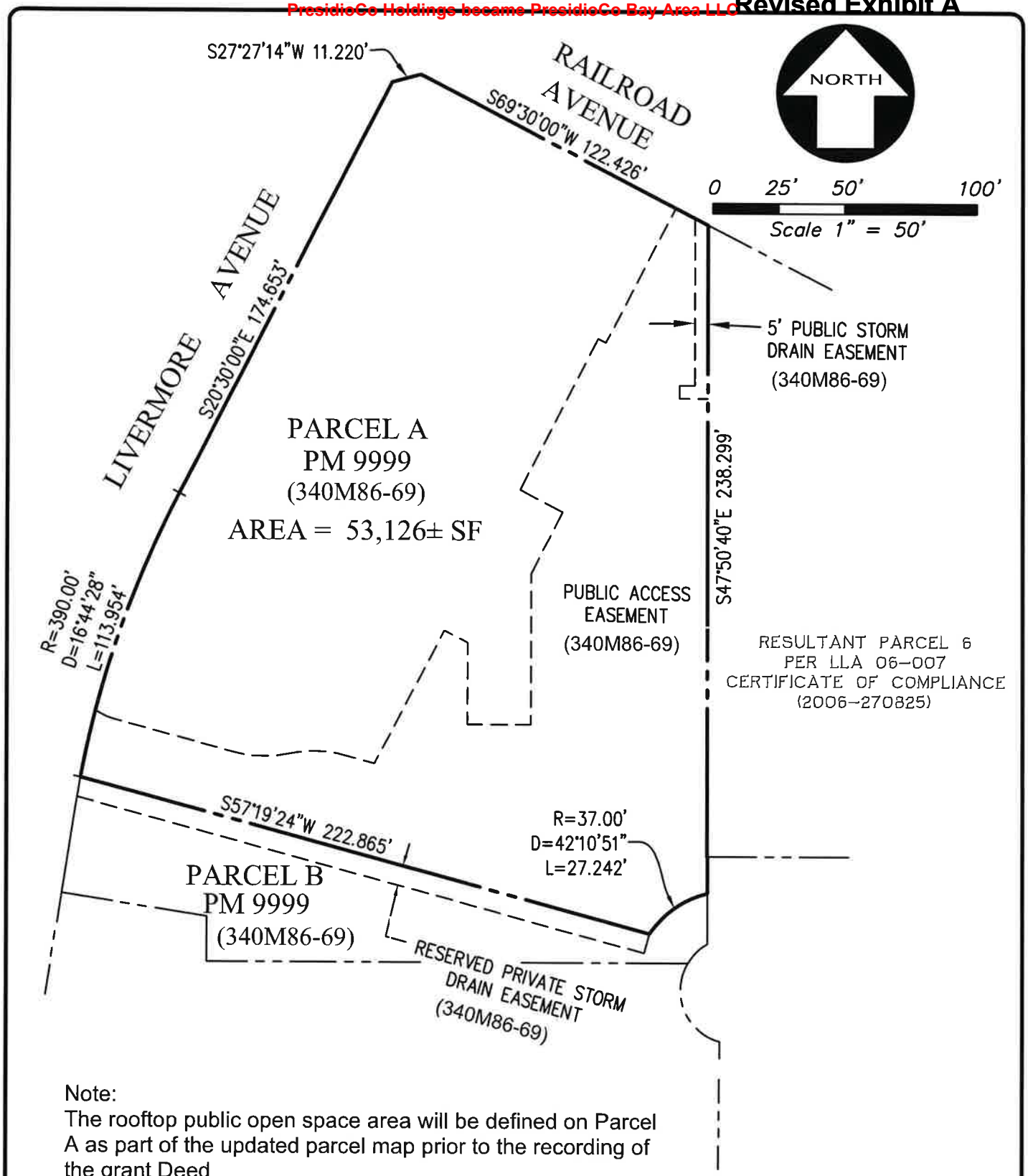
PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A SHEET 1 OF 3

NOTE: The only change in the document is:
~~PresidioCo Holdings became PresidioCo Bay Area LLC~~

Revised Exhibit A



Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

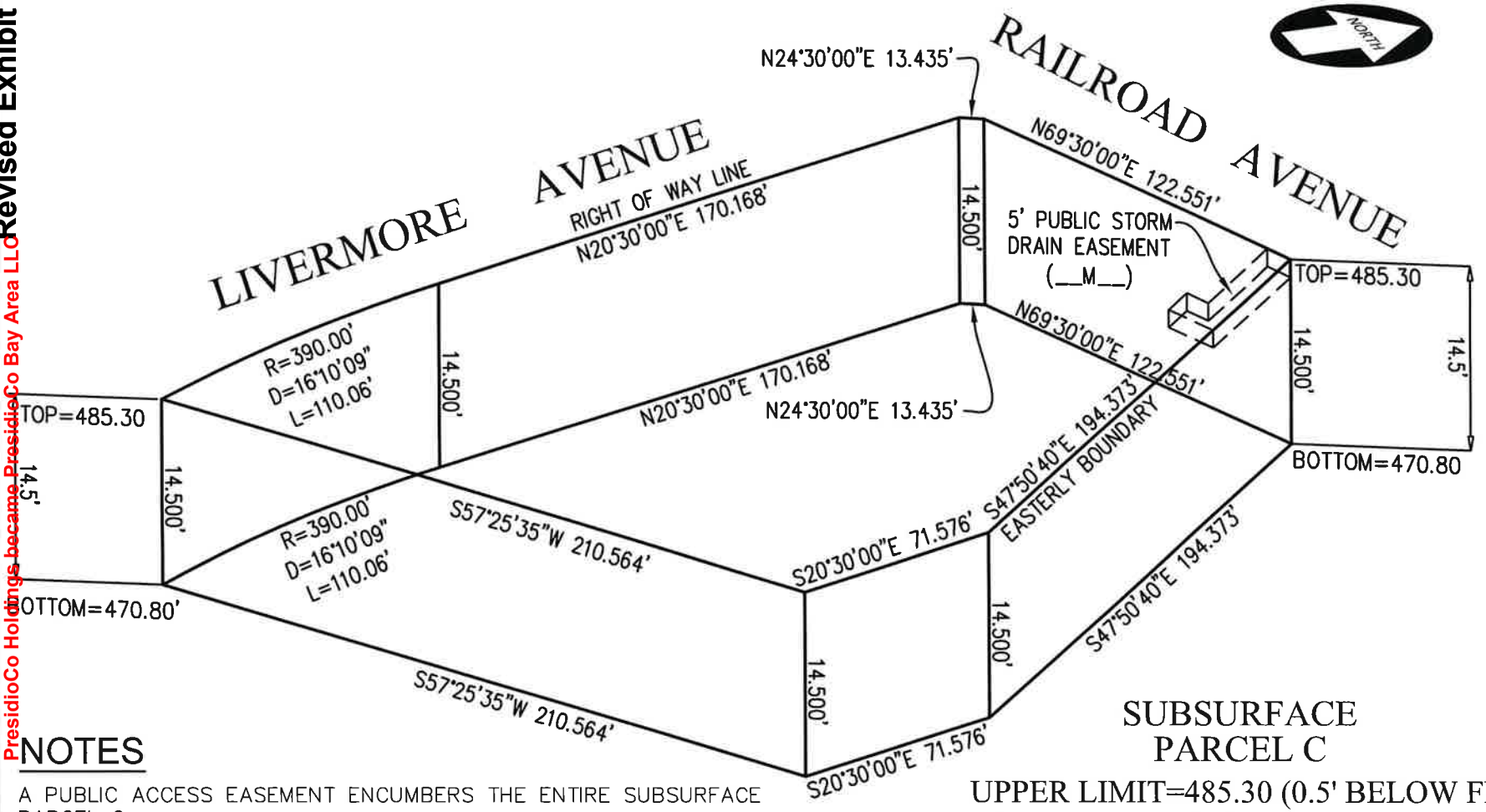
PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 2 OF 3

Revised Exhibit A

NOTE: The only change in the document is: PresidioCo Holdings became PresidioCo Bay Area LLC



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

PLAT - SUBSURFACE PARCEL C
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 3 OF 3

Exhibit J Parking Parcel Description

(Legal Description of Parking Parcel to be provided by Developer upon purchase of property)

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

Parcel Map 9999

PARCEL MAP 9999

CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA
A RESUBDIVISION OF RESULTANT PARCEL 7 PER LOT LINE ADJUSTMENT 06-007, RECORDED JULY 12, 2006 AS INSRUMENT No. 2006270825 AND AS FURTHER DESCRIBED IN GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011568; GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011570; AND GRANT DEED RECORDED OCTOBER 24, 1989 UNDER SERIES No. 89-286823

BY THE
CITY OF LIVERMORE
COMMUNITY DEVELOPMENT DEPARTMENT
SEPTEMBER 2018

OWNER'S STATEMENT

THE UNDERSIGNED, HEREBY STATE THAT THEY ARE THE OWNERS OF ALL THE LANDS DELINEATED WITHIN THE BOUNDARY LINES UPON THE HEREIN EMBRACED MAP ENTITLED "PARCEL MAP 9999, CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA" CONSISTING OF FOUR (4) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT THEY HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP; THAT SAID MAP DOES PARTICULARLY SET FORTH AND DESCRIBE ALL PARCELS OF LAND SO RESERVED FOR PUBLIC PURPOSES BY THEIR BOUNDARY COURSES AND EXTENT.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC THOSE PORTIONS OF PARCEL A AND PARCEL B WITHIN THE BOUNDARIES OF LIVERMORE AVENUE RIGHT OF WAY DEDICATION AND RAILROAD AVENUE RIGHT OF WAY DEDICATION, AS SHOWN AND EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP FOR THE USES AND PURPOSES OF PUBLIC HIGHWAYS.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN PUBLIC UTILITIES AND APPURTENANCES THERETO UNDER, ON AND OVER THAT CERTAIN PORTION OF PARCEL B SHOWN UPON SAID MAP AS "P.U.E." (PUBLIC UTILITY EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP AND THE RIGHT TO ENTER UPON SAID STRIPS AND/OR PARCEL OF LAND FOR THE PURPOSES OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING AND REPAIRING SAID PUBLIC UTILITIES AND APPURTENANCES THERETO.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN STORM DRAINS AND THE APPURTENANCES THERETO UNDER, ON, AND OVER THOSE CERTAIN PORTIONS OF LAND SHOWN UPON SAID MAP AS (P.S.D.E) STORM DRAIN EASEMENT THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP, TOGETHER WITH THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING AND REPAIRING SAID STORM DRAINS AND ANY APPURTENANCES THERETO.

AND THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN FACILITIES (INCLUDING SIDEWALKS, PAVING AND LANDSCAPING) AND ANY APPURTENANCES THERETO UNDER, ON AND OVER THOSE CERTAIN PORTIONS OF PARCEL A, AND ALL OF PARCELS B AND C, SHOWN AND UPON SAID MAP AS "P.A.E." (PUBLIC ACCESS EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID PARCEL OF LAND FOR THE PURPOSES OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING AND REPAIRING SAID FACILITIES (SIDEWALKS, PAVING AND LANDSCAPING) AND ANY APPURTENANCES THERETO TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS OF THE PUBLIC FOR PEDESTRIAN AND VEHICLE ACCESS AND USES.

THE UNDERSIGNED HEREBY RESERVES AN EASEMENT TO CONSTRUCT AND MAINTAIN STORMDRAINS, BIO-TREATMENT SWALES, AND APPURTENANCES THERETO, UNDER, ON, AND OVER THAT PORTION OF PARCEL B SHOWN UPON SAID MAP AS (PY.S.D.E.) PRIVATE STORMDRAIN EASEMENT THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP, TOGETHER WITH THE RIGHT TO ENTER UPON SAID PORTION OF PARCEL B FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING, AND REPAIRING SAID FACILITIES (STORMDRAINS, BIO-TREATMENT SWALES) AND APPURTENANCES THERETO.

THIS MAP SHOWS OR NOTES ALL EASEMENTS, EXISTING OR OF RECORD WITHIN THE BOUNDARY LINES OF THE HEREIN EMBODIED MAP.

OWNERS: CITY OF LIVERMORE, A MUNICIPAL CORPORATION,

BY: Marc Roberts
MARC ROBERTS, CITY MANAGER OF THE CITY OF LIVERMORE

OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) S.S.

ON 9-17-18, 2018 BEFORE ME, Amber C. Calkins, Notary Public
PERSONALLY APPEARED MARC ROBERTS, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

SIGNATURE: Amber C. Calkins
PRINT NAME: Amber C. Calkins
MY COMMISSION NUMBER: 2173174
MY COMMISSION EXPIRES: 1-13-2021
PRINCIPAL COUNTY OF BUSINESS: Alameda

CITY ENGINEER'S STATEMENT

I, CHERI R. SHEETS, CITY ENGINEER OF THE CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA, HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "PARCEL MAP 9999, CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA", AND THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP (IF ANY) AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF THE STATE LAWS AND LOCAL ORDINANCES APPLICABLE AT THE DATE OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

Cheri R. Sheets
CHERI R. SHEETS, R.C.E. NO.38751
EXPIRES ON MARCH 31, 2019
CITY ENGINEER, CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA

9/5/18
DATE

REGISTERED PROFESSIONAL ENGINEER CHERI R. SHEETS No. 38751 Exp. 3/31/19 CIVIL STATE OF CALIFORNIA

I, LAWRENCE K. SAMPSON, A LICENSED SURVEYOR FOR THE CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "PARCEL MAP 9999, CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA", AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

Lawrence K. Sampson
LAWRENCE K. SAMPSON
P.L.S. 4238, EXP. 6/30/2020

9/06/18
DATE

LICENSED LAND SURVEYOR LAWRENCE K. SAMPSON Exp. 6/30/20 4238 STATE OF CALIFORNIA

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE OK OF THE CITY OF LIVERMORE IN MAY, 2018. I HEREBY STATE THAT THIS MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

I FURTHER STATE THAT "PARCEL MAP 9999, CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA" IS A SUBDIVISION INTO PARCELS OF LAND CONTAINING 1.426 ACRES, MORE OR LESS.

JOSEPH D. THOMPSON
P.L.S. 8121, EXP. 12/31/2018

9/4/18
DATE

LICENSED LAND SURVEYOR JOSEPH D. THOMPSON No. 8121 Exp. 12-31-18 STATE OF CALIFORNIA

COMMUNITY DEVELOPMENT DIRECTOR'S STATEMENT

PARCEL MAP 9999 CONFORMS WITH THE CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY, AND WAS PROCESSED IN ACCORDANCE WITH THE SUBDIVISION MAP ACT SECTION 66426(b).

Paul Spence
PAUL SPENCE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA

9/7/18
DATE

CITY CLERK'S STATEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) S.S.

ON THIS 7TH DAY SEPTEMBER 2018 BEFORE ME, SARAH BUNTING, CITY CLERK, CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA, PERSONALLY APPEARED PAUL SPENCE PERSONALLY KNOWN TO ME TO BE THE DIRECTOR OF COMMUNITY DEVELOPMENT OF THE CITY OF LIVERMORE AND IS THE PERSON AUTHORIZED BY THE CITY OF LIVERMORE MUNICIPAL CODE TO APPROVE THIS PARCEL MAP WAIVER.

I FURTHER CERTIFY THAT THE INTEREST IN ALL THOSE PARCELS OF LANDS, EASEMENTS AND OTHER LEGAL INTERESTS IN LAND OFFERED FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFERS, IS HEREBY ACCEPTED BY THE UNDERSIGNED CITY CLERK ON BEHALF OF THE CITY COUNCIL PURSUANT TO AUTHORITY CONFERRED BY RESOLUTION NO. 1-65 OF THE CITY COUNCIL ADOPTED ON JANUARY 4, 1965.

NOTE; PER SECTION 6699.20.2, THE FILLING OF THIS MAP SHALL CONSTITUTE THE VACATION AND ABANDONMENT OF THE UNRECORDED STORM DRAIN EASEMENT ACROSS THE CENTRAL PORTION OF PARCEL "A", AS CERTIFIED HERETO BY THE CITY CLERK OF THE CITY OF LIVERMORE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 17TH DAY OF SEPTEMBER 2018.

SARAH BUNTING
CITY CLERK AND CLERK OF THE CITY COUNCIL
CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA

CLERK OF THE BOARD OF SUPERVISOR'S STATEMENT

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) S.S.

I, ANIKA CAMPBELL-DELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, HEREBY STATE, AS CHECKED BELOW THAT:

[ ] AN APPROVED BOND HAS BEEN FILED WITH THE SUPERVISORS OF THE SAID COUNTY AND STATE IN THE AMOUNT OF $_____ CONDITIONED FOR THE PAYMENT OF ALL THE TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES WHICH ARE NOW A LIEN AGAINST SAID LAND OR ANY PART THEREOF BUT NOT YET PAYABLE, AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.

[ ] ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID, AS CERTIFIED BY THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

[✓] EXEMPT

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 2ND DAY OF OCTOBER, A.D. 2018.

ANIKA CAMPBELL-DELTON
CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA

BY: Anika Campbell-Delton
DEPUTY COUNTY CLERK

BOARD OF SUPERVISORS ALAMEDA COUNTY, CAL.

