



**CITY OF PITTSBURG
AGENDA**

******* AMENDED *******

November 05, 2018

**CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA**

**CLOSED SESSION
5:30 P.M.**

**REGULAR MEETINGS
7:00 P.M.**

**CITY COUNCIL
PITTSBURG POWER COMPANY
SUCCESSOR AGENCY**

PRESIDING

**Dwaine “Pete” Longmire, Mayor/Chair
Sal Evola, Vice-Mayor/Chair
Juan Antonio Banales, Council Member/Board Member
Jelani Killings, Council Member/Board Member
Marilyn “Merl” Craft, Council Member/Board Member**

**FOR HOUSING AUTHORITY:
S.L. Floyd, Housing Authority Member
Annie Hill Herring, Housing Authority Member**

Pittsburg City Council meetings are held the first and third Mondays of each month at 7:00 p.m. The Housing Authority meets in conjunction with the City Council on the third Monday of each month. The Pittsburg City Council meets regularly in the Council Chamber at 65 Civic Avenue, unless otherwise noted above. The City Council also sits as the Board of Directors of several other City agencies. The stipends for all agency members conform to state statutes governing compensation amounts. All other Agencies meet on an as needed basis and will be listed above if applicable. Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except from noon to 1:00 p.m. and City holidays). The agenda and reports are also located on the City's website at www.ci.pittsburg.ca.us. Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

NOTICE TO PUBLIC (Attached)

COUNCIL COMMITTEES LIST (Attached)

COMMISSIONS/COMMITTEES MEETING SCHEDULE (Attached)

AUDIENCE REMARKS

The Audience Remarks period is for the public to comment on any items scheduled to be heard during the Closed Session portion of the meeting, if applicable.

5:30 P.M.

CONVENE IN CLOSED SESSION

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Section 54956.8):

Property: APN's 096-100-015, 096-100-027, 096-100-029, 096-100-031, 096-100-032, 096-100-033, 096-100-034, 094-080-002; Negotiators: Joe Sbranti, Garrett Evans, Maria Aliotti; Negotiating Parties: Southern Energy Delta LLC, GenOn Delta LLC, and EDS LLC; Under negotiation: Both price and terms of payment

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION FOR THE SUCCESSOR AGENCY OF THE CITY OF PITTSBURG (Paragraph (1) of subdivision (d) of Section 54956.9):

Earth Construction and Mining vs. Successor Agency to the Former Redevelopment Agency of the City of Pittsburgh, Contra Costa County Superior Court Case no. C13-00796

3. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION FOR THE CITY OF PITTSBURG; Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9:

Three (3) cases

4. PUBLIC EMPLOYMENT PERFORMANCE EVALUATION (Pursuant to Section 54957):

City Manager

7:00 P.M.

CONVENE IN OPEN SESSION FOR REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PROCLAMATION

Shelter-in-Place Education Day

PRESENTATIONS

Delta Watershed Education Program

CITY MANAGER REPORTS/REMARKS

The City Manager may make brief announcements or informal comments at this time and brief the Council on items of interest. (No Action Required)

CITIZENS REMARKS

Members of the audience who wish to address the City Council or Agency Boards on issues that are not scheduled for the agenda and on any items listed as part of the Consent Calendar should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. (No Action Required)

CITY COUNCIL MEETING

PUBLIC HEARING

5. Introduction and Waive First Reading of an Ordinance Amending Pittsburg Municipal Code Title 15 Buildings and Construction Relating to Post Disaster Assessment Standards

This is the first reading of an ordinance to add Chapter 15.09 Post Disaster Safety Assessment Standards to the Pittsburg Municipal Code, including placards and criteria for demolition of dangerous buildings or structures damaged as a result of a disaster or local declared emergency, to comply with recently adopted policies of the State of California.

6. Adoption of a City Council Resolution Adding Territory to Future Annexation Area of Community Facilities District 2016-1 (Maintenance of Project Facilities)

The City currently has four community facilities districts ("CFDs") that provide funds for certain services, including public safety, park maintenance and fire safety emergency services. Two of the four districts allow future annexations for new developments located anywhere within the City limits. This action would make this designation consistent among all the CFDs and allow an expedited annexation procedure for parcels that are required to annex into one or more of these CFDs in the future.

7. Adoption of a City Council Resolution Adding Territory to Future Annexation Area of Community Facilities District 2017-1 (Fire Facilities and Fire Safety and Emergency Services)

The City currently has four community facilities districts (“CFDs”) that provide funds for certain services, including public safety, park maintenance and fire safety emergency services. Two of the four districts allow future annexations for new developments located anywhere within the City limits. This action would make this designation consistent among all the CFDs and allow an expedited annexation procedure for parcels that are required to annex into one or more of these CFDs in the future.

CONSIDERATION

8. By Minute Order, Approve the Ceremonial Renaming of El Pueblo Avenue Between Diane Avenue to Treatro Street in Honor of Donald Pearman

In recognition of Donald Pearman’s many years of service to the community and his long history and tireless hours of service to the El Pueblo Housing Community, staff recommends approval of a ceremonial re-naming of the segment of El Pueblo Avenue as “Donald Pearman Way.” The ceremonial name would be in addition to the El Pueblo Avenue address assigned to the properties along this segment of the street and would not alter official mailing addresses.

9. Adoption of a City Council Ordinance Approving an Amendment to the Development Agreement between the City of Pittsburg and Garaventa Enterprises, Inc., a City Council Resolution Approving an Assignment and Assumption of Purchase and Sale Agreement between Garaventa Enterprises Inc. and the City of Pittsburg, and a City Council Resolution Approving an Amended and Restated Purchase and Sale Agreement between the City of Pittsburg and Stay Cal Pittsburg LLC

On October 15, 2018, the City Council held a public hearing, introduced, and waived first reading of an ordinance approving an Amendment to the Development Agreement (“Amendment to the DA”) between the City of Pittsburg, a municipal corporation and Garaventa Enterprises, Inc., a California Corporation (“Garaventa”). The proposed amendment will enable Garaventa to sell a portion of its property to Stay Cal Pittsburg LLC, a California limited liability company (“Stay Cal”), resize the proposed office building, and extend the timelines in the Schedule of Performance. To facilitate implementation of the Amendment to the DA, Garaventa and the City propose to enter into an Assignment and Assumption of Purchase and Sale Agreement (“Assignment and Assumption”) and the City and Stay Cal propose to enter into an Amended and Restated Purchase and Sale Agreement (“Amended and Restated PSA”).

CONFLICT OF INTEREST STATEMENT

City Council/Agency Members may make any conflict of interest declarations pertaining to Consent Calendar items at this time.

CONSENT CALENDAR

COMBINED CITY COUNCIL AND PITTSBURG POWER COMPANY CONSENT CALENDAR

10. Minutes

Minutes of October 15, 2018

11. Adoption of a City Council Resolution Approving an Exclusive Negotiating Rights Agreement between the City of Pittsburg and Clear Channel Outdoor Inc. for the Proposed Construction and Operation of a Digital Billboard

The City of Pittsburg, a municipal corporation and Clear Channel Outdoor, Inc., a Delaware corporation ("CCO"), propose to enter into an Exclusive Negotiating Rights Agreement ("ENRA") for the proposed construction and operation of a digital billboard.

12. Adoption of a City Council Resolution to Approve the Lease Agreement by and between the City of Pittsburg and Global Resources Trading, LLC.

The City of Pittsburg desires to lease a modular building at 27 Marina Blvd. to Global Resources Trading, LLC doing business as Fisherman's Catch (Lessee) as a bait store and fish market in the marina area, for a term of eighteen months while a permanent structure is proposed and constructed on adjacent parcels.

13. Adoption of an Ordinance Amending Pittsburg Municipal Code Section 7.04.010 Relating to the Adoption of Contra Costa County Animal Control Regulations

The Contra Costa County Animal Services Department provides animal control services within the City of Pittsburg. Pittsburg Municipal Code Section 7.04.010 incorporates the Contra Costa County Animal Control Ordinance by reference to enable enforcement of animal control within the City. Contra Costa County has amended its Animal Control Ordinance to include a new section: Article 416-12.2 Nuisances. This update will allow enforcement of this new section.

14. Adoption of a City Council Resolution to Approve the Purchase of CityWorks Software and Allocate Funds for Implementation

To improve efficiency and monitoring of the maintenance of the City's water and sewer infrastructure, staff reviewed software readily available on the market and recommends the purchase of CityWorks to improve efficiency and monitoring of infrastructure maintenance.

15. Adoption of a City Council Resolution to Create a Master Pay Schedule as Required by California Public Employees' Retirement System

To comply with CalPERS' interpretation of the requirements of Code of Regulations section 570.5 by affirming the single master pay schedule already on the City's website representing all previously approved actions on the individual classifications of the pay schedule. The single master salary schedule will be submitted to Council for approval each time any single MOU or compensation plan is brought to the City Council for approval.

16. Adoption of City Council Resolution Allocating Funds and Authorizing a Consultant Agreement for Environmental Consultant Services for the Alves Ranch Development

The applicant, William Lyon Homes, has requested approval to build 346 housing units and 140,000 square feet of commercial space within a 57.81-acre site located at the northern terminus of West Leland Road and Alves Ranch Road. An addendum to a previously certified Environmental Impact Report (EIR) was prepared; however, the applicant has requested that the City elevate the environmental documentation associated with the project to include a new EIR, rather than the previously prepared addendum. The environmental consultant, First Carbon Solutions, submitted a new proposal to prepare a full EIR for the project for an amount not to exceed \$163,760. City staff is requesting an additional authorization equal to 15% of the contract total (\$24,564) to use as a contingency fund.

17. Adoption of a City Council Resolution Approving the Measure M Citizens Oversight Committee Report – Final FY 17-18 usage and Excess Carryforward to FY 2018-19

On June 5, 2012 the voters of Pittsburg passed the Pittsburg Preservation of Citywide Services Temporary Funding Transactions and Use Tax Ordinance. The ordinance established a one-half of one percent (0.5%) use and transaction tax. On June 7, 2016, the voters of Pittsburg passed Measure M, extending the use and transaction tax to June 30, 2035. The measures require the establishment of a Citizens Oversight Committee (“Committee”) charged with making recommendations to the City Council (“Council”) for the use of the Measures revenue. This item is the Committee’s report on the receipt and use of these Measures funds for FY 2017-18 and a recommendation for the excess over budget to be carried forward to FY 18-19.

18. Adoption of a City Council Resolution Amending the Purchasing Policy to Require Project Stabilization Agreement and Update Requirements

The City has adopted a Purchasing Policy which provides for the informal and formal purchasing requirements of supplies, general services, professional services, and public works projects. The proposed amendments add the requirement of a Project Stabilization Agreement on large public works projects, adds purchasing authority for the newly created position of City Attorney, and adds requirements consistent with state law and best practices

19. Adoption of City Council Resolution Awarding a Contract for the 2018 Patch Paving Program

The City’s Annual Patch Paving Program involves removing failed asphalt concrete and base material, compaction of existing material, and replacing the same with an equivalent amount of asphalt concrete at various locations in the city. Staff recommends the City Council award a contract to continue this part of the City’s ongoing 2018 road maintenance program.

20. Adoption of a City Council Resolution to Approve a Lease Agreement for Public Works Equipment Financing

The City Public Works Department maintains a fleet with a replacement value of over

\$6 million. The Finance Department solicited financing for replacement of three vehicles and one mower to replace equipment past its useful life and has a lower reliability and higher maintenance requirements. The bid exceeded the \$150,000 threshold and requires approval of the City Council.

21. Adoption of a City Council Resolution to Authorize a Reduction in Local Transportation Mitigation Fee Obligation In Exchange For Grading of West Leland Road from Villa Drive to Avila Road

The City entered into agreements with developer SEECON Financial and Construction Co., Inc. that provided for reimbursement of construction related costs for the extension of West Leland Road to Avila Road. If approved, this resolution will reduce the amount of Local Transportation Mitigation Fees owed by the developer in an amount equal to the cost for grading work related to the extension of West Leland Road.

COUNCIL MEMBER REPORTS/REMARKS

Council Members may make brief announcements or informal comments at this time. Council members may ask questions for clarification from City staff, and make a report on their activities, including reports on committee assignments (see attached list of ad hoc committees and other public agencies in which Council members participate). (No Action Required)

ADJOURNMENT to November 19, 2018

NOTICE TO PUBLIC

GENERAL INFORMATION

Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except City holidays). The full packets are also located on the City's website at www.ci.pittsburg.ca.us. If any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports or documents will be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

SPEAKER'S CARD

Members of the audience who wish to address the City Council on issues that are not scheduled for the agenda and on any items listed as part of the agenda should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Speakers are not permitted to yield their time to another speaker. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. Pursuant to the Brown Act, no action may be taken by the City Council on items not already scheduled on the agenda; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

PUBLIC HEARINGS

Persons who wish to speak on Public Hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to public comment and brought to the Council/Agency level for discussion and action. Further comment from the audience will not be received unless requested by the Council/Agency.

There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge an action taken by the City Council in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised in the public hearing, or in written correspondence delivered to the City Council prior to or at the public hearing. The City Council may be requested to reconsider a decision if the request is made prior to the next City Council meeting, regardless of whether it is a regular or special meeting.

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the City of Pittsburg will provide special assistance for disabled citizens. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Council meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at 925-252-4850. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

DISRUPTIVE CONDUCT

The Council requests that you observe the order and decorum of our Council Chamber by turning off or setting to vibrate all cellular telephones, and that you refrain from making personal, impertinent, or slanderous remarks. Boisterous and disruptive behavior while the Council is in session, and the display of signs in a manner which violates the rights of others or prevents others from watching or fully participating in the Council meeting, is a violation of our Municipal Code and any person who engages in such conduct can be ordered to leave the Council Chamber by the Mayor.

LIVE MEDIA BROADCASTING ADVISEMENT

City Council meetings are webcast live on the City's website at www.ci.pittsburg.ca.us on the Streaming Media page. Past meetings are also archived on that webpage. City Council meetings are also broadcast live on CCTV, Channel 24 also re-run at a later date. For more information, please contact the City Clerk's office at 252-4850.

City Council Outside Agency / Liaison / Sub-Committees Assignments - 2018

Updated September 17, 2018

<u>OUTSIDE AGENCY BOARDS</u>	<u>COUNCIL MEMBER(S)</u>	<u>TYPE</u>	<u>MEETS</u>	<u>STAFF</u>
ABAG	Merl Craft / Pete Longmire Alternate	Standing	Annual	J. Sbranti
SF Bay Regional Water Quality Board	Merl Craft / Pete Longmire Alternate	Standing	As needed	J. Sbranti
Contra Costa County Fire Dist.	Pete Longmire / Jelani Killings Alternate	Standing	2 nd Monday	J. Sbranti
Delta Diablo**	Pete Longmire / Juan Banales Alternate	Standing	2 nd Wednesday	F. McKinley
East Co.Co.County Habitat Conservancy	Sal Evola / Juan Banales Alternate	Standing	Monthly	K. Pollot
East County Water Management	Merl Craft / Pete Longmire Alternate	Standing	Annual	F. McKinley
MCE Clean Energy Board	Juan Banales / Pete Longmire Alternate	Standing	4 Per Year	G. Evans
TRANSPLAN / ECCRFFA	Sal Evola / Juan Banales Alternate	Standing	2 nd Thursday	J. Hecht
Tri-Delta Transit (2 reps)***	Pete Longmire& Merl Craft / Jelani Killings Alt.	Standing	Last Wednesday	J. Hecht
<u>LIAISON TO</u>	<u>COUNCIL MEMBER(S)</u>	<u>TYPE</u>	<u>MEETS</u>	<u>STAFF</u>
East Bay League of Calif. Cities	Sal Evola / Merl Craft Alternate	Standing	3 rd Thursday	*Rotational
Mayor's Conference	Pete Longmire / Sal Evola Alternate	Standing	1 st Thursday	J. Sbranti/G. Evans
School Districts Committee	Merl Craft &Jelani Killings / Juan Banales Alt.	Standing	4 th Thursday even months	J. Sbranti
<u>SUBCOMMITTEES</u>	<u>COUNCIL MEMBER(S)</u>	<u>TYPE</u>	<u>MEETS</u>	<u>STAFF</u>
CAC/CDBG	Juan Banales & Jelani Killings / Pete Longmire Alt.	Standing	As needed	M. Aliotti
CIP	Juan Banales & Jelani Killings	Ad Hoc	As needed	F. McKinley/J.Hecht
Commission and Council Procedures	Merl Craft / Sal Evola	Ad Hoc	As needed	A. Evenson
Concord Hills Working Group	Sal Evola & Juan Banales / Merl Craft Alt.	Ad Hoc	As needed	J. Sbranti
Pittsburg Recognition Committee	Merl Craft / Pete Longmire Alt.	Ad Hoc	As needed	J. Hecht
Economic Develop/Waterfront Subcommittee	Pete Longmire &Juan Banales / Sal Evola Alt.	Standing	Quarterly	G. Evans
Finance Subcommittee	Sal Evola & Pete Longmire / Merl Craft Alt.	Standing	As needed	B. Farmer
Land Use Subcommittee	Sal Evola &Juan Banales / Merl Craft Alt.	Ad Hoc	As needed	K. Pollot
Local Contracting & Preference Policy	Merl Craft & Sal Evola	Ad Hoc	As needed	J. Sbranti
Pittsburg Arts & Community Foundation	Merl Craft& Jelani Killings / Pete Longmire Alt.	Standing	As needed	J. Sbranti
Pittsburg Police Activities League (PAL)	Juan Banales & Pete Longmire / Killings Alt.	Standing	Monthly	B. Addington
Power Company Advisory	Pete Longmire & Juan Banales / Merl Craft Alt.	Standing	As needed	G. Evans
Public Outreach	Juan Banales & Jelani Killings	Ad Hoc	As needed	K. Simonton
Sister City Committee	Sal Evola&Merl Craft/ Pete Longmire Alt.	Ad Hoc	As needed	G. Evans
Successor Agency Subcommittee	Merl Craft &Jelani Killings / Pete Longmire Alt.	Standing	As needed	M. Aliotti

*Rotational Staff as assigned by City Manager

**Stipend of \$209 per month

***Stipend of \$100 per month

COMMISSION/SUBCOMMITTEE MEETING SCHEDULE

Following is a tentative list of currently scheduled Commission meetings for the upcoming month. For further information, please visit our website at www.ci.pittsburg.ca.us and click on the CALENDAR link for meetings, dates, times and locations.

Commission	Tentative Meeting Dates
Planning Commission	2 nd and 4 th Tuesdays
Community Advisory Commission	1 st Wednesday

Planning Commission meetings are regularly held the second and fourth Tuesdays of the month in the Pittsburg City Hall Council Chambers.

Community Advisory Commission meetings are regularly held the first Wednesday of the month in the Pittsburg City Hall Council Chambers.

In addition to the Commission Meetings listed above, there are several Council Member Subcommittees that meet on an “as needed basis”. For a list of subcommittees that Council Members and staff are assigned to, please see the “Council Committee List” attached to the agenda.

Subcommittee Meetings that are anticipated to occur in the coming month vary. The meeting dates, times and locations for these meetings are yet to be determined. This information will be posted on the City’s website, www.ci.pittsburg.ca.us, as soon as it is determined. Please check the Calendar on the City’s website for information.

For further information, contact the City staff member assigned to that Commission or Subcommittee.



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/22/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Introduction and Waive First Reading of an Ordinance Amending
Pittsburg Municipal Code Title 15 Buildings and Construction Relating
to Post Disaster Assessment Standards

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

This is the first reading of an ordinance to add Chapter 15.09 Post Disaster Safety Assessment Standards to the Pittsburg Municipal Code, including placards and criteria for demolition of dangerous buildings or structures damaged as a result of a disaster or local declared emergency, to comply with recently adopted policies of the State of California.

FISCAL IMPACT

None from this action.

RECOMMENDATION

City Council conduct a Public Hearing and introduce and waive further reading of the attached Ordinance amending Pittsburg Municipal Code by adding Chapter 15.09 Post Disaster Assessment Standards.

BACKGROUND

California Office of Emergency Services, California Office of Statewide Health Planning and Development, and the Federal Emergency Management Agency set out procedures for post-earthquake evaluation of buildings. Among the requirements is for Post Disaster Safety Assessment Placards, to be posted at each entry point of a building or structure to indicate the condition of a structure for continued occupancy after a disaster. Another requirement is to establish demolition criteria for buildings and structures damaged as the result of a disaster for which a local emergency has been declared by the city council, state or federal government, when that building or structure poses an imminent threat to public health and safety.

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

Adoption of this ordinance formalizes the City's post disaster assessment standards, including placards to be used to indicate the condition of a structure for occupancy after a natural disaster and a rapid evaluation by authorized personnel.

Placards are placed on a building to protect the owner, tenant and the public.

Unofficial placards represent a recommendation only, and unfortunately, there have been reports after natural disasters of placards being removed by property owners or tenants.

Adopting the placards by ordinance makes them official and enforceable.

Post-disaster demolition criteria provide a procedure for the Building Official to require immediate demolition of all or a portion of a building or structure damaged in a disaster, if that building or structure poses an imminent threat to public health and safety.

ATTACHMENTS: Ordinance

Report Prepared By: Kent Kampton, Building Inspection Supervisor

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Ordinance Adding Chapter 15.09)
To the Pittsburgh Municipal Code for)
Post Disaster Safety Assessment)
Standards) ORDINANCE NO. 18-XXXX

The City Council of the City of Pittsburgh DOES ORDAIN as follows:

SECTION 1. As required by the California Office of Emergency Services, California Office of Statewide Health Planning and Development, and the Federal Emergency Management Agency, *Procedures for Post-Earthquake Safety Evaluation of Buildings* and demolition criteria for buildings and structures damaged as a result of a declared disaster or local emergency.

Consistent with the state statutes, the City desires to set forth post-disaster safety assessment standards, including assessment placards and for those placards to be enforceable by law, and criteria for post-disaster demolition of dangerous buildings or structures. The placards will indicate the condition of a structure for occupancy after a natural disaster and rapid evaluation by authorized personnel, and establishes criteria for post-disaster demolition of buildings or structures that pose an imminent threat to public health and safety.

SECTION 2. Chapter 15.09 Post Disaster Safety Assessment Standards is added to the Pittsburgh Municipal Code to read in full as follows:

Section 15.09.010 Safety Assessment Placards

- A. Intent. This section establishes standard placards to be used to indicate the condition of a structure for occupancy after a natural disaster and a rapid evaluation by authorized personnel. This section further authorizes the Building Official and his or her authorized representatives to post the appropriate placard at each entry point to a building or structure upon completion of a safety assessment.
- B. Application of provisions. The provisions of this section are applicable to all buildings and structures of all occupancies regulated by the City of Pittsburgh.

Section 15.09.011 Definitions.

A. The following words and phrases as used in this section are defined as follows:

“Safety Assessment” is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy.

B. Placards. Following are titles and descriptions of the official jurisdiction placards to be used to designate the condition of a building or structure for continued occupancy, partial or conditional occupancy, or unsafe to enter. Copies of placards are on file in the Building Division of the Community Development Department.

INSPECTED – Lawful Occupancy Permitted - is to be posted on any building or structure wherein no apparent hazard has been found. This placard is not intended to mean there is no damage to the building or structure, but that any damage that occurred does not present a hazard to occupants.

RESTRICTED USE – is to be posted on each building or structure that has been damaged wherein the damage has resulted in some form of restriction to the continued occupancy. The individual who posts this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy.

UNSAFE – Do Not Enter or Occupy - is to be posted on each building or structure that has been damaged such that continued occupancy poses a threat to life safety. Building or structures posted with this placard shall not be entered under any circumstances except as authorized in writing by the building official, or his or her authorized representative. Safety assessment teams shall be authorized to enter these buildings at any time. This placard is not to be used or considered as a demolition order. The individual who posts this placard will note in general terms the type of damage encountered.

Section 15.09.012 Content of Placard. The Pittsburg Municipal Code (PMC) number and the words “City of Pittsburg” shall be permanently affixed to each placard.

Section 15.09.013 Unlawful to Remove. Once a placard has been attached to a building or structure, it is not to be removed, altered or covered until done so by an authorized representative of the Building Official. It shall be unlawful for any person, firm or corporation to alter, remove, cover or deface a placard unless authorized pursuant to this section.

Section 15.09.020 Post Disaster Demolition

- A. Intent. This section establishes demolition criteria for all buildings and structures damaged as a result of a disaster for which a local emergency has been declared by the city council, state, or federal government, to the degree where demolition is a viable alternative to repair.
- B. Application of Provisions. The provisions of this section are applicable following each disaster for which a local emergency has been declared by the city council, state or federal buildings, to all buildings and structures of all occupancies regulated by the city.

Section 15.09.021 Definitions

A. The following words and phrases as used in this section are defined as follows:

“Condemn and Condemned” shall mean no person shall enter the building or structure for any reason without the express written permission of the Building Official or his or her designee.

“Event” is any occurrence, which results in the declaration of an emergency, and shall include but not limited to, fires, wind storms, earthquakes and floods.

Section 15.09.022 Demolition Criteria

- A. If after the event, and during any state of emergency, the Building Official determines that any building or structure poses an imminent threat to public health and safety and that protection of the public health and safety requires immediate demolition of the building or structure, or a portion of a building or structure, the official or his designee shall, without contacting the owner or providing a hearing to the property owner, order that said building or structure be demolished immediately. Upon the order of the Building Official or designee, the city shall immediately demolish said building or structure. Such demolition shall be performed in the interest of public health and safety without condemnation hearings otherwise required by the Pittsburgh Municipal Code.
- B. If, after the event, the Building Official determines that any building or structure poses a hazard, but not an imminent threat to the public health and safety, the official or his designee shall notify the building owner of such determination, and the reasons thereof by certified mail return receipt deposited in the United States mail no later than five days after the determination is made. The notice shall set for the date, time and place of a hearing which the Building Official or his designee shall conduct, and also state that during the hearing the building owner may present any evidence to explain why the building or structure should not be condemned. The decision of the Building Official or his designee to condemn the building or structure unless all required repairs are made shall be final. In making the final decision, the Building Official or his or her designee shall consider: 1) all evidence presented at the hearing by the owner or his or her representative; 2) the nature of the hazard presented by the building or structure; and 3) the likelihood of personal injury or death occurring if the building or structure is not condemned.
- C. For any building or structure which the owner has decided to demolish rather than repair, the owner, or owner’s representative, shall follow the established procedures for securing a demolition permit.

SECTION 3. Publication.

The City Clerk shall either (a) have this ordinance published once within 15 days after adoption in a newspaper of general circulation or (b) have a summary of the

ordinance published twice in a newspaper of general circulation, once 5 days before its adoption and again 20 days after its adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Pittsburg held on _____, and was adopted and ordered published at a meeting of the City Council held on _____ by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/25/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution Adding Territory to Future Annexation Area of Community Facilities District 2016-1 (Maintenance of Project Facilities)

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City currently has four community facilities districts (“CFDs”) that provide funds for certain services, including public safety, park maintenance and fire safety emergency services. Two of the four districts allow future annexations for new developments located anywhere within the City limits. This action would make this designation consistent among all the CFDs and allow an expedited annexation procedure for parcels that are required to annex into one or more of these CFDs in the future.

FISCAL IMPACT

Parcels can annex into each of the four existing CFDs from the future annexation area related thereto via Unanimous Approval form, signed by the owner of the applicable parcel and delivered to the City. This is a short-form method of annexation that does not require further public hearings or Council actions, saving time and administrative costs. The only cost for expansion of the future annexation areas for CFD 2016-1 is the legal cost to special outside counsel, Jones Hall. These costs would be paid by the district.

RECOMMENDATION

City Council open the public hearing, take public comment, close the public hearing and introduce, waive further reading, and move to adopt, the attached Resolution Adding Additional Territory to Future Annexation Area of Community Facilities District CFD 2016-1 (Maintenance of Project Facilities).

BACKGROUND

The City of Pittsburg ("City") currently has four community facilities districts ("CFDs") that provide funds primarily for authorized services. These CFDs are as follows:

- Community Facilities District No. 2005-1 (Public Safety Services)
- Community Facilities District No. 2007-1 (Park Maintenance Services)
- Community Facilities District No. 2016-1 (Maintenance of Project Facilities)
- Community Facilities District No. 2017-1 (Fire Facilities and Fire Safety and Emergency Services)

The City Council established the districts pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of division 2, Title 5, commencing at Section 53311, of the California Government Code (the "Act"), which authorizes the City Council to establish a community facilities district, to establish a future annexation area and to add territory thereto.

Each of the four CFDs contains a "future annexation area" from which parcels can annex into the CFD and be levied a special tax to pay for authorized services. The future annexation area for each of CFD No. 2005-1 and CFD No. 2007-1 extends City-wide. The future annexation area for CFD No. 2016-1 does not.

Staff proposes to add territory to the existing future annexation area for CFD No. 2016-1 to also make the future annexation areas City-wide, to be consistent among all four CFDs. If approved the change will also allow for an expedited annexation procedure for parcels that annex into one or more of these CFDs in the future.

The City Council took the first action in this regard on October 1, 2018, by adopting a Resolution of Intention to future Annexation Area of Community Facilities District No. 2016-1 (Maintenance of Project Facilities).

Tonight, the City Council will hold a public hearing on the expansion of the future annexation area for each CFD, and if there is no majority protest, adopt resolutions adding additional territory to each future annexation area.

SUBCOMMITTEE FINDINGS

Not Applicable

STAFF ANALYSIS

This is the second and final step in the process of adding territory to the future annexation area previously established for CFD 2016-1. Upon adoption of this Resolution, the City will be able to annex parcels from the future annexation area into CFD 2016-1 via the unanimous consent of the property owner in the future annexation area, without further hearings or proceedings required.

ATTACHMENTS: Resolution

Map of Future Annexation Area for CFD 2016-1

Report Prepared By: Jolan Longway
Clean Water Program Coordinator

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution)
Adding Territory to Future Annexation)
Area of Community Facilities District)
No. 2016-1 (Maintenance of Project)
Facilities))

RESOLUTION NO. 18-_____

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, this City Council (this "Council") of the City of Pittsburg (the "City") has conducted proceedings to establish Community Facilities District No. 2016-1 (Maintenance of Project Facilities) (the "CFD") and a Future Annexation Area (the "Future Annexation Area") related thereto pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code; and

WHEREAS, in order to provide for the addition of certain territory (the "territory") into the Future Annexation Area, the City Council adopted Resolution 18-13536, "Resolution of Intention to Add Territory to Future Annexation Area of Community Facilities District 2016-1" on October 1, 2018; and

WHEREAS, the City Council held a public hearing on the matter of adding such territory into the Future Annexation Area of the CFD described in the Resolution of Intention; and

WHEREAS, at the public hearing all interested persons desiring to be heard on all matters pertaining to the addition of the territory into the Future Annexation Area of the CFD were heard and a full and fair hearing was held.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Prior Proceedings. All prior proceedings taken by this Council with respect to the CFD and the proposed addition of the territory into the Future Annexation Area of the CFD thereto have been duly considered and are hereby determined to be valid and in conformity with the Act.

Section 2. Prior Resolution. The provisions of the Resolution of Intention previously adopted by this Council for the CFD, are by this reference incorporated herein, as if fully set forth herein.

Section 3. Territory Described. The boundaries of the territory which is being added into the Future Annexation Area of the CFD, as set forth in the Map Adding Territory to Future Annexation Area heretofore recorded on the 25th day of October 2018, at the hour of 11:16 a.m., in Book 87 of Maps of Assessment and Community Facilities Districts at Page 24-26 in the Office of the Clerk-Recorder in the County of Contra Costa, are hereby approved, are incorporated herein by reference and shall be part of the boundaries of the Future Annexation Area of the CFD.

Section 4.Addition of Territory into Future Annexation Area. In accordance with the Act, the territory has been validly added into the Future Annexation Area pursuant to the Act.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a “Unanimous Approval”) of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

The Council hereby determines that any property for which the owner or owners execute a Unanimous Approval shall be annexed into the CFD, and the Clerk shall record an amendment to the notice of special tax lien for the CFD pursuant to Section 3117.5 of the Streets & Highways Code.