COUNTY RECORDER'S STATEMENT

FILED THIS 3RD DAY OF October 2018
AT 12:45 P.M., IN BOOK 340 OF MAPS AT PAGES 86-89 INCLUSIVE, RECORDERS SERIES
NO. 2018192226 AT THE REQUEST OF OLD REPUBLIC TITLE COMPANY.
FEE $ 89.00 PAID

STEVE MANNING
COUNTY RECORDER IN AND FOR THE
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

BY: K. Sam
DEPUTY COUNTY RECORDER

SHEET 1 OF 4 SHEETS

EXHIBIT I SHEET 1 OF 4

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

Parcel Map 9999

Map 6838

Pg 85

PARCEL MAP 9999

CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA

A RESUBDIVISION OF RESULTANT PARCEL 7 PER LOT LINE ADJUSTMENT 06-007, RECORDED JULY 12, 2006 AS INSTRUMENT No. 2006270825 AND AS FURTHER DESCRIBED IN GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011568; GRANT DEED RECORDED JANUARY 13, 2017, UNDER SERIES No. 2017011570; AND GRANT DEED RECORDED OCTOBER 24, 1989 UNDER SERIES No. 89-286823

BY THE

CITY OF LIVERMORE
COMMUNITY DEVELOPMENT DEPARTMENT
SEPTEMBER 2018

SCALE 1"=40'

SHEET 2 OF 4 SHEETS

GRAPHIC SCALE
0 40 80 160
(IN FEET)

NOTES

(1) ALL DISTANCES SHOWN ARE GROUND AND DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF.

(2) THE STORM DRAIN ACROSS THE CENTRAL PORTION OF PARCEL "A" IS TO BE REMOVED AND ANY UNRECORDED STORM DRAIN EASEMENT IS HEREBY DEEMED VACATED AND ABANDONED PER SECTION 66499.20.2 OF THE SUBDIVISION MAP ACT.

BASIS OF BEARINGS

THE MONUMENT LINE OF RAILROAD AVENUE TAKEN AS NORTH 69°30'15" EAST AS SHOWN ON PARCEL MAP 6370 (274 M 92-93).

BENCHMARK

CITY MONUMENT ON NORTH LIVERMORE AVENUE, APPROXIMATELY 150 FEET SOUTH OF RAILROAD AVENUE.

ELEVATION = 484.816 FEET (CITY OF LIVERMORE 2K DATUM)

MAP REFERENCES

(R1) PARCEL MAP 6370, (274 M 92)
(R2) PARCEL MAP 6548 (282 M 24)
(R3) LOT LINE ADJUSTMENT 06-007, CERTIFICATE OF COMPLIANCE 2006-270825.

LEGEND

PARCEL MAP BOUNDARY
NEW PROPERTY LINE
STREET MONUMENT LINE
STREET MONUMENT TIE
CL DITCH
⊗ FOUND STREET MONUMENT AS NOTED
(R) RADIAL BEARING
S.N.F. SEARCHED, NOT FOUND
(XXX) RECORD INFORMATION
M.M.M. MAGNETIC MONUMENT (VARIES)
PI-M POINT OF INTERSECTION TO MONUMENT
(R1) PER REFERENCE DOCUMENT
P.U.E PUBLIC UTILITY EASEMENT
P.A.E PUBLIC ACCESS EASEMENT
P.S.D.E PRIVATE STORM DRAIN EASEMENT
P.S.D.E PUBLIC STORM DRAIN EASEMENT
F.O.B FACE OF BUILDING
℄ PROPERTY LINE
BM BENCHMARK
(C) SUBSURFACE PARCEL C DIMENSION

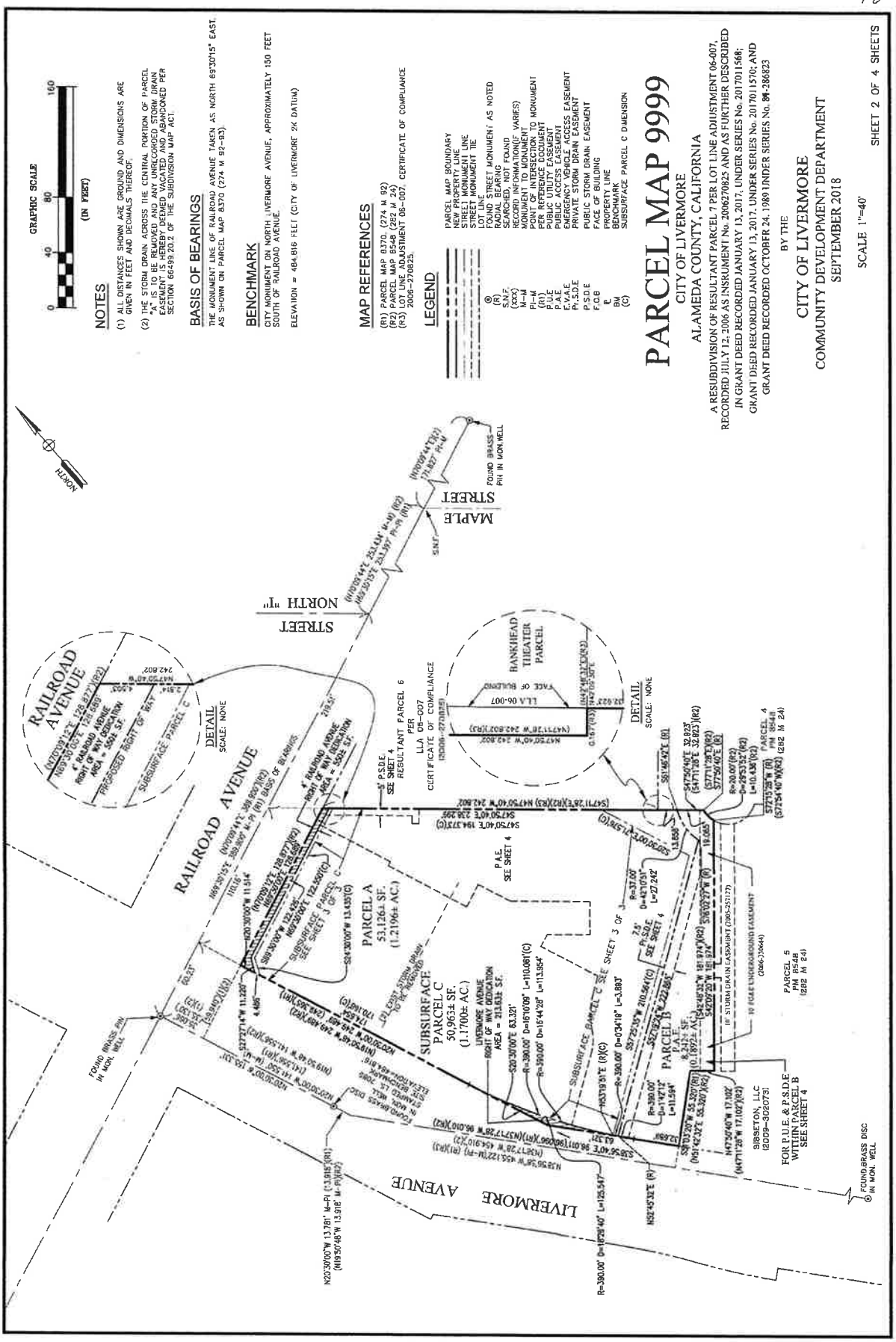


EXHIBIT I SHEET 2 OF 4

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

Parcel Map 9999

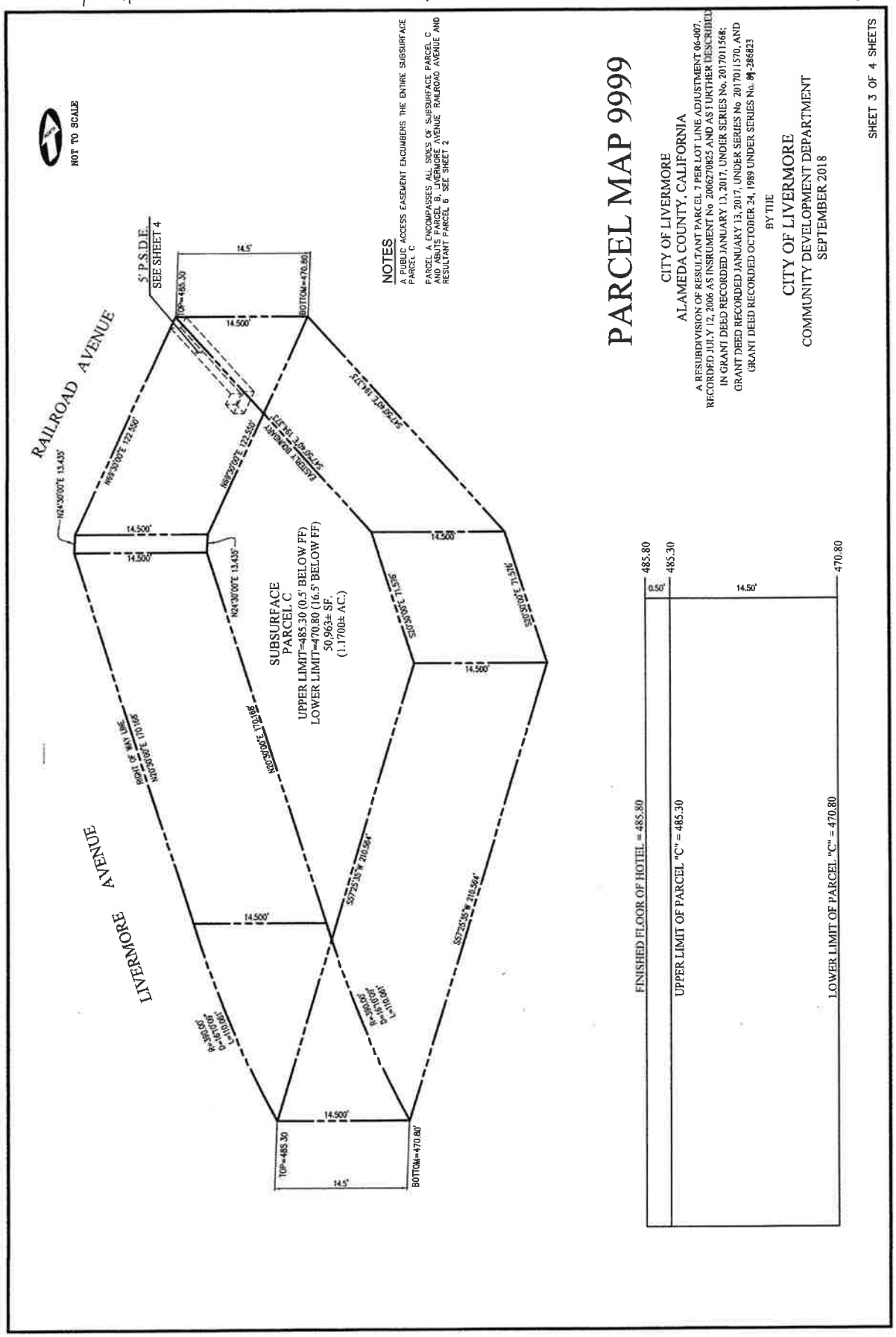


EXHIBIT I SHEET 3 OF 4

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

Parcel Map 9999 Map Bk 340 Pg 89

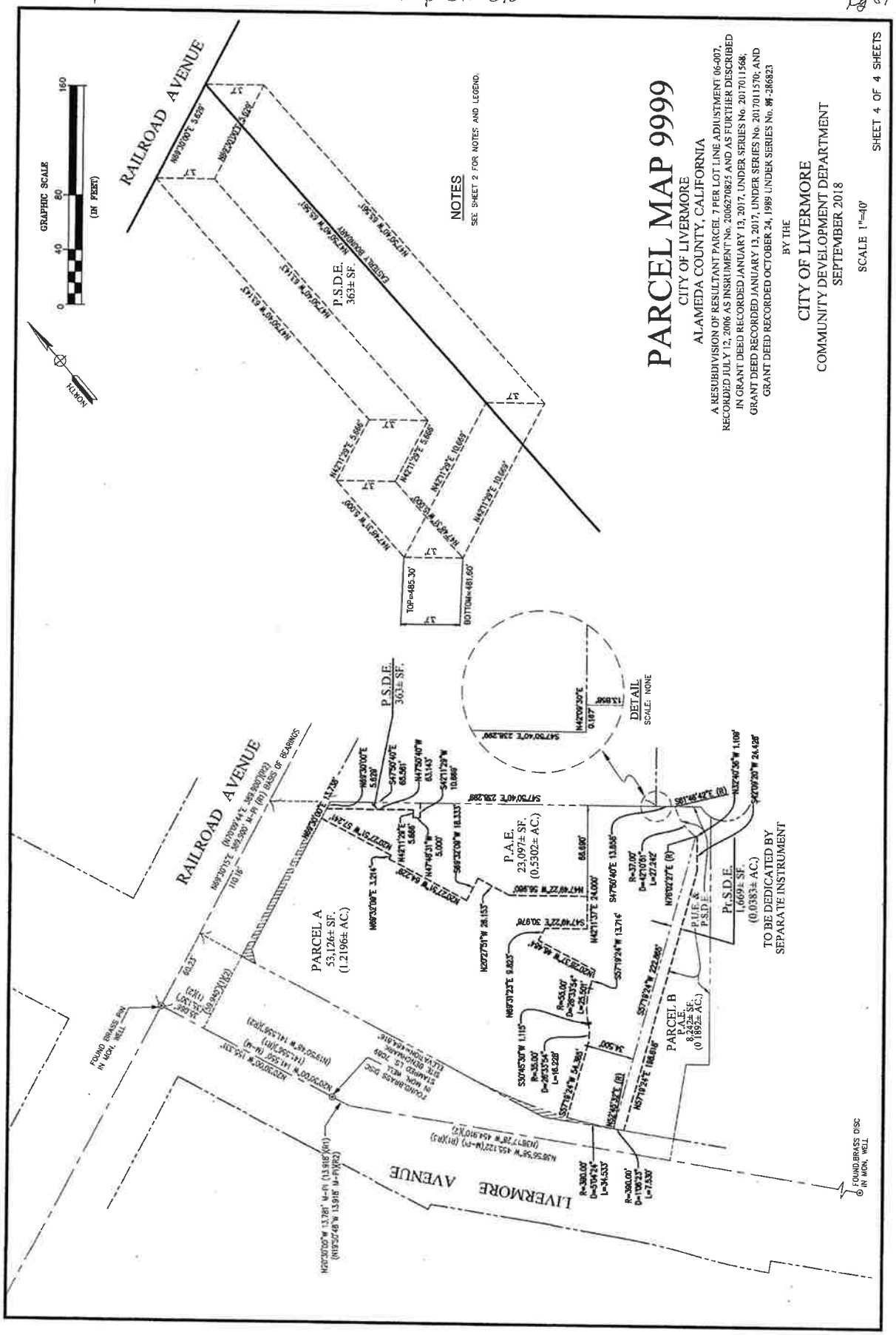


EXHIBIT I SHEET 4 OF 4

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

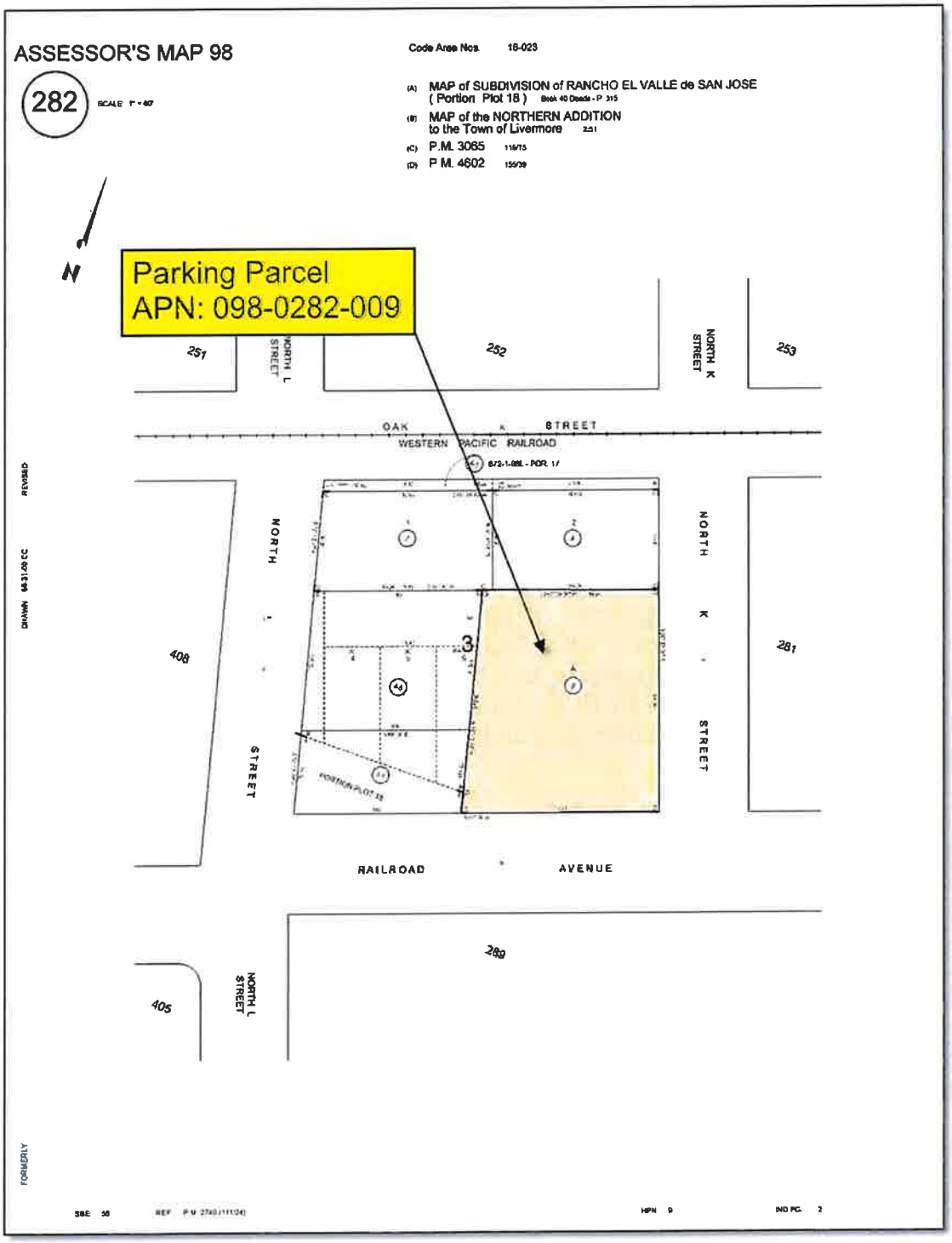


EXHIBIT J

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE
Amended and Restated Disposition, Development and Loan Agreement
Site Acquisition Loan

Principal Amount: $1,923,750 _____, 2022

APN 098-0282-009-00

FOR VALUE RECEIVED, the undersigned 2205 Railroad Avenue LLC, a Delaware Limited Liability Company ("Borrower") whose address is 262 Glorietta Boulevard, Orinda, California 94563, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of ONE MILLION NINE HUNDRED AND TWENTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY Dollars ($1,923,750), together with interest accrued thereon, as set forth in this Promissory Note ("Note").