Section 5.Effective Date. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Dwaine “Pete” Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

MAP ADDING TERRITORY TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG
COMMUNITY FACILITIES DISTRICT NO. 2016-1
MAINTENANCE OF PROJECT FACILITIES

CITY OF PITTSBURG
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA



REFERENCE IS HEREBY MADE TO THAT CERTAIN MAP ENTITLED PROPOSED BOUNDARIES OF CITY OF PITTSBURG COMMUNITY FACILITIES DISTRICT NO. 2016-1 (MAINTENANCE OF PROJECT FACILITIES), COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA," FILED THE ____ AT THE HOUR OR ____, IN BOOK 5 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE ____, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP AFFECTS.

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF PITTSBURG THIS ____ DAY OF ____ 20__

CITY CLERK

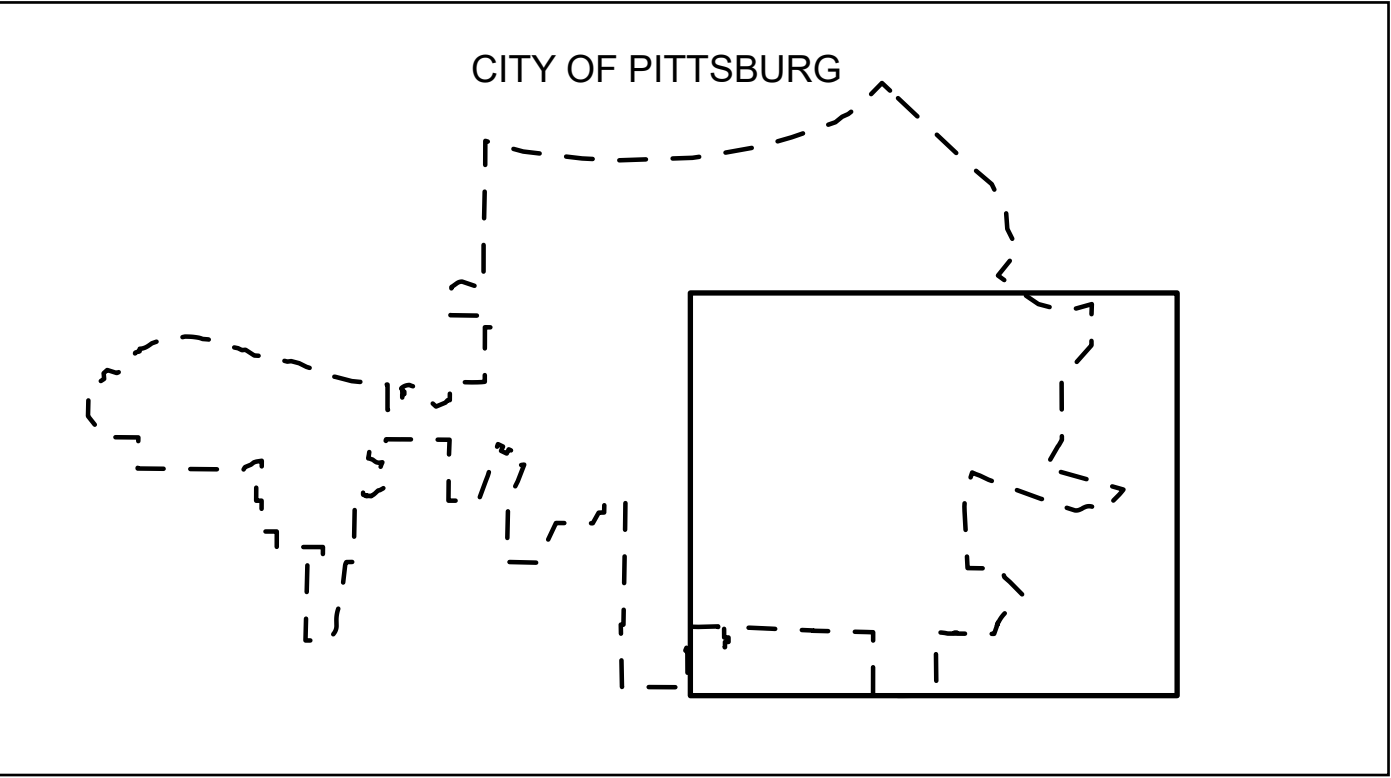
I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING PROPOSED BOUNDARIES OF TERRITORY TO BE ADDED TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG COMMUNITY FACILITIES DISTRICT NO. 2016-1 (MAINTENANCE OF PROJECT FACILITIES), COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF PITTSBURG, AT A MEETING THEREOF, HELD ON THE ____ DAY OF ____ 20____. BY ITS RESOLUTION NO ____ .

CITY CLERK

FILED THIS ____ DAY OF ____, 20 __. AT THE HOUR OF ____ O' CLOCK __ M., IN BOOK ____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS. AT PAGE ____ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

COUNTY RECORDER,
COUNTY OF CONTRA COSTA

FOR PARTICULARS OF THE LINES AND DIMENSIONS OF ASSESSOR PARCELS, REFERENCE IS MADE TO THE MAPS OF THE ASSESSOR, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

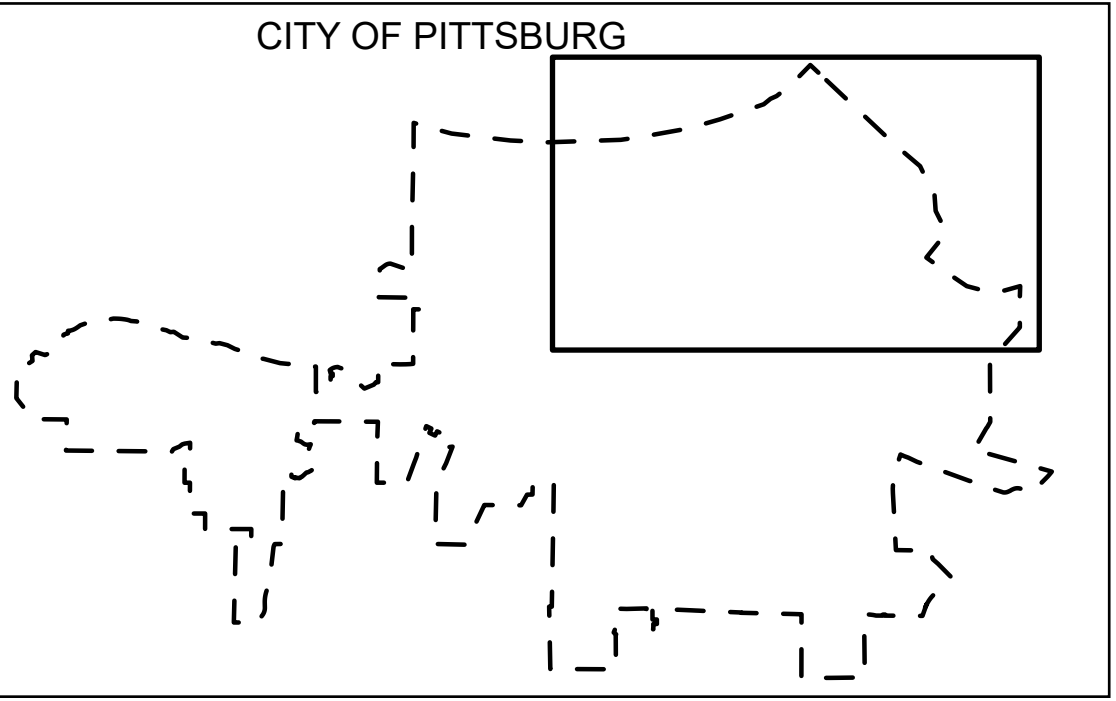
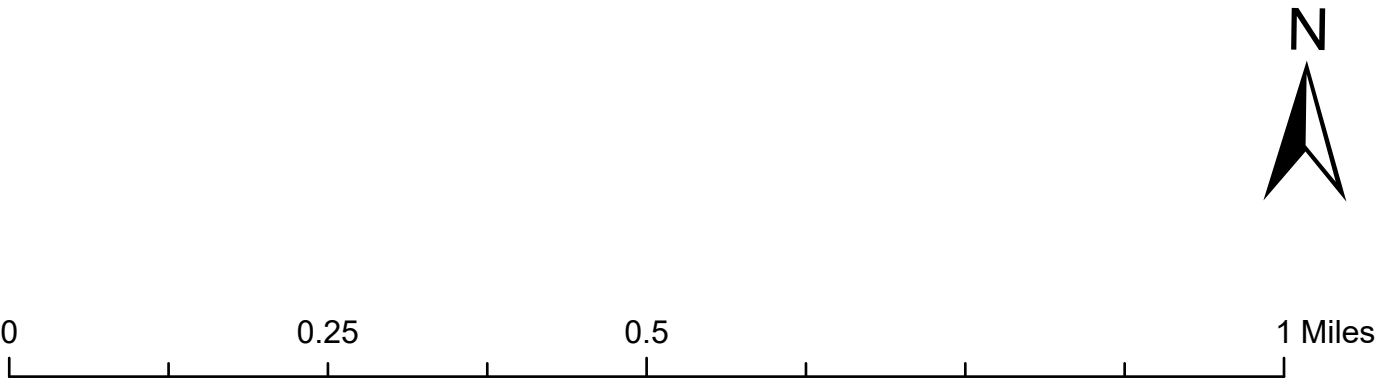


- Parcel Lines
- Territory already included in CFD 2016-1
- Territory for future annexation area

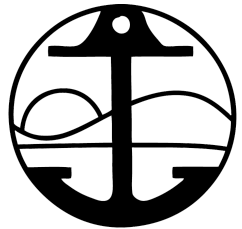


MAP ADDING TERRITORY TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG
COMMUNITY FACILITIES DISTRICT NO. 2016-1
MAINTENANCE OF PROJECT FACILITIES

CITY OF PITTSBURG
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA

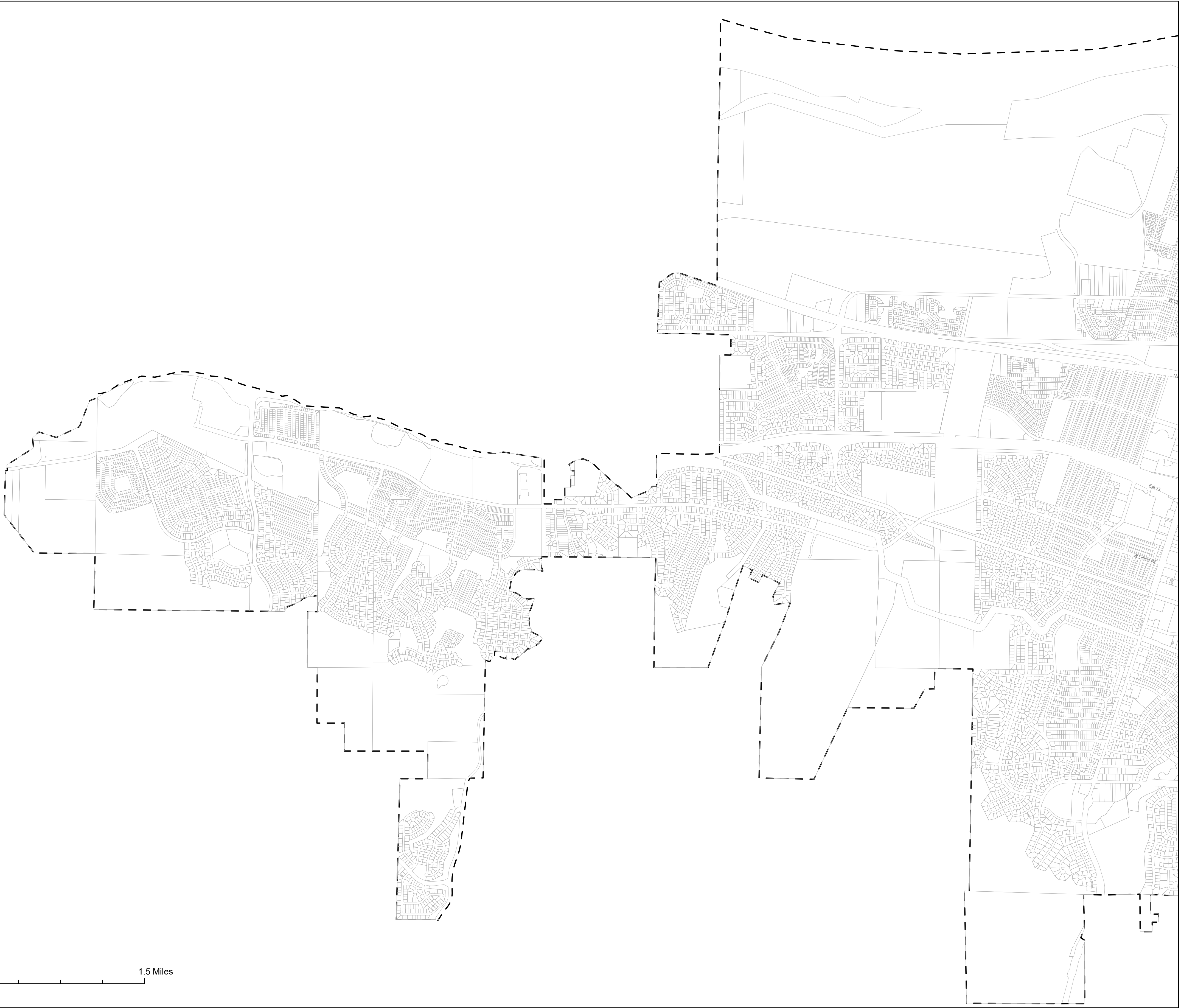


- Parcel Lines
- Territory already included in CFD 2016-1
- Territory for future annexation area

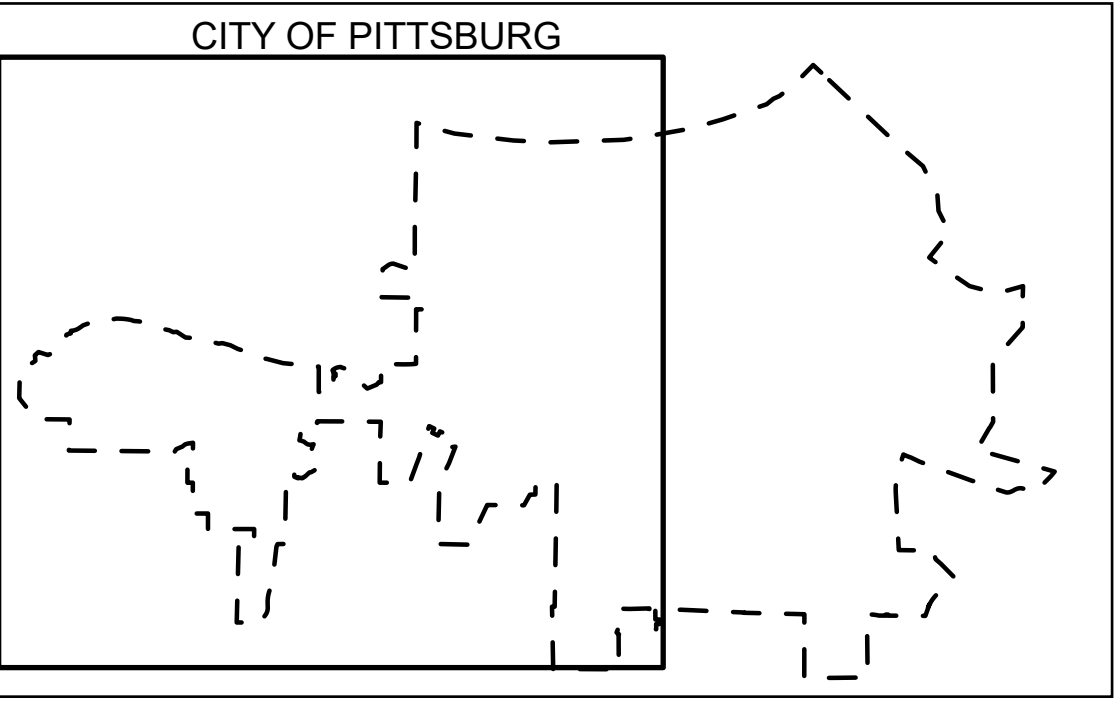


MAP ADDING TERRITORY TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG
COMMUNITY FACILITIES DISTRICT NO. 2016-1
MAINTENANCE OF PROJECT FACILITIES

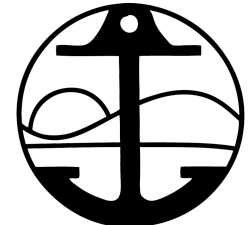
CITY OF PITTSBURG
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA



0 0.38 0.75 1.5 Miles



- Parcel Lines
- Territory already included in CFD 2016-1
- Territory for future annexation area





**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/25/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution Adding Territory to Future Annexation Area of Community Facilities District 2017-1 (Fire Facilities and Fire Safety and Emergency Services)

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City currently has four community facilities districts (“CFDs”) that provide funds for certain services, including public safety, park maintenance and fire safety emergency services. Two of the four districts allow future annexations for new developments located anywhere within the City limits. This action would make this designation consistent among all the CFDs and allow an expedited annexation procedure for parcels that are required to annex into one or more of these CFDs in the future.

FISCAL IMPACT

Parcels can annex into each of the four existing CFDs from the future annexation area related thereto via Unanimous Approval form, signed by the owner of the applicable parcel and delivered to the City. This is a short-form method of annexation that does not require further public hearings or Council actions, saving time and administrative costs. The only cost for expansion of future annexation areas for CFD 2017-1 is the legal cost to special outside counsel, Jones Hall. These costs would be paid by the district.

RECOMMENDATION

City Council open the public hearing, take public comment, close the public hearing and introduce, waive further reading, and move to adopt, the attached Resolution Adding Additional Territory to Future Annexation Area of Community Facilities District CFD 2017-1 (Fire Facilities and Fire Safety and Emergency Services).

BACKGROUND

The City of Pittsburg ("City") currently has four community facilities districts ("CFDs") that provide funds primarily for authorized services. These CFDs are as follows:

- Community Facilities District No. 2005-1 (Public Safety Services)
- Community Facilities District No. 2007-1 (Park Maintenance Services)
- Community Facilities District No. 2016-1 (Maintenance of Project Facilities)
- Community Facilities District No. 2017-1 (Fire Facilities and Fire Safety and Emergency Services)

The City Council established the districts pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of division 2, Title 5, commencing at Section 53311, of the California Government Code (the "Act"), which authorizes the City Council to establish a community facilities district, to establish a future annexation area and to add territory thereto.

Each of the four CFDs contains a "future annexation area" from which parcels can annex into the CFD and be levied a special tax to pay for authorized services. The future annexation area for each of CFD No. 2005-1 and CFD No. 2007-1 extends City-wide. The future annexation area for CFD No. 2017-1 does not.

Staff proposes to add territory to the existing future annexation area for CFD No. 2017-1 to also make the future annexation areas City-wide, to be consistent among all four CFDs. If approved the change will also allow for an expedited annexation procedure for parcels that annex into one or more of these CFDs in the future.

The City Council took the first action in this regard on October 1, 2018, by adopting a Resolution of Intention to future Annexation Area of Community Facilities District No. 2017-1 (Fire Facilities and Fire Safety and emergency Services).

Tonight, the City Council will hold a public hearing on the expansion of the future annexation area for the CFD, and if there is no majority protest, adopt a resolution adding additional territory to the future annexation area.

SUBCOMMITTEE FINDINGS

Not applicable.

STAFF ANALYSIS

This is the second and final step in the process of adding territory to the future annexation area previously established for CFD 2017-1. Upon adoption of this Resolution, the City will be able to annex parcels from the future annexation area into CFD 2017-1 via the unanimous consent of the property owner in the future annexation area, without further hearings or proceedings required.

ATTACHMENTS: Resolution

Map of Future Annexation Area for CFD 2017-1

Report Prepared By: Jolan Longway
Clean Water Program Coordinator

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution)
Adding Territory to Future Annexation)
Area of Community Facilities District)
No. 2017-1 (Fire Facilities and Fire)
Safety and Emergency Services))

RESOLUTION NO. 18-_____

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, this City Council (this "Council") of the City of Pittsburg (the "City") has conducted proceedings to establish Community Facilities District No. 2017-1 (Fire Facilities and Fire Safety and Emergency Services) (the "CFD") and a Future Annexation Area (the "Future Annexation Area") related thereto pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code; and

WHEREAS, in order to provide for the addition of certain territory (the "territory") into the Future Annexation Area, the City Council adopted Resolution 18-13537 "Resolution of Intention to Add Territory to Future Annexation Area of Community Facilities District 2017-1" on October 1, 2018; and

WHEREAS, the City Council held a public hearing on the matter of adding such territory into the Future Annexation Area of the CFD described in the Resolution of Intention; and

WHEREAS, at the public hearing all interested persons desiring to be heard on all matters pertaining to the addition of the territory into the Future Annexation Area of the CFD were heard and a full and fair hearing was held.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Prior Proceedings. All prior proceedings taken by this Council with respect to the CFD and the proposed addition of the territory into the Future Annexation Area of the CFD thereto have been duly considered and are hereby determined to be valid and in conformity with the Act.

Section 2. Prior Resolution. The provisions of the Resolution of Intention previously adopted by this Council for the CFD, are by this reference incorporated herein, as if fully set forth herein.

Section 3. Territory Described. The boundaries of the territory which is being added into the Future Annexation Area of the CFD, as set forth in the Map Adding Territory to Future Annexation Area heretofore recorded on the 25th day of October, 2018, at the hour of 11:26 am, in Book 87 of Maps of Assessment and Community Facilities Districts at Page 27-29 in the Office of the Clerk-Recorder in the County of Contra Costa, are hereby approved, are incorporated herein by reference and shall be part of the boundaries of the Future Annexation Area of the CFD.

Section 4.Addition of Territory into Future Annexation Area. In accordance with the Act, the territory has been validly added into the Future Annexation Area pursuant to the Act.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

The Council hereby determines that any property for which the owner or owners execute a Unanimous Approval shall be annexed into the CFD, and the Clerk shall record an amendment to the notice of special tax lien for the CFD pursuant to Section 3117.5 of the Streets & Highways Code.

Section 5.Effective Date. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

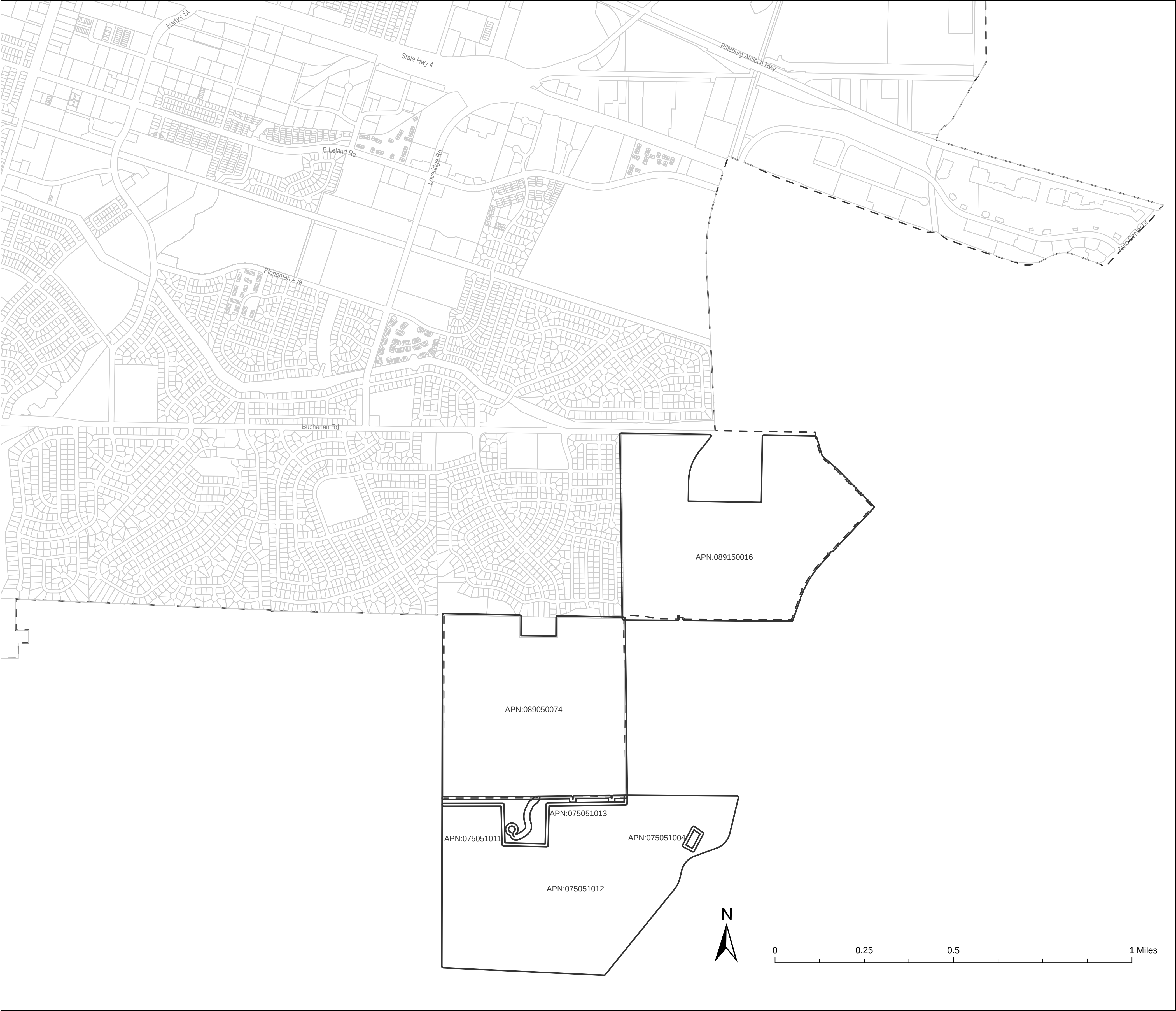
Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

MAP ADDING TERRITORY TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG
COMMUNITY FACILITIES DISTRICT NO. 2017-1
FIRE PROTECTION AND EMERGENCY SERVICES

CITY OF PITTSBURG
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA



REFERENCE IS HEREBY MADE TO THAT CERTAIN MAP ENTITLED PROPOSED BOUNDARIES OF CITY OF PITTSBURG COMMUNITY FACILITIES DISTRICT NO. 2017-1 (FIRE PROTECTION AND EMERGENCY SERVICES), COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA," FILED THE ____ AT THE HOUR OR ____ IN BOOK 5 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE ____, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, WHICH THIS ANNEXATION MAP AFFECTS.

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF PITTSBURG THIS ____ DAY OF ____ 20__

CITY CLERK

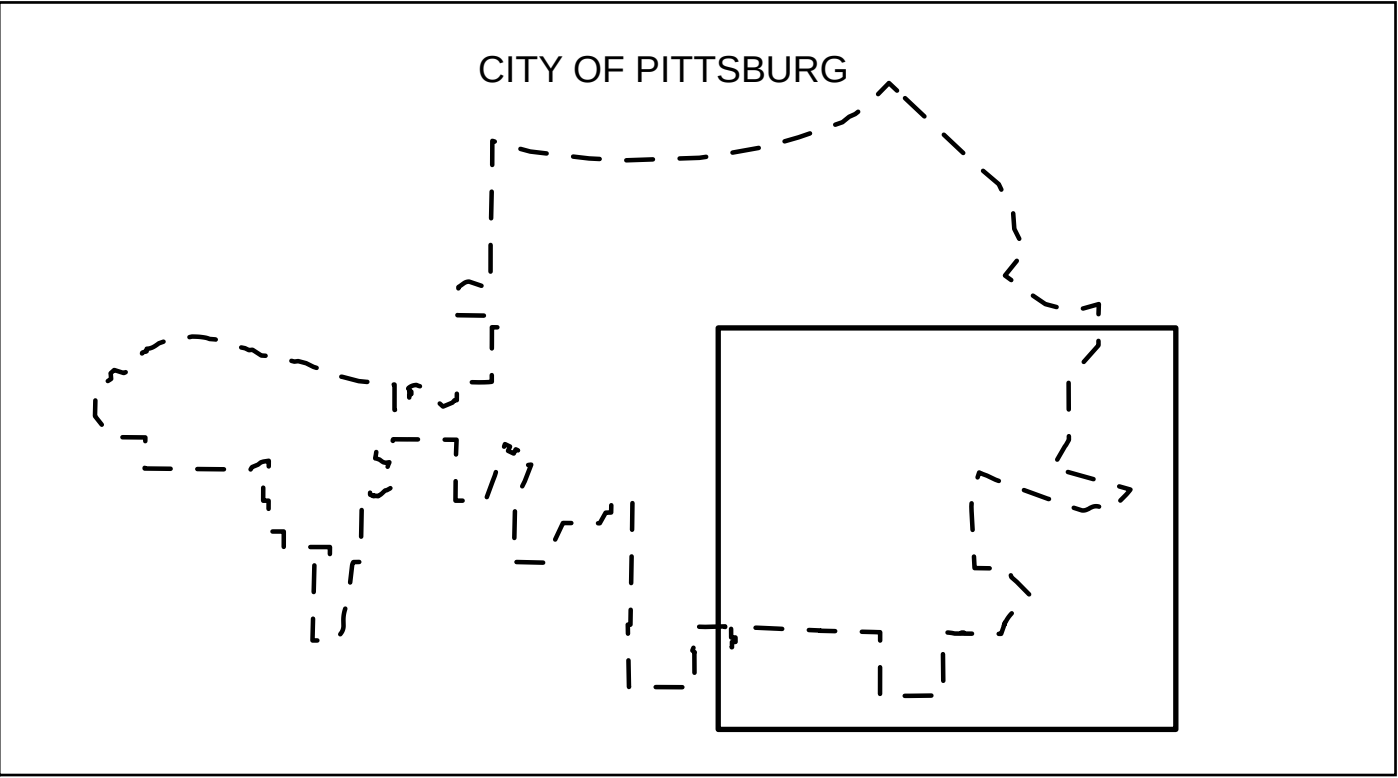
I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING PROPOSED BOUNDARIES OF TERRITORY TO BE ADDED TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG COMMUNITY FACILITIES DISTRICT NO. 2017-1 (FIRE PROTECTION AND EMERGENCY SERVICES), COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF PITTSBURG, AT A MEETING THEREOF, HELD ON THE ____ DAY OF ____ 20____. BY ITS RESOLUTION NO ____ .

CITY CLERK

FILED THIS ____ DAY OF ____, 20 __. AT THE HOUR OF ____ O' CLOCK __ M., IN BOOK ____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS. AT PAGE ____ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

COUNTY RECORDER,
COUNTY OF CONTRA COSTA

FOR PARTICULARS OF THE LINES AND DIMENSIONS OF ASSESSOR PARCELS, REFERENCE IS MADE TO THE MAPS OF THE ASSESSOR, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

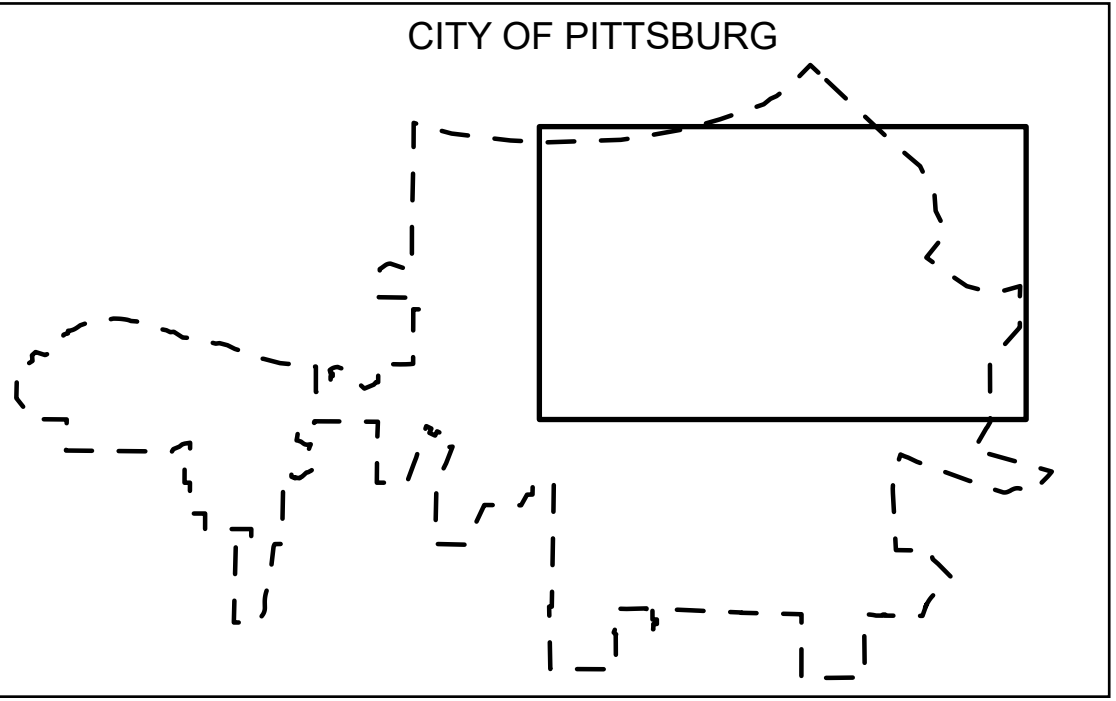
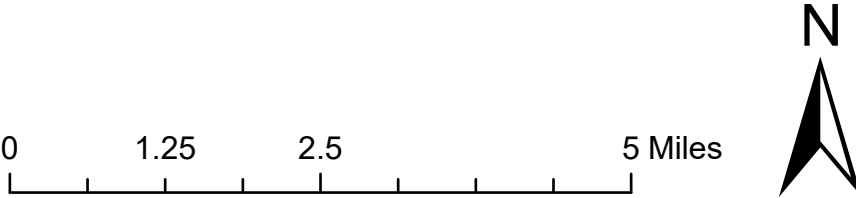


- Parcel Lines
- Territory for future annexation area
- Territory already included in CFD 2017-1

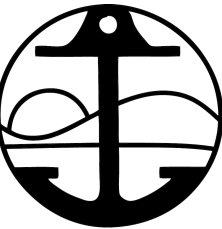


MAP ADDING TERRITORY TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG
COMMUNITY FACILITIES DISTRICT NO. 2017-1
FIRE PROTECTION AND EMERGENCY SERVICES

CITY OF PITTSBURG
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA



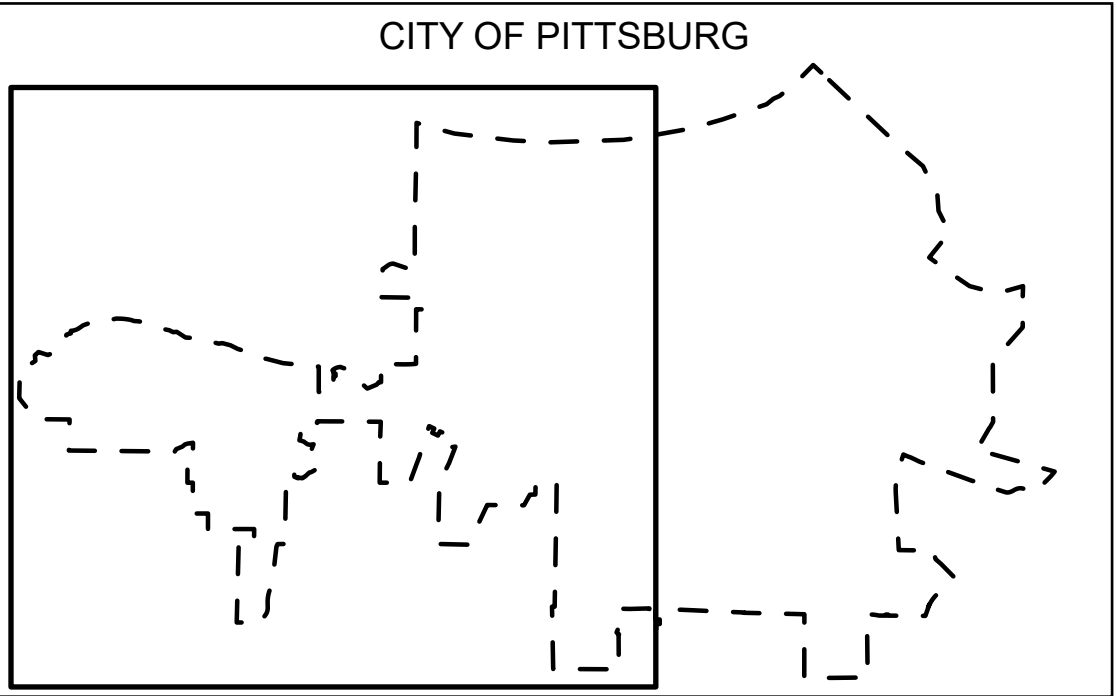
- Parcel Lines
- Territory for future annexation area
- Territory already included in CFD 2017-1



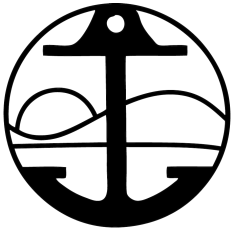
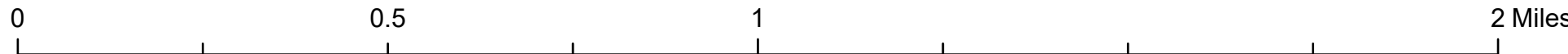
City of Pittsburg

MAP ADDING TERRITORY TO FUTURE ANNEXATION AREA OF CITY OF PITTSBURG
COMMUNITY FACILITIES DISTRICT NO. 2017-1
FIRE PROTECTION AND EMERGENCY SERVICES

CITY OF PITTSBURG
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA



- Parcel Lines
- Territory for future annexation area
- Territory already included in CFD 2017-1



City of Pittsburg



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/24/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: By Minute Order, Approve the Ceremonial Renaming of El Pueblo Avenue Between Diane Avenue to Treatro Street in Honor of Donald Pearman

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

In recognition of Donald Pearman's many years of service to the community and his long history and tireless hours of service to the El Pueblo Housing Community, staff recommends approval of a ceremonial re-naming of the segment of El Pueblo Avenue as "Donald Pearman Way." The ceremonial name would be in addition to the El Pueblo Avenue address assigned to the properties along this segment of the street and would not alter official mailing addresses.

FISCAL IMPACT

Nominal cost for installation of street signs.

RECOMMENDATION

By Minute Order, staff recommends that the City Council approve the ceremonial renaming of El Pueblo Avenue between Diane Avenue and Treatro Street "Donald Pearman Way."

BACKGROUND

Donald "Donnie" Pearman, passed away unexpectedly on February 15, 2016. He was born in Albuquerque, New Mexico but spent the majority of his life in Contra Costa County. Donnie was a graduate of Albany High School and studied criminal justice at the college level. He touched many lives in the community as a member of the Pittsburg Police Department where he served for 22 years. During his service he received the Police Chief's Commendation and was awarded officer of the year because of the work he did in his community and the impact he had on one of the toughest areas in town.

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

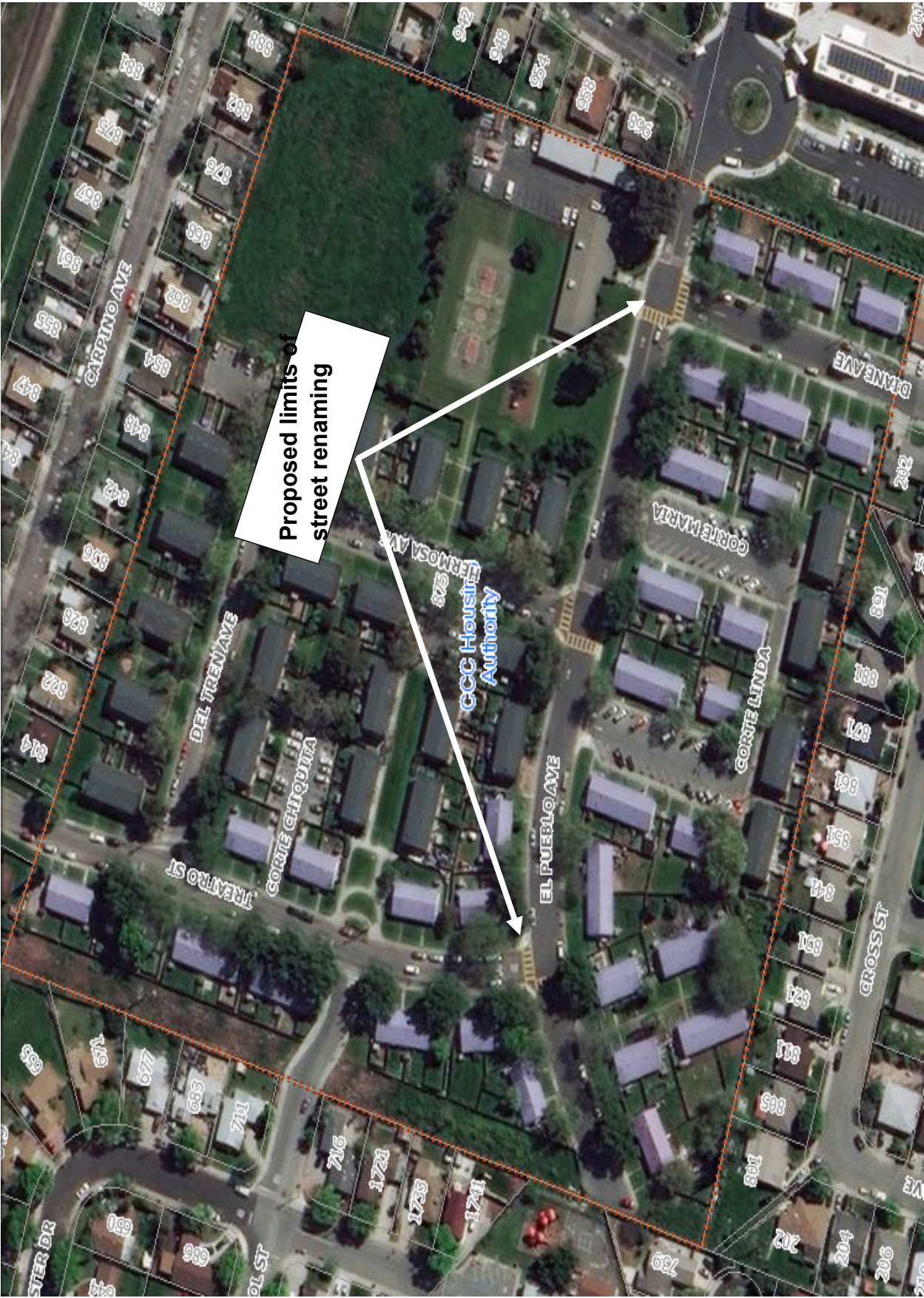
Donald “Donnie” Pearman touched many lives in the El Pueblo Housing development with his dedication and generous spirit. He felt as if El Pueblo was his second home and loved making it a safe community.

Staff is recommending approval of a ceremonial re-naming of a segment of El Pueblo Avenue in the El Pueblo Housing Community, this ceremonial re-naming is supported by Contra Costa County Housing Authority. If approved, the portion of El Pueblo Avenue between Diane Avenue and Treatro Street would be known as “Donald Pearman Way.”

If approved, this action will not alter official mailing addresses along the street. The ceremonial name would be in addition to the ‘El Pueblo Avenue’ addresses assigned to properties along this segment of the street.

ATTACHMENTS: Map of proposed Donald Pearman Way.

Report Prepared By: Fritz McKinley, Director of Public Works



Proposed limits of
street renaming

CCC Housing
Authority



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/23/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Ordinance Approving an Amendment to the Development Agreement between the City of Pittsburg and Garaventa Enterprises, Inc., a City Council Resolution Approving an Assignment and Assumption of Purchase and Sale Agreement between Garaventa Enterprises Inc. and the City of Pittsburg, and a City Council Resolution Approving an Amended and Restated Purchase and Sale Agreement between the City of Pittsburg and Stay Cal Pittsburg LLC

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

On October 15, 2018, the City Council held a public hearing, introduced, and waived first reading of an ordinance approving an Amendment to the Development Agreement ("Amendment to the DA") between the City of Pittsburg, a municipal corporation and Garaventa Enterprises, Inc., a California Corporation ("Garaventa"). The proposed amendment will enable Garaventa to sell a portion of its property to Stay Cal Pittsburg LLC, a California limited liability company ("Stay Cal"), resize the proposed office building, and extend the timelines in the Schedule of Performance. To facilitate implementation of the Amendment to the DA, Garaventa and the City propose to enter into an Assignment and Assumption of Purchase and Sale Agreement ("Assignment and Assumption") and the City and Stay Cal propose to enter into an Amended and Restated Purchase and Sale Agreement ("Amended and Restated PSA").

FISCAL IMPACT

Consideration and approval of the Amendment to the DA, Assignment and Assumption, and the Amended and Restated PSA will enable a transaction that will result in the City disposing of property for a purchase price of One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,110) ("Purchase Price") that is payable over a 20-year period at a 2% interest rate. The disposition of the property will result in the development of a Courtyard by Marriott ("Marriott") which at completion, is anticipated to generate approximately Five Hundred Thousand Dollars (\$500,000) in transient occupancy tax ("TOT").

RECOMMENDATION

City Council adopt the Ordinance approving the Amendment to the DA between the City and Garaventa, the Resolution approving the Assignment and Assumption between Garaventa and the City; and the Resolution approving the Amended and Restated PSA between the City and Stay Cal.

BACKGROUND

Garaventa owns certain vacant parcels of real property located adjacent to the intersection of Railroad Avenue and Center Drive in the City of Pittsburgh, as more specifically identified as Assessor Parcel Numbers 086-100-040 and 086-100-041, which encompasses approximately 227,725 square feet (collectively, the “Original Parcels”).

On June 4, 2018, the City Council adopted Resolution 18-13489, determining that the Original Parcels are not needed for future public or institutional use and that a hotel is an office-supporting commercial use consistent with the vision of the Railroad Avenue Specific Plan (“RASP”).

Garaventa recorded Parcel Map Waiver for a Lot Line Adjustment PMW 18-02 on August 10, 2018, resizing the Original Parcels, as more specifically detailed in Attachment A to this Staff Report. Parcel 1 is approximately 111,874 square feet and Parcel 2 is approximately 115,851 square feet.

Pending City Council approval, City and Garaventa are entering into an Amendment to the DA, amending the original Development Agreement dated May 5, 2014. On October 15, 2018, the City Council held a public hearing, introduced, and waived first reading of an Ordinance approving the Amendment to the DA. On July 6, 2009, the City Council adopted Resolution No. 09-11250 certifying the Environmental Impact Report (“EIR”), adopting and approving statements of findings and overriding considerations, and approving a Mitigation Monitoring and Reporting Program (“MMRP”) for the RASP. The mitigation measures included in the MMRP were subsequently incorporated into the RASP which was adopted by City Council on November 2, 2009, through Ordinance No. 09-1319. The RASP EIR analyzed the traffic and other potential impacts of RASP implementation. The Amended and Restated DA would require development that is consistent the General Plan and RASP and therefore, additional environmental review is not required under CEQA.

The Amendment to the DA effectuate the following events: 1) enable Garaventa to sell Parcel 1 so that it may be developed with a hotel; 2) resize the office building that Garaventa is proposing to construct on Parcel 2, which includes 5,000 square feet of space for the City at no cost and a tenant improvement allowance to the City of \$60 per square foot; and 3) extend the dates on the Amendment to the DA Schedule of Performance, giving Garaventa time to evaluate its options for development of Parcel 2. Pursuant to the Amendment to the DA, Garaventa shall have up to two years from the earlier of (i) the date that the proposed Marriott for Parcel 1 receives a certificate of occupancy or (ii) January 1, 2020, in which to determine whether to develop Parcel 2 with an office building. If Garaventa elects to not develop Parcel 2 with an office building, then Garaventa will return ownership of Parcel 2 to the City and the City will return Garaventa’s \$100,000 deposit.

Garaventa and Stay Cal executed a Purchase and Sale Agreement (“PSA”), dated October 10, 2018 for the sale and purchase of Parcel 1 and its development with a Marriott.

SUBCOMMITTEE FINDINGS

Not Applicable

STAFF ANALYSIS

The ordinance approving the Amendment to the DA is now ready for adoption. The proposed Assignment and Assumption and the Amended and Restated PSA will facilitate implementation of the Amendment to the DA. As part of the negotiations for the Assignment and Assumption, Garaventa shall assign its rights and obligations under the PSA and the City shall assume those rights and obligations. In exchange for extending the dates on the Amendment to the DA Schedule of Performance, the City will be the beneficiary of the Purchase Price.

The City and Stay Cal have negotiated the Amended and Restated PSA as a result of the Assignment and Assumption. Stay Cal will acquire Parcel 1 and is proposing to construct a Marriott. The negotiated terms under the Amended and Restated PSA include:

Loan – Stay Cal will acquire Parcel 1 for the Purchase Price, payable over a 20-year period at a 2% interest rate. The City shall carry the principal balance and interest which shall be repaid over the term of two hundred thirty-nine (239) equal monthly payments of Eight Thousand Four Hundred Eighty-nine Dollars and Twenty-Eight Cents (\$8,489.28) and one (1) final payment of Eight Thousand Four Hundred Seventy-Five Dollars and Fifteen Cents (\$8,475.15) (“Monthly Payments”). The Monthly Payments shall commence on the earlier to occur of the following: (i) the first day of the calendar month after Marriott opens to the public or (ii) two years from Closing Date, regardless of whether Marriott has been constructed on the Property and/or is open to the public.

Infrastructure Improvements – Stay Cal will be required to construct infrastructure improvements that are servicing both Parcels 1 and 2 in anticipation of future demand.

Fee Deferral – Pursuant to a Fee Deferral Agreement (“Fee Deferral Agreement”), the City will defer certain City controlled fees and charges and their repayment shall be in installments until fully repaid.

Both Loan and Fee Deferral Agreement will be secured by a Deed of Trust, recorded against Parcel 1.

TOT – Stay Cal will collect 12% TOT, 10% will be paid to the City and 2% will be used in the following order: (i) to reimburse Stay Cal for the cost of the non-Stay Cal pro rata share of certain infrastructure improvements until Stay Cal is completely reimbursed, (ii) pay certain City controlled fees and charges pursuant to the Fee Deferral Agreement until all deferred fees are repaid, and (iii) repayment of the Loan, only if Stay Cal still has an outstanding balance.

During the February 20, 2018 Goal Setting Meeting, the City Council adopted a list of goals, one of which was Goal 4 – Continue Economic Development & Facilitate Growth which included efforts such as promote economic development, increase access to jobs, and identify revenue opportunities. The funds generated by the sale of Parcel 1, the TOT, and other ancillary revenues such as property tax and sales tax are General Fund monies that may be used to support a variety of City sponsored activities such as public safety, senior and youth programs, economic development, and infrastructure improvements. Finally, hotel

staffing needs will provide jobs. Development of a Marriott on the Property is in the best interests of the City and will materially contribute to the health and welfare of the citizens of the City.

Upon approval of the Amendment to the DA, staff will file an environmental notice of determination with the Contra Costa County Clerk-Recorder.

ATTACHMENTS: Ordinance – Amendment to the DA
Resolution – Assignment and Assumption
Resolution – Amended and Restated PSA
Attachment A – Parcel Map Waiver for a Lot Line Adjustment PMW 18-02
Amendment to the Development Agreement
Assignment and Assumption Purchase and Sale Agreement
Amended and Restated Purchase and Sale Agreement

Report Prepared By: Maria M. Aliotti, Director of Community Services
Hector Rojas, Senior Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Ordinance Approving an Amendment to)
the Development Agreement between)
Garaventa Enterprises, Inc. and the City of)
Pittsburg Concerning the Development of)
a 5.23-Acre Site Located at the Northwest)
Corner of Railroad Avenue and State)
Route 4, for "Garaventa Development)
Agreement, AP-18-1368 (DA).")

ORDINANCE NO. 18-____

The City Council of the City of Pittsburg DOES ORDAIN as follows:

SECTION 1. Recitals.

- A. On June 4, 2007, the City of Pittsburg Redevelopment Agency adopted Resolution No. 07-1212, directing Agency staff to enter into an Exclusive Negotiating Rights Agreement (ENRA) with Garaventa Enterprises, Inc. to develop a mid-rise office building (Civic Tower) on a 5.23-acre site located at the northwest corner of Railroad Avenue and State Route 4 and identified as Parcel 1 and Parcel 2 on PMW 18-02 filed with the Contra Costa County Clerk-Recorder's Office.
- B. On April 7, 2008, the City Council adopted a Mitigated Negative Declaration (MND) and Mitigation and Monitoring Plan for the Civic Tower project.
- C. On May 27, 2008, the Planning Commission adopted Resolution No. 9758, granting tentative parcel map and design review approval for the Civic Tower project.
- D. On October 27, 2009, the City Council and the Redevelopment Agency adopted Resolution Nos. 09-11323 and 09-1393, respectively, approving a Disposition and Development Agreement (DDA) between Garaventa and the Redevelopment Agency for the Civic Tower project. The DDA established a set of obligations and a schedule for the developer to construct a minimum three-story, Class A office building and full-service restaurant, and related parking and site improvements in exchange for the land.
- E. In June 2011, the California legislature adopted Assembly Bill (AB) 26 for the dissolution of redevelopment agencies, which was upheld by a subsequent court decision. DDAs and other agreements to which the Agency was a party and that were in place at the time of Agency dissolution are considered enforceable obligations that may continue to be enforced through the Successor Agency for the Redevelopment Agency.
- F. On May 5, 2014, the City Council adopted Ordinance No. 14-1381 approving a ten-year Development Agreement (DA) between the City of Pittsburg and Garaventa. The DA obligated Garaventa to construct a three-story office building ranging between 65,000 and 75,000 square feet in size; a full-service, stand-alone

restaurant between 6,000 and 8,000 square feet in size; and related site improvements. In exchange, the City was obligated to make every effort to support Garaventa in beginning and completing development of the Civic Tower project, as revised.

- G. In September 2015, Garaventa requested a minor amendment to the 2014 DA to extend the schedule of performance by 12 months and remove their obligation to construct the stand-alone restaurant. The City Manager approved this request pursuant to the authority established under the 2014 DA for the approval of minor amendments. As part of this amendment, Garaventa agreed to construct a four-story office building instead of a three-story building.
- H. In August 2016, Garaventa requested a second minor amendment to the 2014 DA to extend the schedule of performance by an additional 12 months. The City Manager approved this request pursuant to the authority established under the 2014 DA for the approval of minor amendments and Garaventa agreed to construct a four-story office building ranging between 80,000 and 100,000 square feet in size. Garaventa also agreed to lease 5,000 square feet of office space to the City at no cost and provide the City with a tenant improvement allowance of \$60 per square foot.
- I. On February 20, 2018, Garaventa met with staff to discuss a major amendment to the 2014 DA. The proposed major amendment would require Garaventa to: a) develop an office building on the western half of the site; and b) develop or cause the development of a Courtyard by Marriott or equivalent hotel brand on the eastern half of the site. The office building would be a three-story, 'Class A' building with 60,000 square feet of leasable space. Consistent with the 2nd Minor Amendment to the 2014 DA, the City would be leased 5,000 square feet of office space at no cost. Garaventa would provide the City a tenant improvement allowance of \$60 per square foot with annual increases based on the regional Consumer Price Index. The City would be required to pay its pro-rata share of property taxes and Common Area Maintenance charges. The hotel would be required to include at least 125 rooms, an on-site restaurant, full service bar, and a conference room. Garaventa would have two years from the earlier date of: a) the issuance of a Certificate of Occupancy for the hotel; or b) January 1, 2020 to determine if it will pursue construction of the office building. If Garaventa does not pursue construction, it will be required to return the office building site to the City.
- J. The proposed major amendment is subject to the California Environmental Quality Act (CEQA), and the CEQA Guidelines (Public Resources Code section 21080). On July 6, 2009, the City Council adopted Resolution No. 09-11250 certifying the Environmental Impact Report (EIR), adopting and approving statements of findings and overriding considerations, and approving a Mitigation Monitoring and Reporting Program (MMRP) for the RASP. The mitigation measures included in the MMRP were subsequently incorporated into the RASP which was adopted by City Council on November 2, 2009, through Ordinance No. 09-1319.

The RASP EIR analyzed the physical impacts of RASP implementation, which includes the Garaventa site. The California Environmental Quality Act (CEQA)

provides that after a public agency certifies an EIR, the agency shall consider whether further environmental review is required for a subsequent discretionary decision. CEQA Guidelines Section 15183(a) provides that if the subsequent activities under review “are consistent with the development densities established by existing zoning, community plan or general plan for which an EIR was certified,” the agency “shall not prepare additional environmental review, except as may be necessary to examine whether there are project-specific significant impacts which are peculiar to the project or its site...”. The proposed major amendment to the 2014 DA would require development that is consistent the General Plan and RASP and therefore, additional environmental review is not required under CEQA.

- K. On November 25, 1996, the City Council adopted Resolution No. 96-8371, establishing procedures and requirements for considering, adopting and reviewing development agreements and major amendments, pursuant to Pittsburg Municipal Code (PMC) section 18.44.020 and in compliance with California Government Code Section 65867.5 and 65868. Pursuant to Resolution No. 96-8371, the Planning Commission must first hold a public hearing to consider the development agreement or major amendment, and they may provide recommendations; however, a recommendation is not required. After the Planning Commission public hearing, the City Council must hold a public hearing to consider the application along with any comments made by the Planning Commission and any additional public testimony. The City Council may then approve the proposed major amendment to the 2014 DA if it finds that the amendment: 1) is consistent with the General Plan and any applicable specific plan; and 2) will promote the public health, safety, and general welfare.
- L. On September 25, 2018, the Planning Commission held a public hearing and considered a resolution recommending City Council approval of the proposed major amendment to the 2014 DA. The Commission voted 3-3 with one commissioner absent. Pursuant to the Planning Commission bylaws, a tie vote is a denial of the question before it, and therefore the Commission denied the proposed recommendation to the City Council.
- M. On or prior to Friday, October 5, 2018, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020.B, C and D, a “Notice of Public Hearing,” for the October 15, 2018, public hearing on this item was published in the East County Times; was posted at City Hall; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed project site, to local service agencies whose services might be affected by this project, and to individuals who had previously filed written request for such notice.
- N. On October 15, 2018, the City Council held a duly-noticed public hearing to introduce and waive first reading of an ordinance approving the proposed major amendment, at which time oral and/or written testimony was considered.

SECTION 2. Findings.

- A. Based on the City Council Staff Report entitled, "Introduction and Waive First Reading of an Ordinance Approving an Amendment to the Development Agreement between Garaventa Enterprises, Inc. and the City of Pittsburgh, AP-18-1368 (DA)", dated October 15, 2018, and based on all the information contained in the Planning Division files on the project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburgh, and based on all written and oral testimony presented at the public hearing, the City Council finds that:
1. All recitals above are true and correct and are incorporated herein by reference.
 2. The proposed amendment to the 2014 DA is consistent with the General Plan and Railroad Avenue Specific Plan (RASP), in that it will help implement the community's vision for the area within a quarter-mile distance of the Pittsburgh Center BART Station as set forth in both plans. The vision is for a vibrant, walkable, mixed-use, transit-oriented activity center with housing options, neighborhood retail, public amenities, open space, and strong employment uses. The amendment will help realize this vision by obligating the construction of an employment center including offices and a Courtyard by Marriott hotel or equivalent hotel brand right next to the Pittsburgh Center BART Station.
 3. The proposed amendment to the 2014 DA will promote the public health, safety, and general welfare by obligating the construction of two major projects which could create over 300 jobs and will generate considerable property, sales, transient occupancy, and other taxes and fees. These funds will help diversify the City's revenue stream, enhancing its ability to continue providing programs that benefit the community.
- B. The City Council Staff Report entitled, "Introduction and Waive First Reading of an Ordinance Approving an Amendment to the Development Agreement between Garaventa Enterprises, Inc. and the City of Pittsburgh, AP-18-1368 (DA)", dated October 15, 2018, is referenced hereto as additional support for findings.

SECTION 3. Decision.

Based on the findings and the authority set forth above, the City Council hereby adopts an ordinance approving a major amendment to the May 5, 2014, development agreement between Garaventa Enterprises, Inc. and the City of Pittsburgh as substantially presented in Exhibit A of this ordinance.

SECTION 4. Effective Date

This Ordinance shall be in full force and effective thirty (30) days after its adoption.

SECTION 5. Publication.

The City Clerk shall either (a) have this ordinance published once within 15 days after adoption in a newspaper of general circulation or (b) have a summary of the ordinance published twice in a newspaper of general circulation, once 5 days before its adoption and again 20 days after its adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Pittsburg held on October 15, 2018, and was adopted and ordered published at a meeting of the City Council held on November 5, 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

Dwaine "Pete" Longmire, Mayor

Alice E. Evenson, City Clerk

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Approving	)	
An Assignment and Assumption of Purchase and	)	RESOLUTION NO. 18-
Sale Agreement between Garaventa Enterprises	)	
Inc. and the City of Pittsburgh	)	

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, on July 6, 2009, the City Council adopted Resolution No. 09-11250 certifying the Environmental Impact Report ("EIR"), adopting and approving statements of findings and overriding considerations, and approving a Mitigation Monitoring and Reporting Program ("MMRP") for the Railroad Avenue Specific Plan ("RASP"). The mitigation measures included in the MMRP were subsequently incorporated into the RASP which was adopted by City Council on November 2, 2009, through Ordinance No. 09-1319. The RASP EIR analyzed the traffic and other potential impacts of RASP implementation; and

WHEREAS, Garaventa Enterprises Inc., a California corporation ("Garaventa") owns certain vacant parcels of real property located adjacent to the intersection of Railroad Avenue and Center Drive in the City of Pittsburgh, as more specifically identified as Assessor Parcel Numbers 086-100-040 and 086-100-041, which encompasses approximately 227,725 square feet (collectively, the "Original Parcels"); and

WHEREAS, on June 4, 2018, the City Council adopted Resolution 18-13489, determining that the Original Parcels are not needed for future public or institutional use and that a hotel is an office-supporting commercial use consistent with the vision of the RASP; and

WHEREAS, Garaventa recorded Parcel Map Waiver for a Lot Line Adjustment PMW 18-02 on August 10, 2018, resizing the Original Parcels, as more specifically detailed in Attachment A to the Staff Report. Parcel 1 is approximately 111,874 square feet and Parcel 2 is approximately 115,851 square feet; and

WHEREAS, Garaventa and Stay Cal Pittsburgh LLC, a California limited liability company ("Stay Cal") executed a Purchase and Sale Agreement ("PSA"), dated October 10, 2018 for the sale and purchase of Parcel 1 and its development with a Courtyard by Marriott ("Marriott"); and

WHEREAS, pending City Council approval, City and Garaventa are entering into an Amended and Restated Development Agreement ("Amended and Restated DA"), amending the original Development Agreement dated May 5, 2014. The first and second readings of the Amended and Restated DA Ordinance were scheduled to be heard on October 15, 2018 and November 5, 2018. The Amended and Restated DA would require development that is consistent the General Plan and RASP and therefore, additional environmental review is not required under CEQA; and

WHEREAS, Garaventa and the City propose to enter into an Assignment and Assumption of Purchase and Sale Agreement ("Assignment and Assumption") whereby Garaventa shall assign to the City its rights and obligations under the PSA and the City shall assume those rights and obligations.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1.

All the recitals above are true and correct and incorporated herein.

Section 2.

The City Council hereby adopts the Resolution approving the Assignment and Assumption between Garaventa and the City.

Section 3.

The City Manager is hereby authorized to execute such other documents and take such further actions as may be necessary or appropriate to carry out the City Council's obligations pursuant to this Resolution.

Section 4.

The City Clerk shall certify to the adoption of this Resolution.