Pursuant to that certain Amended and Restated Disposition, Development and Loan Agreement ("DDLA") dated _____, 2022, by and between City and Borrower (the "Developer"), the Developer agreed to construct a four-story approximately 65,000-75,000 square foot hotel containing between 125-135 rooms, approximately 1,400-2,000 square feet of economically viable meeting space, a roof-top deck and related hotel amenities and improvements (the "Project") on the Property (defined below) and agreed to satisfy a portion of the parking requirements identified in the conditions for approval for the Project on the Parking Parcel (identified below).

In accordance with the DDLA, the property consists of the parcels located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore in the City of Livermore, Alameda County, California (APNs: 098-0407-031-00 and 098-0407-033-00) as more particularly described and depicted as Parcel A and Parcel C on Parcel Map 9999 and in Exhibit A attached hereto (the "Property").

Likewise, in accordance with the DDLA, the parking parcel consists of a parcel located at the northwest corner of Railroad Avenue and North K Street commonly known as 2080 Railroad Avenue (APN 098-0282-009-00) as more particularly described and depicted in Exhibit B attached hereto (the "Parking Parcel").

In accordance with the DDLA, the Borrower intends to purchase, develop, own, and operate the Project on the Property and to use the Parking Parcel to satisfy a portion of the parking requirements identified in the conditions of approval for the Project. Pursuant to the DDLA and its terms and conditions for the loan, the City has made a site acquisition loan to Borrower in the original principal amount of ONE MILLION NINE HUNDRED AND TWENTY-THREE

THOUSAND SEVEN HUNDRED AND FIFTY Dollars ($1,923,750) to fund the acquisition of the Parking Parcel to help satisfy a portion of the parking requirements in the conditions of approval for the Project (the "Site Acquisition Loan").

This Note is made and delivered pursuant to and in conjunction with the DDLA entered into by and between the City and Borrower dated as of even date herewith. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance the acquisition of the Parking Parcel for the Project, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply with all terms and conditions of this Note.

2. Principal. The principal amount of this Note, $1,923,750 ("Principal Amount"), loaned to the Borrower by the City to finance the acquisition of the Parking Parcel for the Project, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three and one-half percent (3.5%) annual interest as of the date of this Note.

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) three months after the completion of the Project's construction as determined by the issuance of a certificate of occupancy for the hotel, or (ii) December 31, 2025, whichever is sooner (the "Maturity Date"); unless otherwise terminated for infeasibility in accordance with the DDLA.

5. No Assumption. Except as may be otherwise set forth in this Agreement and the DDLA, this Note shall not be assumable by the successors and assigns of Borrower without the City's prior written consent.

6. Security. This Note is secured by that certain Deed of Trust and Assignment of Rents executed concurrent with this Note and recorded against the Parking Parcel in the Official Records of Alameda County, wherein the Borrower is the Trustor, and the City is the Beneficiary (the "Security Instrument"). City shall be entitled to the benefits of the Security Instrument and shall have the right to enforce the covenants and agreements contained herein, in the Security Instrument, and in the DDLA executed by and between the Borrower and the City as a condition of the DDLA. Any restrictive covenants executed by and between City and Borrower as a condition of the DDLA shall remain effective for the full duration of those restrictions and shall survive repayment of this Note as set forth in the DDLA.

7. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Site Acquisition Loan as set forth in the DDLA during the Term of this Note. This Note becomes due and payable in full on the earlier of: (a) the date of any Transfer, as defined in the DDLA not authorized by the City; (b) an Event of Default by Borrower which has not been cured as provided for in the DDLA; but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to current annual interest due, and then to reduce the principal amount of the Site Acquisition Loan. All payments by the Borrower shall be paid to the City in currency of the United States

of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

8. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time to time before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

9. Encumbrances. The Borrower shall not encumber either or both the Property or Parking Parcel, permit the covenancy, transfer, or encumbrance of either or both the Property or Parking Parcel, allow the placement of any liens, notes, or deeds on either or both the Property or Parking Parcel, or use either or both the Property or the Parking Parcel as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved financing plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 14 below.

10. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property or the Parking Parcel, or both, in accordance with the DDLA;
B. The Borrower fails to cure a default consistent with the requirements of Section 11 below;
C. The transfer of the Property, Parking Parcel, or this Note in violation of Section 13, and without the City's written approval consistent with the requirements of Sections 14 and 15 below;
D. The encumbrance of the Property or Parking Parcel, or both, in violation of Section 8, without the City's written approval consistent with the requirements of Sections 9 and 15;
E. Borrower is found to be in Default of the DDLA.

11. Default – Notice & Opportunity to Cure. If in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of thirty (30) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. Any investor, limited partner of Borrower or Borrower's assignee shall have the same notice and

cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

12. Default Rate. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "Default Rate"); provided, however, if any payment due hereunder is not paid when due, the Default Rate shall apply to commence upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

13. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property, Parking Parcel, or any parts thereof, or any trust or power, or any transfer in any other mode or form, of the Property or Parking Parcel, or any parts thereof or any interests therein; provided, however, that the Borrower may transfer any or all of its interest in the Property, the Parking Parcel, or both, to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City.

14. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property, the Parking Parcel, or both: The Property and Parking Parcel is to be transferred to another qualified developer, as pre-determined by the City, who will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA.

15. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances, and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note and the DDLA. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 24.

16. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, the Parking Parcel, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property and the Parking Parcel.

17. Notices. Any demand or notice which either party desires to deliver to the other shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited

in the United States mail with first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

18. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

19. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

20. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

21. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

22. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

23. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

24. Nonrecourse. Except as expressly provided in this Section, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property, the Parking Parcel, and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Site Acquisition Loan in the DDLA of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Site Acquisition Loan in the DDLA as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City

may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the DDLA or other documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Site Acquisition Loan in the DDLA Loan, or in DDLA or other documents between the City and the Borrower, or in connection with any request for any action or consent by City in connection with the DDLA and its terms and conditions for the Site Acquisition Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations in the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property or the Parking Parcel and which has a material adverse effect on the value of the Property, the Parking Parcel, or both; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA.

[Signatures on the Following Page]

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

DATE:

BORROWER:

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By:PresidioCo Bay Area LLC,
a Delaware limited liability company,
Its: Manager

By: _____

Name: _____

Title: _____

DATE:

CITY:

CITY OF LIVERMORE,
a municipal corporation

By: _____

Name: Marc Roberts

Title: City Manager

APPROVED AS TO FORM

By: _____

Exhibit A – Property Description – Hotel Parcel
Exhibit B – Parking Parcel Description

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

LEGAL DESCRIPTION HOTEL PARCEL

PARCEL A & SUBSURFACE PARCEL C – PARCEL MAP 9999

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL A AND SUBSURFACE PARCEL C, OF PARCEL MAP NO. 9999, RECORDED
October 3, 2018, IN BOOK 340 OF MAPS AT PAGES 86-89, ALAMEDA COUNTY RECORDS.

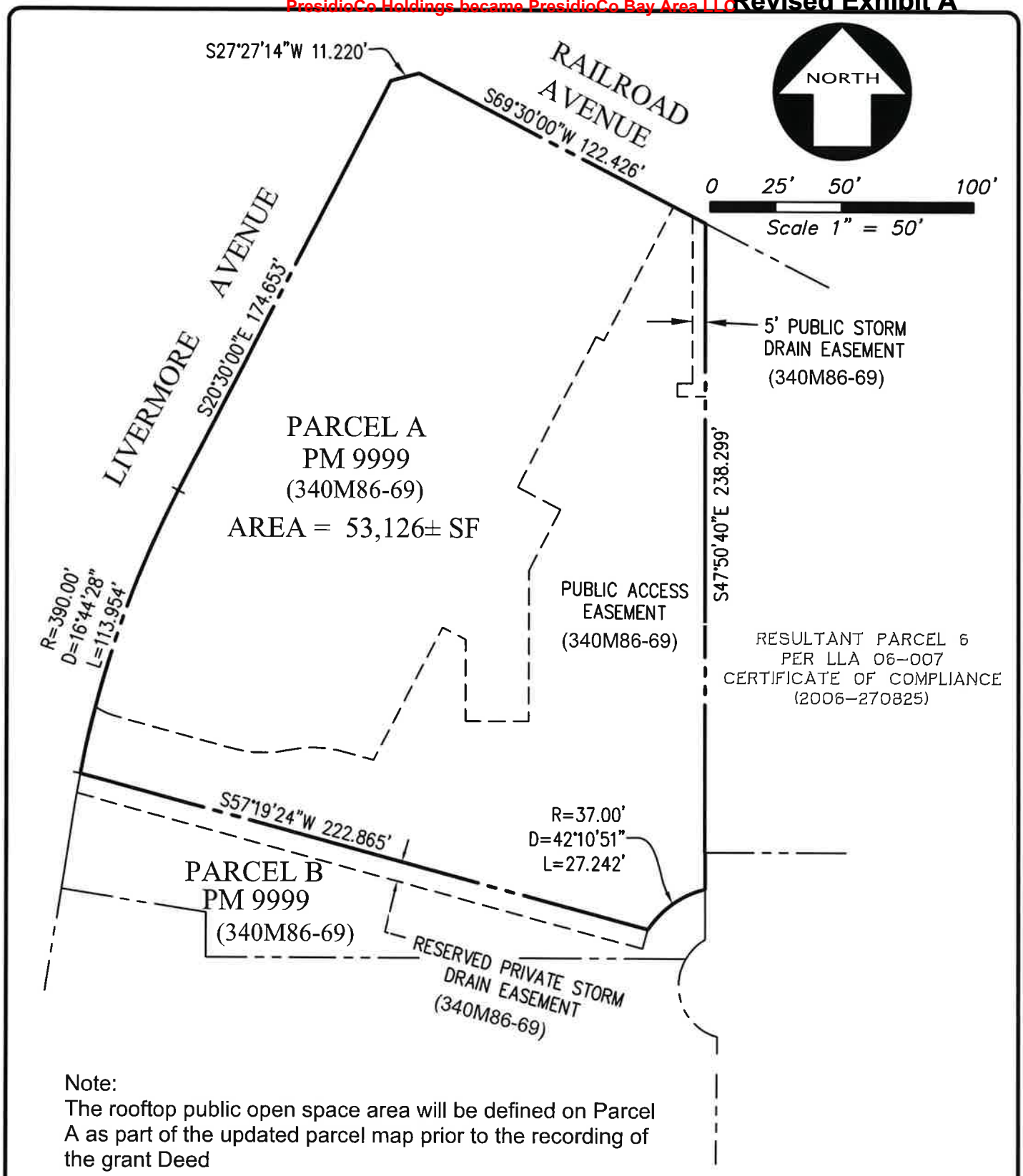
PARCEL A CONTAINING 53,126 SQUARE FEET OF LAND MORE OR LESS

SUBSURFACE PARCEL C CONTAINING 50,963 SQUARE FEET OF LAND MORE OR LESS

EXHIBIT A SHEET 1 OF 3

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

Revised Exhibit A



Note:
The rooftop public open space area will be defined on Parcel A as part of the updated parcel map prior to the recording of the grant Deed

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
www.kierwright.com
Phone (925) 245-8788
Fax (925) 245-8796

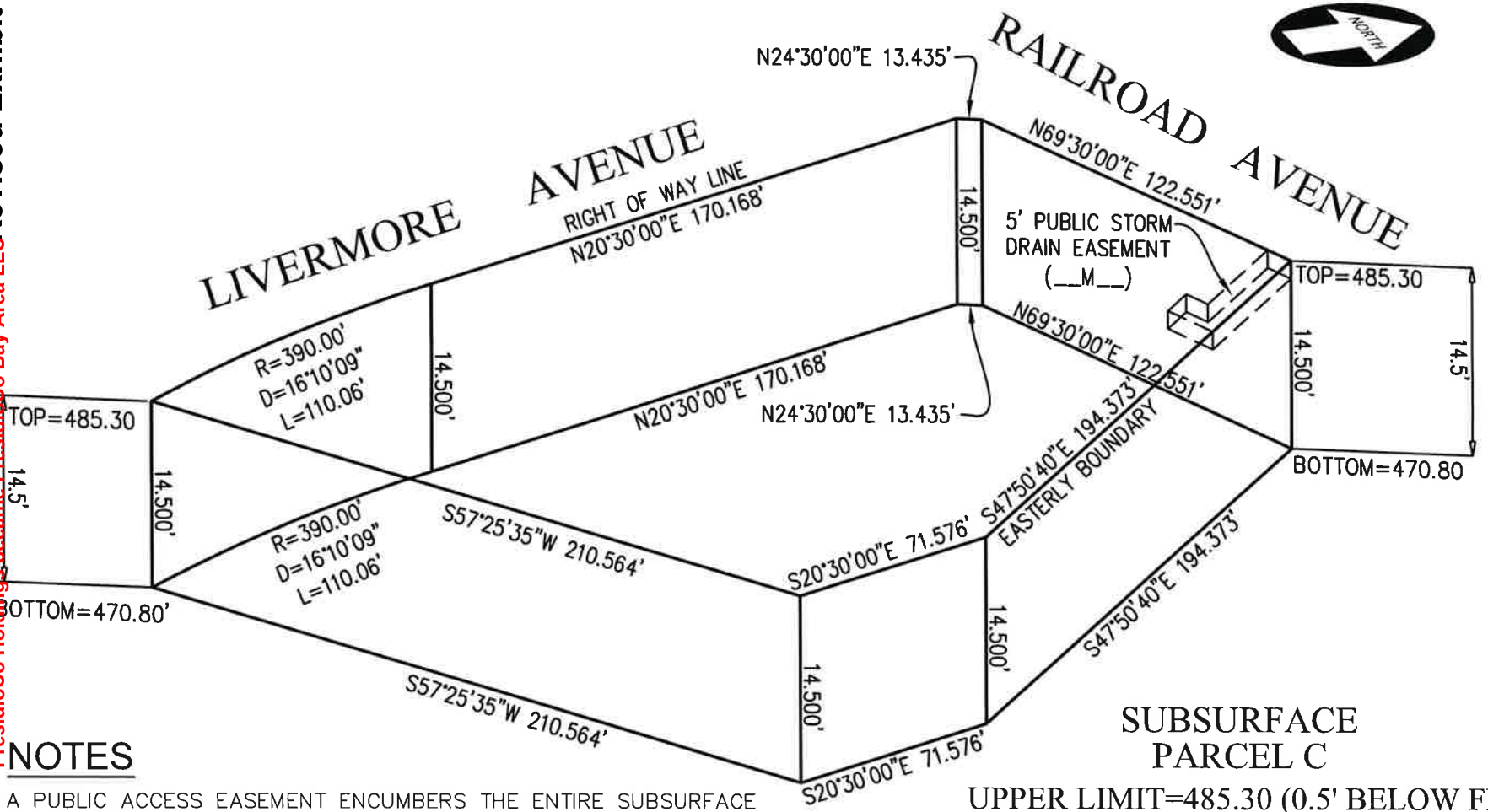
PLAT - PARCEL A
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	1" = 50'
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 2 OF 3

Revised Exhibit A

NOTE: The only change in the document is: PresidioCo Holdings became PresidioCo Bay Area LLC



NOTES

A PUBLIC ACCESS EASEMENT ENCUMBERS THE ENTIRE SUBSURFACE PARCEL C.

PARCEL A ENCOMPASSES ALL SIDES OF SUBSURFACE PARCEL C AND ABUTS PARCEL B, LIVERMORE AVENUE, RAILROAD AVENUE AND RESULTANT PARCEL 6. SEE SHEET 2 OF PARCEL MAP 9999.

SUBSURFACE PARCEL C

UPPER LIMIT=485.30 (0.5' BELOW FF)
LOWER LIMIT=470.80 (16.5' BELOW FF)
50,963± SF.
(1.1700± AC.)

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PLAT - SUBSURFACE PARCEL C
PARCEL MAP 9999
LIVERMORE, CALIFORNIA

DATE	AUG 2018
SCALE	NOT TO SCALE
BY	RJH
JOB NO.	A18527
SHEET	1 OF 1

EXHIBIT A SHEET 3 OF 3

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

EXHIBIT B

Parking Parcel Description
(Legal Description of Parking Parcel to be provided by Developer upon purchase of property)

DESCRIPTION OF PUBLIC IMPROVEMENTS

A. South Livermore Avenue Roadway Modifications

The Livermore Avenue roadway modifications are to create a dual drop-off zone in front of the proposed Hotel lobby. The drop-off zone will consist of a minimum eight (8) foot wide sidewalk in front of the lobby, a nine (9) foot wide drop-off lane adjacent to the sidewalk, an eight (8) foot wide drop-off lane, and a two (2) foot wide striped buffer separating the travel lanes from the drop-off lanes. The curb gutter along the east side of Livermore Avenue shall be realigned to reroute the existing two northbound travel lanes around the drop-off lanes and then align back with the existing lane configuration at the intersection of Livermore Avenue and Railroad Avenue signalized intersection. The two northbound travel lanes shall be twelve (12) feet wide south of the drop-off area then be reduced to eleven (11) feet wide travel lanes across the frontage of the drop-off area and then widen as necessary to conform with the existing travel lanes at the intersection. The existing northbound left-turn pocket at the intersection of Livermore Avenue and Railroad Avenue shall be modified such that the left-turn pocket shall be a minimum length of one hundred thirty (130) linear feet with a minimum sixty (60) foot taper as follows:

1. Remove the existing median in Livermore Avenue and salvage the existing pavestones.

2. Remove the existing curb, gutter, sidewalk, and street trees along the east side of Livermore Avenue from the southeast corner of the Livermore Avenue/Railroad intersection to the existing crosswalk near the southern boundary of the Hotel.