Section 5.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Approving an)
Amended and Restated Purchase and Sale) RESOLUTION NO. 18-
Agreement between the City of Pittsburg and)
Stay Cal Pittsburg LLC)

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, on July 6, 2009, the City Council adopted Resolution No. 09-11250 certifying the Environmental Impact Report ("EIR"), adopting and approving statements of findings and overriding considerations, and approving a Mitigation Monitoring and Reporting Program ("MMRP") for the Railroad Avenue Specific Plan ("RASP"). The mitigation measures included in the MMRP were subsequently incorporated into the RASP which was adopted by City Council on November 2, 2009, through Ordinance No. 09-1319. The RASP EIR analyzed the traffic and other potential impacts of RASP implementation; and

WHEREAS, Garaventa Enterprises Inc., a California corporation ("Garaventa") owns certain vacant parcels of real property located adjacent to the intersection of Railroad Avenue and Center Drive in the City of Pittsburg, as more specifically identified as Assessor Parcel Numbers 086-100-040 and 086-100-041, which encompasses approximately 227,725 square feet (collectively, the "Original Parcels"); and

WHEREAS, on June 4, 2018, the City Council adopted Resolution 18-13489, determining that the Original Parcels are not needed for future public or institutional use and that a hotel is an office-supporting commercial use consistent with the vision of the RASP; and

WHEREAS, Garaventa recorded Parcel Map Waiver for a Lot Line Adjustment PMW 18-02 on August 10, 2018, resizing the Original Parcels, as more specifically detailed in Attachment A to the Staff Report. Parcel 1 is approximately 111,874 square feet and Parcel 2 is approximately 115,851 square feet; and

WHEREAS, Garaventa and Stay Cal Pittsburg LLC, a California limited liability company ("Stay Cal") executed a Purchase and Sale Agreement ("PSA"), dated October 10, 2018 for the sale and purchase of Parcel 1 and its development with a Courtyard by Marriot ("Marriott"); and

WHEREAS, pending City Council approval, City and Garaventa are entering into an Amended and Restated Development Agreement ("Amended and Restated DA"), amending the original Development Agreement dated May 5, 2014. The first and second readings of the Amended and Restated DA Ordinance were scheduled to be heard on October 15, 2018 and November 5, 2018. The Amended and Restated DA would require development that is consistent the General Plan and RASP and therefore, additional environmental review is not required under CEQA; and

WHEREAS, Garaventa and the City propose to enter into an Assignment and Assumption of Purchase and Sale Agreement whereby Garaventa shall assign to the City its rights and obligations under the PSA and the City shall assume those rights and obligations; and

WHEREAS, the City and Stay Cal propose to enter into an Amended and Restated Purchase and Sale Agreement ("Amended and Restated PSA") amending the PSA with terms agreed upon by the City and Stay Cal.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1.

All the recitals above are true and correct and incorporated herein.

Section 2.

The City Council hereby adopts this Resolution approving the Amended and Restated PSA between the City and Stay Cal.

Section 3.

The City Manager is hereby authorized to execute such other documents and take such further actions as may be necessary or appropriate to carry out the City Council's obligations pursuant to this Resolution.

Section 4.

The City Clerk shall certify to the adoption of this Resolution.

Section 5.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwayne "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Attachment A

The land situated in the City of Pittsburg, County of Contra Costa,
State of California and described as follows:

RECORDED AT THE REQUEST OF:

copy/duplicate has not been
compared to original document

RETURN RECORDED COPY TO:
CITY OF PITTSBURG
ENGINEERING RECORDS SECTION
65 CIVIC AVENUE
PITTSBURG, CA 94565-3814

08/10/2018, 20180128209

PARCEL MAP WAIVER FOR A LOT LINE ADJUSTMENT PMW 18-02

OWNER: Garaventa Enterprises, Inc
PROPERTY ADDRESS: Center Drive
Pittsburg, CA 94565
ASSESSOR PARCEL NO.: 086-100-040 & 086-100-041

I, Richard Abono, City Engineer for the City of Pittsburg, do hereby waive the parcel map requirements (pursuant to the State of California Subdivision Map Act Section 66412 and the City of Pittsburg Municipal Code Section 17.04.050) for the lot line adjustment described and shown on the attached Exhibits "A" and "B".

The resulting parcels conform to the City of Pittsburg ordinances as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary sewer facilities, water supply availability, environmental protection and other requirements pursuant thereto.

This certificate and the attached exhibits do not constitute a parcel map or legal record of survey and are only to certify that this lot line adjustment does not require the filing of a parcel map.

I certify that this Parcel Map Waiver conforms to the requirements of the Subdivision Map Act and local ordinances.

Date 8/10/18 [Signature]
Richard Abono City Engineer PE 65440 City of Pittsburg
Exp. 09/30/2019

ACKNOWLEDGEMENT

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 Contra Costa

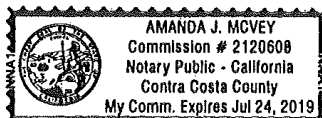
On August 10, 2018 before me, Amanda J. McVey, Notary Public

personally appeared Richard Abono
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 Amanda J. McVey



AUGUST 8, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 1

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 1 AND A PORTION OF PARCEL 2, AS SAID PARCELS ARE DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET;

THENCE, LEAVING SAID SOUTHWEST LINE, NORTH 17°42'22" EAST, 326.07 FEET TO A POINT ON THE NORTHWEST LINE OF SAID PARCEL 2;

THENCE, ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 AND SAID PARCEL 1 THE FOLLOWING SEVENTEEN (17) COURSES:

- 1) SOUTH 72°17'38" EAST, 13.83 FEET,
- 2) SOUTH 27°17'38" EAST, 7.44 FEET,
- 3) SOUTH 72°17'38" EAST, 10.22 FEET,
- 4) SOUTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS NORTH 86°22'10" WEST, THROUGH A CENTRAL ANGLE OF 14°04'32', AN ARC DISTANCE OF 4.79 FEET,
- 5) SOUTH 72°17'38" EAST, 28.00 FEET,
- 6) NORTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 72°17'38" EAST, THROUGH A CENTRAL ANGLE OF 11°28'15", AN ARC LENGTH OF 3.90 FEET,
- 7) SOUTH 74°03'49" EAST, 9.86 FEET,
- 8) NORTH 62°42'22" EAST, 8.23 FEET,
- 9) SOUTH 72°17'38" EAST, 135.81 FEET,
- 10) ALONG THE ARC OF A NON-TANGENT 192.46 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 17°44'07" WEST, THROUGH A CENTRAL ANGLE OF 5°40'02", AN ARC LENGTH OF 19.04 FEET,

Page 1 of 2

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- 11) ALONG THE ARC OF A COMPOUND 40,493.50 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 00°01'42", AN ARC LENGTH OF 20.10 FEET,
- 12) ALONG THE ARC OF A REVERSE 210.50 FOOT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°43'29", AN ARC LENGTH OF 21.03 FEET,
- 13) SOUTH 72°17'38" EAST, 83.39 FEET,
- 14) ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 91°58'34", AN ARC LENGTH OF 40.13 FEET,
- 15) ALONG THE ARC OF A COMPOUND 420.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 10°28'47", AN ARC LENGTH OF 76.82 FEET,
- 16) ALONG THE ARC OF A REVERSE 1,010.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 8°57'26", AN ARC LENGTH OF 157.90 FEET,
- 17) THROUGH THE ARC OF A REVERSE 80.00 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32°25'04", AN ARC LENGTH OF 45.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 111,874 SQUARE FEET, OR 2.57 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



A handwritten signature in dark ink, appearing to read "Mark H. Wehber", written over a horizontal line.

MARK H. WEHBER, P.L.S.
L.S. NO. 7960

AUGUST 8, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 2

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 THE FOLLOWING FOURTEEN (14) COURSES:

- 1) CONTINUING ALONG THE ARC OF A 514.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 09°10'35" WEST, THROUGH A CENTRAL ANGLE OF 01°12'45", AN ARC DISTANCE OF 10.88 FEET,
- 2) ALONG THE ARC OF A REVERSE 514.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 04°36'45", AN ARC DISTANCE OF 41.38 FEET,
- 3) NORTH 77°25'24" WEST 362.34 FEET,
- 4) NORTH 17°42'22" EAST 262.92 FEET,
- 5) NORTH 14°10'19" EAST 49.50 FEET,
- 6) ALONG THE ARC OF A NON-TANGENT 2.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 76°33'57" EAST, THROUGH A CENTRAL ANGLE OF 89°27'52", AN ARC DISTANCE OF 3.90 FEET,
- 7) ALONG THE ARC OF A REVERSE 265.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 30°26'12", AN ARC DISTANCE OF 140.77 FEET,
- 8) ALONG THE ARC OF A NON-TANGENT 289.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 85°57'59" WEST, THROUGH A CENTRAL ANGLE OF 21°44'23", AN ARC DISTANCE OF 109.66 FEET,
- 9) SOUTH 17°42'22" WEST 30.87 FEET,

Page 1 of 2

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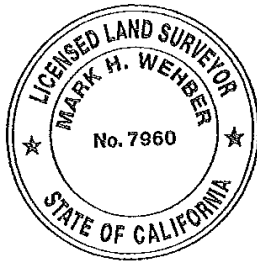
- 10) SOUTH 72°17'38" EAST 54.10 FEET,
- 11) ALONG THE ARC OF A TANGENT 88.00 FOOT RADIUS CURVE TO THE LEFT,
THROUGH A CENTRAL ANGLE OF 33°22'16", AN ARC DISTANCE OF 51.25
FEET,
- 12) NORTH 74°20'06" EAST 97.04 FEET,
- 13) NORTH 17°42'22" EAST 72.94 FEET,
- 14) SOUTH 72°17'38" EAST 78.60 FEET;

THENCE, LEAVING SAID EXTERIOR BOUNDARY LINES, SOUTH 17°42'22" WEST
326.07 FEET TO SAID POINT OF BEGINNING.

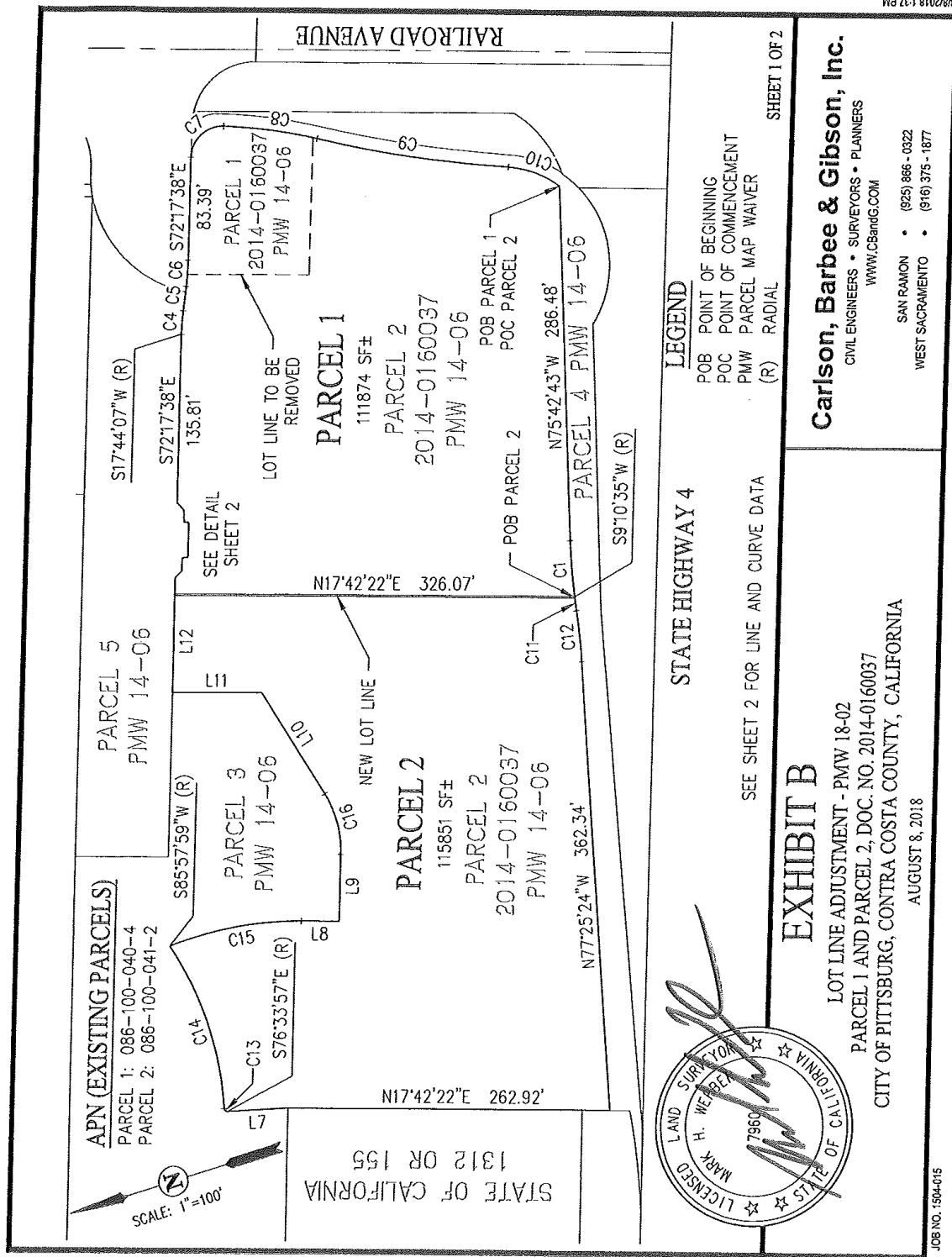
CONTAINING 115,851 SQUARE FEET, OR 2.66 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B,
AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



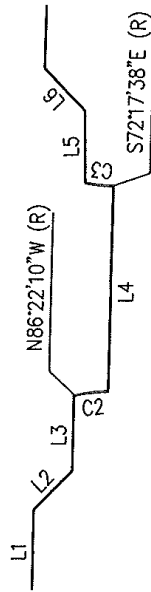

MARK H. WEHBER, P.L.S.
L.S. NO. 7960



LINE TABLE	
NO	BEARING
L1	S72°17'38"E
L2	S72°17'38"E
L3	S72°17'38"E
L4	S72°17'38"E
L5	S74°03'49"E
L6	N62°42'22"E
L7	N14°10'19"E
L8	S17°42'22"W
L9	S72°17'38"E
L10	N74°20'06"E
L11	N17°42'22"E
L12	S72°17'38"E

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	514.00'	5°06'42"	45.86'
C2	19.50'	14°04'32"	4.79'
C3	19.50'	11°28'15"	3.90'
C4	192.46'	5°40'02"	19.04'
C5	40493.50'	0°01'42"	20.10'
C6	210.50'	5°43'29"	21.03'
C7	25.00'	91°58'34"	40.13'
C8	420.00'	10°28'47"	76.82'
C9	1010.00'	8°57'26"	157.90'
C10	80.00'	32°25'04"	45.26'
C11	514.00'	1°12'45"	10.88'
C12	514.00'	4°36'45"	41.38'
C13	2.50'	89°27'52"	3.90'
C14	265.00'	30°26'12"	140.77'
C15	289.00'	21°44'23"	109.66'
C16	88.00'	33°22'16"	51.25'

PARCEL 5
PMW 14-06



PARCEL 1

DETAIL
NOT TO SCALE

SHEET 2 OF 2

EXHIBIT B

LOT LINE ADJUSTMENT-PMW 18-02
PARCEL 1 AND PARCEL 2, DOC. NO. 2014-0160037
CITY OF PITTSBURG, CONTRA COSTA COUNTY, CALIFORNIA

AUGUST 8, 2018

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
WWW.CB&G.COM

SAN RAMON • (925) 866-0322
WEST SACRAMENTO • (916) 375-1877

JOB NO. 1504-015

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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 Contra Costa)

On _____ before me, _____, Notary Public, , personally appeared, _____, who proved to me 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 _____

**RECORDING REQUESTED BY
CITY OF PITTSBURG**

(Exempt from Recording Fees Pursuant to Government Code Section 27383 - Benefits City)

AND WHEN RECORDED MAIL TO:

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attention: City Clerk's Office

SPACE ABOVE THIS LINE FOR RECORDERS USE

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF PITTSBURG, A CALIFORNIA MUNICIPAL CORPORATION
AND
GARAVENTA ENTERPRISES, INC., A CALIFORNIA CORPORATION**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2018, by and between the City of Pittsburg, a California municipal corporation ("City") and Garaventa Enterprises, Inc., a California corporation ("Developer"), pursuant to the authority of California Government Code Sections 65864 through 65869.5. This Agreement shall not become effective unless the following agreements are recorded: 1) this Agreement; 2) a Purchase and Sale Agreement ("PSA") between the Developer and StayCal Pittsburg, LLC, a California limited liability company; 3) an Assignment and Assumption Agreement of the PSA; and 4) an Amended PSA. The date of this Agreement's recording is its effective date ("Effective Date.")

RECITALS:

A. To strengthen the public planning process, to encourage private participation in comprehensive planning and to reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the California Government Code (the "Development Agreement Statutes").

B. The Development Agreement Statutes authorize the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property.

C. This Agreement is voluntarily entered into in consideration of the benefits to and the rights and obligations of the parties on the basis of the facts cited herein, on the understanding and intentions of the parties and in reliance upon the various representations and warranties contained herein.

D. Developer is organized under the laws of the State of California and is in good standing thereunder.

E. Developer and the Redevelopment Agency of the City of Pittsburg (the "Redevelopment Agency") entered into that certain Disposition and Development Agreement (the "DDA") dated November 2, 2009, for the transfer of certain property by the Redevelopment Agency to Developer for development of certain improvements.

F. Subsequent to execution of the DDA, the California Legislature adopted, the Governor signed, and the California Supreme Court, in *California Redevelopment Association, et al. v. Matosantos*, (2012) 53 Cal.4th 231, upheld, Assembly Bill x1 26 ("AB 26" and as further modified by AB 1484, the "Dissolution Law").

G. Pursuant to the Dissolution Law, the Redevelopment Agency was dissolved effective February 1, 2012, and the authority, rights, powers, duties and obligations previously vested with the former Redevelopment Agency vested in the Successor Agency to the Redevelopment Agency (the "Successor Agency"), including the right to enforce "enforceable obligations," as defined in the Dissolution Law.

H. The DDA is an "enforceable obligation" under the Dissolution Law.

I. Pursuant to the DDA, the Successor Agency transferred to, and the Developer owns in fee, those certain parcels of land more specifically known as Parcel Map Waiver 14-06, Parcel 1 and Parcel Map Waiver 14-06, Parcel 2, and subject to certain utility easements, hereafter collectively referenced as "the Project Site," as more particularly described in Exhibits A-1 and A-2, attached to this Agreement and incorporated herein by this reference.

J. The Project Site is now known as County Assessor's Parcel Numbers 086-100-040 and 086-100-041, as shown on Exhibit A-3

K. Developer has completed and recorded a lot line adjustment on [INSERT DATE], affecting County Assessor's Parcel Numbers 086-100-040 and 086-100-041, as shown on Exhibit A-4

L. Developer intends to develop a portion of the Project Site with a Class A office tower as more fully detailed in Exhibit B, attached to this Agreement and incorporated herein by this reference (the "Project" or "Scope of Development").

M. Pursuant to Section 34173(i) of the Dissolution Law, at the request of the City, land use related plans and functions are automatically transferred to the City, provided that the City shall not take any action that would increase the amount of obligated property tax (formerly tax increment) necessary to fulfill any existing enforceable obligation.

N. The City has requested, and the Successor Agency has agreed, to

transfer the land use related plans and functions related to the Project under the DDA to the City.

O. The Project Site is located in the City and consists of a total of approximately 5.23 acres of land.

P. The General Plan designates the Project Site as a Mixed Use District.

Q. Effective May 5, 2014, Garaventa Enterprises, Inc. and City entered into a Development Agreement (recorded December 9, 2015) for the Project (the "2014 Agreement"). Also in 2014, Developer executed and delivered to City a Performance Deed of Trust (the "Deed of Trust"), a recorded copy of which is attached hereto as Exhibit E and incorporated herein, to secure Developer's obligation to perform under the 2014 Agreement. The 2014 Agreement was amended by three minor letter amendments: September 24, 2015 (revising schedule of performance), September 26, 2016 (revising schedule of performance and modifying project requirements), and April 23, 2018 (revising schedule of performance).

R. The purpose of this amended and restated Agreement is to reflect certain changes to the 2014 Agreement relating to Exhibit B and the Project Description therein, as to the size of the proposed office building, , funding of certain project improvements, and related timing of the Project. The parties also wish to clarify and revise certain provisions of the 2014 Agreement., .

S. This Agreement constitutes a "major amendment" as that term is defined in Section 8.01 below.

T. This Agreement was considered by the City at duly noticed public hearing in accordance with the Development Agreement Statutes and the City Enacting Ordinance.

U. For the reasons recited herein, the City has determined that the Project is a development for which this Agreement is appropriate under the Development Agreement Statutes and City Enacting Resolution.

V. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project Site, assuring progressive installation of necessary improvements, providing public services appropriate to each stage of development of the Project Site, ensuring attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, and otherwise achieving the goals and purposes of the Development Agreement Statutes.

W. In exchange for the benefits to City, contained herein, City has taken or will take all actions required so that Developer may begin and consummate development of the Project, including the approval, adoption or issuance of necessary development permits, and the future ministerial approval of building plans and

ministerial issuance of final maps, appropriate building permits, lot line adjustments, and other necessary or desired approvals and entitlements which are consistent with the development of the Project (collectively, the "Ministerial Approvals").

X. In exchange for the benefits to City, Developer desires to receive the assurance that Developer may proceed with the Project in accordance with the City's land use ordinances, as they may presently exist or as modified as part of the City's review and approval of the Project, subject to the terms and conditions contained in this Agreement, and to secure the benefits afforded Developer by Government Code Section 65865.3.

Y. As set forth herein, the City's approval of this Agreement complies with CEQA.

Z. It is the intent of the parties that all acts referenced in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Statutes, the City Enacting Resolution and applicable law.

aa. The terms of this Agreement support the vital and best interests of the City by ensuring the development of the Project which will provide additional sales tax, use tax, property tax, franchise fees, project supervision fees, and other revenue for the City.

bb. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained herein. The parties acknowledge that, in reliance on the agreements, representations and warranties contained herein, Developer shall take certain actions, including making substantial investments and expenditures of monies, relative to the Project Site and the development thereof.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statutes, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

AGREEMENT:

SECTION 1. GENERAL ACKNOWLEDGMENTS.

The parties acknowledge that: (a) the City has entered into this Agreement pursuant to the Development Agreement Statutes and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development on the Project Site and the need for public facilities and infrastructure in connection with the Project Site and other property in the area; and (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or

restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder.

SECTION 2. GENERAL PROVISIONS.

2.01 Property Description. The legal description of the Project Site is specifically set forth on Exhibits A-1, A-2, A-3, and A-4, attached hereto and made a part hereof.

2.02 Location of Project Site. The Project Site is located in the City and consists of a total of approximately 5.23 acres.

2.03 Effective Date. This Agreement shall be binding as to Developer upon Developer's execution hereof, with an effective date ("Effective Date") as of the effective date of the Ordinance adopting the Agreement.

2.04 Term. The term of this Agreement shall commence upon the Effective Date and shall extend ten (10) years thereafter, unless the term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual, written consent of the parties. The parties agree that the term of this Agreement is necessary to permit the orderly and planned development of the Project.

2.05 Expiration of Term. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

2.06 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

2.07 Enforceability of Agreement. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by either party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, the Existing Rules or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations adopted by the City which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.

2.08 Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

2.09 Enforcement of Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.

2.10 Covenants Run With The Land. Except as otherwise specified herein, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.

2.11 Constructive Notice. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

SECTION 3. DEFINITIONS.

Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

3.01 Applicable Land Use Approvals. The City and any other governmental permits and approvals necessary to construct the Improvements including but not limited to overall design and architectural review, and, as applicable, approval of a Tentative Map and Subdivision Map pursuant to Government Code Section 66410 et seq., but excluding building, grading or other ministerial construction permits.

3.02 Approvals. Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Project Site in the manner as described herein.

3.03 Bankruptcy/Insolvency Event. Means any of the following:

(1) Insolvency. A court having 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 the entity in question under the 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, if any such decree or order described in clause (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period will apply under this subsection; or the Developer shall have admitted

in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

(2) Assignment; Attachment. The Developer shall have assigned its assets for the benefit of its creditors 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 or prior to sooner sale pursuant to such sequestration, attachment or execution.

(3) Suspension; Termination. The Developer shall have voluntarily suspended its business or fails to maintain its good standing.

3.04 Building Ordinances. Those building standards, of general application and not imposed solely with respect to the Project Site, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, sign, and fire codes.

3.05 Business Day. A day the City is open for business.

3.06 CEQA. CEQA means the California Environmental Quality Act, California Public Resources Code section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.

3.07 Certificate of Completion. A certificate that shall be a conclusive determination that certain covenants in this Agreement with respect to the obligations of the Developer to construct the Improvements are complete.

3.08 City. City of Pittsburg, County of Contra Costa, State of California.

3.09 Conceptual Development Documents. The documentary expression of the preliminary design concepts for the Improvements which shall include both (1) preliminary site plan and elevations, and (2) a detailed narrative. The Conceptual Development Documents shall address the footprint and general location of the Improvements and the applicable parking improvements on the Project Site, the number of buildings and the height, size, bulk and number of stories of each building, the interior layout, the mix of proposed uses by square footage on each floor, the style and quality of architectural treatment, the materials used on the exterior of the Improvements, the access and pedestrian and traffic circulation features (including location and methods of ingress and egress), the preliminary façade treatment, and all other relevant design factors.

3.10 Construction Contracts. Collectively, all the contracts between the Developer and any general contractor(s) covering the construction of any portion of the Improvements.

3.11 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 board of directors in the case of a corporation.

3.12 Developer. Garaventa Enterprises, Inc., and any successor or assignee to its rights under this Agreement to the extent permitted by this Agreement.

3.13 Developer Deposit. The good faith deposit provided by the Developer in the amount of One Hundred Thousand Dollars (\$100,000), and any interest that is earned on the Developer Deposit.

3.14 Developer Event of Default. A list of possible Developer defaults listed in Section 11.03.

3.15 Development. The improvement of the Project Site for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Project Site; the construction of structures and building; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

3.16 Development Agreement Statutes. Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

3.17 Development Approvals. Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development.

3.18 Effective Date. The date set forth above.

3.19 Enacting Ordinance. Ordinance No. _____ enacted by the City Council on _____, approving this Agreement.

3.20 Existing Land Use Ordinances. The Land Use Ordinances in effect as of the Effective Date of this Agreement.

3.21 Existing Rules. The rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of

use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site as in force on the effective date of this Agreement.

3.22 Financing Proposal. The Developer's proposed financing for the Development.

3.23 Final Construction Plans. The Final Construction Plans as defined in Section 6.09 of this Agreement.

3.24 Financing Plan. The meaning given in Section 6.10.

3.25 General Plan. The City of Pittsburg General Plan as adopted by the City Council.

3.26 Hotel Building. The hotel building consisting of at least 125 rooms and branded as a Courtyard by Marriott or equivalent hotel brand.

3.27 Improvements. Collectively: (i) the Office Building Improvements, (ii) related on-site improvements, including but not limited to, all applicable required on-site parking, sidewalks, storm drains, sanitary sewers, utility connections, public plazas, common area landscaping, and related improvements, and (iii) any off-site public improvements required pursuant to the Applicable Land Use Approvals, including but not limited to the improvements and/or related obligations set forth in Section 6.19 (13)..

3.28 Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Project Site, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Project Site. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Development Plan, the City's Zoning Code, and the City's Design Review standards. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

3.29 Manager. City Manager for the City of Pittsburg.

3.30 Mitigated Negative Declaration. The mitigated negative declaration approved by the City on April 7, 2008, as amended.

3.31 Office Building. The office building consisting of no less than three (3) stories and no less than sixty thousand (60,000) square feet (all subject to Applicable Land Use Approvals). As more particularly described in the Scope of Development, the Office Building shall be constructed, and thereafter operated as a "Class A" office building.

3.32 Office Building Improvements. Collectively, the Office Building and the related on-site improvements, including but not limited to no less than two hundred forty (240) parking stalls (subject to Applicable Land Use Approvals, which, among other things, shall require no less than two (2) parking stalls, adjacent to the existing library building, to be dedicated as "handicapped" parking for such library), on-site hardscape, sidewalks, and landscaping improvements to be located on the Project Site.

3.33 Parties. The City and the Developer. "Party" means either the City or the Developer.

3.34 Persons. As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

3.35 Project. The Project shall consist of a Class A office tower, located in Pittsburg, California, as more particularly described in Exhibit B.

3.36 Project Site. That real property described in Exhibit A, attached hereto and incorporated herein.

3.37 Regulations. Constitutions, statutes, City ordinances, and codes, City resolutions and official policies of the City.

3.38 Schedule of Performance. The summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the development of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit C.

3.39 Scope of Development. The description of the basic physical characteristics of the Improvements, including a basic site plan that will serve as a basis for the Developer's application for the Applicable Land Use Approvals. The Scope of Development, sometimes referred herein as "Project", is attached to this Agreement as Exhibit B.

3.40 Certain Other Terms. Certain other terms shall have the meanings set forth for such terms in this Agreement.

SECTION 4. GENERAL DEVELOPMENT OF THE PROPERTY.

4.01 Project. The Project is further defined and described in the Project

Description and Scope of Development, attached hereto as Exhibit B, which specifies several Project requirements, including but not limited to: (i) proposed uses of the Project Site, (ii) height, size and location of buildings to be constructed on the Project Site, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Project Site for public purposes. The Parties recognize that any changes or modifications to the Project, as set forth in the Project Description, may trigger legal requirements mandating City review and/or approval relating to, but not limited to, environmental, design, mitigation measures, building standards, or similar factors. Prior to implementing such changes or modifications that trigger such legal requirements, Developer shall timely seek and obtain City review and approval.

4.02 General Development. Any development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement. Developer's development of the Project Site, shall be subject to City's building standards, Design Review process, and applicable rules and regulations.

4.03 Permitted Uses. The permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location of public improvements, and other terms and conditions of development applicable to the Project Site shall include an office tower, parking lot, and related facilities, subject to the following:

(1) CEQA. On July 6, 2009, the City Council adopted Resolution No. 09-11250 certifying the Environmental Impact Report (EIR), adopting and approving statements of findings and overriding considerations, and approving a Mitigation Monitoring and Reporting Program (MMRP) for the Railroad Avenue Specific Plan (RASP). The mitigation measures included in the MMRP were subsequently incorporated into the RASP which was adopted by City Council on November 2, 2009, through Ordinance No. 09-1319. The RASP EIR analyzed the physical impacts of RASP implementation, which includes the Project Site. The California Environmental Quality Act (CEQA) provides that after a public agency certifies an EIR, the agency shall consider whether further environmental review is required for a subsequent discretionary decision. CEQA Guidelines Section 15183(a) provides that if the subsequent activities under review "are consistent with the development densities established by existing zoning, community plan or general plan for which an EIR was certified," the agency "shall not prepare additional environmental review, except as may be necessary to examine whether there are project-specific significant impacts which are peculiar to the project or its site...". This Agreement would require development that is consistent the General Plan and RASP and therefore, additional environmental review is not required under CEQA.

(2) Other Uses. Such other uses permitted by this Agreement, insofar as this Agreement so provides or as otherwise set forth in applicable laws, ordinances, rules or regulations.

4.04 Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing of any Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Approvals consistent with this Agreement.

4.05 Vested Right to Develop; Applicable Rules, Regulations and Official Policies. Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the effective date of this Agreement ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by this Agreement and the Development Permits. Developer shall have the right to build and implement the Project on the Project Site consistent with the terms of this and other applicable Agreements, rules and regulations.

4.06 Amendment to Applicable Ordinances. In the event the City Zoning Code is amended by the City in a manner which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of Developer's desire to be subject to the new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City Official whom the City Council may designate, such new standards shall become applicable to the Project Site.

4.07 Application of New Rules Regulations and Policies. This Agreement shall not prevent City in subsequent actions applicable to the Project Site from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Project Site and set forth herein; nor shall this Agreement prevent City from denying or conditionally approving any subsequent development application on the basis of such existing or new rules, regulations, and policies.

4.08 Future Public Financings. The City retains the discretion, subject to applicable law, to impose upon the Project Site taxes and/or assessments, or increases in such, when imposed on other similar, but not necessarily all, properties within the City.

4.09 Changes in State and Federal Rules and Regulations. Nothing in this Agreement shall preclude the application to the development of the Project Site or changes in the City's laws, regulations, plans or policies, the terms of which are

specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.

SECTION 5. PERIODIC REVIEW.

City shall conduct a review of this Agreement as set forth in the following subsections. However, the City's failure to timely conduct such review shall not constitute default under this Agreement.

5.01 Annual Review. City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.

5.02 Procedure. Such annual review shall be conducted in accordance with the City's duly adopted Development Agreement Procedures.

5.03 Notice. City shall notify Developer in writing of the date of review at least thirty (30) days prior thereto.

5.04 Good-faith Compliance. During each annual review, Developer is required to demonstrate good faith compliance with the terms of this Agreement.

5.05 Production of Documents and Other Evidence. Developer agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.

5.06 Cost of Annual Review. The costs incurred by City in connection with the annual review shall be borne by Developer. Upon written request by the City, Developer shall pay the City Ten Thousand Dollars (\$10,000) per review to cover the City's costs. At the completion of the review, City shall request additional funds should a shortfall exist. Failure, if any, by Developer to pay the monies shall be grounds for declaring Developer to be in default of this Agreement and/or in noncompliance thereof.

SECTION 6. OBLIGATIONS OF DEVELOPER.

6.01 General Obligations. In consideration of City entering into this Agreement, Developer has agreed to comply with the applicable provisions of the Project Description in developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area.

6.02 Nexus Reasonable Relationship Challenges. Developer consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Ordinances, Existing Rules or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny

equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

6.03 Cooperation By Developer. Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefor.

6.04 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project Site as may be required for the development of, or provision of services to, the Project.

6.05 Developer Deposit. Developer previously delivered to the City the Developer Deposit in the amount of One Hundred Thousand Dollars (\$100,000). The City may elect to hold the Developer Deposit in an interest-bearing account. Any interest accrued by the Developer Deposit will be returned to the Developer upon issuance of a Certificate of Completion unless subject to Section 6.18.

Upon termination of this Agreement after a Developer Event of Default, the City shall be entitled to the entirety of the Developer Deposit as provided in Section 11.

At the issuance of a Certificate of Completion for the office building, any funds remaining from the Developer Deposit shall be returned to the Developer.

6.06 Overall Timing for Development of Project Site. Developer shall have up to two years from the earlier of (a) the date that the hotel proposed for the Hotel Site receives a certificate of occupancy or (b) January 1, 2020, in which to determine whether to develop the Office Site with an office building, consistent with the terms and conditions hereof. If Developer determines to develop the Office Site with an office building, then Developer shall provide written notice to the City Manager, with a copy to the City Attorney, of such determination and comply with the timeframes set forth in Sections 6.07-6.23. If Developer provides notice to the City Manager and City Attorney that Developer does not intend to develop the Office Site with an office building, or provides no notice, by the specified date, then Developer shall return ownership of the Office Site to the City, whether by grant deed or automatic reverter, at the City's sole option. Upon such reversion and vesting of title of the Office Site with the City, the City shall return the entirety of the \$100,000 Developer Deposit. In addition, if the Developer does not pursue development of the Office Site, as set forth herein, any costs incurred by a Party in connection with this Agreement and the Improvements shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except for the delivery of plans and documents as set forth in Section 11.04 and pursuant to such provisions herein which would specifically survive in the situation of termination of this Agreement.

(1) The office building shall include not less than sixty thousand (60,000) square feet of office space.

(2) City shall be entitled to 5,000 (five thousand) square feet of office space in the office building, plus \$60 per square foot allowance for tenant improvements, increased annually, as of July 1, 2019, by the Consumer Price Index for the San Francisco Bay Area region; both at no cost to the City. City will pay its pro rata share of common area maintenance fees and taxes.

(3) Should Developer develop the Office Site with an urgent care facility or a project that the City, in its sole discretion, deems consistent with the City goals and direction for the Office Site, the City will be willing to negotiate a reduction in its 5,000 square feet of space.

6.07 Conceptual Development Documents. No later than the date set forth in the Schedule of Performance, the Developer shall submit the Conceptual Development Documents for the Office Building and Office Building Improvements to the City for the City's review and approval. The City shall approve or disapprove the Conceptual Development Documents within sixty (60) days following submission, and, if not approved or disapproved within such sixty (60) day period, the Conceptual Development Documents shall be deemed approved. The City shall approve the Conceptual Development Documents if they are substantially consistent with the description of the Improvements set forth in the Scope of Development. If the City disapproves the submission, the City shall specify in writing the reasons for disapproval. Within sixty (60) days following notice of disapproval from the City, the Developer shall thereafter revise the Conceptual Development Documents so as to remove the reasons for disapproval and submit those revised Conceptual Development Documents to the City for approval. The City shall approve or disapprove the revised Conceptual Development Documents within sixty (60) days following submission, and if not disapproved within that sixty (60) day period, the revised Conceptual Development Documents shall be deemed approved. The process for revision and review shall be repeated until the City has approved the Conceptual Development Documents; provided, however that if the City's approval of the Conceptual Development Documents for the Improvements has not been obtained by the dates set forth in the Schedule of Performance then the City may terminate this Agreement pursuant to Section 11.02.

The Developer acknowledges that the City's right to review and approve the proposed Conceptual Development Documents are in addition to, and shall not be limited by, the City's obligation, if any, to review the Developer's proposed Conceptual Development Documents for consistency with applicable building code requirements. The Developer further acknowledges that the City shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the City's commercially reasonable requested changes or modifications to the proposed Conceptual Development Documents (even in the event that such requested changes or modifications exceed the minimum thresholds set forth in the applicable building code and have not been required by the City's building division).

6.08 Application for Applicable Land Use Approvals. No later than the date set forth in the Schedule of Performance, the Developer shall apply to the City and any other relevant government agency for the Applicable Land Use Approvals for the Office Building and Office Building Improvements. All applications shall conform to the description of the Improvements set forth in Scope of Development, unless a variation has been previously approved by the City in writing. The applications shall include architectural elevations, and such other information as the City or relevant government agency may require. No later than the date set forth in the Schedule of Performance, the Developer shall have taken the steps necessary to obtain the Applicable Land Use Approvals.

6.09 Construction Plans. The Developer shall prepare construction plans for the construction of the Office Building and the Office Building Improvements for the City's review and approval. The final construction plans for the Office Building and Office Building Improvements submitted by the Developer for City approval shall consist of all construction documentation upon which the Developer and its contractors shall rely in building the Improvements. Such construction plans shall include (without limitation) final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings"). The construction plans shall be based upon the City approved Conceptual Development Documents and the Applicable Land Use Approvals and shall not materially deviate therefrom without the written consent of the City Manager.

No later than the date set forth in the Schedule of Performance, the Developer shall complete and submit to the City the final construction plans for City review and approval. The City Engineer shall have forty-five (45) days from the date of the City's receipt of such constructions plans to either approve or disapprove the construction plans, and if not disapproved within that forty-five (45) day period, the submitted plans shall be deemed approved. If the City Engineer disapproves the construction plans, the City Engineer shall specify in writing the reasons for disapproval. Within thirty (30) days following notice of disapproval, the Developer shall thereafter revise the construction plans so as to remove the reasons for disapproval and submit those revised construction plans to the City for approval. The City Engineer shall approve or disapprove the revised plans within thirty (30) days following submission, and if not disapproved within that thirty (30) day period, the revised plans shall be deemed approved. The process for revision and review shall be repeated until the City Engineer has approved the construction plans; provided, however that if the City Engineer's approval of the construction plans for the Improvements has not been obtained by the dates set forth in the Schedule of Performance then the City may terminate this Agreement pursuant to 11.03. The Developer acknowledges that the City's right to review and approve the proposed construction plans are in addition to, and shall not be limited by, the City's obligation to review the Developer's proposed construction plans for consistency with applicable building code requirements. The Developer further acknowledges that the City shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the City's reasonably requested changes or modifications to the proposed construction plans (even in the event that

such requested changes or modifications exceed the minimum thresholds set forth in the applicable building code and have not been required by the City's building department).

As approved, these construction plans for the applicable component of the Improvements shall be referred to as the "Final Construction Plans".

6.10 Financing Plan. No later than the date set forth in the Schedule of Performance, the Developer shall submit for City approval evidence to the City Manager's satisfaction of the availability of the funds necessary to develop the Office Building and Office Building Improvements as set forth below (the "Financing Plan").

(1) Third-Party Financing. In the event the Developer intends to utilize any third-party financing, then the Financing Plan shall include:

(a) An estimate of the Developer's sources and uses, including a cost breakdown for costs of constructing the Improvements. The sources and uses shall include all assumptions for all debt and equity financing, shall show the timing of uses of each source of financing, and shall break down which expenses each source of financing is funding consistent with the terms of this Agreement. The sources and uses shall detail the amount of the development fee, and shall provide a proposed schedule of payments of the development fee based on performance milestones as to be mutually agreed to by the Developer and the City;

(b) A copy of a commitment to execute a construction contract(s) containing a guaranteed maximum cost for construction of the Improvements, which specifies the expected guaranteed maximum cost;

(c) A description of any joint ventures, limited liability companies or partnerships the Developer proposes to enter into in order to provide funds for construction of any component of the Improvements and acquisition of the Project Site including copies of the proposed joint venture, operating or partnership agreements; (provided, however, City approval of a financing plan does not constitute approval of any proposed joint venture which shall be subject to Section 9);

(d) A copy of the commitment or commitments obtained by the Developer for loans to assist in financing the construction of the Improvements certified by the Developer to be a true and correct copy or copies thereof; and

(e) A certified financial statement or other financial statement in such form reasonably satisfactory to the City evidencing other sources of capital sufficient to demonstrate that the Developer has adequate funds available and is committing such funds to cover the difference, if any, between costs of development and construction of the Improvements and acquisition of the Project Site and the amount available to the Developer from external sources.

(2) Developer Financing. In the event the Developer intends to finance the development of the Development with the Developer's own funds, and will not utilize any third-party financing, then the Financing Plan shall consist of a letter from a reputable financial institution, reasonably acceptable to the City, stating that the Developer has currently available funds or assets to pay for all costs necessary for the development of the Development, substantially in the form attached as Exhibit D. The Developer hereby authorizes the City to contact the financial institution providing such documentation to the City to verify, or otherwise confirm, the Developer's ability to develop the Development and the Developer hereby agrees to provide such additional documentation and execute such additional agreements necessary for the City to determine the Developer's financial condition with the Developer's financial institution. To the extent permitted under applicable law, the City shall keep any financial information obtained confidential.

(3) City Review of Financing Plan. Upon receipt by the City of the proposed Financing Plan, the City shall promptly review the Financing Plan and shall approve or disapprove it within thirty (30) days after submission if it conforms to the provisions of this Agreement. The City's review of the Financing Plan shall be limited to (i) determining if the contemplated financing will be reasonably available, (ii) determining if the financing contemplated in the Financing Plan would provide sufficient funds to undertake and complete the development and construction of the Improvements, and (iii) determining if the Financing Plan is consistent with the terms of this Agreement.

If the Financing Plan is not approved by the City, the City shall notify the Developer in writing of the reasons therefor. The Developer shall thereafter resubmit a revised Financing Plan to the City for its approval within fifteen (15) days after the City's notification of disapproval. The City will either approve or disapprove the revised Financing Plan within thirty (30) days after resubmission by the Developer, and if disapproved, this Agreement may be terminated pursuant to Section 11 below.

The Parties agree that notwithstanding the time requirements set forth in this Section for submission and resubmission to the City by the Developer of a proposed Financing Plan and review and approval of the Financing Plan by the City, the Developer is responsible for assuring that a Financing Plan, in approvable form, is submitted to the City in a timely manner such that the City may have the time permitted by this Section to review and approve a Financing Plan no later than the date set forth in the Schedule of Performance. In the event that the Developer desires to redevelop the Project Site in phases, then, as a condition, the City may require the Developer to submit an updated Financing Plan for the applicable component of the Improvements subject to the requirements of this Section.

Prior to the recordation of the Certificate of Completion for all components of the Improvements, any material change, modification, revision or alteration of the approved Financing Plan must first be submitted to and approved by the City for conformity to the provisions of this Agreement. If not so approved, the approved Financing Plan shall continue to control.

6.11 Building Permits. No later than the date set forth in the Schedule of Performance, the Developer shall apply to the City, and thereafter diligently pursue and obtain building and construction permits for construction of the Office Building and Office Building Improvements no later than the date set forth in the Schedule of Performance. In the event that the Developer is unable to obtain the building permits by such dates, then such failure shall constitute a Developer Event of Default pursuant to Section 11.03.

6.12 Construction Contracts. The Developer shall enter into Construction Contracts only with licensed contractors having the reputation, experience, skill and financial capability and qualifications for serving as a contractor on first-class construction projects of similar magnitude in Northern California. The contracts shall provide for the work to be performed for fixed and specified maximum amounts or allowances pursuant to the approved Final Construction Plans and the Financing Plan.

Within five (5) Business Days following the issuance of the Building Permits for any component of the Office Building and Office Building Improvements, the Developer shall submit a copy of each proposed Construction Contract(s) for such component to the City Manager or his or her designee, for the sole and limited purposes of determining: (i) that the amount of the cost of work is consistent with the amount set forth in the approved Financing Plan, if applicable, for such work; (ii) that the proposed contractor is a reputable licensed contractor; and (iii) that the covenants as to Equal Opportunity in Construction and Prevailing Wages set forth in Section 6.18 of this Agreement have been met.

Unless the City Manager, or a designee, notifies the Developer in writing within ten (10) days after submitting the contract(s) that the contract has been disapproved because it does not meet the requirements of this Section 6.12, it shall be deemed approved. The Developer shall not rely on the City's approval of the Construction Contract(s) as a representation regarding the enforceability or business advantage of the Construction Contract(s). City approval shall merely constitute satisfaction of the condition set forth in this Section 6.11.

6.13 Payment and Performance Bonds. No later than the date set forth in the Schedule of Performance, the Developer shall deliver to the City forms of one (1) labor and material bond and one (1) performance bond for the Improvements issued by a reputable insurance company licensed to do business in California and reasonably acceptable to the City Manager and City Attorney, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Improvements for the City's review and approval. The bonds shall name the City as co-obligee. Upon receipt by the City of the proposed payment and performance bonds, the City shall promptly review such bonds and approve them within ten (10) days if they satisfy the criteria set forth above, and include any other modification reasonably requested by the City. If the payment and performance bonds are not approved by the City, the City shall

set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit revised payment and performance bonds for City approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the ten (10)-day period(s) set forth above shall be deemed approval by the City.

Prior to construction, the Developer shall deliver to the City copies of actually issued bonds substantially identical to the forms previously delivered to, and approved by, the City. The Developer may elect to satisfy the obligation set forth in this Section by delivering bonds which name the Developer's general contractor(s), and not the Developer, as the principal. If such bonds are not received within the time set forth above, this Agreement may be terminated by the City pursuant to Section 11.

6.14 Insurance. Within ten (10) days following the satisfaction of all conditions to issuance of a building permit for the Office Building Improvements, the Developer shall submit to the City evidence satisfactory to the City that the insurance requirements of Section 19 of this Agreement have been satisfied.

6.15 Parcel Map; Reconfiguration of Site. Developer has completed and recorded a lot line adjustment affecting the existing parcels as shown in Exhibit A-4.

6.16 Evidence of Availability of Funds. All financing necessary to construct the applicable component of the Office Building or Office Building Improvements, as approved by the City in the Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the start of construction of the Office Building or Office Building Improvements.

6.17 Organizational Documents; Resolutions. Prior to construction of the Office Building or Office Building Improvements, the Developer shall deliver to the City a copy of the Developer's complete organizational documents, a certificate of good standing from the California Secretary of State (dated no more than thirty (30) days prior to construction of the Office Building or Office Building Improvements), and a corporate resolution authorizing the execution of this Agreement.

6.18 Additional Conditions Related to Hotel Development. Developer agrees to cooperate with the City's efforts relating to development of a hotel on the Project Site. :

6.19 Construction of the Improvements.

(1) Commencement of Construction. Subject to extension of time for enforced delay pursuant to Section 10.01 or any delay caused solely by the City, the Developer shall commence construction of the Office Building and Office Building Improvements no later than the date set forth in the Schedule of Performance.

(2) Completion of the Construction of the Improvements. Subject to extension of time for enforced delay pursuant to Section 10.01 below, the Developer shall diligently prosecute to completion the construction of the Office Building and Office Building Improvements no later than the date set forth in the Schedule of Performance.

(3) Payment of Construction Costs. The Developer shall be solely responsible for all costs associated with the construction of the Office Building and Office Building Improvements in accordance with this Agreement and the Final Construction Plans.

(4) Construction Pursuant to Plans. Unless modified by operation of this Section, all work of construction and development of the Office Building and Office Building Improvements therein shall be done in accordance with the approved Final Construction Plans.

(5) Material Change in Plans. The Developer shall construct the Office Building and Office Building Improvements in accordance with the Final Construction Plans and the Applicable Land Use Approvals set forth in Section 6.08. The Developer shall notify the City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the approved Final Construction Plans. A written change order authorized by the City must be obtained before any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Improvements as provided for in the approved Final Construction Plans.

If the City does not approve or disapprove a proposed change order within five (5) Business Days after receipt, then the change order shall be deemed authorized. Consent to any additions, changes, or deletions to the work shall not relieve or release the Developer from any other obligations under this Agreement. No change order shall be implemented by the Developer or the general contractor without the prior written approval of the City; provided, however, that a change order necessitated by an emergency construction situation, such as unexpected soils conditions or any emergency engendering health, life or property, may be made without City consent, so long as the Developer provides the City with immediate notification by telephone or fax, and provides the City with the reason for and cost of such emergency change order.

(6) Progress Reports. Until the completion of construction of all of the Office Building and Office Building Improvements evidenced by the City's issuance of the Certificate of Completion for the Improvements, the Developer shall provide quarterly written reports regarding construction progress in such detail as the City may reasonably require.

(7) Equal Opportunity. During the construction of the Office Building and Office Building Improvements there shall be no discrimination on the basis of race, color, creed, age, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the

construction work. The Developer and its contractors, employees and agents shall comply with all state laws, including all equal opportunity and fair employment law and regulations applicable to the Improvements. Moreover, the Developer, by and through its construction contractor(s), shall give preference, to the extent practicable, for employment to those individuals residing within the geographical area governed by the City.

(8) Prevailing Wages. The Developer shall, and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Office Building and Office Building Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. The Developer shall, and shall cause the contractor and subcontractors to, keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and immediately upon request shall deliver certified payrolls in compliance with Labor Code Sections 1720 et seq. to the City. The Developer's failure to deliver, or cause the delivery of, such certified payrolls to the City in accordance with this Section 6.18 shall constitute a Developer Event of Default. Copies of the currently applicable per diem prevailing wages are available from the DIR. During the construction of the Office Building and Office Building Improvements, the Developer shall or shall cause the contractor to post at the Project Site the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by 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 Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with construction of the Improvements, or any other work undertaken or in connection with the Project Site. The obligations set forth in this Section 6.18 shall apply to the construction of the Office Building and Office Building Improvements and the initial construction of all tenant improvements within all portions of the Office Building and Office Building Improvements. Following the construction of the initial tenant improvements within all portions of the Office Building and Office Building Improvements, the obligations set forth herein shall terminate; provided, however, the Developer's indemnity obligation shall remain in effect and shall survive the termination or expiration of this Agreement.

(9) Development In Compliance With Law. The Developer shall cause all construction 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 the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the applicable portion of the Project Site.

(10) Construction Responsibilities. The Developer shall coordinate and schedule the construction work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement. At all times during the construction of the Development, the Developer shall provide vehicular and pedestrian access to the public library adjacent to the Project Site; provided, however, the Developer may change the specific access to such library, during the course of construction of the Office Building and Office Building Improvements, in accordance with the Applicable Land Use Approvals and/or the Building Permit. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the construction of the Office Building and Office Building Improvements, including (but not limited to): (i) the quality and suitability of the Final Construction Plans, (ii) the supervision of construction work, (iii) the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers, and (iv) the means, methods, or techniques utilized by the Developer or any party under direct or indirect control of the Developer. Any review or inspection undertaken by the City with reference to the Project Site, the Office Building and Office Building Improvements is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City, and shall 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.

(11) Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against any portion of the Project Site or a stop notice is served on any other lender or other third party in connection any portion of the Project Site, the Office Building and Office Building Improvements, then the Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in Section 6.18.11(a), then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternately, the City may require the Developer to immediately deposit with the City the amount necessary to

satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction on the Office Building and Office Building Improvements for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against any portion of the Project Site. The Developer authorizes the City, but without any 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 any portion of the Project Site, and the Improvements.

(12) Certificate of Completion. Promptly after completion of the Office Building and Office Building Improvements in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Improvements (including the dates for beginning and completion thereof), the City will provide a Certificate of Completion for the Development. Such certification shall be conclusive determination that certain covenants in this Agreement with respect to the obligations of the Developer to construct the Office Building and Office Building Improvements (excluding the Developer's obligation set forth in Section 6.18.8) and the dates for the beginning and completion thereof have been met. Such certification shall be in such form as reasonably determined by the City. Such certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

(13) Construction of Public Improvements. In connection with the construction of the Office Building and Office Building Improvements, the Developer shall, or shall cause, the construction of all public improvements required by the Applicable Land Use Approvals, including, but not limited to a pedestrian and bicycle path along the southern boundary of the Project Site. Developer hereby acknowledges that such public improvements have been constructed by the City. Developer, at the City's sole discretion, will either reimburse the City for Developer's pro-rata share of the already constructed public improvements in the amount of One Hundred Eight Thousand, Five Hundred Fifty-Six Dollars and Twelve Cents (\$108,556.12) (the "Public Improvement Amount") or construct or cause the construction of a public improvement in an amount equal to the Public Improvement Amount.

6.20 Continuing Covenants

(1) Nature of Obligations. Throughout the Term, the covenants set forth in this Section, shall be continuing covenants of Developer and its successors and assigns with respect to the Project Site.

(a) General Use and Maintenance. The Developer agrees to use the Project Site for the specific purpose of developing and operating the Improvements as set forth in this Agreement and the Applicable Land Use Approvals, and shall maintain the Project Site and the Improvements in good repair and in a neat clean and orderly condition and in full compliance with this Agreement, and all applicable local, state, and federal laws and regulations. If there arises a condition in contravention of this Section , and if the Developer has not cured such condition within thirty (30) days after receiving City notice of such a condition (or within a reasonable period of time, but in no event to exceed sixty (60) days, if such cure cannot be completed within said thirty (30) day period), 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, and to establish or enforce a lien or other encumbrance against the Project Site.

(b) Office Building. The Parties acknowledge that the quality and mix of tenants in the Office Building are important to the overall success of the Office Building and is important to the City in order to maintain the quality and character of the Office Building consistent with the goals and objectives of the City. To that end, the Parties agree that, to the extent a Party selects or approves tenants, subtenants, or assignees, the Office Building shall be operated in a manner consistent with a "Class A" office building and that in selecting tenants or subtenants for the Office Building certain uses shall be prohibited and shall not be allowed under any circumstances. Prohibited uses include any use which emits a noxious or obnoxious odor, dust, vibration, noise or sound which can be heard or smelled outside any space within the Office Building; any operation primarily used as a wholesale or warehouse operation and any assembling, refining, smelting, agricultural or mining operation; any second hand store, thrift store, surplus store or flea market; any fire sale, bankruptcy sale (unless under court order) or auction house operation; any central laundry, dry cleaning plant, or laundromat; any recycling facility except as required by law; any business where the primary enterprise is the sale of liquor or beer for off premise consumption; any adult oriented establishments whether for sale, rent or on-site use or viewing including adult book stores/adult cabaret/adult motion picture theater/or adult arcade; any theater of any type, any day spa, any church, or house of worship, any veterinary hospital or kennel or similar animal-related uses; any establishments for sale or rent of funerary supplies, mortuary or related activities or services; any manufacturing facility; any facility for repair of any appliances or other products; any establishments for the sale, storage, rental, and/or servicing of vehicles and vehicle parts; any facility using/storing or treating Hazardous Materials or facility for rent or storage spaces or for warehousing; any facility for the housing of passive components such as digital switching units; any sale of firearms, guns or explosives; any sale of military or security supplies or surplus; any massage parlor; any card room, fortune teller, any tattooing or body piercing parlors; any sale of drug paraphernalia or supplies; any ice dispenser; any feeding center; and any storage facility.

(2) Hazardous Materials.

(a) Covenants.

(i) No Hazardous Materials Activities. The Developer hereby represents and warrants to the City that the Developer shall not cause or permit any portion of the Project Site or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(ii) Hazardous Materials Laws. The Developer shall comply and cause the Project Site and the Improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(iii) Notices. The Developer shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under any portion of the Project Site; (ii) any knowledge by the Developer that any portion of the Project Site does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, any portion of the Project Site, or the Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project Site, that could cause any portion of the Project Site, or any part thereof to be designated as "border zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith.

(iv) Remedial Action. The Developer shall immediately take, at Developer's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

(v) Environmental Indemnity. Without limiting the generality of the indemnity set forth in Section 18, the Developer shall indemnify and hold harmless the City and their respective board members, council members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability they may incur directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by the Developer or its contractors, subcontractors, tenants, agents, employees, and licensees of Hazardous Materials on, under, or about any portion of the Project Site, or the Improvements, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Project Site, or the Improvements, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the City in connection with clauses (i) and (ii), including but not limited to reasonable

attorney's fees, excluding therefrom the extent to which the City, or the City, or their respective board members', officers', officials', employees' or agents' acts or omissions caused or led to any claims, losses, liabilities, and damages as determined by the application of comparative fault principles as applied by the courts of the State of California. This obligation to indemnify shall survive termination of this Agreement.

(4) Taxes and Assessments. The Developer shall pay when due all real property taxes and assessments assessed and levied on the Project Site and the Improvements, and shall remove any lien or attachment made on the Project Site or the Improvements.

(5) Changes. The Developer shall promptly notify the City in writing of any changes in the location of any place of business or tangible material assets of the Developer, and of any other change in fact or circumstance represented or warranted at any time by the Developer to the City.

(6) Mitigation Measures. The Developer shall perform and observe the mitigation measures applicable to the Project Site and the Improvements and the Public Improvements, if any, as set forth in the Applicable Land Use Approvals.

(7) Notification of Litigation. The Developer shall promptly notify the City in writing of (a) any litigation that (1) affects the Developer or any portion of the Project Site and (2) would materially adversely affect the Developer's capacity to perform its obligations under this Agreement, and (b) any claims or disputes that involve a material risk of litigation that would materially adversely affect the Developer's capacity to perform its obligations under this Agreement.

(8) Sales and Use Tax Allocations.

(a) The Developer shall require that its contractors and subcontractors exercise their option to obtain a Board of Equalization sub permit for the jobsite and allocate all eligible use tax payments to the City. Prior to beginning the construction of the Improvements, the Developer shall require that its contractor and subcontractors provide the City with either a copy of the sub permit or a statement that use tax does not apply to their portion of the job.

(b) The Developer shall review the direct payment process established under California Revenue and Taxation Code 7051.3 and, if eligible, use the permit so that the local share of its use tax payments is allocated to the City. The Developer shall provide the City with either a copy of the direct payment permit or a statement certifying ineligibility to qualify for the permit. The Developer shall further work with the City to inform all commercial tenants and operators of the Improvements about the direct payment permit process and require their participation if qualified.

6.21 Financial Obligations

(1) Landscape and Lighting. Developer agrees that the Project Site will be subject to the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88-7324. Developer shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Project Site into the City's existing Lighting and Landscaping District prior to issuance of any permits for the Project Site.

(2) Police CFD. Developer agrees to cooperate with City's efforts to annex the Project Site into City of Pittsburg Community Facilities District No. 2004-01, as adopted pursuant to Resolution No. 04-10071 (the "Police Services District") in order to fund police services made necessary by the Project. Developer shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Project Site into the City's Police Services District prior to issuance of any permits for the Project Site.

(3) Fire District CFD. Developer agrees to cooperate with City's efforts to annex the Project Site into Contra Costa County Fire Protection Community Facilities District, to be established by the Contra Costa County Fire Protection District (the "Fire Services District") in order to fund fire services made necessary by the Project. Developer shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Project Site into the City's Fire Services District prior to issuance of any permits for the Project Site.

(4) Property Taxes. Developer shall not seek to reduce the Project Site's assessed value with the Contra Costa County Assessor or State Board of Equalization.

(5) eBART CFD. Developer agrees to cooperate with City's efforts to annex the Project Site into proposed City of Pittsburg Community Facilities District No. 2014-01 for the Railroad Avenue Specific Plan Area (the "eBART District"), to be established by the City in order to finance the construction of the eBART Railroad Avenue Station. Developer shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Project Site into the City's eBART District prior to issuance of any permits for the Project Site.

6.22 Business License. At all times, the Developer, its contractors and subcontractors are required to maintain an active business license with the City.

6.23 Continuing Obligations. Notwithstanding any other provision of this Agreement, Developer's obligations under Section 6, inclusive, shall constitute a continuing obligation and bind Developer, its successors and/or assigns as long the Project exists. Developer's obligations under Section 6 shall survive this Agreement's termination and continue in full force and effect until the Project ceases and all entitlements are vacated. Failure by Developer of any of the obligations listed in this Section 6 will constitute a Default under Section 11.

SECTION 7. OBLIGATIONS OF CITY.

In consideration of Developer entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:

7.01 Processing. Upon satisfactory completion by Developer of all required preliminary actions to the satisfaction of City, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project Site in accordance with the provisions of this Agreement including, but not limited to, the following:

- (a) the holding of all required public hearings; and
- (b) the processing and approval of all Ministerial Approvals and related matters as necessary for the completion of the development of the Project. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor as required by the Existing Rules.

7.02 Standard of Review. The rules, regulations and policies that apply to any Ministerial Approvals which must be secured prior to the construction of any portion of the Project shall be the Existing Rules. Any Ministerial Approval, including without limitation a building permit, shall be approved by the City within a reasonable period of time after application is made therefor.

SECTION 8. AMENDMENTS.

8.01 Major Amendments. A "Major Amendment" shall be any modification that makes a substantive change, modification or deviation in the terms of this Agreement or any Exhibits or Schedules attached hereto including the terms of the Project Description attached hereto as Exhibit B. Approval of any Major Amendment shall require a noticed hearing and must be authorized by formal action of the City Council.

8.02 Minor Amendments. A "Minor Amendment" shall be any modification that does not make a substantive change, modification or deviation in the terms of this Agreement or any Exhibits or Schedules attached hereto, including the terms of the Project Description attached hereto as Exhibit B. Minor Amendments may be approved by the prior written consent of the Manager.

8.03 Discretion of Manager. The Manager has the sole discretion to determine whether any proposed change, modification, or deviation is a Major Amendment or Minor Amendment for purposes of this Agreement. The Manager's determination as to the status of any Major or Minor Amendment is final. The Manager

also may, at his/her discretion, determine that a Minor Amendment shall be reviewed and acted upon by the City Council and not by the Manager.

SECTION 9. TRANSFERS AND ASSIGNMENTS.

9.01 City's Intent. Developer has demonstrated, and the City finds that Developer possesses, the experience, reputation and financial resources to develop and maintain the Project Site in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Project Site to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's General Plan and this Agreement.

9.02 Transfers Prohibited. The limitations on Transfers set forth in this Article 9 shall apply from the Effective Date until the issuance of the final Certificate of Completion for the Improvements. The Developer shall not make or create any Transfer, either voluntarily or by operation of law, without the prior written approval of the City Manager, which may be granted or denied in the City's sole discretion. Any Transfer made in contravention of this Section 9.02 shall be void and shall be deemed to be a Developer Event of Default, whether or not the Developer knew of or participated in such Transfer.

The City shall not withhold approval of a Transfer of (i) a security interest in the Project Site through a Security Financing Interest for the benefit of a lender making a loan identified in the approved Financing Plan; (ii) all or a portion of the Project Site to an entity Controlled by the Developer, provided such entity delivers to the City its organizational documents and any other documentation reasonably requested by the City to demonstrate such control by the Developer, and executes an assignment and assumption agreement, in a form provided by the City, and such other documentation reasonably requested by the City to evidence the transfer of the Developer's obligations under this Agreement to such entity; or (iii) the leasing of the Office Building by the Developer to third-party tenants in the ordinary course of the Developer's business and in accordance with Section 6.20.

9.03 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. Developer agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable third party.

9.04 Request Procedure. City shall administer the provisions of this Section through its City Manager. Developer shall notify the Manager in writing of its request for City's consent to an assignment or transfer under this Section.

9.05 Additional Information. Upon receipt of a request for an assignment or transfer under this Section, the City Manager shall have the authority to require the production of additional information relating to the qualifications of the proposed assignee or transferee from Developer. Developer shall promptly furnish any and all information required under this Section as the City considers Developer's request for consent to the proposed assignment or transfer.

9.06 Approval of Assignment. The City Manager may, at his or her discretion, approve of the assignment or transfer in writing, deny the assignment or transfer, or refer the matter to the City Council for action. In the event the City Manager determines that the assignment or transfer should be acted upon by the City Council, the City Manager shall notify Developer in writing of the need for City Council authorization. The City Council shall thereafter consider the proposed assignment or transfer. The proposed assignment or transfer may be approved or denied by formal action of the City Council.