3. Remove the existing paving within Livermore Avenue to install a new raised median.

In addition, a solar-powered pedestrian flashing beacon shall be installed at the existing crosswalk just south of the hotel parcel exit driveway. Cost-sharing for these improvements shall be per the provisions of the DDLA.

B. Railroad Avenue

New Railroad Avenue frontage improvements shall be constructed by the City as part of City Project 202116 widening of Railroad Avenue. The developer shall remove and replace any damaged frontage improvements as a result of constructing the Hotel Improvements. The Developer shall install storm drain improvements as required to meet on-site hotel and on-site public roadway stormwater requirements. The developer shall slurry seal and restripe Railroad Avenue from Livermore Avenue to fifty (50) feet beyond the eastern boundary of this project from the median to the gutter along the Hotel frontage due to utility cuts in the street.

C. On-Site Public Roadway

The following improvements and public improvements shall be designed and constructed by the Developer as part of the on-site public roadway:

1. Public roadway from Railroad Avenue to Livermore Avenue routing around the east side of the Hotel varying in width from twelve (12) feet to fourteen (14) feet in width.

2. Seven (7) ADA parking spaces along the eastern boundary of the proposed Hotel Development.

3. An eight (8) foot wide loading zone at the courtyard of the proposed Hotel development.

4. A ten (10) foot wide loading zone along the southern boundary of the Hotel Parcel to serve the Hotel and the existing commercial businesses that front First Street.

5. A five (5) foot wide sidewalk from the Bankhead Theater plaza area to Railroad Avenue along the eastern boundary of the proposed Hotel. The sidewalk shall be flush to grade from the southeast corner of the Hotel the full length of the ADA parking spaces then ramp up to a standard walkway with a 6" curb up to the driveway entry at Railroad Avenue.

6. New curb and gutter along the eastern and western boundaries of the on-site roadway improvements.

7. Bio-retention swale located along the northeast portion of the roadway improvements and new 12" storm drain piping from the bio-retention swale to an existing drop inlet located at the southeast corner of the intersection of Railroad Avenue and Livermore Avenue.

8. New landscaping shall be installed along the eastern boundary of the hotel parcel from the northern point of the ADA parking up to the northeast corner of the hotel parcel. The landscape shall be designed to screen a portion of the adjacent Bankhead Theater and serve as a bio-treatment device to treat the stormwater runoff from the new public roadway.

9. Bio-retention planters located on the adjacent City property (Parcel B, Parcel Map 9999) along the southern portion of the 10-foot-wide loading zone and new 12" storm drain piping from the bio-retention planters to an existing storm drain maintenance hole located at the roadway exit driveway on Livermore Avenue.

10. New street-level driveway approach with ADA ramps on Railroad Avenue at the northeast corner of the Hotel.

11. New street-level driveway approach with ADA ramps on Livermore Avenue at the southwest corner of the Hotel.

D. Landscape on City Parcel B, Parcel Map 9999

The Developer shall design and construct new landscaping in City Parcel B of Parcel Map 9999 adjacent to and along the southern boundary of the hotel parcel. The landscape at the southern boundary of the hotel parcel shall be bio-treatment devices designed to treat a portion of the public roadway and loading zone along the southern boundary of the Hotel Parcel. Additional landscape improvements shall be installed in the area where the existing trash compactor will be removed after the new Joint Solid Waste Facility is installed. Landscape in this area shall match the existing landscape and be irrigated from the existing irrigation system serving the City parcel.

E. Joint Solid Waste Facility

The Developer shall design and construct a Joint Solid Waste Facility in close proximity to the Hotel sized to serve the solid waste produced including but not limited to garbage, organics, and recyclable services by the Hotel, Bankhead Theater, First Street Mixed-Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema. The Joint Solid Waste Facility will replace the temporary facility located south of the Hotel and north of the First Street Mixed-Use Commercial Project (West). The Developer shall maintain access to the temporary solid waste facility during the construction of the Project until such time as the Joint Solid Waste Facility is completed and operational. Once the Joint Solid Waste Facility is operational, the Developer shall remove the temporary solid waste facility and install new landscape and irrigation connected to the City's irrigation system at the location of the former temporary solid waste facility.

PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT is entered into by and between 2205 Railroad Avenue LLC, a Delaware limited liability company ("Developer"), and the City of Livermore, a municipal corporation ("City").

RECITALS

A. The Developer and City are parties to that certain Amended and Restated Disposition and Development Agreement dated XXXXXXXX, 2021, and recorded on XXXXX, 2021, in the official records of Alameda County California as instrument number XXXXXXXXXX (the "DDLA").

B. The Public Improvements as defined in the DDLA have not yet been completed according to the requirements of the DDLA. The City and Developer desire to establish an agreement binding the Developer to complete the Public Improvements no later than 2 years after the date this Agreement is executed.

AGREEMENT

NOW, THEREFORE, the City and Developer hereby agree that the aforementioned recitals are true and correct, and further agree as follows:

1. Performance of Improvements. The Developer shall perform all work as specified in Exhibit "A", attached, and incorporated herein by this reference, in strict accordance with all specifications, plans, applicable City standards, and to the satisfaction of the City Engineer. The work shall be performed, and all materials and labor shall be provided, at the Developer's sole cost and expense subject to the reimbursement provisions set forth in the DDLA. The Developer has provided detailed improvement plans, for all public improvements depicted in Exhibit "A". All required public improvements shall be constructed in accordance with the approved improvement plans (dated , sheets), and current City standard specifications and details, all of which are on file in the office of the City Engineer.

2. Special Conditions. The Developer shall be required to comply with the special conditions as follows: There are no special conditions.

3. Time for Completion. All required public improvements shall be complete and ready for acceptance by City Council as determined by the City no later than 2 years after the execution of this Agreement.

4. Permits, Licenses, and Compliance with the Law. The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the work specified in this Agreement. The Developer shall also comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

EXHIBIT M

5. Acceptance by City. The City shall accept for maintenance the public improvements required by this Agreement after City has determined the Developer has caused all public improvements to have been made in accordance with the requirements of Paragraph 1 above. All public improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

6. Continued Maintenance For One Year. The Developer shall maintain all public improvements required by this Agreement for one year following the completion by the Developer, and acceptance of the public improvements by City Council. All public improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

7. Inspection by City. All work done by the Developer shall be inspected by an inspector employed by the City at the cost and expense of the Developer. The Developer shall pay the City, on-demand, the cost of the inspection in accordance with City ordinances. In order to permit the City to inspect the work, the Developer shall provide to the City proper and safe access to the project site at all times, and all portions of the work, and to all shops wherein portions of the work are in preparation.

8. Payment of Outstanding Fees. Prior to acceptance of the public improvements for permanent maintenance by the City, the Developer shall pay all outstanding fees that are due in accordance with City ordinances or this Agreement. In the event the fees are not paid within one year of the date of execution of this Agreement, the Developer shall pay interest at seven percent (7%) per annum from that date until the fees are paid, whether or not any conditions of this Agreement are extended or modified.

9. Reimbursement by City. The City shall reimburse the Developer for its costs for the Public Improvements in accordance with the reimbursement provisions set forth in the Development Agreement.

10. Bonds Required. The Developer shall provide to the City surety bonds of a form satisfactory to the City Attorney issued by a company authorized to issue surety bonds in the State of California as follows:

(a) At the time of signing this Agreement, the following bonds shall be provided:

i. Faithful Performance – in the amount of 100 percent (100%) of the total estimated construction costs, or $__TBD__, to secure faithful performance of this Agreement by the Developer.

ii. Labor and Materials – in the amount of fifty percent (50%) of the estimated construction costs, or $__TBD__, to secure payment by the Developer of laborers and material engaged pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

EXHIBIT M

(b) At the time of signing this Agreement, or before the City accepts the public improvements, the Developer shall also provide a Warranty Bond for maintenance in the amount of fifteen percent (15%) of the cost of the public improvements, or $__TBD__, to secure performance of Sections 1 and 6 above. This bond shall remain in effect for one (1) year after the date of acceptance by the City Council of the public improvements required by this Agreement.

11. Alternate Security. In lieu of the bonds required by Paragraph 10 above, alternative security in the form outlined by City ordinance, compliant with the Government Code, and approved by the City Attorney may be provided.

12. Reporting Damages. If any damage (including personal injury, death, or property damage) occurs in connection with the performance of this Agreement, the Developer shall immediately notify the City Risk Manager's office by telephone at (925) 960-4172, and Developer shall promptly submit to the City's Risk Manager a written report, in a form acceptable to the City, with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property, if any), (b) the name(s) and address(es) of witnesses, and (c) the name(s) and address(es) of any potential insurance companies.

13. Indemnification. The Developer shall indemnify, defend, and hold the City, its officers, officials, employees, agents, and volunteers harmless against any and all claims, injuries, damages, losses, and suits, including attorney's fees and legal costs, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused solely by the negligence of the City.

14. Insurance Required. The Developer shall procure and maintain insurance for the duration of the contract in the amounts and under the terms set forth in Exhibit "B" against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Developer, its agents, representatives, employees, or subcontractors.

15. Attorney's Fees to Prevailing Party. If any action at law or in equity, including an action for declaratory relief, is brought to challenge, enforce, or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, expert witness fees, and costs, in addition to any other relief to which they may be entitled.

16. Agreement Binds Successors. This Agreement pertains to and runs with the land benefited by the privileges it grants and binds the successors in interest of the parties to this Agreement.

17. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and

effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

18. Modifications. This Agreement may not be modified unless by written instrument signed by both parties.

19. Governing Law. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

****

Signatures and Attachment List on the Following Page

DATE:

DEVELOPER:

2205 RAILROAD AVENUE LLC,
a Delaware limited liability company

By:PresidioCo Bay Area LLC,
a Delaware limited liability company,
Its: Manager

By: _____

Name: _____

Title: _____

Mailing Address:
2205 Railroad Avenue
262 Glorietta Boulevard
Orinda, CA 94563
Attn: Rikesh Patel

(ALL SIGNATURES MUST BE NOTARIZED)

DATE:

CITY OF LIVERMORE,
a municipal corporation

By: _____

Name: Marc Roberts

Title: City Manager

ATTEST:

(SEAL)

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Assistant/City Attorney

Attachments:
Exhibit A – Engineering Considerations
Exhibit B -- Insurance Requirements

EXHIBIT M

NOTE: The only change in the document is:
PresidioCo Holdings became PresidioCo Bay Area LLC

DDLA Schedule of Performance

	Pre-Escrow Requirements	Due Date
1	Pre-submittal meeting between City and Developer for entitlements	20-Dec-21
2	Developer submittal of entitlement package	4-Jan-22
3	Developer submittal of complete entitlement package in response to City comments	24-Jan-22
4	Developer submittal Phase 1 for Parking Parcel lot prior to close of escrow	27-Jan-22
5	Developer completes purchase of Parking Parcel property	15-Feb-22
6	Preliminary pro-forma submitted by Developer to City	28-Feb-22
7	Developer Submittal of Draft Hotel Standard Proposal	28-Mar-22
8	City Council review of entitlement package (date subject to on-time submittal of complete entitlement package)	11-Apr-22
9	City approval of parcel map waiver (staff level - subject to on-time submittal of complete entitlement package)	11-Apr-22
10	Developer and the City have entered into a Lease and Operating Agreement for the Hotel and Parking Parcels	11-Apr-22
11	City records parcel map for Hotel Parcel	22-Apr-22
12	Close of Escrow and final transfer of property to Developer	29-Apr-22
13	Joint Compactor/Solid Waste Facility Agreement signed by all applicable parties	30-Jun-23
14	Developer Submittal of Final Hotel Standard Proposal	3-Jul-23
15	City response to final Hotel Standard Proposal (date subject to on-time submittal of Final Hotel Standard Proposal in Item 14 above)	30-Nov-23
16	Building permit submittal by Developer including Hotel, Parking Parcel, Joint Solid Waste Facility and all public improvements	18-Aug-23
17	Final submittal of Final Hotel Standards Proposal in response to City comments	12-Jan-24
18	City approval of Final Hotel Standards Proposal, with conditions as needed (date subject to on-time submittal of Item 17 above)	2-Feb-24
19	Submittal of improvement agreement, bonds, and final off-site improvement plans	4-Mar-24
20	Developer submittal of letters of intent from lenders/equity partners demonstrating full financing needed to construct	15-Feb-24
21	Council approval of improvement agreement and public improvements (subject to on-time submittal of Item 18 above)	13-May-24
22	Developer has obtained Building Permit approval by City for Hotel, Parking Parcel and Joint Solid Waste Facility	31-May-24
23	Start of construction of Joint Solid Waste facility and Hotel (Outside Date)	30-Jun-24
24	Start of construction of Parking Parcel improvements	30-Jan-25
25	Construction of Hotel and all public improvements, and Parking Parcel complete	15-Nov-25
26	Hotel opens and lump sum payment due for loan + interest on Parking Parcel and final payment due for the Hotel Property purchase	31-Dec-25

EXHIBIT N

Scope of Development

The Scope of Development provides the baseline standards from which the Developer shall prepare plans for the project. The final construction drawings shall be consistent with the scope established here, subject to any changes approved by the City Council as part of the Downtown Design Review Entitlements.

Scope of Development:

The project shall include the design and construction of a four-story 125-135-room hotel with an approximately 3,300 square foot bar/lounge, 1,500-2,000 square foot meeting space, 3,500 square foot rooftop deck open to the public consistent with DDLA Exhibit Q, fitness center, outdoor pool, an open courtyard and patio, and related amenities. The design of the project, including the off-site valet parking lot, shall meet the requirements of the City's Downtown Specific Plan in effect at the time of project entitlement. The hotel shall be designed as an upscale or upper-upscale hotel, under the STR, Inc. Chain Scales Rating system or similar industry-recognized rating system as more particularly described in DDLA Exhibit E (Hotel Standards). The hotel shall be designed and appointed with a quality that meets or exceeds the following hotel types, as they exist at the time of the execution of this agreement: Marriot AC, Marriot Autograph Collection, Hilton Canopy, and the Curio Collection by Hilton.

The design of the hotel exterior shall meet or exceed the quality of the hotel project approved on the project site on September 10, 2018, via Council Resolution No. 2018-155. Interior and exterior materials, workmanship, fixtures, features, and amenities shall be durable and of high quality and further the project's position as a preeminent downtown destination.

The project shall also include off-site valet parking at 2080 Railroad Avenue, consistent with DDLA Exhibit J (Parking Parcel) or other similar off-site valet parking lot if approved by the City Council, consistent with the terms of the DDLA. In addition to valet parking service, the project shall meet its accessible parking requirement on the project site.

The project shall also construct and manage a private Joint Solid Waste Facility for the Livermore Valley Center, per DDLA Exhibit F (Joint Solid Waste Facility Agreement Material Terms) which shall be consistent in design with the surrounding uses and the requirements of the City's Downtown Specific Plan. The project shall also demolish the existing temporary solid waste compactor facility, once the new facility is operational, and provide for replacement landscaping on adjoining City property.

EXHIBIT O

TEMPORARY PARKING LEASE AGREEMENT
(Hotel Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, is made and entered into by and between 2205 Railroad Avenue LLC, a Delaware Limited Liability Company ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. Lessor desires to construct a four story approximately 65,000-75,000 square foot hotel, containing between 125-135 hotel rooms on two City-owned parcels (APNs: 098-0407-031-00 and 098-0407-033-00) located on the southeast corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (hereinafter "Hotel Parcel").

B. On_____, the City and Lessor entered into a Disposition, Development and Loan Agreement (the "DDLA") wherein the City agreed to sell the Hotel Parcel to Lessor for $71,521. Prior to the close of escrow, the City was using a portion of the Hotel Parcel as a temporary paved surface public parking lot. Upon sale of the Hotel Parcel to Lessor, Lessor has agreed to lease a portion the Hotel Parcel to City at no cost for use as a temporary paved surface public parking lot until the commencement of construction on the Hotel Parcel.

C. As part of the Disposition, Development and Loan Agreement, the City made a loan to Developer to fund the acquisition of a piece of real property located at 2080 Railroad Avenue in Livermore in order to use the property as a valet parking lot to satisfy a portion of the City's parking requirements for the Hotel ("Parking Parcel").

D. Prior to commencement of construction of the Hotel, City desires to lease from Lessor and Lessor desires to lease a portion of the Hotel Parcel (hereinafter "Hotel Parcel" or "Leased Premises") as more particularly shown on Exhibit A attached hereto and incorporated herein. The Leased Premises is approximately 41,500 square feet of a paved surface public parking lot.

E. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. <u>Leased Premises</u>. Lessor leases to City and City leases from Lessor, the Leased Premises which consists of approximately 41,500 square feet of a paved surface public parking lot, as indicated on Exhibit A.

2. **Possession; Delay in Delivery of Possession.**

(a) Except as otherwise provided in this Lease Agreement, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Hotel Parcel and/or the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the commencement date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. **Rent.** As a condition of the sale of the Hotel Parcel from City to Lessor, Lessor agrees to lease the Leased Premises to the City at no cost for use as a temporary paved surface public parking lot. This no cost lease was incorporated into the sales price for the Hotel Parcel through the DDLA. City shall be responsible for all costs associated with the maintenance of the Leased Premises as set forth in Section 7 of this Lease Agreement.