9.07 Notice of Proposed Assignment. Developer must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.

9.08 Conditions and Standards. The conditions and standards referred to above are as follows:

- (1) Such assignee or transferee possesses the experience, reputation and financial resources to cause the Project Site to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;
- (2) Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;
- (3) Such assignment or transfer will not impair the ability of City to achieve the objectives of its General Plan and this Agreement;

9.09 Financing Exemption. Mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Project Site are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and Developer retains over fifty percent (50%) of the legal or equitable interest in the Project Site and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

9.10 Notice of Assignment. Upon receiving approval of an assignment,

Developer shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.

9.11 Unapproved Assignments. If City makes the determination not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and Developer conveys the Project Site to a third party, in whole or in part, Developer shall remain liable and responsible for all of the duties and obligations of this Agreement.

SECTION 10. DELAYS IN PERFORMANCE.

10.01 Permissible Delays. In addition to any other provisions of this Agreement with respect to delay, Developer and City shall be excused for performance of their obligations hereunder during any period of reasonable delay caused by acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party. A Party seeking excuse from performance under this section shall provide written notice to the other Party within seventy-two (72) hours of the event preventing or delaying performance. Such notice shall include (1) a request for extension of performance, (2) specific reasons the event qualifies as an excusable delay in or prevention of performance under this section and (3) an estimate of the duration of any delay. The Party receiving a notice properly made under this section shall have seven (7) days to provide a written response approving the request, in whole or in part, or denying the request and stating that the delay or prevention of performance will constitute an event of default.

10.02 Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not Developer is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.

10.03 Notice of Permissible Delays. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 11. DEFAULT AND TERMINATION.

11.01 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of

this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

The nonperformance of a material provision of the Mitigation Monitoring Program shall constitute an event of default under this Agreement; provided, however, that the City shall have given Developer notice of such event and a prospective opportunity to cure, within the cure period described herein. The nonperformance of a provision of the Mitigation Monitoring Program that would not otherwise be considered material, as reasonably determined by the City, may become material if such provision is consistently repeated or ignored after several requests to address such matter from the City or representative thereof.

11.02 No Fault of City.

(1) No Fault of City. At any time following the second (2nd) anniversary of the Effective Date, the City may terminate this Agreement by providing a written notice to the Developer. Following such written notice, this Agreement shall be null and void and of no further force and effect (except for provisions that explicitly survive termination). After a termination pursuant to this Section 11.02(1), any costs incurred by a Party in connection with this Agreement and the Improvements shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except for the delivery of plans and documents as set forth in Section 11.04, and those provisions of this Agreement that recite that they survive termination of this Agreement. Nothing in this Section 11.02 shall limit or impair the City's right to declare a Developer Event of Default in accordance with Section 11.03.

(2) Acknowledgement of City Discretion. The Developer agrees and acknowledges that the City has absolute discretion in determining whether or not it should terminate this Agreement pursuant to Section 11.02(1). The Developer further agrees and acknowledges that in the event the City terminates this Agreement pursuant to Section 11.02(1), the Developer (i) may suffer economic loss or other consequences; and (ii) specifically releases and waives any claim against the City for such loss or economic consequences in connection with the determination of the City to terminate this Agreement pursuant to Section 11.02(1). The Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks related to the City's discretion to terminate this Agreement 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the

debtor.

Developer's Initials:_____

11.03 Fault of Developer.

(1) Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "Developer Event of Default".

(a) The Developer fails to submit the design development plan, or plans, or obtain the City's approval of such plans, as applicable, within the time specified herein.

(b) The Developer fails to apply for the Applicable Land Use Approvals within the time specified herein, or diligently pursue issuance of those permits and approvals.

(c) The Developer fails to submit the construction plan, or plans, or obtain the City's approval of such plan(s), as applicable, within the time specified herein.

(d) The Developer fails to submit to the City, or fails to obtain City approval of the Financing Plan, within the time specified herein.

(e) The Developer fails to apply for, or obtain the building permits within the timeframe specified herein.

(f) The Developer fails to submit to the City, or fails to obtain City approval of the Construction Contract, or fails to deliver the payment and performance bonds within the times specified herein, respectively.

(g) The Developer fails to submit the evidence of insurance within the times specified herein.

(h) The Developer fails to complete the subdivision of the Property within the time frame specified herein.

(i) The Developer fails to provide the evidence of availability of funds as required herein.

(j) The Developer fails to construct the Improvements within the time and in the manner specified herein.

(k) The Developer fails to use and operate the Project Site in the manner set forth herein.

(l) The Developer attempts or completes a Transfer except as

permitted under Section 9.

(m) The Developer breaches any other material provision of this Agreement.

(2) Upon the happening of any event described in Section 11.03(1), the City shall first notify the Developer in writing of its purported breach or failure, and the Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure within such period (or, in the event such breach or failure cannot be cured within thirty (30) days the Developer fails to commence to cure within such period and thereafter fails to diligently cure to completion in no event to exceed ninety (90) days), then the event shall constitute a "Developer Event of Default" and the City shall be afforded all of the following rights and remedies: (i) terminating in writing this entire Agreement; (ii) prosecuting an action for damages; (iii) retaining the Developer Deposit and interest earned thereon; (iv) seeking specific performance of this Agreement; (v) obtaining plans, data, and approvals pursuant to Section 11.04; (vi) the remedies specified in Sections 12.01 and 12.03; and (vii) any other remedy permitted by law.

11.04 No Fault of Developer. At any time following the second (2nd) anniversary of the Effective Date, or as otherwise provided in this Agreement, Developer may terminate this Agreement by providing written notice to the City (a "Developer Termination"). Following a Developer Termination, this Agreement shall be null and void and of no further force and effect (except for provisions that explicitly survive termination), and Developer shall promptly revest the ownership of the Project Site then owned by Developer with the City within sixty days of Developer's notice to City, as referenced in this Section.

11.05 Plans, Data and Approvals. If this Agreement is terminated pursuant to Sections 11.02 or 11.03, then the Developer shall promptly deliver to the City copies of all plans and specifications for the Improvements, all permits and approvals obtained in connection with the Improvements, and all applications for permits and approvals not yet obtained but needed in connection with the Improvements.

11.06 Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

11.07 Cure Period. During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, if delay is due to a court order stemming from institution of legal proceedings with respect thereto, with respect to the Project.

11.08 General Default Remedies. After notice and expiration of the thirty (30) day period without cure, the non-defaulting party shall have such rights and remedies

against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868, to seek mandamus, specific performance, injunctive or declaratory relief, or to foreclose under the Deed of Trust.

11.09. LIQUIDATED DAMAGES. IN THE EVENT OF A DEFAULT OF DEVELOPER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR UPON A DEVELOPER EVENT OF DEFAULT, AS DEFINED IN THIS AGREEMENT, THE CITY AND THE DEVELOPER AGREE THAT THE CITY WILL SUSTAIN DAMAGES, AND THAT CITY'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. THE PARTIES THEREFORE AGREE THAT IN THE EVENT OF A DEFAULT OF DEVELOPER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR UPON A DEVELOPER EVENT OF DEFAULT, AS DEFINED IN THIS AGREEMENT, AND WHERE THE CITY IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THE CITY, AS THE CITY'S SOLE AND EXCLUSIVE REMEDY, SHALL BE ENTITLED TO THE ENTIRETY OF THE DEVELOPER DEPOSIT AND TO FORECLOSE UNDER THE DEED OF TRUST AS LIQUIDATED DAMAGES AND AS CONSIDERATION FOR ENTERING INTO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE RESULTING DAMAGES WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THEREFORE, THAT FORECLOSURE ON THE PROJECT SITE AND RETENTION OF THE ENTIRETY OF THE DEVELOPER DEPOSIT, AS LIQUIDATED DAMAGES, WILL BE AN APPROPRIATE FORM OF COMPENSATION TO THE CITY. BY PLACING THEIR INITIALS IN THE SPACE BELOW, BOTH PARTIES AGREE TO THE LIQUIDATED DAMAGES SET FORTH ABOVE. IN THE EVENT OF A DEVELOPER EVENT OF DEFAULT OR FAILURE IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT WHERE THE CITY IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN (A) FOLLOWING THE CITY'S FORECLOSURE UNDER THE DEED OF TRUST AND RECEIPT OF THE DEVELOPER DEPOSIT, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE DEVELOPER AND CITY HEREUNDER SHALL TERMINATE (EXCEPT THOSE PROVISIONS SPECIFIED TO SURVIVE THE TERMINATION OF THIS AGREEMENT), AND (B) DEVELOPER SHALL RETURN PROMPTLY TO THE CITY ALL DOCUMENTS AND INSTRUMENTS. THE FORECLOSURE OF THE DEED OF TRUST AND PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE CITY HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. THE CITY AND THE DEVELOPER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

CITY'S INITIALS:

DEVELOPER'S INITIALS:

11.10 Remedies Cumulative. Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

11.11 Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

11.12 No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach of this Agreement.

11.13 Effect of Developer Default. No building permit shall be issued or building permit application accepted for any structure on the Project Site after Developer is determined by City to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by the Developer or is waived by City.

11.14 Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

11.15 Scope of Waiver. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

11.16 Attorneys' Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.

11.17 Venue. In the event that suit shall be brought by either party to this

contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Contra Costa or where appropriate, or in the United States District Court for the Northern District of California, as consistent with applicable law.

11.18 Survival. Upon termination of this Agreement under this Article 11, the following provisions of this Agreement shall survive: the waiver in Sections 6.06, 11.02 and 18, and the Developer's indemnification obligations set forth herein. This Section 11.16 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

SECTION 12. APPROVALS.

12.01 Approvals.

(a) Whenever this Agreement calls for City approval, consent, or waiver, including but not limited to changes to the Final Construction Plans, the written approval, consent, or waiver of the City Manager or his or her designee(s) shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager and his or her designee(s) to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Agency.

(b) All approvals under this Agreement shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

SECTION 13. RIGHT OF REVERTER.

14.01 Right of Reverter. If this Agreement is terminated pursuant to Section 11.03 and such termination occurs prior to issuance of the Certificate of Completion for any portion of the Improvements pursuant to Section 6.19, then the City shall have the right to reenter and take possession of any portion of the Project Site and all Improvements thereon, and to revest in the City the estate of Developer in that portion of the Project Site.

The right of reverter contained in this Section 13.01 was set forth in the grant deed transferring the Project Site from the Successor Agency to Developer.

13.02 Rights of Mortgagees. Any rights of the City under Section 13.01 and under Section 11.03 shall not defeat, limit or render invalid any lease, mortgage, deed of trust or any other security interest permitted by this Agreement or otherwise consented to by the City in writing or any rights provided for in this Agreement for the protection of holder of security interests in the Property.

13.03 Option to Repurchase, Reenter and Repossess.

(1) The City shall have the additional right at its option to repurchase, reenter

and take possession of the Project Site or any portion thereof owned by the Developer with all improvements thereon, prior to the issuance of the Certificate of Completion for the Improvements, if there is a Developer Event of Default pursuant to Section 11.03.

(2) Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any Approved Security Interest permitted by this Agreement; or

(b) Any rights or interest provided in this Agreement for the protection of the holder of such Approved Security Interests.

(3) To exercise its right to repurchase, reenter and take possession with respect to the Project Site owned by the Developer, the City shall pay to the Developer in cash an amount equal to:

(a) Two Dollars (\$2.00); plus

(b) The fair market value of the improvements existing on the applicable portion of the Project Site at the time of the repurchase, reentry and repossession; less

(c) Any gains or income withdrawn or made by the Developer from the applicable portion of the Project Site or the improvements thereon; less

(d) The value of any unpaid liens or encumbrances on the applicable portion of the Project Site which the City assumes or takes subject to said encumbrances.

SECTION 14. SECURITY FINANCING INTERESTS.

14.01 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, lines of credit, or any other reasonable method of security, are permitted to be placed upon the Project Site prior to issuance of a Certificate of Completion pursuant to Section 6.19 for any component of the Improvements, but only for the purpose of securing funds to be used for financing the acquisition of the Project Site or construction of the Improvements on the applicable portion of the Project Site, and any other expenditures necessary and appropriate to develop the Project Site in accordance with this Agreement, and costs and expenses incurred or to be incurred by the Developer in furtherance of this Agreement and only if previously approved by the City in writing pursuant to this Agreement. The Developer shall promptly notify the City of any mortgage, deed of trust, sale and lease-back or other financing, conveyance, encumbrance or lien that has been or will be created or attached to the Project Site. The words "mortgage" and "deed of trust" as used in this Agreement includes all other

appropriate modes of security for financing real estate acquisition, construction, and land development. Mortgages, deeds of trust and other reasonable methods of security permitted by this Section 14 are collectively referred to herein as a "Security Financing Interest."

14.02 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Project Site or any part thereof be construed so to obligate such holder (except as set forth in Section 14.03 below). However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Project Site 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.

14.03 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Section 11 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation in construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Project Site or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at each holder's option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy (in which case such holder shall thereafter diligently and promptly pursue such cure to completion) any such default or breach affecting the Project Site and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made, as reasonably determined by the City) without first having expressly assumed, in writing, the Developer's obligations to the City under this Agreement pursuant to an assignment and assumption agreement prepared by the City and recordable among the official records of the County (the "Security Financing Interest Assignment"). Pursuant to the Security Financing Interest Assignment the holder must agree to complete the construction of the Improvements in the manner provided in this Agreement, and, in connection with the execution of such assignment, submit evidence satisfactory to the City that it has the qualification and financial responsibility necessary to perform such obligations. Any such holder properly completing the Improvements pursuant to this Section and the Security Financing Interest Assignment 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 Completion from the City. In the event there are multiple holders of Security Financing Interests, then the City shall accept a cure from such holder of the most senior Security Financing Interest.

14.04 Failure of Holder to Complete Improvements. In any case where three (3) months after having given notice of default by the Developer in completion of the Improvements under this Agreement to the holder of record of any Security Financing Interest, and such holder, having first exercised its option to construct the applicable Improvements pursuant to the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the City), the City shall be afforded the rights against such holder it would otherwise have against Developer under this Agreement.

14.05 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 the Improvements, and the holder has not exercised its option to complete the Improvements (by electing not to execute the Security Financing Interest Assignment), the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Project Site or any portion thereof to the extent of such costs and disbursements.

14.06 Holder to be Notified. The Developer, for itself, its successors and assigns hereby warrants and agrees that each term contained herein dealing with Security Financing Interests and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its coming into any security right or interest in the Project Site.

14.07 Estoppel Certificate. Upon the written request of the Developer, the City shall provide an estoppel certificate, in a form reasonably acceptable to the City, stating (1) whether this Agreement is in effect; (2) whether this Agreement has been amended in any way; and (3) whether the Developer is in default under this Agreement. The City shall provide such estoppel certificate within thirty (30) days after receipt of Developer's request, or such time as the Parties mutually agree.

SECTION 15. RELATIONSHIP OF PARTIES.

15.01 Independent Contractors. The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.

15.02 No Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

15.03 No Third Party Beneficiaries. The only parties to this Agreement are Developer and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

15.04 Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Development Agreement and this has resulted in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.

SECTION 16. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

SECTION 17. SUPERSEDURE OF SUBSEQUENT LAWS OF JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.

SECTION 18. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action or proceeding.

SECTION 19. HOLD HARMLESS AGREEMENT.

Developer hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by Developer or by any of Developer's contractors, subcontractors, agents or employees.

SECTION 20. INDEMNIFICATION.

(1) Third Party. Developer agrees to indemnify, defend, and hold harmless

the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any action arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement. City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees and time referenced herein.

(2) Construction or Operation. Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages, or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations of Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.

(3) Developer's Release of the City. 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, and their council members, board members, 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 Project, or its 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.

(4) Scope of Release. The release set forth in Section 18 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 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Developer's Initials: _____

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City's actual fraud or misrepresentation.

(5) Separate Agreement. The parties agree that this Section 18 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 18, which shall survive such invalidation, nullification, or setting aside.

SECTION 21. LIABILITY INSURANCE

A. Developer shall maintain, or cause to be maintained, in force during the construction of the Project, pursuant to this Agreement, public liability and property damage insurance, including personal injury, contractual, and owned and non-owned vehicles and equipment, with such coverage and limits as may be reasonably requested by City from time to time, but in no event for less than the sum of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.

B. Public liability insurance policy or policies shall name City as an additional insured, and any policy or policies shall contain cross-liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance affected by City will be called upon to contribute to a loss under this coverage.

C. Developer shall provide the City with a certificate and endorsement, in

forms satisfactory to the City, evidencing such insurance coverage or coverages shall be filed with City prior to construction of the Project, and the certificate and endorsement shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days' prior written notice to City.

D. If such coverage is canceled or reduced, Developer shall, within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

SECTION 22. NOTICES.

Any notice or communication required hereunder between City or Developer shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

City of Pittsburg
Attn: City Manager
65 Civic Avenue
Pittsburg, CA 94565

With copies to:
City of Pittsburg
Attn: City Attorney
65 Civic Avenue
Pittsburg, CA 94565

Notices to Developer shall be addressed to:
Garaventa Enterprises, Inc.
2540 Bates Avenue
Concord, CA 94520
Attn: General Counsel

SECTION 23. EXHIBITS.

23.01 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.

Exhibit A-1 – Legal Description of Property

Exhibit A-2 – Legal Description of Utility Easements

Exhibit A-3 – Plat Map of County Assessor's Parcel Numbers 086-100-040 and 086-100-041

Exhibit A-4 – Recorded Lot Line Adjustment

Exhibit B – Scope of Development/Project

Exhibit C – Schedule of Performance

Exhibit D – Form of Financing Plan Letter

Exhibit E – Performance Deed of Trust

23.02 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

SECTION 24. SEVERABILITY.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

SECTION 25. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof.

SECTION 26. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

Executed at Pittsburg, California on

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the dates written above.

City of Pittsburg

Garaventa Enterprises, Inc.

Joe Sbranti
City Manager

Its:

APPROVED AS TO FORM:

Donna Mooney
City Attorney

ATTEST:

Alice E. Evenson
City Clerk

EXHIBIT A-1

PARCEL MAP WAIVER 14-06
PARCEL 1 (RESTAURANT PARCEL)
PITTSBURG, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 2009, IN DOCUMENT NO. 2009-254747 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED NOVEMBER 17, 2009, IN DOCUMENT NO. 2009-273126 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 1958, IN BOOK 3251 OF OFFICIAL RECORDS, AT PAGE 155, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL OF LAND (2009-254747);

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE WESTERN LINE OF SAID PARCEL OF LAND (2009-254747) SOUTH $17^{\circ}42'22''$ WEST 98.26 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID WESTERN LINE, NORTH $72^{\circ}17'38''$ WEST 71.95 FEET;

THENCE, NORTH $17^{\circ}42'22''$ EAST 98.81 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 210.50 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH $20^{\circ}49'30''$ EAST, THROUGH A CENTRAL ANGLE OF $03^{\circ}07'08''$, AN ARC DISTANCE OF 11.46 FEET;

THENCE, SOUTH $72^{\circ}17'38''$ EAST 83.39 FEET;

THENCE, ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $91^{\circ}58'33''$, AN ARC DISTANCE OF 40.13 FEET;

LEGAL DESCRIPTION
PAGE 2 OF 2

AUGUST 28, 2014
JOB NO.: 1504-00

THENCE, ALONG THE ARC OF A COMPOUND 420.00 FOOT RADIUS CURVE TO THE
RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 70°19'04" WEST,
THROUGH A CENTRAL ANGLE OF 09°59'44", AN ARC DISTANCE OF 73.27 FEET;

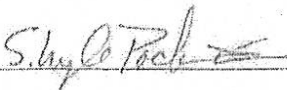
THENCE, NORTH 72°17'38" WEST 38.99 FEET TO SAID POINT OF BEGINNING.

CONTAINING 11,426 SQUARE FEET OF LAND, MORE OR LESS.

ATTACHED HERETO IS EXHIBIT B, AND BY THIS REFERENCE MADE A PART
HEREOF.

END OF DESCRIPTION





SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

PARCEL MAP WAIVER 14-06
PARCEL 2 (TOWER PARCEL)
PITTSBURG, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 2009, IN DOCUMENT NO. 2009-254747 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, ALSO BEING A PORTION OF PARCEL I AND PARCEL II, AS SAID PARCELS ARE DESCRIBED IN THAT CERTAIN DEED GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG RECORDED OCTOBER 23, 2009, IN DOCUMENT NO. 2009-254748 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED NOVEMBER 17, 2009, IN DOCUMENT NO. 2009-273126 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 1958, IN BOOK 3251 OF OFFICIAL RECORDS, AT PAGE 155, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL OF LAND (2009-254747);

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE WESTERN LINE OF SAID PARCEL OF LAND (2009-254747) SOUTH 17°42'22" WEST 98.26 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID WESTERN LINE, SOUTH 72°17'38" EAST 38.99 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 420.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 60°19'19" WEST, THROUGH A CENTRAL ANGLE OF 00°29'02", AN ARC DISTANCE OF 3.55 FEET;

THENCE, ALONG THE ARC OF A REVERSE 1,010.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 59°50'17" EAST, THROUGH A CENTRAL ANGLE OF 08°57'26", AN ARC DISTANCE OF 157.90 FEET;

THENCE, ALONG THE ARC OF A REVERSE 80.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 68°47'43" WEST, THROUGH A CENTRAL ANGLE OF 32°25'04", AN ARC DISTANCE OF 45.26 FEET;

THENCE, NORTH 75°42'43" WEST 286.48 FEET;

THENCE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 06°19'27", AN ARC DISTANCE OF 56.73 FEET;

THENCE, ALONG THE ARC OF A REVERSE 514.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 7°57'50" EAST, THROUGH A CENTRAL ANGLE OF 04°36'45", AN ARC DISTANCE OF 41.38 FEET;

THENCE, NORTH 77°25'24" WEST 362.34 FEET TO A POINT ON THE WESTERN LINE OF SAID PARCEL II (2009-254748);

THENCE, ALONG SAID WESTERN LINE, AND ALONG THE WESTERN LINE OF SAID PARCEL I (2009-254748), NORTH 17°42'22" EAST 262.92 FEET;

THENCE, LEAVING SAID WESTERN LINE, NORTH 14°10'19" EAST 49.50 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 2.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 76°33'57" EAST, THROUGH A CENTRAL ANGLE OF 89°27'52", AN ARC DISTANCE OF 3.90 FEET;

THENCE, ALONG THE ARC OF A REVERSE 265.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 12°53'55" EAST, THROUGH A CENTRAL ANGLE OF 30°26'12", AN ARC DISTANCE OF 140.77 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 289.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 85°57'59" WEST, THROUGH A CENTRAL ANGLE OF 21°44'23", AN ARC DISTANCE OF 109.66 FEET;

THENCE, SOUTH 17°42'22" WEST 30.87 FEET;

THENCE, SOUTH 72°17'38" EAST 54.10 FEET;

THENCE, ALONG THE ARC OF A TANGENT 88.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°22'16", AN ARC DISTANCE OF 51.25 FEET;

THENCE, NORTH 74°20'06" EAST 97.04 FEET;

THENCE, NORTH 17°42'22" EAST 72.94 FEET;

THENCE, SOUTH 72°17'38" EAST 92.44 FEET;

THENCE, SOUTH 27°17'38" EAST 7.44 FEET;

THENCE, SOUTH 72°17'38" EAST 10.22 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 86°22'10" WEST, THROUGH A CENTRAL ANGLE OF 14°04'32", AN ARC DISTANCE OF 4.79 FEET;

THENCE, SOUTH 72°17'38" EAST 28.00 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 72°17'38" EAST, THROUGH A CENTRAL ANGLE OF 11°28'15", AN ARC DISTANCE OF 3.90 FEET;

THENCE, SOUTH 74°03'49" EAST 9.86 FEET;

THENCE, NORTH 62°42'22" EAST 8.23 FEET;

THENCE, SOUTH 72°17'38" EAST 135.81 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 192.46 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 17°44'07" WEST, THROUGH A CENTRAL ANGLE OF 05°40'02", AN ARC DISTANCE OF 19.04 FEET;

THENCE, ALONG THE ARC OF A COMPOUND 40,493.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 23°24'09" WEST, THROUGH A CENTRAL ANGLE OF 00°01'42", AN ARC DISTANCE OF 20.10 FEET;

THENCE, ALONG THE ARC OF A REVERSE 210.50 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 23°25'51" EAST, THROUGH A CENTRAL ANGLE OF 02°36'22", AN ARC DISTANCE OF 9.57 FEET;

THENCE, SOUTH 17°42'22" WEST 98.81 FEET;

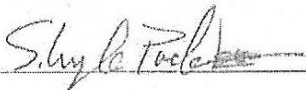
THENCE, SOUTH 72°17'38" EAST 71.95 FEET TO SAID POINT OF BEGINNING.

CONTAINING 216,299 SQUARE FEET OF LAND, MORE OR LESS.

ATTACHED HERETO IS EXHIBIT B, AND BY THIS REFERENCE MADE A PART
HEREOF.

END OF DESCRIPTION





SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

EXHIBIT A-2

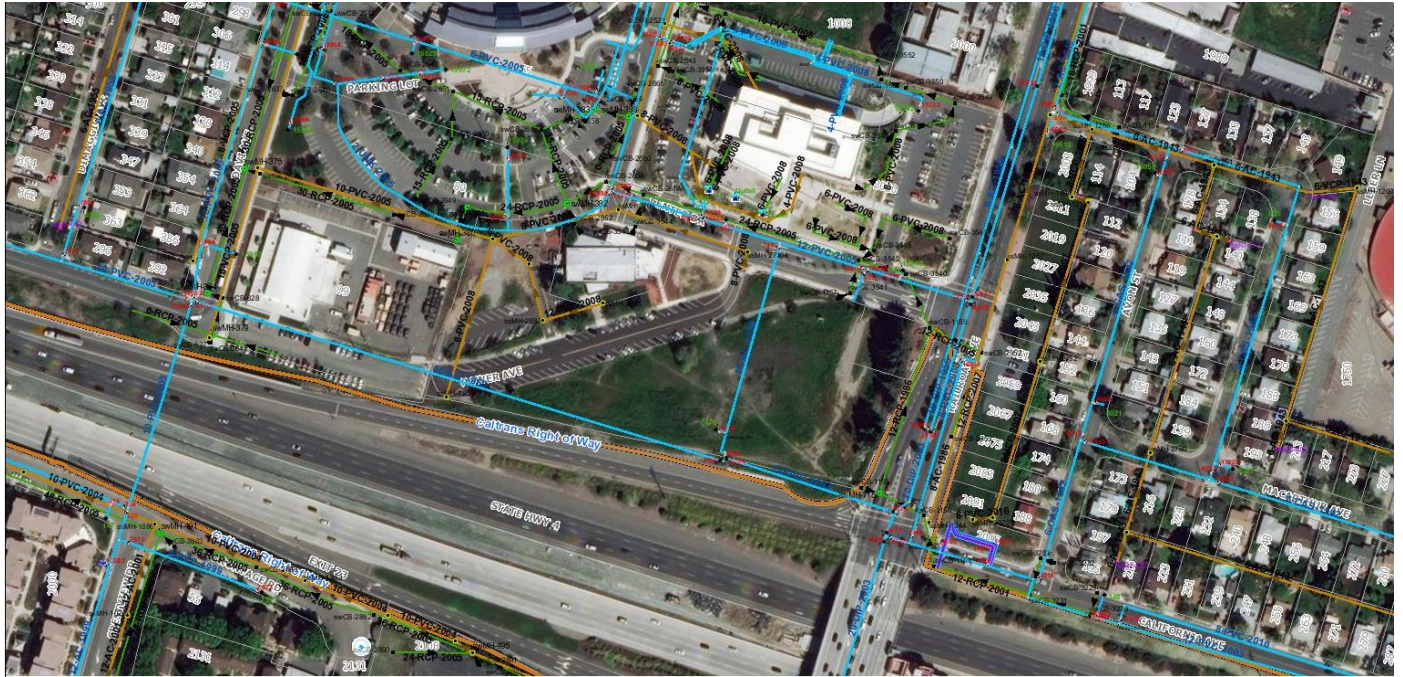


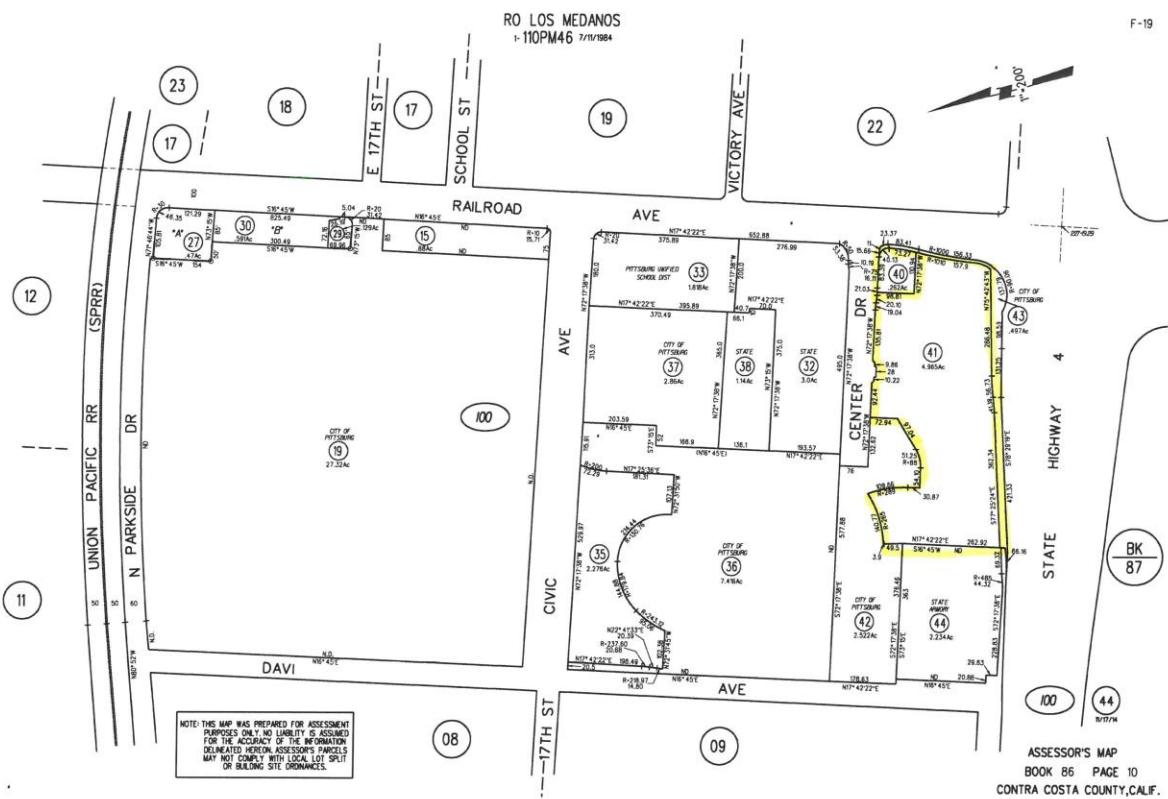
EXHIBIT A-3

EXHIBIT A-4

RECORDED AT THE REQUEST OF:

copy/duplicate has not been
compared to original document

RETURN RECORDED COPY TO:
CITY OF PITTSBURG
ENGINEERING RECORDS SECTION
65 CIVIC AVENUE
PITTSBURG, CA 94565-3814

08/10/2018, 20180128209

PARCEL MAP WAIVER FOR A LOT LINE ADJUSTMENT PMW 18-02

OWNER: Garaventa Enterprises, Inc
PROPERTY ADDRESS: Center Drive
Pittsburg, CA 94565
ASSESSOR PARCEL NO.: 086-100-040 & 086-100-041

I, Richard Abono, City Engineer for the City of Pittsburg, do hereby waive the parcel map requirements (pursuant to the State of California Subdivision Map Act Section 66412 and the City of Pittsburg Municipal Code Section 17.04.050) for the lot line adjustment described and shown on the attached Exhibits "A" and "B".

The resulting parcels conform to the City of Pittsburg ordinances as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary sewer facilities, water supply availability, environmental protection and other requirements pursuant thereto.

This certificate and the attached exhibits do not constitute a parcel map or legal record of survey and are only to certify that this lot line adjustment does not require the filing of a parcel map.

I certify that this Parcel Map Waiver conforms to the requirements of the Subdivision Map Act and local ordinances.