4. **Term.** This Lease Agreement shall commence on [date], 2022 ("Commencement Date") and terminate on the date when Lessor commences construction of the Hotel. Lessor shall provide City with 30 days written notice prior to the date that construction of the Hotel will commence. This Lease Agreement shall supersede and replace any other lease agreement between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Hotel Parcel

5. **Solid Waste Disposal and Collection**. In accordance with the DDLA, Lessor is required to design, construct, and own a Joint Solid Waste Facility that will provide garbage, organics, and recyclable services for the Hotel, Bankhead Theater, First Street Mixed Use Commercial Projects (East and West), Livermore Valley Center Plaza, and the Livermore Cinema. The Joint Solid Waste Facility shall replace the temporary solid waste facility located south of the Hotel Parcel and north of the First Street Mixed-Use Commercial Project (West). Lessor shall maintain sufficient truck access to allow solid waste collection at the existing temporary solid waste facility until such time when the Joint Solid Waste Facility is constructed and operational. At the time Lessor provides City written notice of the date construction of the Hotel will commence, Lessor shall identify how solid waste collection access will be maintained if the Joint Solid Waste Facility is not yet operational.

6. **City's Use of Leased Premises.**

(a) **Use of Leased Premises.** City shall only use the Leased Premises for the purpose of a temporary paved surface public parking lot and for trash collection at the temporary solid waste facility located south of the Hotel Parcel.

(b) **Rules Regarding Use.** City shall observe and comply with the rules and regulations annexed to this Lease Agreement and, after notice of these rules, City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Hotel Parcel or Leased Premises.

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) **Hazardous Materials.** City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Hotel Parcel or Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Leased Premises, of any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

7. City Obligations.

(a) Services and Utilities. City shall provide basic electricity and power for the Leased Premises.

(b) Maintenance. Except as otherwise provided herein, City shall at its own cost and expense, maintain the Leased Premises, and every part thereof, in good and sanitary order, condition, and repair. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

8. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary, surface public parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

9. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Hotel Parcel, and City will keep the Leased Premises free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Leased Premises, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event that Lessor provides City with the required written consent, City shall at its own cost comply with any and all Federal, State, or local laws

and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

10. Destruction. If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood, earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

11. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, paved surface public parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

12. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for a temporary surface public parking lot . City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for improvements, construction and/or repair work outside of the Lessor's obligations.

13. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Hotel Parcel or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

14. Taxes. Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Hotel Parcel, improvements located on the Hotel Parcel, personal property located on or in the Hotel Parcel or improvements, and the leasehold interest created by this Lease Agreement.

15. Lessor Refinancing. City is aware that Lessor is leasing its interest in the Leased Premises to City and that Lessor's leasehold interest in the Leased Premises is related to an outstanding lease financing. City agrees that it will use best efforts to cooperate with Lessor in connection with a refinancing of the outstanding lease financing, including executing any estoppel, consent, and other similar documents requested by the Lessor.

16. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

17. Insurance. For the duration of this Lease Agreement, City shall procure and maintain, at its own cost, insurance in the amounts and under the terms set forth in Exhibit B attached hereto against claims for injuries to persons or damages to property which may arise from or in connection with this Lease Agreement.

18. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Hotel Parcel or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Hotel Parcel and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

19. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

20. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

21. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement.

22. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations, improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

23. Entry by Lessor. City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; and (x) responding to an emergency.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry

into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement.

24. Notices. Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

Lessor: 2205 Railroad Avenue LLC
A Delaware limited liability company

Attn:
262 Glorietta Boulevard
Orinda, California, 94563

25. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

26. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

27. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) **California Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) **Review of Lease.** Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) **Performance Excused.** The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) **Mutual Termination.** This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) **Headings.** The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) **Waiver.** A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) **Attachments.** All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) **Attorney's Fees and Costs.** If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

************Signatures and Attachment List On Next Page************

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

2205 Railroad Avenue LLC
A Delaware limited liability company

By: PresidioCo Bay Area LLC
A Delaware limited liability company
its manager

Lessor
By: _____ Dated: _____
[Signer's Name]
[Signer's Title]

City or Lessee

City of Livermore
A Municipal Corporation

By: _____ Dated: _____
Marc Roberts
City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

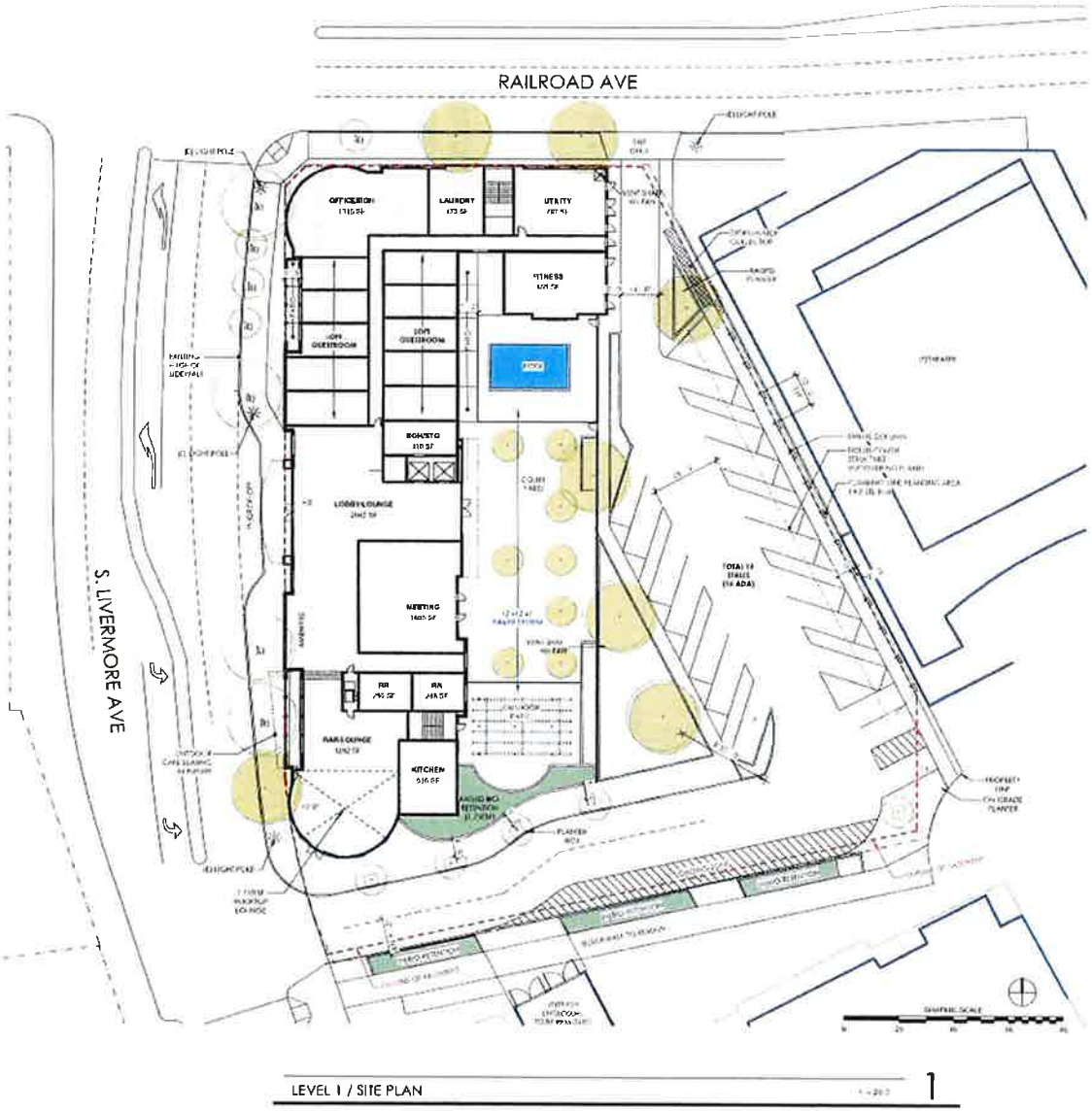
Attachments:
Exhibit A – Real Property Site Plan – Hotel Parcel
Exhibit B – Insurance Requirements

Item 6.1

Revised Exhibit A

NOTE: The only change in the document is:
PresidioCo Holdings became Presidio Property Area LLC

EXHIBIT A
REAL PROPERTY SITE PLAN - HOTEL PARCEL



AREA SUMMARY

LEVEL	PROGRAM	AREA (APPROX.)	AREA (APPROX.)	ROOM COUNT	STALL COUNT	NOTES
LEVEL 2	GUEST ROOMS					
LEVEL 3	GUEST ROOMS					
LEVEL 4	GUEST ROOMS					
TOTAL					120	

HRGA ARCHITECTURE

presidiocompanies

LIVERMORE HOTEL

12/16/2021

4

Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

Terms and Conditions of Deed Restriction to Grant Deed

The following are requirements and restrictions to the Grant Deed for APN 098-0407-031-00 & 098-0407-033-00 (Hotel Parcel):

2205 Railroad Avenue LLC (Grantor) shall hereby grant to the City of Livermore, a municipal corporation (Grantee), public access and use to over and on rooftop public open space on the roof of the hotel. This open space is required to comply with the following:

1. The rooftop public open space area shall be comprised of a minimum 3,500 square foot publicly accessible area on the roof on the southern side of the building and provide seating for a minimum of 15 people.

2. The rooftop public open space area shall be accessible by elevator, provide lighting for safety purposes, and meet all State and Federal accessibility standards in effect at the time of construction.

3. The rooftop public open space shall be available for public use at least 6 days each week from 11 a.m. to 8 p.m. In addition, public use of the rooftop public open space shall be available each year from 9:00 a.m. to 10:00 p.m. on the Fourth of July, from 9:00 am to 9:00 pm for the Downtown Winter Holiday Parade event and the Downtown Rodeo Parade, and from 11 a.m. to 8 p.m. on all other federal holidays.

4. Rooftop public open space access routes and hours of operation shall be posted in the hotel lobby and on the hotel website.

5. Any closures of the rooftop public open space for private activities shall be posted in the lobby and on the hotel website a minimum of 24 hours in advance.

6. Hotelier shall maintain a log of closures for private events to demonstrate compliance with the open hour requirements.

7. The rooftop public open space area may also include amenities such as tables, umbrellas, shade structures, planting, and other similar amenities.

8. The hotel may also provide additional components or structures on the rooftop area, such as a kitchen or warming kitchen, bar, restrooms, and related structures. The square footage required for these components shall be in addition to the minimum 3,500 square foot area required for public open space.

EXHIBIT Q

LIVERMORE
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Downtown Hotel

Disposition, Development and Loan Agreement

City Council

January 10, 2022

1

Project Site

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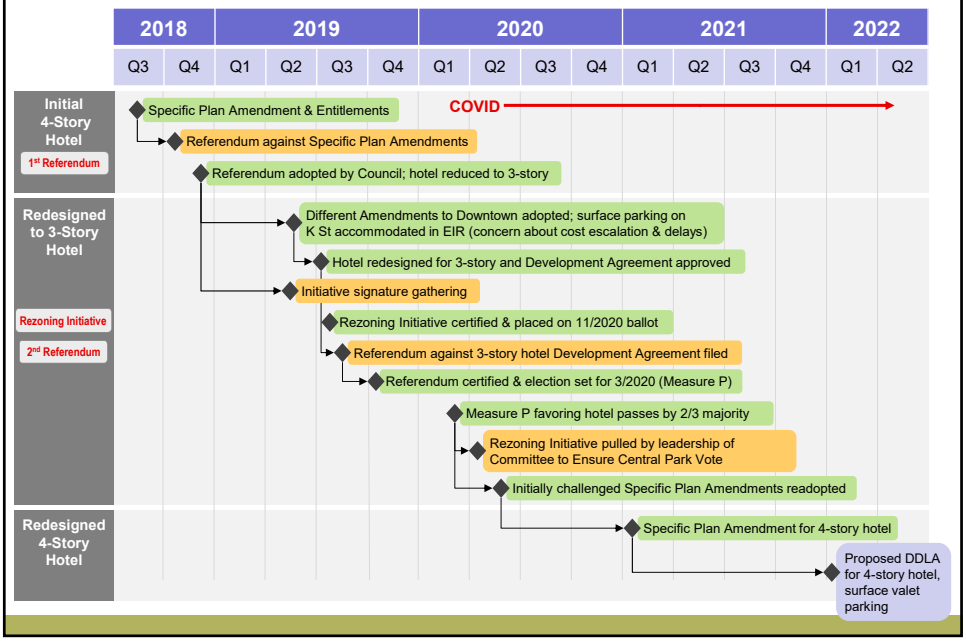
2

Background



3

Disposition, Development & Loan Agreement

- The City will sell the property to Presidio at a price of $71,521.
- Presidio will develop an upscale hotel with between 125-135 rooms.
- Amenities include an approximately 3,300 square foot bar/lounge, 1,500-2,000 square foot meeting space, rooftop deck, fitness center, outdoor pool, and an open courtyard and patio.

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4

Disposition, Development & Loan Agreement

The DDLA terms require Presidio to:

- Participate in a Community Facility Maintenance District for Downtown Improvements (CFMD) to help fund Stockmen's Park maintenance
- Construct, operate, and manage a solid waste facility that will serve the Livermore Valley Center (Bankhead Theater and Plaza, First Street & Railroad Mixed Use Projects, and Livermore Cinema)
- Construct a public roadway and parking spaces on the hotel site, including public ADA accessible spaces
- Grant public access to the rooftop deck
- Lease the hotel site for public parking until the hotel commences construction

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5

K Street Parking

- The City will provide a loan of $1,923,750 to Presidio for the purchase of the parking parcel.
- The loan is at 3.5% interest rate
- The interest rate reflects an agreement to lease this parcel back to the City for use as overflow parking during L Street Garage construction.

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6

Next Steps

March 2022	Planning Commission reviews hotel design
April 2022	City Council reviews hotel design

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7

Recommendation

Staff recommends the City Council adopt two resolutions and direct the following:

1. Declaring that Parcel A and Subsurface Parcel C of Parcel Map 9999 are exempt surplus land as defined in Government Code Section 54221; and
2. Finding the Disposition, Development and Loan Agreement is consistent with, and analyzed by, the addendums to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that were adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, the categorical exemption for infill development for the Downtown Hotel Term Sheet dated February 26, 2018, and the 2004 Downtown Specific Plan Environmental Impact Report, and authorizing the City Manager to execute the DDLA, including the $1,923,750 Predevelopment Loan, and all documents necessary to effectuate the actions described in the DDLA;
3. Authorizing the City Manager to execute on behalf of the City the Amended and Restated Disposition and Development and Loan Agreement; and
4. Supplemental appropriation of $1,923,750 from the General Fund to be directed to the Site Acquisition Loan described in the DDLA.

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8

Report from the Director of Emergency Services regarding the COVID-19 emergency

January 10, 2022

Presented by Marc Roberts, Director of Emergency Services

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1

Updates Since We Last Met

- COVID variants – Vaccination and getting boosted continue to provide the best protection against severe illness.
- Booster doses are now recommended for everyone 12 years and older.
- The CDC recommends that people ages 5+ years with moderately to severely weakened immune systems who received the Pfizer vaccine should get an additional dose of vaccine 28 days after their 2nd shot.
- Alameda County's local isolation and quarantine orders now align with the State's 5-day isolation and quarantine options.

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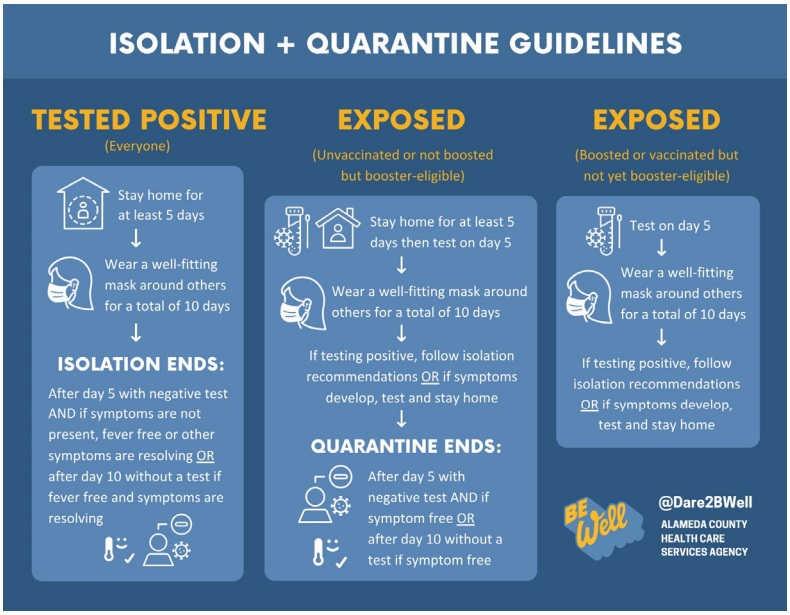
2



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3

Updates Since We Last Met

- Effective December 30, everyone must wear masks in all indoor settings, regardless of vaccination status. Alameda County's Health Officer rescinded a previous health order allowing fully vaccinated people to go unmasked in certain settings.
- The Statewide masking requirement is extended through February 15.
- With the increase in cases, City operations continue. We are in communication with the County and our local vaccination and testing providers.

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4

Local Testing Sites

- Alameda County free community testing sites
  - Pleasanton – Axis Community Health (5925 W. Las Positas Blvd.)
  - Pleasanton – Dublin/Pleasanton BART Station (5801 Owens Dr.)
- Stanford Health Care – ValleyCare Community Testing (1111 E. Stanley Blvd., Livermore)
- Las Positas College Parking Lot P operated by CityHealth Urgent Care (3000 Campus Hill Dr., Livermore)
- The County recommends that if you are unable to access a test and believe you have been exposed or have symptoms, you should stay home and follow isolation or quarantine instructions.