Date 8/10/18



Richard Abono
City Engineer

PE 65440

City of Pittsburg
Exp. 09/30/2019

ACKNOWLEDGEMENT

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 Contra Costa

On August 10, 2018 before me, Amanda J. McVey, Notary Public

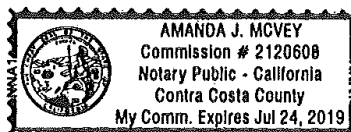
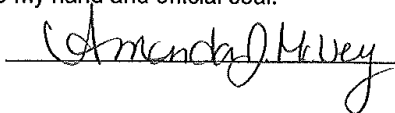
personally appeared Richard Abono,

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



AUGUST 8, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 1

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 1 AND A PORTION OF PARCEL 2, AS SAID PARCELS ARE DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET;

THENCE, LEAVING SAID SOUTHWEST LINE, NORTH 17°42'22" EAST, 326.07 FEET TO A POINT ON THE NORTHWEST LINE OF SAID PARCEL 2;

THENCE, ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 AND SAID PARCEL 1 THE FOLLOWING SEVENTEEN (17) COURSES:

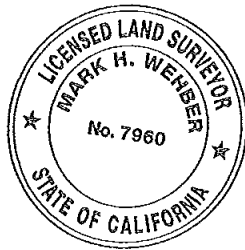
- 1) SOUTH 72°17'38" EAST, 13.83 FEET,
- 2) SOUTH 27°17'38" EAST, 7.44 FEET,
- 3) SOUTH 72°17'38" EAST, 10.22 FEET,
- 4) SOUTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS NORTH 86°22'10" WEST, THROUGH A CENTRAL ANGLE OF 14°04'32", AN ARC DISTANCE OF 4.79 FEET,
- 5) SOUTH 72°17'38" EAST, 28.00 FEET,
- 6) NORTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 72°17'38" EAST, THROUGH A CENTRAL ANGLE OF 11°28'15", AN ARC LENGTH OF 3.90 FEET,
- 7) SOUTH 74°03'49" EAST, 9.86 FEET,
- 8) NORTH 62°42'22" EAST, 8.23 FEET,
- 9) SOUTH 72°17'38" EAST, 135.81 FEET,
- 10) ALONG THE ARC OF A NON-TANGENT 192.46 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 17°44'07" WEST, THROUGH A CENTRAL ANGLE OF 5°40'02", AN ARC LENGTH OF 19.04 FEET,

- 11) ALONG THE ARC OF A COMPOUND 40,493.50 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 00°01'42", AN ARC LENGTH OF 20.10 FEET,
- 12) ALONG THE ARC OF A REVERSE 210.50 FOOT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°43'29", AN ARC LENGTH OF 21.03 FEET,
- 13) SOUTH 72°17'38" EAST, 83.39 FEET,
- 14) ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 91°58'34", AN ARC LENGTH OF 40.13 FEET,
- 15) ALONG THE ARC OF A COMPOUND 420.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 10°28'47", AN ARC LENGTH OF 76.82 FEET,
- 16) ALONG THE ARC OF A REVERSE 1,010.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 8°57'26", AN ARC LENGTH OF 157.90 FEET,
- 17) THROUGH THE ARC OF A REVERSE 80.00 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32°25'04", AN ARC LENGTH OF 45.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 111,874 SQUARE FEET, OR 2.57 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION




MARK H. WEHBER, P.L.S.
L.S. NO. 7960

AUGUST 8, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 2

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 THE FOLLOWING FOURTEEN (14) COURSES:

- 1) CONTINUING ALONG THE ARC OF A 514.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 09°10'35" WEST, THROUGH A CENTRAL ANGLE OF 01°12'45", AN ARC DISTANCE OF 10.88 FEET,
- 2) ALONG THE ARC OF A REVERSE 514.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 04°36'45", AN ARC DISTANCE OF 41.38 FEET,
- 3) NORTH 77°25'24" WEST 362.34 FEET,
- 4) NORTH 17°42'22" EAST 262.92 FEET,
- 5) NORTH 14°10'19" EAST 49.50 FEET,
- 6) ALONG THE ARC OF A NON-TANGENT 2.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 76°33'57" EAST, THROUGH A CENTRAL ANGLE OF 89°27'52", AN ARC DISTANCE OF 3.90 FEET,
- 7) ALONG THE ARC OF A REVERSE 265.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 30°26'12", AN ARC DISTANCE OF 140.77 FEET,
- 8) ALONG THE ARC OF A NON-TANGENT 289.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 85°57'59" WEST, THROUGH A CENTRAL ANGLE OF 21°44'23", AN ARC DISTANCE OF 109.66 FEET,
- 9) SOUTH 17°42'22" WEST 30.87 FEET,

Page 1 of 2

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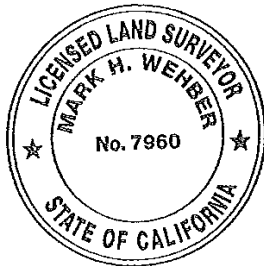
- 10) SOUTH 72°17'38" EAST 54.10 FEET,
- 11) ALONG THE ARC OF A TANGENT 88.00 FOOT RADIUS CURVE TO THE LEFT,
THROUGH A CENTRAL ANGLE OF 33°22'16", AN ARC DISTANCE OF 51.25
FEET,
- 12) NORTH 74°20'06" EAST 97.04 FEET,
- 13) NORTH 17°42'22" EAST 72.94 FEET,
- 14) SOUTH 72°17'38" EAST 78.60 FEET;

THENCE, LEAVING SAID EXTERIOR BOUNDARY LINES, SOUTH 17°42'22" WEST
326.07 FEET TO SAID POINT OF BEGINNING.

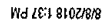
CONTAINING 115,851 SQUARE FEET, OR 2.66 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B,
AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



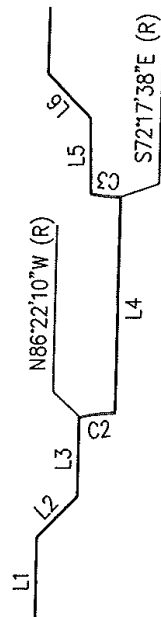

MARK H. WEHBER, P.L.S.
L.S. NO. 7960



LINE TABLE		
NO	BEARING	LENGTH
L1	S72°17'38"E	13.83'
L2	S27°17'38"E	7.44'
L3	S72°17'38"E	10.22'
L4	S72°17'38"E	28.00'
L5	S74°03'49"E	9.86'
L6	N62°42'22"E	8.23'
L7	N14°10'19"E	49.50'
L8	S17°42'22"W	30.87'
L9	S72°17'38"E	54.10'
L10	N74°20'06"E	97.04'
L11	N17°42'22"E	72.94'
L12	S72°17'38"E	78.60'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	514.00'	5°06'42"	45.86'
C2	19.50'	14°04'32"	4.79'
C3	19.50'	11°28'15"	3.90'
C4	192.46'	5°40'02"	19.04'
C5	40493.50'	0°01'42"	20.10'
C6	210.50'	5°43'29"	21.03'
C7	25.00'	91°58'34"	40.13'
C8	420.00'	10°28'47"	76.82'
C9	1010.00'	8°57'26"	157.90'
C10	80.00'	32°25'04"	45.26'
C11	514.00'	1°12'45"	10.88'
C12	514.00'	4°36'45"	41.38'
C13	2.50'	89°27'52"	3.90'
C14	265.00'	30°26'12"	140.77'
C15	289.00'	21°44'23"	109.66'
C16	88.00'	33°22'16"	51.25'

PARCEL 5
PMW 14-06



PARCEL 1
DETAIL
NOT TO SCALE

SHEET 2 OF 2

EXHIBIT B

LOT LINE ADJUSTMENT- PMW 18-02
PARCEL 1 AND PARCEL 2, DOC. NO. 2014-0160037
CITY OF PITTSBURG, CONTRA COSTA COUNTY, CALIFORNIA
AUGUST 8, 2018

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
WWW.CBANDG.COM

SAN RAMON • (925) 866 - 0322
WEST SACRAMENTO • (916) 375 - 1877

JOB NO. 1504-015

G:\1504\ACAD\PLATS\PLAT21 LOT LINE ADJUSTMENT.DWG

8/8/2018 1:38 PM

EXHIBIT B

SCOPE OF DEVELOPMENT/PROJECT

The Pittsburg Civic Center Office Project will be located at the southwest corner of Railroad Avenue and Center Drive in the City of Pittsburg, CA.

The proposed project consists of the development of an office building and associated improvements on a portion of the Project Site. The Project Site may be subdivided to allow and facilitate development of the proposed project on one or more legal parcels.

Office Building:

Construction of a wood or steel frame, three-story "Class A" office building for commercial lease of not less than 60,000 square feet.

Developer shall provide at least 5,000 square feet of the office building to the City, at no cost to the City. A Memorandum of Lease, reflecting the City's tenancy, will be recorded prior to the City Issuing the certificate of occupancy for the office building to run with the land. Developer shall also provide a tenant improvement allowance of \$60/square foot, increased annually, as of July 1, 2019, by the Consumer Price Index for the San Francisco Bay Area region. The City will pay its share of common area maintenance charges and pro rata share of property taxes for the office building only. Should Developer develop the Office Site with an urgent care facility or a project that the City, in its sole discretion, deems consistent with the City's goals and direction for the Project Site, the City will be willing to negotiate a reduction in its 5,000 square feet of space.

Parking:

Construction of a surface parking lot or structure and associated amenities such as parking lot landscaping and lighting to serve the office and hotel. It is anticipated that the provided parking will exceed city codes for the required number of parking spaces to serve the above uses, but the number of available parking spaces will at least meet city parking codes and will include two (2) dedicated handicapped parking spaces south of and directly adjacent to the library for use by the library.

Alternative to Class I Bicycle Path:

The 2014 Agreement required construction of a Class I bicycle path consisting of an 8-foot-wide asphalt path with 2-foot-wide graded shoulders on either side of the asphalt path, to be located south of, and outside the project site, between the project site and the Caltrans right-of-way to the south of the project, on City land. City has already constructed this improvement. Developer, at the City's sole discretion, will either reimburse the City for Developer's pro-rata share of the already constructed public improvements in the amount of One Hundred Eight Thousand, Five Hundred Fifty-Six Dollars and Twelve Cents (\$108,556.12) or construct or cause the construction of a public improvement in an amount equal to the Public Improvement Amount.

Stormwater Control Plan:

Construction of long-term best management practices (BMP's) for the reduction or elimination of storm water pollutants in conjunction with the approved Stormwater Control Plan. Developer shall also submit a Stormwater BMP Operation and Maintenance Plan pertaining to the long term maintenance of the best management practices. The developer is the owner and responsible party for the BMPS and shall be responsible for the cost of and continuous maintenance and treatment of those facilities until such time that the responsibility is formally transferred to a subsequent owner.

Utilities

The Developer shall evaluate existing, receiving storm, sewer, and water facilities for adequate capacity to serve the planned developments, and shall identify any potential service or supply problems. The cost for extending existing on-site utilities and installation of additional facilities, if any, shall be borne by the Developer.

Library

The Developer shall, at all times during construction, maintain access to the public library that lies within a pocket carved out of the project site, though the library access may change from time-to-time as construction progresses.

EXHIBIT C

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Development Agreement (the "Agreement" or the "DA") to which this exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the DA to which such items relate. Section references herein to the DA are intended merely as an aid in relating this Schedule of Performance to other provisions of the DA and shall not be deemed to have any substantive effect.

Whenever this Schedule of Performance requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

<u>Action</u>	<u>Date</u>
1. <u>Developer Deposit</u> . The Developer shall deposit the Developer Deposit in the amount of \$100,000. [DA § 6.06]	Completed in 2014.
2. <u>Conceptual Development Documents</u> . The Developer shall submit the Conceptual Development Documents to the City for the City's review and receive the City approval. [DA § 6.07]	June 1, 2022.
3. <u>Application for Applicable Land Use Approvals</u> . The Developer shall apply for the Applicable Land Use Approvals necessary for the construction of the Improvements and receive the City Approval. [DA § 6.08]	December 31, 2022 .
4. <u>Construction Plans</u> . The Developer shall submit proposed Construction Plans for the Office Building and Office Building Improvements to the City for the City's review and receive the City approval. [DA § 6.09]	September 30, 2023.
5. <u>Financing Plan</u> . The Developer shall submit evidence of financing, acceptable to the City, for development of the Office Building and Office Building Improvements. [DA § 6.10]	No later than September 30, 2023.
6. <u>Building Permits</u> . The Developer shall obtain the Building Permits for construction of the Office Building and Office Building Improvements. [DA § 6.11]	No later than March 31, 2024.
7. <u>Construction Contract</u> . The Developer shall submit, and receive, City approval the construction contract for the construction of the Office Building and Office Building Improvements. [DA § 6.12]	No later than March 31, 2024.
8. <u>Payment and Performance Bonds</u> . The Developer shall submit for and receive	No later than 15 days prior to the start of construction.

<u>Action</u>	<u>Date</u>
City approval of the payment and performance bonds for the construction of the Improvements. [DA § 6.13]	
9. <u>Insurance</u> . The Developer shall submit evidence of insurance to the City and receive City approval thereof. [DA § 6.14]	Within 10 days prior to the start of construction.
10. <u>Parcel Map; Reconfiguration of Site</u> . The Developer shall complete all steps necessary for a parcel map to reconfiguring the Project Site . [DA § 6.15]	Prior to the Effective Date of this Agreement.
11. <u>Commencement of Construction</u> . The Developer shall commence construction of the Office Building and Office Building Improvements. [DA § 6.19]	No later than May 31, 2024.
12. <u>Completion of Construction</u> . The Developer shall complete construction of the Improvements. [DA § 6.19]	No later than June 30, 2025.

EXHIBIT D

(Form of Financing Plan Letter)

[NOTE: TO BE PROVIDED BY DEVELOPER'S FINANCIAL INSTITUTION, EXECUTED BY SUCH FINANCIAL INSTITUTION'S AUTHORIZED REPRESENTATIVE ON FINANCIAL INSTITUTION'S LETTERHEAD]

[DATE]

To: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Manager

Re: Assets of Garaventa Enterprises, Inc.

To Whom It May Concern:

_____, N.A., a national banking association (the "Bank"), hereby certifies to the City of Pittsburg (the "City") the following information regarding the assets of Garaventa Enterprises, Inc.. (the "Developer"), in connection with that certain Development Agreement (the "DA") between the City and the Developer. Capitalized terms used herein, but not defined, shall have the meaning set forth in the DA.

1. The Developer has delivered to the Bank a construction contract for the Improvements and such contract provides for the construction of the Improvements for a guaranteed maximum price not to exceed _____ Dollars (\$_____).
2. As of the date of this letter, the Developer has on deposit with the Bank readily available cash in the amount not less than _____ Dollars (\$_____) **[NOTE: AMOUNT TO BE NOT LESS THAN 150% OF THE CONSTRUCTION COSTS]**
3. The Bank recognizes and acknowledges it is making these representations to the City with the intent that the City, and its successors and assigns, shall rely hereon, in connection with the Developer's obligations under Section 6.10 of the DDA.
4. The undersigned signatory hereto hereby warrants that he/she has full and valid legal power and authority to make and deliver this letter and to bind the Bank to the statements and certifications made herein.

Sincerely,

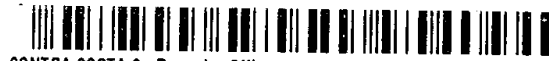
EXHIBIT E

PERFORMANCE DEED OF TRUST

**Recording requested by and when
recorded mail to:**

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383



CONTRA COSTA Co Recorder Office

JOSEPH CANCIAMILLA, Clerk-Recorder

DOC - 2015-0228352-00

Check Number

Friday, OCT 30, 2015 09:52:23

FRE \$0.00

Ttl Pd \$0.00

Nbr-0002430662

lrc / R9 / 3-24



Space above this line for Recorder's use.

PERFORMANCE DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS PERFORMANCE DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Performance Deed of Trust**") is entered into as of July 24, 2015, by Garaventa Enterprises, Inc., a California corporation ("**Trustor**") to Old Republic Title Company as trustee ("**Trustee**"), for the benefit of the City of Pittsburg, a California municipal corporation ("**Beneficiary**").

RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"). The Land is located within the City of Pittsburg, and concurrently with the recordation of this instrument, Beneficiary and Trustor have entered into that certain Development Agreement dated as of May 5, 2014 and executed by and between Beneficiary and Trustor (the "**Development Agreement**"). The Development Agreement will be recorded in the Official Records of Contra Costa County concurrently herewith. Capitalized terms used herein without definition have the meaning ascribed to such terms in the Development Agreement.

B. Pursuant to the Development Agreement, Trustor intends to develop the Land by constructing a class A office tower which may include a restaurant complex (the "**Project**").

C. As a condition precedent to execution of the Development Agreement, Trustor has agreed to enter into this Performance Deed of Trust and grant to Trustee for the benefit of Beneficiary a lien and security interest in the Property (as hereafter defined) to secure Trustor's performance under the Development Agreement.

NOW, THEREFORE, to secure the full and timely performance by Trustor of the Secured Obligation as defined below, it is agreed as follows:

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land ("**Improvements**");

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, "**Equipment**");

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, "**Leases**"), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding ("**Proceeds**");

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor ("**Gross Revenues**");

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, "**Plans**"); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property**."

2. Obligations Secured. This Performance Deed of Trust is given for the purpose of securing performance of the following (collectively, the "**Secured Obligations**"): (i) all present and future obligations of Trustor to Beneficiary under the Development Agreement, including but not limited to the construction of the Project as more particularly described in the Development Agreement, (ii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Performance Deed of Trust; (iii) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (iv) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Performance Deed of Trust or any other agreement between Trustor and Beneficiary as such may be modified, supplemented, amended, renewed or extended.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and 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, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the 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 done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Performance Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Performance Deed of Trust and at law or in equity, including the right to

exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one (1) month.

4. Security Agreement. The parties intend for this Performance Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Performance Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Performance Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Performance Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Performance Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3)

Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Performance Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Performance Deed of Trust is to be filed in the real estate records of Contra Costa County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Performance Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Development Agreement or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"), this Performance Deed of Trust creates a valid first lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) Trustor's correct current address is specified in Section 10.2.

Trustor further represents and warrants that this Performance Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.2 Performance of Secured Obligations. Trustor shall perform all obligations of Trustor pursuant to the Development Agreement and in accordance with the respective terms thereof.

7.3 Preservation and Maintenance of Property; Compliance with Laws. Trustor shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Units, including without limitation all applicable requirements of state and local building codes and regulations, Prevailing Wage Laws, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and Improvements solely for purposes authorized by the Development Agreement, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Development Agreement.

7.4 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if any Transfer (as defined in the Development Agreement) of the Property, any part thereof, or interest therein occurs in violation of the requirements of the Development Agreement. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Performance Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.5 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Development Agreement. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document compliance with the Development Agreement and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary following two business days prior notice.

7.6 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due

diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

Trustor shall immediately discharge or cause to be discharged any lien on the Property (other than encumbrances approved by Beneficiary as of the date hereof in writing). Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Performance Deed of Trust. Trustor shall not be required to pay any tax, levy, charge or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings.

7.7 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Performance Deed of Trust.

7.8 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, Trustor shall, at Trustor's expense, maintain insurance policies in accordance with the requirements set forth in the Development Agreement. Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may reasonably require, (including without limitation copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required pursuant to the Development Agreement, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy. If any insurance policy required pursuant to the Development Agreement is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.9 Hazardous Materials. Trustor shall not cause or permit any Hazardous Material (as defined in Section 6.9.1 of the Development Agreement) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in the construction and operation of the Project in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous

Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.9 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

(i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnites in any legal or administrative proceeding incident to any matters against which Indemnites are entitled to be indemnified under this Performance Deed of Trust;

(ii) reimburse Indemnites for any expenses paid or incurred in connection with any matters against which Indemnites are entitled to be indemnified under this Performance Deed of Trust; and

(iii) reimburse Indemnites for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnites of their rights under this Performance Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnites shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of the Development Agreement; (ii) any extensions of time for performance required by the Development Agreement; (iii) any provision of the Development Agreement limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Performance Deed of Trust or by Trustor or any other party under any documents, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under the Development Agreement; (vi) the release or substitution in whole or in part of any security for

the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.9 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary 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 Development Agreement or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Performance Deed of Trust.

Without limiting any of the remedies provided in this Performance Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.9 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

"**Environmental Law**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 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. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste

Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.10 Notice of Claims; Defense of Security; Reimbursement of Costs.

(a) Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

(b) Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Performance Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

(c) Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Performance Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Performance Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.15 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Performance Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

(d) Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.11 Indemnification.

(a) Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.9) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Beneficiary document, (b) any

representation by Trustor in any Beneficiary document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Beneficiary document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall be secured by this Performance Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Performance Deed of Trust.

(b) Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Performance Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Performance Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.11(b), and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.12 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any payments due to Beneficiary from Trustor arising out of the Development Agreement, the Development Agreement or this Performance Deed of Trust secured hereby in such order as Beneficiary may determine, or at the 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.

7.13 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Performance Deed of Trust for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any

person responsible for performance of any Secured Obligation, (ii) extend the time for performance or otherwise alter the terms of performance of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.14 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been performed in full, and upon surrender of this Performance Deed of Trust, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Performance Deed of Trust. The recitals in any reconveyance executed under this Performance Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.15 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Performance Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Performance Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Performance Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.15 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Performance Deed of Trust.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Performance Deed of Trust upon the occurrence of any one or more of the following events:

- (i) Beneficiary's declaration of an Event of Default under the Development Agreement, subject to the expiration of any applicable cure period set forth in such document;
- (ii) Trustor fails to perform any monetary obligation which arises under this Performance Deed of Trust, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;
- (iii) If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.4 hereof or if any other Transfer occurs in violation of the Development Agreement;

(iv) Trustor fails to maintain the insurance coverage required under the Development Agreement or otherwise fails to comply with the requirements of Section 7.8 hereof and Trustor fails to cure such default within the time specified in Section 7.8;

(v) Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within ten (10) days;

(vi) Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Performance Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Beneficiary document proves to have been false or misleading in any material adverse respect when made;

(vii) 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**"), Trustor (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor; (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;

(viii) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or substantially all of Trustor's assets, or (iii) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance;

(ix) The holder of any other debt instrument secured by a mortgage or Performance Deed of Trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

(x) Trustor fails to perform any obligation arising under this Performance Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than one hundred twenty (120) days following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any

and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in the Development Agreement, and any other remedy existing at law or in equity. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

(a) Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(b) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Performance Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

(c) UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(d) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Performance Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Performance Deed of Trust.

(e) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Performance Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Performance Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Performance Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the 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, and at Beneficiary's request shall, postpone sale of all or any portion of the 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 and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.10(c); and

(b) Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Performance Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions

10.1 Additional Provisions. The Development Agreement grants further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Performance Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Performance Deed of Trust 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:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Beneficiary: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attention: City Manager

With Copy to: Meyers Nave
Attn: Ruthann G. Ziegler
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

Trustor: Garaventa Enterprises, Inc.
2540 Bates Avenue
Concord, CA 94520
Attention: Joe Garaventa

Trustee: Old Republic Title Company
1000 Burnett Ave., Suite 400
Concord, CA 94520
Attention: Jennifer Quigley

10.3 Binding on Successors. The terms, covenants and conditions of this Performance Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.4.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Contra Costa County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Performance Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Performance Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Performance Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Development Agreement. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Performance Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Performance Deed of Trust. The captions used in this Performance Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Performance Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Performance Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

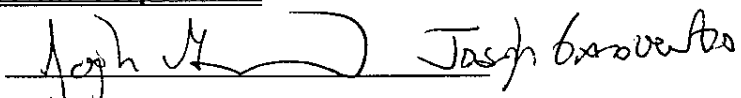
10.8 Action By Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's City Manager or by any person who shall have been designated by Beneficiary's City Manager, without further approval by the governing board of Beneficiary. Beneficiary shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner. In any approval, consent, or other determination by Beneficiary required hereunder, Beneficiary shall act reasonably and in good faith.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Performance Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Performance Deed of Trust.

IN WITNESS WHEREOF, Trustor has executed this Performance Deed of Trust as of the date first written above.

GARAVENTA ENTERPRISES, INC.,
a California corporation

By: 
Its: C.E.O.

SIGNATURE MUST BE NOTARIZED.

Notary Consumer Disclosure (SB1050)

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)

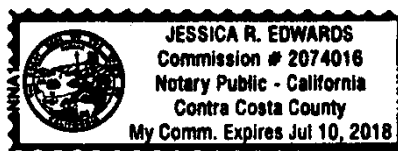
County of Contra Costa)

On October 13, 2015 before me, Jessica Edwards, Notary Public, personally appeared Joseph Garaventa, 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.

Jessica Edwards, Notary Public



(seal)

Exhibit A
LAND

PARCEL MAP WAIVER 14-06
PARCEL 1 (RESTAURANT PARCEL)
PITTSBURG, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 2009, IN DOCUMENT NO. 2009-254747 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED NOVEMBER 17, 2009, IN DOCUMENT NO. 2009-273126 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 1958, IN BOOK 3251 OF OFFICIAL RECORDS, AT PAGE 155, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL OF LAND (2009-254747);

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE WESTERN LINE OF SAID PARCEL OF LAND (2009-254747) SOUTH $17^{\circ}42'22''$ WEST 98.26 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID WESTERN LINE, NORTH $72^{\circ}17'38''$ WEST 71.95 FEET;

THENCE, NORTH $17^{\circ}42'22''$ EAST 98.81 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 210.50 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH $20^{\circ}49'30''$ EAST, THROUGH A CENTRAL ANGLE OF $03^{\circ}07'08''$, AN ARC DISTANCE OF 11.46 FEET;

THENCE, SOUTH $72^{\circ}17'38''$ EAST 83.39 FEET;

THENCE, ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $91^{\circ}58'33''$, AN ARC DISTANCE OF 40.13 FEET;

LEGAL DESCRIPTION
PAGE 2 OF 2

AUGUST 28, 2014
JOB NO.: 1504-00

THENCE, ALONG THE ARC OF A COMPOUND 420.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH $70^{\circ}19'04''$ WEST, THROUGH A CENTRAL ANGLE OF $09^{\circ}59'44''$, AN ARC DISTANCE OF 73.27 FEET;

THENCE, NORTH $72^{\circ}17'38''$ WEST 38.99 FEET TO SAID POINT OF BEGINNING.

CONTAINING 11,426 SQUARE FEET OF LAND, MORE OR LESS.

ATTACHED HERETO IS EXHIBIT B, AND BY THIS REFERENCE MADE A PART
HEREOF.

END OF DESCRIPTION



Sabrina Kyle Pack

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

PARCEL MAP WAIVER 14-06
PARCEL 2 (TOWER PARCEL)
PITTSBURG, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 2009, IN DOCUMENT NO. 2009-254747 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, ALSO BEING A PORTION OF PARCEL I AND PARCEL II, AS SAID PARCELS ARE DESCRIBED IN THAT CERTAIN DEED GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG RECORDED OCTOBER 23, 2009, IN DOCUMENT NO. 2009-254748 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG BY DEED RECORDED NOVEMBER 17, 2009, IN DOCUMENT NO. 2009-273126 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF PITTSBURG BY DEED RECORDED OCTOBER 23, 1958, IN BOOK 3251 OF OFFICIAL RECORDS, AT PAGE 155, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL OF LAND (2009-254747);

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE WESTERN LINE OF SAID PARCEL OF LAND (2009-254747) SOUTH 17°42'22" WEST 98.26 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID WESTERN LINE, SOUTH 72°17'38" EAST 38.99 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 420.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 60°19'19" WEST, THROUGH A CENTRAL ANGLE OF 00°29'02", AN ARC DISTANCE OF 3.55 FEET;

THENCE, ALONG THE ARC OF A REVERSE 1,010.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 59°50'17" EAST, THROUGH A CENTRAL ANGLE OF 08°57'26", AN ARC DISTANCE OF 157.90 FEET;

THENCE, ALONG THE ARC OF A REVERSE 80.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 68°47'43" WEST, THROUGH A CENTRAL ANGLE OF 32°25'04", AN ARC DISTANCE OF 45.26 FEET;

THENCE, NORTH 75°42'43" WEST 286.48 FEET;

THENCE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 06°19'27", AN ARC DISTANCE OF 56.73 FEET;

THENCE, ALONG THE ARC OF A REVERSE 514.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 7°57'50" EAST, THROUGH A CENTRAL ANGLE OF 04°36'45", AN ARC DISTANCE OF 41.38 FEET;

THENCE, NORTH 77°25'24" WEST 362.34 FEET TO A POINT ON THE WESTERN LINE OF SAID PARCEL II (2009-254748);

THENCE, ALONG SAID WESTERN LINE, AND ALONG THE WESTERN LINE OF SAID PARCEL I (2009-254748), NORTH 17°42'22" EAST 262.92 FEET;

THENCE, LEAVING SAID WESTERN LINE, NORTH 14°10'19" EAST 49.50 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 2.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 76°33'57" EAST, THROUGH A CENTRAL ANGLE OF 89°27'52", AN ARC DISTANCE OF 3.90 FEET;

THENCE, ALONG THE ARC OF A REVERSE 265.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 12°53'55" EAST, THROUGH A CENTRAL ANGLE OF 30°26'12", AN ARC DISTANCE OF 140.77 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 289.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 85°57'59" WEST, THROUGH A CENTRAL ANGLE OF 21°44'23", AN ARC DISTANCE OF 109.66 FEET;

THENCE, SOUTH 17°42'22" WEST 30.87 FEET;

THENCE, SOUTH 72°17'38" EAST 54.10 FEET;

THENCE, ALONG THE ARC OF A TANGENT 88.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°22'16", AN ARC DISTANCE OF 51.25 FEET;

THENCE, NORTH 74°20'06" EAST 97.04 FEET;

THENCE, NORTH 17°42'22" EAST 72.94 FEET;

THENCE, SOUTH 72°17'38" EAST 92.44 FEET;

THENCE, SOUTH 27°17'38" EAST 7.44 FEET;

THENCE, SOUTH 72°17'38" EAST 10.22 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH $86^{\circ}22'10''$ WEST, THROUGH A CENTRAL ANGLE OF $14^{\circ}04'32''$, AN ARC DISTANCE OF 4.79 FEET;

THENCE, SOUTH $72^{\circ}17'38''$ EAST 28.00 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH $72^{\circ}17'38''$ EAST, THROUGH A CENTRAL ANGLE OF $11^{\circ}28'15''$, AN ARC DISTANCE OF 3.90 FEET;

THENCE, SOUTH $74^{\circ}03'49''$ EAST 9.86 FEET;

THENCE, NORTH $62^{\circ}42'22''$ EAST 8.23 FEET;

THENCE, SOUTH $72^{\circ}17'38''$ EAST 135.81 FEET;

THENCE, ALONG THE ARC OF A NON-TANGENT 192.46 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH $17^{\circ}44'07''$ WEST, THROUGH A CENTRAL ANGLE OF $05^{\circ}40'02''$, AN ARC DISTANCE OF 19.04 FEET;

THENCE, ALONG THE ARC OF A COMPOUND 40,493.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH $23^{\circ}24'09''$ WEST, THROUGH A CENTRAL ANGLE OF $00^{\circ}01'42''$, AN ARC DISTANCE OF 20.10 FEET;

THENCE, ALONG THE ARC OF A REVERSE 210.50 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH $23^{\circ}25'51''$ EAST, THROUGH A CENTRAL ANGLE OF $02^{\circ}36'22''$, AN ARC DISTANCE OF 9.57 FEET;

THENCE, SOUTH $17^{\circ}42'22''$ WEST 98.81 FEET;

THENCE, SOUTH $72^{\circ}17'38''$ EAST 71.95 FEET TO SAID POINT OF BEGINNING.

CONTAINING 216,299 SQUARE FEET OF LAND, MORE OR LESS.

ATTACHED HERETO IS EXHIBIT B, AND BY THIS REFERENCE MADE A PART
HEREOF.

END OF DESCRIPTION



Sabrina Kyle Pack

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

END OF DOC

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Clerk

Exempt from Recording Fees
Government Code §§ 6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Parcel 1 on the Parcel Map Waiver for a Lot Line Adjustment PMW 18-02

**ASSIGNMENT AND ASSUMPTION OF
PURCHASE AND SALE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT (this "**Assignment**") is entered into as of _____, 2018 by and between Garaventa Enterprises Inc. ("**Assignor**") and the City of Pittsburg, a California municipal corporation ("**City**"), with respect to real property located in Pittsburg, California 94565, which consists of approximately 111,874 square feet, known as Parcel 1 on the Parcel Map Waiver for a Lot Line Adjustment PMW 18-02 (the "**Property**"), as more particularly described in Exhibit A attached hereto and incorporated hereto by this reference. Assignor and City are collectively referred to herein as the "**Parties**."