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5

Local Vaccine Clinics

- Upcoming Pfizer Youth Vaccination Clinic at May Nissen Community Center January 12 and February 2
  - Hosted by City, LVJUSD, LARPD and Axis Community Health
  - 1st/2nd doses for students ages 5-11
  - Youth booster doses for ages 12-17
- Standing Clinics:
  - Stanford Health Care – ValleyCare (1133 E. Stanley Blvd.)
    - Monday/Thursday/Saturday for ages 12+
    - Wednesday/Friday for ages 5-11
  - Local pharmacies (CVS, Walgreens, Safeway, Rite Aid, etc.)

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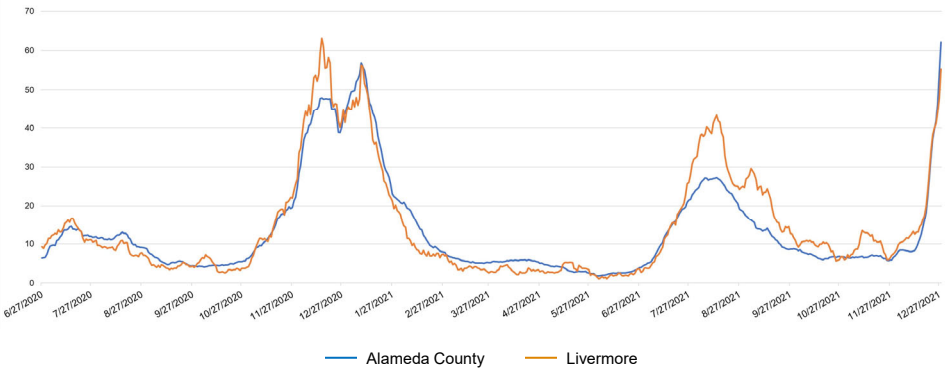
6

7-Day Rolling Avg of Daily New COVID-19 Cases per 100,000 Population

6/27/2020 to 12/28/2021



Note: sourced from the County's Data Sharing Initiative https://data.acgov.org/

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7

Livermore Vaccination Data

	Pop.	At Least One Dose	Fully Vaccinated	Fully Vaccinated with Booster Dose
Livermore	88,961	80.7%	75.0%	44.6%
Alameda County	1,648,969	86.3%	80.0%	48.0%

Note: sourced from the County's COVID data site https://covid-19.acgov.org/data

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8

Questions?

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9

Imagine LIVERMORE 2045

Draft Vision Statement and Guiding Principles

January 10, 2022

Presented by

Andy Ross, Senior Planner

Joanna Jansen, PlaceWorks

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1

Presentation Overview

1. What is a Vision Statement?
2. Overview of Development Process and Community Outreach
3. Visioning Themes
4. Feedback and Recommendations from Advisory Committee and Planning Commission
5. Draft Vision Statement and Guiding Principles

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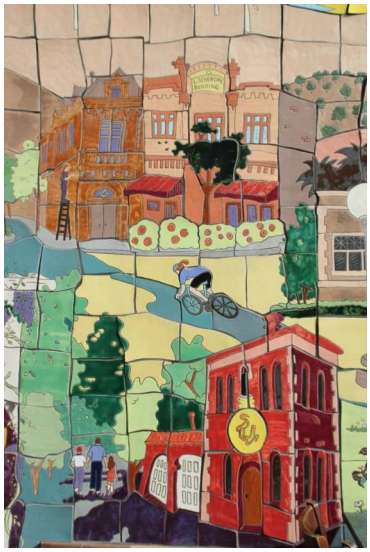
2

Project Components



- Vision Statement and Guiding Principles
- Existing Conditions Reports
- Land Use Alternatives
- Policy Development
- Housing Element
- Draft General Plan
- Environmental Impact Report (EIR)

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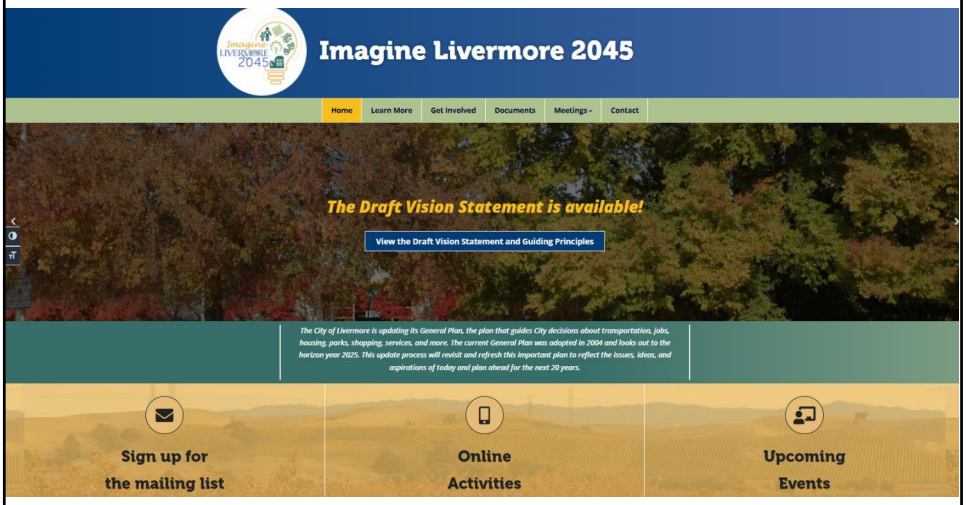
3

ImagineLivermore2045.org



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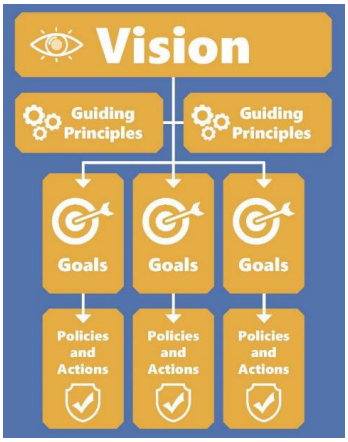
4

General Plan Vision and Guiding Principles



- Describe the future of Livermore as you would like it to be in 2045
- Express shared community values
- Relate to topics in the General Plan
- Guide preparation of General Plan content
- Guide how the General Plan will be realized
- Are unique to Livermore

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5

From Vision to Policy: Example

- **Vision Statement**
  "Livermore maintains a healthy local economy"
- **Goal** (desired outcome)
  Increased Local Jobs.
- **Policies and Actions** (directives to achieve the goal)
  New land use designations for commercial uses.
  Develop a program to attract new businesses to the Industrial Park.

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6

Vision Statement Process

1. Community Input – September to October
2. Draft Vision and Guiding Principles
3. GPAC Review – October 27
4. Planning Commission Review – November 16
5. City Council Direction – Tonight

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7

Visioning Outreach

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8

Visioning Outreach Activities

- **Six pop-ups**
  1. Thursday 9/9 – Farmers' Market
  2. Tuesday 9/14 – Marylin Avenue School Food Pantry
  3. Thursday, 9/30 – Farmers' Market
  4. Sunday, 10/10 – Rincon Library
  5. Thursday, 10/14 – Farmers' Market
  6. Saturday, 10/16 – Livermore Pridefest
- **Virtual Workshop – Thursday, 9/23**
- **Civic Center Library Outdoor Open House – Saturday, 9/25**
- **Online Activity –Thursday, 9/9 to Sunday, 10/3**
- **Communitywide Survey (randomly selected sample) – Thursday, 9/9 to Thursday, 9/30**

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9

How many did we engage with?

- Outreach events: 500 people
- Online participants: 80
- Community survey: 450
- Total= 1,030 people

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10

Outreach Materials and Questions

All outreach materials were bi-lingual:

- Business cards with project website
- Flyer advertising community events
- Flyer on the GPU process

Same 4 questions at September events:

- What do you like about Livermore?
- What is your vision for Livermore in 2045?
- What guiding principles should steer the General Plan?
- What key issues should the General Plan address?

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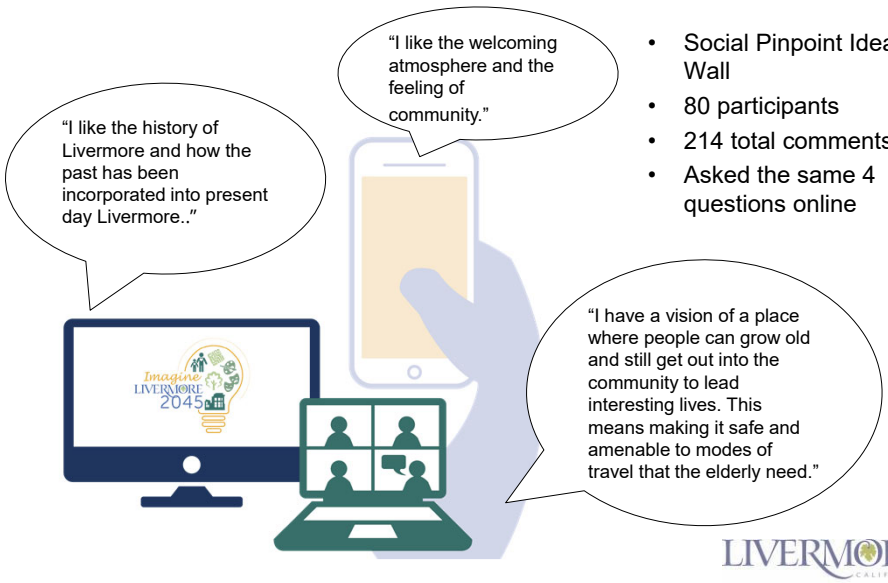
11

Online engagement



- Social Pinpoint Ideas Wall
- 80 participants
- 214 total comments
- Asked the same 4 questions online

LIVERMORE CALIFORNIA

12

Themes of Visioning Outreach

LIVERMORE CALIFORNIA

13

What do you like about Livermore?

- Small town
- Family friendly
- Welcoming
- Inclusive
- Diverse
- Community
- Safe
- Downtown
- Restaurants
- Wineries
- Library
- Schools
- Bankhead Theater
- National Laboratories
- Farmers' Market
- Parks
- Arts and Events
- Open space
- Greenbelt around the city
- Biking
- Walking/hiking

LIVERMORE CALIFORNIA

14

What is your vision for Livermore in 2045?

- Small town feel, family friendly
- Safe and healthy community
- Vibrant downtown
- Strong local economy, economic opportunity
- An accessible transportation system for pedestrians, bicyclists, and public transit
- Variety of affordable housing options
- Protected open space

LIVERMORE CALIFORNIA

15

What guiding principles should steer the General Plan?

- Diversity
- Inclusivity
- Equity
- Safety
- Prosperity
- Balance
- Sustainability
- Family friendly/ welcoming

LIVERMORE CALIFORNIA

16

What key issues should the General Plan address?

- Lack of affordable and diverse housing
- Crime
- Community health
- Climate change
- Managed growth
- Public services and infrastructure level of service
- Traffic/congestion
- Public transit system including BART to Livermore
- Parking
- Negative impacts to city from airport expansion
- Homelessness
- Rent control
- More high-density housing
- No four-story housing developments

LIVERMORE CALIFORNIA

17

Themes of GPAC Feedback

- Generally agreed the Draft Vision Statement and Guiding Principles captured the Livermore essence
- Use more aspirational terminology
- Add the concept of resiliency.
- Honor Native Americans

LIVERMORE CALIFORNIA

18

Themes of Planning Commission Recommendations

- Agree with GPAC feedback
- Vision Statement needs more emotional resonance
- Use aspirational language
- Include economic sustainability
- Integrate the concept of reliability, resiliency, and security of resources
- Include family-friendly wording
- Include attributes: sciences, arts, cultural amenities, jobs, and breweries
- Revise agricultural heritage to an active statement
- Incorporate biological diversity into open space preservation

LIVERMORE CALIFORNIA

19

Draft Vision and Guiding Principles

LIVERMORE CALIFORNIA

20

Draft Vision Statement

In 2045, Livermore is safe and welcoming for all. Residents and visitors enjoy a vibrant, active, clean downtown, complemented by commercial districts distributed throughout the city's various neighborhoods. Known for a healthy economy, Livermore supports a diverse variety of local jobs including those in science and technology, arts and trades, and agriculture. Livermore is recognized for its public art and cultural amenities, which are enjoyed by the local community and visitors alike. Individuals and families of all types and income levels find diverse housing choices close to shopping and entertainment, jobs, well-maintained parks, and exceptional schools.

LIVERMORE CALIFORNIA

21

Draft Vision Statement

Residents and visitors value clean energy, water, and air that contribute to Livermore's high quality of life. Everyone appreciates the availability of pleasant, convenient, zero-emission mobility and enjoys a variety of travel options. People walk and bike on paths, sidewalks, and trails for errands, to meet their daily needs, and for fun.

In 2045, Livermore is a unique community with a big heart where families and individuals flourish, and diverse people work together for the common good. Neighbors cultivate a connection to their city and to each other fostering a close-knit community where civic life and opportunity thrive.

LIVERMORE CALIFORNIA

22

Draft Guiding Principles

- **Balance.** We prioritize well-designed development and thoughtful preservation and collaborate to choose carefully among the tradeoffs inherent in progress.
- **Diversity.** We welcome and celebrate everyone, respect and listen to differing viewpoints, seek out the voices of those who have been underserved, and ensure everyone has a say in City decisions.
- **Equity.** We create opportunities to thrive in healthy homes and neighborhoods and connect people to the services they need.
- **Prosperity.** We take pride in our excellent, fiscally sound City services and infrastructure that support a growing population and an abundant, adaptable local economy where people come to work, shop, dine, and spend time at our parks and open spaces, wineries, breweries, and cultural venues.
- **Sustainability.** We protect open spaces for its scenic, watershed, biological and recreation value, integrate nature into the urban environment, minimize our negative impacts on the planet, and proactively reduce our greenhouse gas emissions. We use our financial resources productively and at a manageable rate.
- **Resiliency.** We plan ahead to adapt to a changing climate, manage resources wisely, and ensure the stability of our homes, businesses, energy, and infrastructure.
- **Integrity.** We recognize the Ohlone people as the original stewards of this area and honor small-town roots as we plan for future generations.

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23

Recommendation

The Planning Commission and staff recommend the City Council adopt a Resolution approving the General Plan Update – Draft Vision Statement and Guiding Principles.

LIVERMORE CALIFORNIA

24

LAVTA ZEB Transition Study

January 10, 2022

Steve Clermont, Director of Planning & Deployment
Savannah Gupton, Lead Managing Consultant
Niki Rinaldi El-Abd, Lead Associate

1

About CTE

WHO WE ARE
501(c)(3) nonprofit engineering and planning firm

OUR MISSION
Improve the health of our climate and communities by bringing people together to develop and commercialize clean, efficient, and sustainable transportation technologies

PORTFOLIO
$600+ million

- *Research, demonstration, deployment*
- *118 Active Projects totaling over $316 million*

OUR FOCUS
Zero-Emission Transportation Technologies

NATIONAL PRESENCE
Atlanta, Berkeley, Los Angeles, St. Paul

2

CTE Service Areas

Prototype Development & Demonstration
We support technology providers' cutting edge pilots.

Smart Deployment
We support early adopters with technical solutions.

Fleet Transition
We help fleet operators implement strategic plans.

Education & Outreach
We help organizations of all shapes and sizes stay ahead of the technology curve.

3

CARB Innovative Clean Transit Regulation

100% ZEB Fleet by 2040 is not a mandate, but a goal
There is only a *purchasing* mandate:

ZEB Purchase Requirements

Starting January 1	ZEB Percentage of Total New Bus Purchases
2026	25%
2027	25%
2028	25%
2029	100%

- Small CA Transit Agencies (<100 buses) are required to submit a board-approved ZEB Rollout Plan by **July 1, 2023.**

4

Battery Electric Buses & Fuel Cell Electric Buses

Battery Electric Buses (BEB)

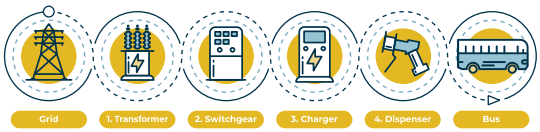
- May need to increase fleet size
- Fueling time longer than ICE* bus
- Fuel cost highly variable. Could be higher or lower than fossil fuels
- BEB bus cost approximately 50% higher than LAVTA diesel bus
- Infrastructure costs increases per bus when scaled up

*Internal Combustion Engine

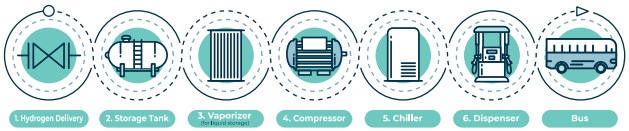
Fuel Cell Electric Buses (FCEB)

- Comparable range to ICE* bus – 1:1 replacement ratio
- Fueling time comparable to ICE bus
- Fuel cost moderately higher than fossil fuel
- Bus cost 70% higher than LAVTA diesel bus
- Infrastructure costs reduce per bus when scaled up
- Greater resilience
- Fewer entrants in market compared to BEB

BEB Fuel Delivery Pathway

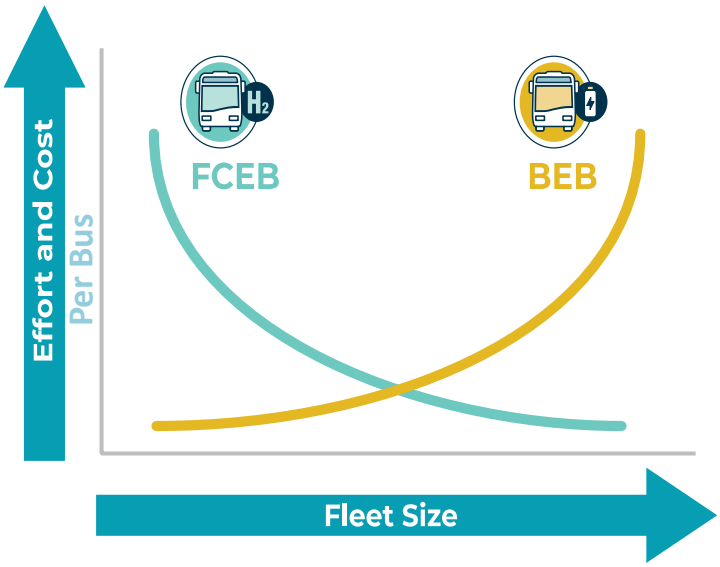


FCEB Fuel Delivery Pathway



5

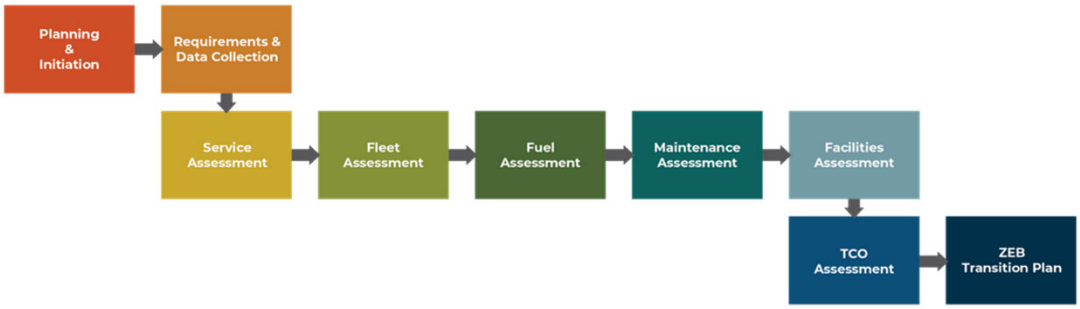
ZEB Infrastructure Scalability



- FCEB: High initial cost for H2 fueling stations can be leveraged over many buses in larger fleets
- BEB: More equipment and infrastructure is needed to support larger fleets

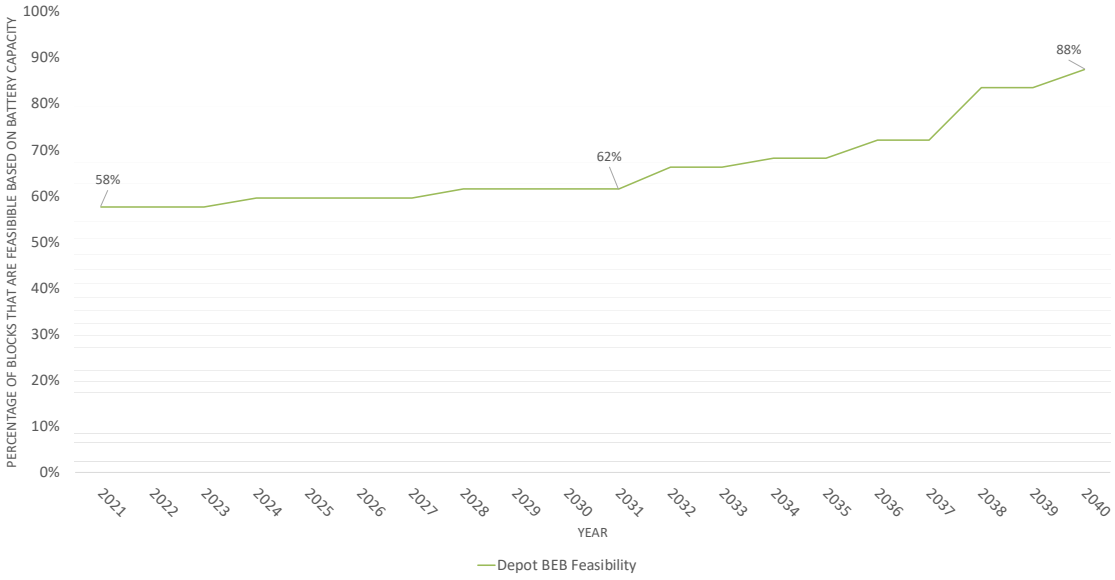
6

ZEB Transition Methodology



7

Overnight Depot-Charged BEB Service Feasibility



8

ZEB Technology Fleet Transition Scenarios

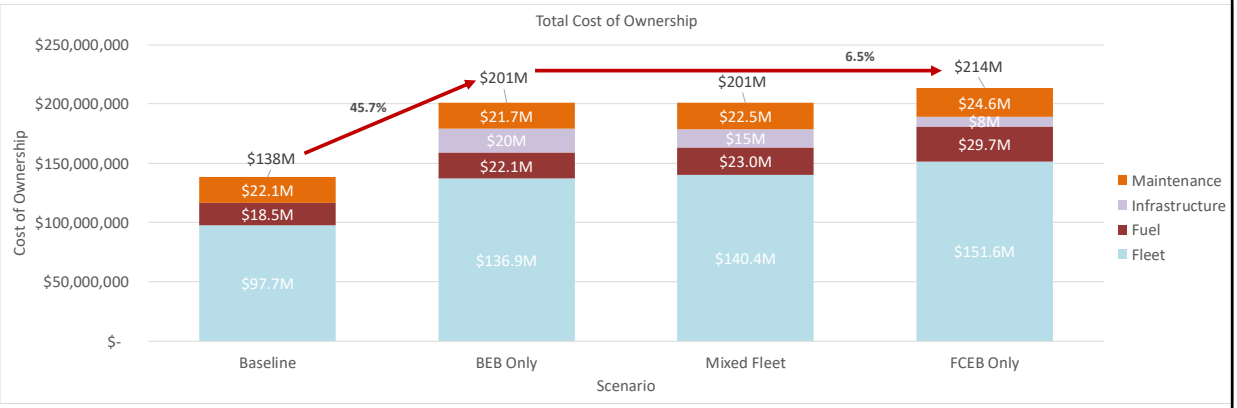
Additional ZEB technology solutions are required to achieve a 100% zero-emission fleet transition

- Depot & on-route charged battery-electric buses (BEBs)
- Depot charged battery-electric buses (BEBs) & fuel cell electric buses (FCEBs)
- Fuel cell electric buses (FCEBs) only

9

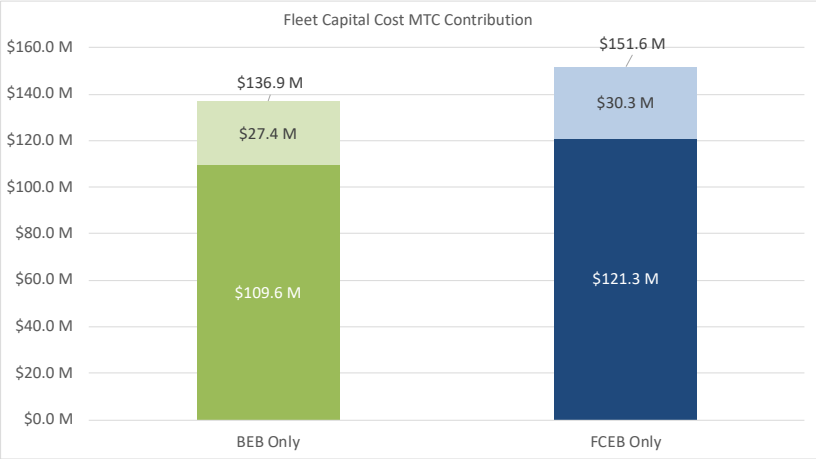
Total Cumulative Capital & Operating Costs

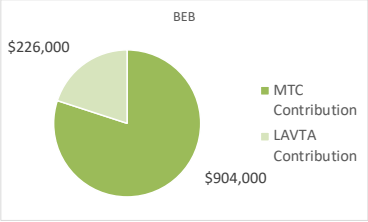
All Scenarios, 2021-2040

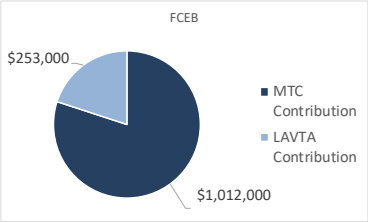


10

Incremental Bus Capital Costs

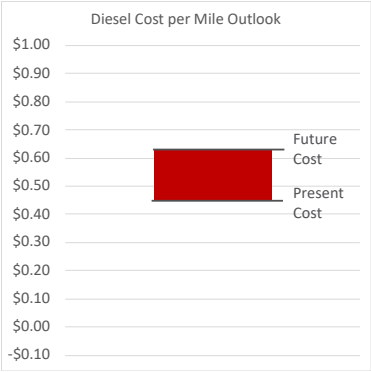


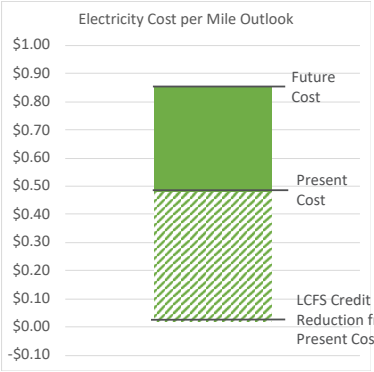


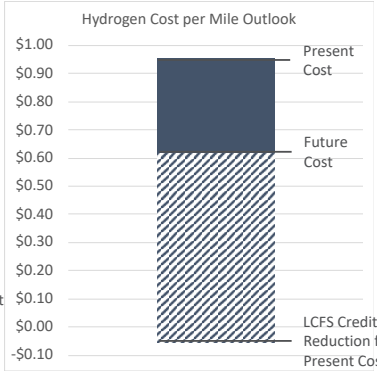


11

Fuel Cost per Mile Comparison







12

LAVTA Staff Recommendation: FCEB

- FCEBs provide greater flexibility in deployment planning due to greater comparable range than BEBs.
- General expectation that H_2 fuel prices will trend lower in next decade, with growing opportunities for green hydrogen.
- Opportunities to leverage economy of scale with Valley Link project.
- Stronger service resilience following a major disaster.
- Less infrastructure needed at Atlantis and transit centers.
- Higher reported availability than BEB*

** AC Transit ZETBTA report (Part 1)*

13

Performance Data

Fleet availability – a measurement of the vehicle readiness status for morning pull out at 7 a.m.

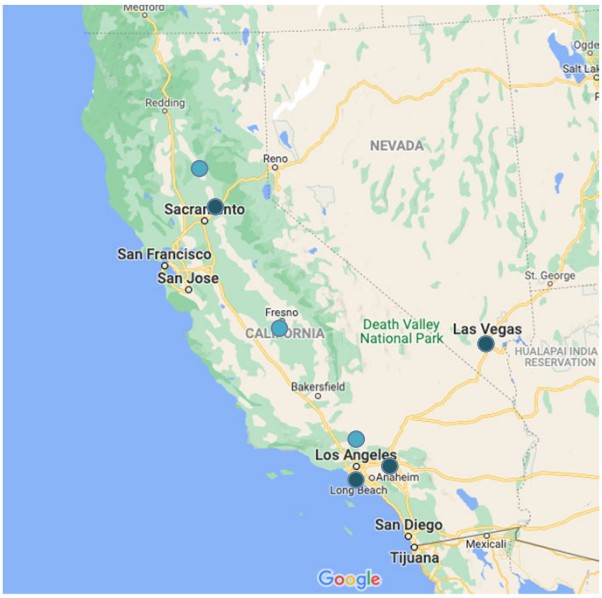
Miles between road calls (MBRC) – an indicator that measures the vehicle miles between mechanical failures during revenue service

Jul 2020 – Dec 2020	BEB	FCEB
Fleet availability	57%	90%
MBRC	8,109	10,406

** AC Transit ZETBTA report (Part 1)*

14

Hydrogen Production Centers



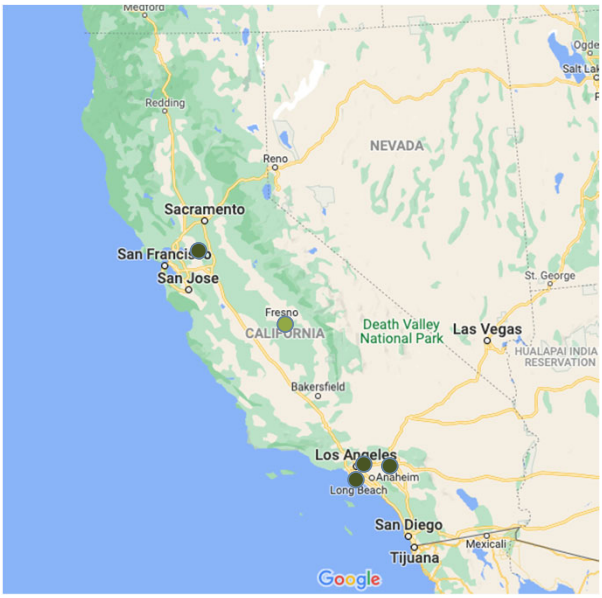
Hydrogen Producers

1. Air Liquide (Las Vegas)
2. Air Products (Sacramento & Los Angeles)
3. Linde (Ontario, CA)
4. *Plug Power (Fresno) – Proposed*
5. *SG2 H2 Energy (Butte & Lancaster) – Proposed*

- ***Proposed Hydrogen Production Centers***
- ***In-Service Hydrogen Production Centers***

15

Hydrogen Storage & Distribution Centers



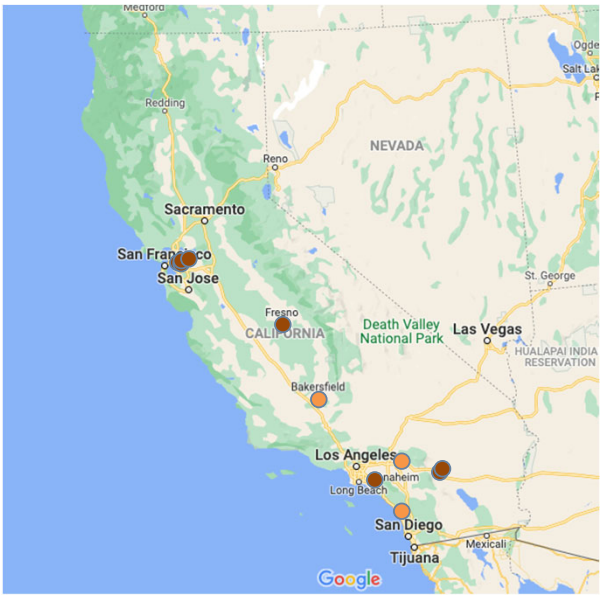
Distribution Center Operators

1. First Element (Livermore)
2. Shell (Los Angeles & Port of Long Beach & Ontario)
3. *Plug Power (Fresno) – Proposed*

- ***Proposed Hydrogen Distribution Hubs***
- ***In-Service Hydrogen Distribution Hubs***

16

Medium/Heavy Duty Fueling Stations



Med/Heavy Fueling Stations

1. AC Transit (Emeryville & Oakland)
2. OCTA (Santa Ana)
3. Sunline (Thousand Palms & *Indio - proposed)*
4. First Element (Oakland & Fresno & Livermore)
5. *Golden Empire Transit (Bakersfield) – Proposed*
6. *North County Transit (Oceanside) – Proposed*
7. *Foothill Transit (Pomona) – Proposed*

Proposed Med/Heavy Duty Fueling Station
In-Service Med/Heavy Duty Fueling Station

17

FCEB Project Process & Risk Mitigation Plan

Bus Timeline

LAVTA 12 FCEB Procurement RFP → PO for 12 FCEBs Issued → Bus Production → Bus Delivery → Bus Testing and Acceptance → Bus & Station Enter Service

Facility Timeline

with capital award

concurrent & approx. 18 months →

H_2 Station Requirements Analysis and RFP → Station Contracting & NTP → Station Construction → New Maintenance Facility Construction with H_2 Code & Detection → Station Commissioning → Bus & Station Enter Service

Contingency Facility Plan Pending Funding Availability

Fueling at First Element Distribution

Retrofit 2 existing LAVTA maintenance bays with H_2 gas detection

18

Station & Maintenance Facility Funding Potential - High

Federal Funding Opportunities

- United States Department of Transportation (USDOT)
  - Better Utilizing Investments to Leverage Development (BUILD) Grant
- Federal Transportation Administration (FTA)
  - Capital Investment Grants – New Starts
  - Capital Investment Grants – Small Starts
  - Bus and Bus Facilities Discretionary Grant
  - Low-or No-Emission Vehicle Grant
  - Metropolitan & Statewide Planning and Non-Metropolitan Transportation Planning
  - Urbanized Area Formula Grants
  - State of Good Repair Grants
  - Flexible Funding Program – Surface Transportation Block Grant Program
- Federal Highway Administration (FHWA)
  - Congestion Mitigation and Air Quality Improvement Program
- Environmental Protection Agency (EPA)
  - Environmental Justice Collaborative Program-Solving Cooperative Agreement Program

State Funding Opportunities

- California Air Resources Board (CARB)
  - Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP)
  - State Volkswagen Settlement Mitigation
  - Carl Moyer Memorial Air Quality Standards Attainment Program
  - Cap-and-Trade Funding
  - Low Carbon Fuel Standard (LCFS)
- California Transportation Commission (CTC)
  - Solution for Congested Corridor Programs (SCCP)
- California Department of Transportation (Caltrans)
  - Low Carbon Transit Operations Program (LCTOP)
  - State Transit Assistance (STA) + STA SB1
  - Transportation Development Act
  - Transit and Intercity Rail Capital Program
  - Transportation Development Credits
  - New Employment Credit
- California Energy Commission
  - Block Grant for Medium and Heavy Duty Zero-Emission Refueling Infrastructure Incentives
  - EnergIIZE

19

Next Steps

- January 24 – Project and Services Committee
- February 7 – Board of Directors Meeting: Zero-emission transition scenario selection
- **April 4** – Board of Directors Meeting: ICT Rollout Plan Final and Approval by Board

20

Questions?

21

Council Member	Committee Meeting Date	Committee	Agenda Link	Meeting Type
Mayor Woerner	12/15/2021	All-America City Award Reception		Reception
Mayor Woerner	12/21/2021	LDI Board Meeting		
Mayor Woerner	12/22/2021	Valley Link		Board of Directors
Mayor Woerner	12/31/2021	East Bay Regional Communications System Authority	http://www.ebrcsa.org/meetings.page	Board Meeting
Mayor Woerner	1/4/2022	Valley Link		Kick Off Briefing
Mayor Woerner	1/5/2022	Alameda County Health Care Servcies Agency		Elected Officials COVID Update
Mayor Woerner	1/5/2022	Tri Valley Cities Mayors, City Mangers and Liaisons Meeting		
Mayor Woerner	1/10/2022	Alameda County Transporation Committee	https://www.alamedactc.org/get-involved/upcoming meetings/	Programs and Projects Committee
Mayor Woerner	1/10/2022	Alameda County Transporation Committee	https://www.alamedactc.org/get-involved/upcoming meetings/	Special Commission Meeting

Item 8.0
Council Members' Reports

Council Member	Committee Meeting Date	Committee	Agenda Link	Meeting Type	Committee Report: Summary
Vice Mayor Bonanno	12/15/2021	All-America City Award Reception			
Vice Mayor Bonanno	12/29/2021	Livermore-Amador Valley Transit Authority	https://www.wheelsbus.com/meeting/projects-and-services-committee-meeting-71/	LAVTA Programs and Services Committee	Committee updated on zero emission bus (ZEB) study. LAVTA to present to City Council on 1/10/22.
Vice Mayor Bonanno	12/29/2021	Livermore-Amador Valley Transit Authority	https://www.wheelsbus.com/meeting/special-board-of-directors-meeting-4/	Board	Special board meeting to approve continuation of remote meetings

Council Member	Committee Meeting Date	Committee	Agenda Link	Meeting Type
Council Member Carling	12/15/2021	StopWaste		Board Meeting

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 10.2**

DATE: January 10, 2022

TO: Honorable Mayor and City Council

FROM: Donald Hester, Acting Administrative Services Director

SUBJECT: Items received at the meeting.

RECOMMENDED ACTION

SUMMARY

DISCUSSION

ATTACHMENTS

1. Items Received at the Meeting

Prepared by: Debbie Elam
Deputy City Clerk

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Bhavna Chaudhary
City Treasurer/Finance Manager

Item	Name	Comment	Position
4) CITIZENS FORUM	Glenn Stewart	Previous mayor and current mayor & group who have zero experience in urban planning, decided in 2013 to develop 8.2 acres without residents input & without retaining an urban planner. The $500K 2017 workshops (waste of money) only happened because of public outcry to 260 high-rise Lennar condos. Then cut a deal with Eden Housing without engaging residents & what a mess today. They€™re focused on east side hotel w/o underground parking- again no outside urban consulting or listening to residents. Now spending $34M on 500car L St garage, when a 625car robotic garage can be built for $20M. Extra 125 parking spaces can be for hotel parking. Now, you want to loan $1.9M of taxpayer€™s money to buy Pool site and build a flat parking lot. That€™s crazy. Zero consideration as to the impact on future parking, traffic congestion, community character. Do you know that Listening builds trust€¦reduces misunderstandings€¦ eliminates conflict€¦improves business relationships€¦improves leadership skills?	

6.1) Hearing to consider approving an Amended and Restated Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC to develop a four-story hotel on the southeast corner of Railroad Avenue and South Livermore Avenue, which includes a site acquisition loan for 2205 Railroad Avenue LLC to develop a parking facility on 2080 Railroad Avenue; to declare that the parcels to be transferred from the City to 2205 Railroad Avenue LLC are identified for disposition for the development of a hotel in the Livermore Successor Agency's Long Range Property Management Plan and are exempt surplus land; and authorizing a supplemental appropriation of $1,923,750 from the General Fund for the site acquisition loan.	Doug Gehmlich	It is unconscionable to loan money to build a private hotel parking lot with public funds, especially when the city cannot afford to fund essential services without wanting to raise our sales and property taxes. If the city can afford to loan $1.9M for a private parking lot for a hotel, then you do not need new taxes to support essential services. In general, I do not support using public funds for any private development. If the private developers cannot raise private funding for their projects, then clearly financial institutions do not think the project is viable. The city has already funded this project too much by declaring the hotel property "excess", thus essentially giving the land to the developers.	Oppose

From: Michelle.Cornell-Davis@lw.com
To: Cityclerk - Livermore
Cc: Winston.Stromberg@lw.com
Subject: January 10 City Council Agenda, Item 6.1
Date: Monday, January 10, 2022 4:48:08 PM
Attachments: Livermore City Council Agenda 1-10-22 - item 6.1 - SLD letter.pdf

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Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Ms. Weber –

Please circulate the attached correspondence to the City Councilmembers in advance of tonight's City Council meeting.

Thank you very much.

Very truly yours,

Michelle Cornell-Davis

LATHAM & WATKINS LLP
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Los Angeles, CA 90071-1560
Direct Dial: +1.213.891.7675
Fax: +1.213.891.8763
Email: michelle.cornell-davis@lw.com
https://www.lw.com

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January 10, 2022

VIA EMAIL (cityclerk@cityoflivermore.net)

Mayor Woerner and Members of the City Council
City of Livermore
City Hall
1052 S. Livermore Ave.
Livermore, CA 94550

Re: January 10, 2022 City Council Hearing, Agenda Item No. 6.1

Dear Mayor Woerner and Honorable Councilmembers:

On behalf of Save Livermore Downtown ("SLD"), we appreciate the opportunity to submit these comments on the proposed Amended and Restated Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC ("DDLA") for the development of a hotel on the southeast corner of Railroad Avenue and South Livermore Avenue (the "Project"). SLD supports the development of a hotel in downtown Livermore, and recognizes that the City and its voters realize the benefits the hotel will bring to downtown Livermore. However, for the reasons discussed below, SLD respectfully requests that the City Council reject the proposed DDLA.

SLD believes that there is a higher and better use for property located at 2080 Railroad Avenue than just a surface parking lot. This parcel would instead be better suited for an affordable housing project. SLD has previously raised this issue to the City, noting that this parcel and its adjoining properties would be an ideal location for a larger affordable housing project than Eden Housing had proposed on the Lucky Site. Using the parcel as a surface parking lot is simply bad planning.

Using the 2080 Railroad Avenue parcel for off-site parking is also contrary to applicable planning and zoning rules. The Downtown Specific Plan states that for commercial, retail, office, and non-residential uses in the Downtown Core plan area—where the hotel would be situated—"[r]equired parking shall be provided on-site, by payment of an in-lieu fee, ***off-site within the Downtown Core***, or any combination thereof." (Downtown Specific Plan, Ch. 8, p. 7 [emphasis added].) Thus, although the Downtown Specific Plan allows for the use of off-site parking, that parking is limited to off-site areas "within the Downtown Core." While the hotel is within the Downtown Core, 2080 Railroad Avenue is not. "The Downtown Core is centered on the City's historic crossroads, at the intersection of First Street and Livermore Avenue. ***Its northern boundary is Railroad Avenue from M Street to Livermore Avenue***." (Downtown Specific Plan, Ch. 4, p. 3 [emphasis added].) To that end, 2080 Railroad Avenue is actually within the "Downtown Neighborhood - North Side" area of the Downtown Specific Plan, which

is not in the Downtown Core. Because the 2080 Railroad Avenue site is outside of the Downtown Core, the hotel project as envisioned in the proposed DDLA is inconsistent with the Specific Plan, in that it would allow off-site parking for the hotel in an unlawful location.

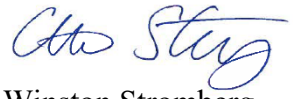
Moreover, as part of the approval of the DDLA, staff recommends that City Council authorize a supplemental appropriation of $1,923,750 from the General Fund for a site acquisition loan for 2080 Railroad Avenue. However, as discussed above, the use of 2080 Railroad Avenue for surface parking is contrary to local planning and zoning rules—specifically the Downtown Specific Plan. Thus, such an exorbitant loan clearly constitutes an "illegal expenditure of, waste of, or injury to, the estate, funds, or other property of [the city]. (Code of Civil Procedure, § 526a.) In other words, this "loan" would be a waste of taxpayer funds.

Finally, the Staff Report contains a conclusory assertion that the sale of the hotel parcels to 2205 Railroad Avenue LLC is exempt from the Surplus Land Act. However, while the hotel property may be exempt under the current version of the Surplus Land Act set forth in 2019's Assembly Bill 1486 and the accompanying Surplus Land Act Guidelines implementing it, Government Code sections 54234(a)(1) and (b)(1) are clear that the Surplus Land Act as it existed on December 31, 2019 still applies. (Gov. Code § 54234(a)(1) ["If a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, the provisions of this article as it existed on December 31, 2019, shall apply. . . ."]; *id.* at 54234(b)(1) [explaining that the 2019 version of the Surplus Land Act applies to "land held in the Community Redevelopment Property Trust Fund. . .or that has been designated in a long-range property management plan when "[a] exclusive negotiating agreement or legally binding agreement for disposition is entered into not later than December 31, 2020" and "[t]he disposition is completed not later than December 31, 2022."].)

Here, the City's staff report does nothing to demonstrate that the City complied with the prior version of the Surplus Land Act in proposing to dispose of the property to 2205 Railroad Avenue, LLC. Generally, the prior version of the Surplus Land Act required a city, prior to disposing of surplus land, to offer that land for sale or lease for affordable housing, park and recreational purposes, and school district facilities or open space. (See former Gov. Code, § 54222.) The City needs to explain on the record how it complied with the prior version of the Surplus Land Act with respect to the hotel parcels, and/or whether it contends that this disposition is also exempt from the former version of the law.

We appreciate your attention to the issues addressed in this letter, and we look forward to discussing them further with you. If you have any questions, please do not hesitate to call me at (213) 891-8983 or email me at winston.stromberg@lw.com.

Very Truly Yours,



Winston Stromberg
of LATHAM & WATKINS LLP

From:	Richard Ryon
To:	Cityclerk - Livermore; Livermore City Council
Cc:	Independent
Subject:	Please reject the proposed $1.9 million loan to 2205 Railroad Avenue, LLC
Date:	Monday, January 10, 2022 5:11:53 PM
Attachments:	Letter to City Council 10Jan22.docx Untitled attachment 00009.htm

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January 10, 2022
Dear Council Members,

City Staff recommends appropriation of $1,923,750 from the General Fund to be loaned at 3.5% to the downtown hotel developer to acquire the currently-vacant lot at 2080 Railroad Avenue. The lot would become valet parking for the hotel. The City previous agreed to sell the property at the SE corner of S. Livermore and Railroad Avenues to the same corporation to build a 133 room hotel ***with underground parking***. The proposed parking lot would be a tenth of a mile away from the hotel.

The proposed borrower is the corporate entity known as 2205 Railroad Avenue, LLC. It is wholly owned and operated by Presidio Holdings LLC. Why did Presidio create 2205 Railroad Avenue? It is reasonable to assume to limit financial liability through bankruptcy. As a separate corporation, 2205 Railroad can go bankrupt at any time, without recourse to the parent company, Presidio, or its owners.

The City previous agreed to sell the property at S. Livermore and Railroad to the same entity for $71,521 to build the hotel and underground parking lot. The developer now says that cost increases have made building the underground parking economically infeasible. Thus, its stated need for an alternate site for a parking lot, to be purchased with the City-provided loan.

The proposed loan to purchase the alternate parking lot is $1,923,750. That is 27 times larger than paid for the hotel site itself! The hotel site sale price of $71,521 is only $1.33 per square foot, or $61,700 per acre! It is reasonable to say the City sold the hotel site for well below its actual value.

Interest rates on commercial loans are somewhere around 4.5% - 7.0% At current interest rates, and rates of inflation, the proposed loan rate of 3.5% seems well below what should be paid.

America is supposed to have a market-driven, free enterprise economic system. The above hotel sales price, the City loan instead of self-financing or commercial loan, and loan interest rate seem more like the mafia-capitalism of Russia or the government-dominated capitalism of China. It is not what should be tolerated in America!

It appears that a weak developer entity is seeking a subsidy at taxpayer expense from the City. There is already one bankrupt development in downtown Livermore, at the former Groth Brothers car dealership site at L Street between Railroad Avenue and First Street. Do we really want another bankrupt development nearby? The City's taxpayers should not be obligated to subsidize a financially weak developer.

In conclusion, the City Council should reject the proposed loan. The Council should require that the originally approved plan to construct a parking garage under the hotel be adhered to.

Sincerely,
Richard Ryon
Livermore, CA

Attachment: This letter

To: Livermore City Clerk <cityclerk@cityoflivermore.net>, Livermore Council members <LivermoreCityCouncil@cityoflivermore.net>
CC: Editor Livermore Independent Newspaper <editor@independentnews.com>
Subject: Please reject the proposed $1.9 million loan to 2205 Railroad Avenue, LLC
Date: January 10, 2022

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In conclusion, the City Council should reject the proposed loan. The Council should require that the originally approved plan to construct a parking garage under the hotel be adhered to.

Sincerely,
Richard Ryon
Livermore, CA

From:	Jean King
To:	Bob Woerner; Gina Bonanno; Robert Carling; Brittni Kiick; Patricia (Trish) Munro
Cc:	Cityclerk - Livermore
Subject:	Fwd: January 10 City Council Agenda, Item 6.1
Date:	Monday, January 10, 2022 5:40:18 PM
Attachments:	Livermore City Council Agenda 1-10-22 - item 6.1 - SLD letter.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Mayor and Council Members
The City Clerk suggested that I send this correspondence to you directly.
Thank you.
Jean King
Save Livermore Downtown

From: Cornell-Davis, Michelle (LA) <Michelle.Cornell-Davis@lw.com>
Sent: Monday, January 10, 2022 4:48 PM
To: cityclerk@cityoflivermore.net
Cc: Stromberg, Winston (LA) <Winston.Stromberg@lw.com>
Subject: January 10 City Council Agenda, Item 6.1

Dear Ms. Weber –

Please circulate the attached correspondence to the City Councilmembers in advance of tonight's City Council meeting.

Thank you very much.

Very truly yours,

Michelle Cornell-Davis

LATHAM & WATKINS LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560
Direct Dial: +1.213.891.7675
Fax: +1.213.891.8763
Email: michelle.cornell-davis@lw.com
https://www.lw.com

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January 10, 2022

VIA EMAIL (cityclerk@cityoflivermore.net)

Mayor Woerner and Members of the City Council
City of Livermore
City Hall
1052 S. Livermore Ave.
Livermore, CA 94550

Re: January 10, 2022 City Council Hearing, Agenda Item No. 6.1

Dear Mayor Woerner and Honorable Councilmembers:

On behalf of Save Livermore Downtown ("SLD"), we appreciate the opportunity to submit these comments on the proposed Amended and Restated Disposition, Development and Loan Agreement with 2205 Railroad Avenue LLC ("DDLA") for the development of a hotel on the southeast corner of Railroad Avenue and South Livermore Avenue (the "Project"). SLD supports the development of a hotel in downtown Livermore, and recognizes that the City and its voters realize the benefits the hotel will bring to downtown Livermore. However, for the reasons discussed below, SLD respectfully requests that the City Council reject the proposed DDLA.

SLD believes that there is a higher and better use for property located at 2080 Railroad Avenue than just a surface parking lot. This parcel would instead be better suited for an affordable housing project. SLD has previously raised this issue to the City, noting that this parcel and its adjoining properties would be an ideal location for a larger affordable housing project than Eden Housing had proposed on the Lucky Site. Using the parcel as a surface parking lot is simply bad planning.

Using the 2080 Railroad Avenue parcel for off-site parking is also contrary to applicable planning and zoning rules. The Downtown Specific Plan states that for commercial, retail, office, and non-residential uses in the Downtown Core plan area—where the hotel would be situated—"[r]equired parking shall be provided on-site, by payment of an in-lieu fee, ***off-site within the Downtown Core***, or any combination thereof." (Downtown Specific Plan, Ch. 8, p. 7 [emphasis added].) Thus, although the Downtown Specific Plan allows for the use of off-site parking, that parking is limited to off-site areas "within the Downtown Core." While the hotel is within the Downtown Core, 2080 Railroad Avenue is not. "The Downtown Core is centered on the City's historic crossroads, at the intersection of First Street and Livermore Avenue. ***Its northern boundary is Railroad Avenue from M Street to Livermore Avenue***." (Downtown Specific Plan, Ch. 4, p. 3 [emphasis added].) To that end, 2080 Railroad Avenue is actually within the "Downtown Neighborhood - North Side" area of the Downtown Specific Plan, which

is not in the Downtown Core. Because the 2080 Railroad Avenue site is outside of the Downtown Core, the hotel project as envisioned in the proposed DDLA is inconsistent with the Specific Plan, in that it would allow off-site parking for the hotel in an unlawful location.

Moreover, as part of the approval of the DDLA, staff recommends that City Council authorize a supplemental appropriation of $1,923,750 from the General Fund for a site acquisition loan for 2080 Railroad Avenue. However, as discussed above, the use of 2080 Railroad Avenue for surface parking is contrary to local planning and zoning rules—specifically the Downtown Specific Plan. Thus, such an exorbitant loan clearly constitutes an "illegal expenditure of, waste of, or injury to, the estate, funds, or other property of [the city]. (Code of Civil Procedure, § 526a.) In other words, this "loan" would be a waste of taxpayer funds.

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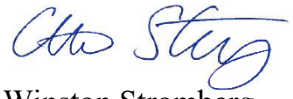
We appreciate your attention to the issues addressed in this letter, and we look forward to discussing them further with you. If you have any questions, please do not hesitate to call me at (213) 891-8983 or email me at winston.stromberg@lw.com.

Very Truly Yours,



Winston Stromberg
of LATHAM & WATKINS LLP