RECITALS

A. Assignor entered into a development agreement, effective May 5, 2014 with City (the "**Development Agreement**") for, among other things, the development of the Property.

B. Assignor entered into that certain purchase and sale agreement (the "**Purchase Agreement**") dated _____, 2018 with Stay Cal Pittsburg, LLC ("**Stay Cal**") for the sale of the Property to Stay Cal for construction of a Courtyard by Marriott or equivalent hotel brand on the Property.

C. City and Assignor entered into an Amended and Restated Development Agreement, pursuant to which, in exchange for other consideration, Developer is required to and hereby agrees to transfer the Property to the City.

D. City has agreed to assume all responsibility under the Purchase Agreement from Assignor upon transfer of the Property from Assignor to City.

AGREEMENT

For valuable consideration, receipt of which is acknowledged, City and Assignor agree as follows:

1. Assignment. The Assignor hereby assigns and transfers to City all of the Assignor's rights and obligations under the Purchase Agreement.

2. Assumption. City hereby accepts the foregoing assignment and expressly assumes and agrees to perform the obligations of Assignor under the Purchase Agreement from and after the date hereof.

3. Assignor Representation. Assignor hereby represents and warrants that as of the date of this Assignment (i) the Purchase Agreement is in full force and effect and (ii) no default exists under the Purchase Agreement which, with the passage of time or the giving of notice or both, could become a default under the Purchase Agreement.

4. City Representations. City represents and warrants that: (i) City is a municipal corporation in good standing under the laws of the State of California; (ii) City has the power and authority to execute, deliver and perform its obligations under the Purchase Agreement and this Assignment; (iii) the execution, delivery and performance of the Purchase Agreement and this Assignment do not violate any rule, regulation, statute, law, order, decree, judgment, or any agreement or instrument to which City is a party; and (iv) City shall comply with all of the terms and provisions of the Purchase Agreement.

5. Further Assurances. City and Assignor each agree to execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions as are necessary or desirable to effect this Assignment.

6. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the City and Assignor and their respective personal representatives, heirs, successors and assigns.

7. Governing Law. This Assignment shall be construed under and enforced in accordance with the laws of the State of California.

8. Attorneys' Fees. If either party brings an action or proceeding at law or in equity to interpret or enforce this Agreement or any provisions contained herein, or to seek damages or other redress for a breach, the prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs incurred in such action or proceeding.

9. Counterparts. The Parties may execute this Assignment in one or more counterparts. All counterparts shall be construed together and shall constitute one agreement.

10. Entirety of Agreement. This Assignment constitutes the entire agreement of City and Assignor with respect to the subject matter hereof. This Assignment may not be modified or amended except by writing signed by all Parties to this Assignment.

[Signatures on following page]

IN WITNESS WHEREOF, the City and Assignor have executed this Assignment as of the date first written above.

ASSIGNOR:
Garaventa Enterprises, Inc.

By:_____

Its:_____

CITY:
City of Pittsburg, a California municipal corporation

By:_____

Joe Sbranti
City Manager

Attest:

City Clerk

Reviewed as to Form:

Donna Mooney, City Attorney

SIGNATURES MUST BE NOTARIZED

Exhibit A

The land situated in the City of Pittsburg, County of Contra Costa,
State of California and described as follows:

RECORDED AT THE REQUEST OF:

copy/duplicate has not been
compared to original document

RETURN RECORDED COPY TO:
CITY OF PITTSBURG
ENGINEERING RECORDS SECTION
65 CIVIC AVENUE
PITTSBURG, CA 94565-3814

08/10/2018, 20180128209

**PARCEL MAP WAIVER FOR A LOT LINE ADJUSTMENT
PMW 18-02**

OWNER: Garaventa Enterprises, Inc
PROPERTY ADDRESS: Center Drive
Pittsburg, CA 94565
ASSESSOR PARCEL NO.: 086-100-040 & 086-100-041

I, Richard Abono, City Engineer for the City of Pittsburg, do hereby waive the parcel map requirements (pursuant to the State of California Subdivision Map Act Section 66412 and the City of Pittsburg Municipal Code Section 17.04.050) for the lot line adjustment described and shown on the attached Exhibits "A" and "B".

The resulting parcels conform to the City of Pittsburg ordinances as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary sewer facilities, water supply availability, environmental protection and other requirements pursuant thereto.

This certificate and the attached exhibits do not constitute a parcel map or legal record of survey and are only to certify that this lot line adjustment does not require the filing of a parcel map.

I certify that this Parcel Map Waiver conforms to the requirements of the Subdivision Map Act and local ordinances.

Date 8/10/18
Richard Abono
City Engineer PE 65440
City of Pittsburg
Exp. 09/30/2019

ACKNOWLEDGEMENT

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 Contra Costa

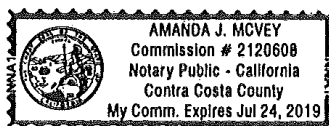
On August 10, 2018 before me, Amanda J. McVey, Notary Public

personally appeared Richard Abono,
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 Amanda J. McVey



AUGUST 8, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 1

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 1 AND A PORTION OF PARCEL 2, AS SAID PARCELS ARE DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET;

THENCE, LEAVING SAID SOUTHWEST LINE, NORTH 17°42'22" EAST, 326.07 FEET TO A POINT ON THE NORTHWEST LINE OF SAID PARCEL 2;

THENCE, ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 AND SAID PARCEL 1 THE FOLLOWING SEVENTEEN (17) COURSES:

- 1) SOUTH 72°17'38" EAST, 13.83 FEET,
- 2) SOUTH 27°17'38" EAST, 7.44 FEET,
- 3) SOUTH 72°17'38" EAST, 10.22 FEET,
- 4) SOUTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS NORTH 86°22'10" WEST, THROUGH A CENTRAL ANGLE OF 14°04'32", AN ARC DISTANCE OF 4.79 FEET,
- 5) SOUTH 72°17'38" EAST, 28.00 FEET,
- 6) NORTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 72°17'38" EAST, THROUGH A CENTRAL ANGLE OF 11°28'15", AN ARC LENGTH OF 3.90 FEET,
- 7) SOUTH 74°03'49" EAST, 9.86 FEET,
- 8) NORTH 62°42'22" EAST, 8.23 FEET,
- 9) SOUTH 72°17'38" EAST, 135.81 FEET,
- 10) ALONG THE ARC OF A NON-TANGENT 192.46 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 17°44'07" WEST, THROUGH A CENTRAL ANGLE OF 5°40'02", AN ARC LENGTH OF 19.04 FEET,

Page 1 of 2

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- 11) ALONG THE ARC OF A COMPOUND 40,493.50 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 00°01'42", AN ARC LENGTH OF 20.10 FEET,
- 12) ALONG THE ARC OF A REVERSE 210.50 FOOT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°43'29", AN ARC LENGTH OF 21.03 FEET,
- 13) SOUTH 72°17'38" EAST, 83.39 FEET,
- 14) ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 91°58'34", AN ARC LENGTH OF 40.13 FEET,
- 15) ALONG THE ARC OF A COMPOUND 420.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 10°28'47", AN ARC LENGTH OF 76.82 FEET,
- 16) ALONG THE ARC OF A REVERSE 1,010.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 8°57'26", AN ARC LENGTH OF 157.90 FEET,
- 17) THROUGH THE ARC OF A REVERSE 80.00 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32°25'04", AN ARC LENGTH OF 45.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 111,874 SQUARE FEET, OR 2.57 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



A handwritten signature in dark ink, appearing to read "Mark H. Wehber", written over a horizontal line.

MARK H. WEHBER, P.L.S.
L.S. NO. 7960

AUGUST 8, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 2

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 THE FOLLOWING FOURTEEN (14) COURSES:

- 1) CONTINUING ALONG THE ARC OF A 514.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 09°10'35" WEST, THROUGH A CENTRAL ANGLE OF 01°12'45", AN ARC DISTANCE OF 10.88 FEET,
- 2) ALONG THE ARC OF A REVERSE 514.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 04°36'45", AN ARC DISTANCE OF 41.38 FEET,
- 3) NORTH 77°25'24" WEST 362.34 FEET,
- 4) NORTH 17°42'22" EAST 262.92 FEET,
- 5) NORTH 14°10'19" EAST 49.50 FEET,
- 6) ALONG THE ARC OF A NON-TANGENT 2.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 76°33'57" EAST, THROUGH A CENTRAL ANGLE OF 89°27'52", AN ARC DISTANCE OF 3.90 FEET,
- 7) ALONG THE ARC OF A REVERSE 265.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 30°26'12", AN ARC DISTANCE OF 140.77 FEET,
- 8) ALONG THE ARC OF A NON-TANGENT 289.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 85°57'59" WEST, THROUGH A CENTRAL ANGLE OF 21°44'23", AN ARC DISTANCE OF 109.66 FEET,
- 9) SOUTH 17°42'22" WEST 30.87 FEET,

Page 1 of 2

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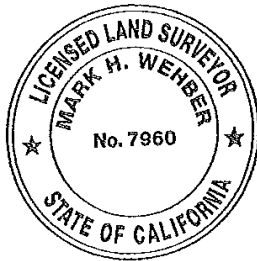
- 10) SOUTH 72°17'38" EAST 54.10 FEET,
- 11) ALONG THE ARC OF A TANGENT 88.00 FOOT RADIUS CURVE TO THE LEFT,
THROUGH A CENTRAL ANGLE OF 33°22'16", AN ARC DISTANCE OF 51.25
FEET,
- 12) NORTH 74°20'06" EAST 97.04 FEET,
- 13) NORTH 17°42'22" EAST 72.94 FEET,
- 14) SOUTH 72°17'38" EAST 78.60 FEET;

THENCE, LEAVING SAID EXTERIOR BOUNDARY LINES, SOUTH 17°42'22" WEST
326.07 FEET TO SAID POINT OF BEGINNING.

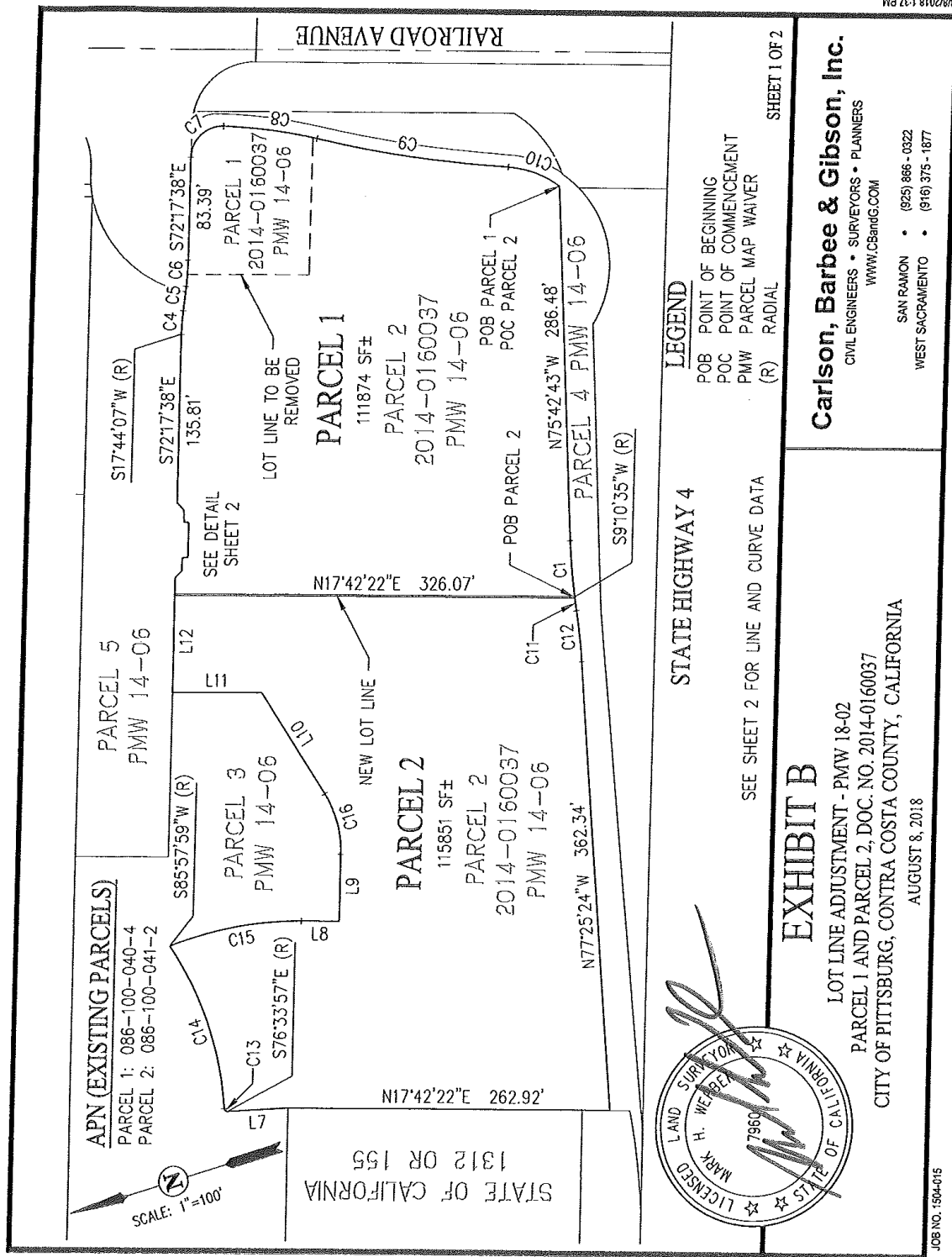
CONTAINING 115,851 SQUARE FEET, OR 2.66 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B,
AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



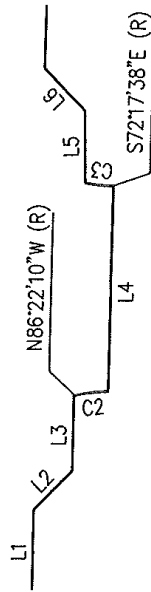

MARK H. WEHBER, P.L.S.
L.S. NO. 7960



LINE TABLE	
NO	BEARING
L1	S72°17'38"E
L2	S72°17'38"E
L3	S72°17'38"E
L4	S72°17'38"E
L5	S74°03'49"E
L6	N62°42'22"E
L7	N14°10'19"E
L8	S17°42'22"W
L9	S72°17'38"E
L10	N74°20'06"E
L11	N17°42'22"E
L12	S72°17'38"E

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	514.00'	5°06'42"	45.86'
C2	19.50'	14°04'32"	4.79'
C3	19.50'	11°28'15"	3.90'
C4	192.46'	5°40'02"	19.04'
C5	40493.50'	0°01'42"	20.10'
C6	210.50'	5°43'29"	21.03'
C7	25.00'	91°58'34"	40.13'
C8	420.00'	10°28'47"	76.82'
C9	1010.00'	8°57'26"	157.90'
C10	80.00'	32°25'04"	45.26'
C11	514.00'	1°12'45"	10.88'
C12	514.00'	4°36'45"	41.38'
C13	2.50'	89°27'52"	3.90'
C14	265.00'	30°26'12"	140.77'
C15	289.00'	21°44'23"	109.66'
C16	88.00'	33°22'16"	51.25'

PARCEL 5
PMW 14-06



PARCEL 1

DETAIL
NOT TO SCALE

SHEET 2 OF 2

EXHIBIT B

LOT LINE ADJUSTMENT-PMW 18-02
PARCEL 1 AND PARCEL 2, DOC. NO. 2014-0160037
CITY OF PITTSBURG, CONTRA COSTA COUNTY, CALIFORNIA

AUGUST 8, 2018

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS
WWW.CB&G.COM

SAN RAMON • (925) 866-0322
WEST SACRAMENTO • (916) 375-1877

JOB NO. 1504-015

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8/8/2018 1:33 PM

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 Contra Costa)

On _____ before me, _____, Notary Public, , personally appeared, _____, who proved to me 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 _____

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Clerk

Exempt from Recording Fees
Government Code §§ 6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02

AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

by and between

THE CITY OF PITTSBURG

and

STAY CAL PITTSBURG, LLC

November 5, 2018

Exhibits

- A Legal Description
- B Form of Grant Deed
- C Schedule of Performance
- D Form of Certificate of Completion
- E Form of Note
- F Form of Deed of Trust
- G Insurance Requirements
- H Fee Deferral Agreement
- I Utility Construction Cost Sharing

This Amended and Restated Purchase and Sale Agreement (this “**Agreement**”) amending that certain Purchase and Sale Agreement by and between the City of Pittsburg, a municipal corporation (“**City**”) and Stay Cal Pittsburg, LLC, a California limited liability company (“**StayCal**”) dated November 5, 2018 (the “**PSA**”) is entered into effective as of December 5, 2018 (“**Effective Date**”) by and between City and Stay Cal. City and Stay Cal are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. City is the owner of the real property located in the City of Pittsburg adjacent to the intersection of Railroad Avenue and Center Drive in the City of Pittsburg, County of Contra Costa, State of California, identified as Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02, which encompasses approximately 111,874 square feet, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”).

B. Stay Cal had previously entered into the PSA with the prior owner of the Property.

C. City assumed all rights and responsibilities of the former owner under the PSA pursuant to an assignment and assumption agreement at the time that the City took possession of the Property.

D. Pursuant to this Agreement, the Parties desire to amend and restate the PSA to reflect the renegotiation of certain terms of the sale of the property and to reflect the financing to be provided by City for construction of the Project (defined below).

E. Pursuant to the PSA, the purchase price for the Property is One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,110) (the “**Purchase Price**”).

F. The Purchase Price is not amended or revised by this Agreement.

G. Stay Cal intends to purchase the Property and construct a Courtyard by Marriott or equivalent hotel brand on the Property with at least 125 rooms (the “**Project**”).

H. Stay Cal has requested, and City has agreed to provide a loan in the amount of One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,110) (the “**Loan**”) for the purchase of the Property, subject to the terms and conditions of this Agreement.

I. Stay Cal has requested, and City has agreed to provide deferral of certain development fees in the amount not greater than Four Hundred Thirty Thousand Dollars \$ 430,000, to be repaid by Stay Cal in monthly payments until fully repaid,

pursuant to a Fee Deferral Agreement (the “**Deferral Agreement**”) substantially in the form attached as Exhibit H to this Agreement.

J. Pursuant to this Agreement, Stay Cal will execute a promissory note (the “**Note**”) and a deed of trust (the “**Deed of Trust**”) evidencing the Loan, against the Property in favor of the City as beneficiary to secure the Loan and the Fee Deferral Agreement.

K. The City has concluded that Stay Cal has the necessary expertise, skill and ability to carry out the commitments contained in this Agreement and that this Agreement is in the best interests of the City and will materially contribute to the health and welfare of the citizens of the City.

L. Subject to the terms and conditions set forth in this Agreement: (i) the City will convey the Property to Stay Cal, (ii) the City will provide a loan to finance Stay Cal’s acquisition of the Property, and (iii) Stay Cal will design, construct, own and operate the Project on the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I DEFINITIONS

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.

- 1.1 “**Bankruptcy Law**” is defined in Section 9.1.h.
- 1.2 “**Certificate of Completion**” is defined in Section 4.14.
- 1.3 “**City Documents**” is defined in Section 2.3.3.
- 1.4 “**City’s Lender Title Policy**” is defined in Section 3.8.1.d.
- 1.5 “**City’s Permitted Exceptions**” is defined in Section 3.8.1.d.
- 1.6 “**Claims**” is defined in Section 4.16.
- 1.7 “**Closing Date**” or “**Close of Escrow**” shall be the date that escrow closes for conveyance of the Property to Stay Cal as defined in Section 3.6.
- 1.8 “**Conditions of Approval**” is defined in Section 4.1.

- 1.9 **“Construction Plans”** is defined in Section 4.10.
- 1.10 **“Controlled Affiliate”** is defined in Section 7.3.
- 1.11 **“Deed of Trust”** means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing to be executed by Stay Cal as Trustor for the benefit of City and recorded against the Property to secure the repayment of the Loan is defined in Section 5.1.
- 1.12 **“Stay Cal’s Permitted Exceptions”** is defined in Section 3.1.
- 1.13 **“Environmental Laws”** is defined in Section 8.1.2.
- 1.14 **“Escrow Agent”** is defined in Section 3.3.
- 1.15 **“Financing Plan”** is defined in Section 4.6.
- 1.16 **“Hazardous Material”** is defined in Section 8.1.1.
- 1.17 **“Hazardous Materials Claims”** is defined in Section 8.7(3).
- 1.18 **“Grant Deed”** is defined in Section 3.1.
- 1.19 **“Indemnitees”** is defined in Section 4.16.
- 1.20 **“Loan”** is defined in Section 5.1.
- 1.21 **“Note”** is defined in Section 5.1.
- 1.22 **“Purchase Price”** is defined in Section 3.2.
- 1.23 **“Official Records”** means the Official Records of Contra Costa County.
- 1.24 **“Owner’s Title Policy”** is defined in Section 3.8.2.
- 1.25 **“Prevailing Wage Laws”** is defined in Section 4.16.
- 1.26 **“Project”** is defined in Recital G.
- 1.27 **“Property”** is defined in Recital A.
- 1.28 **“Schedule of Performance”** is defined in Section 4.7.
- 1.29 **“Title Company”** is defined in Section 3.3.
- 1.30 **“Title Exceptions”** is defined in Section 3.7.
- 1.31 **“Title Report”** is defined in Section 3.1.

1.32 “**Transfer**” is defined in Section 7.2.

**ARTICLE II
REPRESENTATIONS; EFFECTIVE DATE; CONDITIONS
PRECEDENT TO DISPOSITION**

2.1 Stay Cal’s Representations. Stay Cal represents and warrants to City as follows, and Stay Cal 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, Stay Cal shall immediately give written notice of such fact or condition to City. Stay Cal acknowledges that City shall rely upon Stay Cal’s representations made herein notwithstanding any investigation made by or on behalf of City.

2.1.1 Authority. Stay Cal is a limited liability company in good standing under the laws of the State of California. The persons executing this Agreement on behalf of Stay Cal have been duly authorized to do so. This Agreement and the other City Documents (as defined below) constitute valid and binding obligations of Stay Cal, enforceable in accordance with their respective terms.

2.1.2 No Conflict. Stay Cal’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Stay Cal is a party or by which it is bound.

2.1.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened that would prevent, hinder or delay the ability of Stay Cal to perform its obligations under this Agreement.

2.1.4 No Stay Cal Bankruptcy. Stay Cal is not the subject of a bankruptcy or insolvency proceeding.

2.2 Effective Date. The obligations of Stay Cal and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.3 Conditions Precedent. City’s obligation to convey the Property to Stay Cal is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 2.3 and in Section 3.8, unless any such condition is waived by City acting in the discretion of its City Manager. Prior to conveyance of the Property:

2.3.1 Due Authorization and Good Standing. Stay Cal’s delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Stay Cal is properly organized and authorized to do business in the State of California, (ii) a certified resolution indicating that Stay Cal has authorized this

transaction and that the persons executing the City Documents (defined below) on behalf of Stay Cal have been duly authorized to do so, (iii) copies of Stay Cal's articles of organization.

2.3.2 No Litigation. To the best of Stay Cal's knowledge, there is no litigation pending with respect to this Agreement or any City approval related to the Project, the outcome of which could materially interfere with the development of the Property as set forth herein.

2.3.3 Execution and Delivery of Documents. Stay Cal has executed, acknowledged as applicable, and delivered to City or deposited into escrow this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Note and the Deed of Trust. All of the foregoing documents, together with this Agreement and the Grant Deed are hereinafter referred to collectively as the "**City Documents**."

2.3.4 Design Review. City has reviewed and approved the Site Development Plan and Project design.

2.3.5 Permits and Approvals; Cooperation. Stay Cal has completed all CEQA requirements and obtained all entitlements, permits, licenses and approvals required for the construction of the Project on the Property, including without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve. Nothing in this Agreement shall be construed as approval of any City entitlements for the Project. If Stay Cal is unable to obtain all necessary entitlements, permits, licenses and approvals required for the construction of the Project on the Property prior to Closing then Stay Cal shall have the right to terminate this Agreement and the parties shall have no further obligation to each other.

2.3.6 Payment of Fees. Stay Cal has paid, when due, all customary and reasonable fees and charges in connection with the processing of permits and approvals. Certain City controlled fees and charges in connection with the processing of permits and approvals in the amount not greater than Four Hundred Thirty Thousand Dollars (\$430,000) shall be deferred and repaid by Stay Cal in monthly payments at a rate of two percent (2%) interest. Stay Cal will collect an additional two percent (2%) to the initial ten percent (10%) of transient occupancy tax to pay for certain City controlled fees and charges until the total deferred amount is fully repaid.

2.3.7 Construction Plans, Budget and Schedule. City has approved the Construction Plans and specifications for the Project pursuant to Article IV, and the construction budget and schedule for the Project.

2.3.8 Financing. Within sixty (60) days but no later than thirty (30) days from the Closing Date, Stay Cal has delivered to City evidence reasonably satisfactory to City that Stay Cal has secured binding commitments for all funding required to pursue

the development of the Project in excess of the Loan, subject only to commercially reasonable conditions, as more particularly described in Section 4.6.

2.3.9 Insurance and Performance Bonds. Stay Cal has provided evidence reasonably satisfactory to City that Stay Cal has obtained insurance coverage meeting the requirements set forth in Article X and shall have provided to City performance bonds or other assurance of completion reasonably satisfactory to City pursuant to the requirements set forth in Section 4.20.

2.3.10 Title. City shall have received assurance that the Deed of Trust will be recorded subject only to: (a) the provisions and effects of the City Documents, (b) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deeds, and (c) the City's Permitted Exceptions.

ARTICLE III DISPOSITION OF THE PROPERTY

3.1 Purchase and Sale of Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, City shall sell to Stay Cal, and Stay Cal shall purchase from City, the fee interest in the Property in accordance with and subject to the terms, covenants and conditions of this Agreement, free and clear of all exceptions to title except: (a) the provisions and effects of the City Documents, (b) applicable building and zoning laws and regulations, (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed (defined below), (d) exception numbers 6-9 and 11-14 as shown on that certain preliminary title report for the Property issued by First American Title Company and dated October 9, 2018 ("**Title Report**"), and (e) such other conditions, liens, encumbrances, restrictions, easements and exceptions as Stay Cal may approve in writing, which approval shall not be unreasonably withheld. All of the foregoing are collectively hereinafter referred to as the "**Stay Cal's Permitted Exceptions.**" Conveyance of the Property shall be effectuated by grant deed substantially in the form attached hereto as Exhibit B (the "**Grant Deed**").

3.2 Purchase Price. City shall sell the Property to Stay Cal for the sum of One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,110.00) (the "**Purchase Price**").

3.3 Escrow. Within thirty (30) days of the Effective Date, City and Stay Cal shall open escrow at the office of First American Title Company, 1850 Mt. Diablo Blvd., Suite 300, Walnut Creek, CA 94596, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the conveyance of the Property to Stay Cal and the closing of escrow for the transactions contemplated hereby.

3.4 Costs of Closing and Escrow. Stay Cal shall pay all escrow fees (including the costs of preparing documents and instruments), recording fees, title insurance

premiums for policies Stay Cal elects to purchase in connection with the acquisition of the Property and the financing of the Project and title report costs. City shall pay government conveyance fees and all transfer taxes. Property taxes and assessments shall be prorated as of the Closing Date. Stay Cal 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. All other costs and fees shall be paid in accordance with custom and practice in Contra Costa County.

3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. City and Stay Cal shall provide the Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Stay Cal may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by the Parties, shall serve as escrow instructions for the conveyance of the Property.

3.6 Closing. The Closing Date shall be the earlier to occur of the following: (i) one-hundred eighty (180) days from the expiration of the Due Diligence Period or (ii) July 3, 2019 (the "**Closing Date**" or "**Close of Escrow**"). Prior to the Close of Escrow, Stay Cal shall deposit into escrow the amount of any funds Stay Cal is obligated to pay pursuant to this Agreement and the City Documents, executed and acknowledged as applicable. Provided that all conditions precedent to conveyance of the Property have been satisfied or waived, City shall deposit into escrow the executed Grant Deed and executed copies of the City Documents to which City is a party. On the Closing Date, the Escrow Agent shall cause the Grant Deed, the Deed of Trust to be recorded in the Official Records of the County of Contra Costa.

3.7 Review of Title. City shall provide or cause Title Company to provide Stay Cal with a copy of the Title Report within thirty (30) days following the Effective Date. Stay Cal shall notify City of any objections Stay Cal has to exceptions to title ("**Title Exceptions**") within ten (10) business days following Stay Cal's receipt of the Title Report. Stay Cal's failure to object within such period shall be deemed to be approval of the condition of title to the Property. If Stay Cal objects to any Title Exception, City shall use reasonable efforts at City's expense to remove from title or otherwise satisfy each such exception in a form that is reasonably satisfactory to Stay Cal no later than fourteen (14) days prior to the Closing Date.

3.8 Conditions to Closing.

3.8.1 City's Conditions to Closing. City's obligation to proceed with the conveyance of the Property is subject to Stay Cal's satisfaction or City's waiver of the following conditions:

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 Stay Cal 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. Satisfaction of Conditions Precedent. All conditions set forth in Section 2.3 and each subsection thereof shall have been satisfied.

d. Lender's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of City ("**City Lender's Title Policy**") in the amount of the Loan, insuring that the lien of the Deed of Trust is subject only to exceptions numbers 6-9 and 11-14 identified in that certain Preliminary Report issued by First American Title Company and dated October 9, 2018, deeds of trust and other security instruments securing all other construction and permanent financing for the Project included in Stay Cal's approved Financing Plan, and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may approve in writing (collectively, the "**City's Permitted Exceptions**") and containing such endorsements as City may reasonably require, with the cost of such Title Policy to be paid by Stay Cal.

3.8.2 Stay Cal's Conditions to Closing. Stay Cal's obligation to proceed with the acquisition of the Property is subject to City's satisfaction or Stay Cal'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 Grant Deed and any other documents required hereunder, and shall have delivered such documents into escrow.

c. Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Stay Cal ("**Owner's Title Policy**") showing title to the Property vested in Stay Cal, subject only to Stay Cal's Permitted Exceptions.

ARTICLE IV DEVELOPMENT OF THE PROPERTY

4.1 The Project. Stay Cal shall construct the Project in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body

or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

The Project will consist of a Courtyard by Marriott or an equivalent hotel brand with at least 125 rooms, an on-site restaurant, full service bar, and conference room.

4.2 Backhaul System and Security System. Due to the location and height of the Project, Stay Cal agrees to install a backhaul, a relaying system that will convey surveillance information to the City of Pittsburgh Police Department (“PPD”). Stay Cal also agrees to install a camera security system compatible with PPD.

4.3 Project Approvals. Stay Cal acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Stay Cal from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for construction of the Project on the Property including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review.

Stay Cal covenants that it shall: (i) use best efforts to obtain all necessary permits and approvals which may be required by City or any other governmental agency having jurisdiction over the Property by the date set forth in the Schedule of Performance, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction work on the Project prior to issuance of building permits required for such work.

City staff shall work cooperatively with Stay Cal to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for construction of the Project.

4.4 Fees. Except as expressly set forth herein, Stay Cal shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project.

4.5 Cost of Acquisition and Construction. Except as expressly set forth herein, Stay Cal shall be solely responsible for all direct and indirect costs and

expenses incurred in connection with the acquisition of the Property and construction of the Project, and none of such costs and expenses shall be the obligation of the City.

4.6 Financing Plan. Within sixty (60) days but no later than thirty (30) days from the Closing Date, Stay Cal shall submit for City review Stay Cal's plans for financing the construction and permanent financing of the Project (hereinafter the "**Financing Plan**"). The Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of Project development, including without limitation acquisition costs and hard and soft construction costs, and shall be accompanied by evidence that all such funds have been firmly committed by Stay Cal, equity investors or lending institutions, subject only to commercially reasonable conditions. The Financing Plan shall include development and operating pro formas which set out in detail Stay Cal's plan for financing the costs of acquisition, construction and operation of the Project. City staff shall promptly review the proposed Financing Plan, and acting through the City's City Manager, the City shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section. If the City does not approve the Financing Plan, the City shall set forth its objections in writing and notify Stay Cal of the reasons for its disapproval. Stay Cal shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and the City shall grant Stay Cal a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan, subject to the outside time limit for commencement of construction set forth in Section 4.7.

4.7 Schedule of Performance. Stay Cal shall commence and complete construction of the Project and shall satisfy all other obligations of Stay Cal under this Agreement within the time periods set forth herein and in the Schedule of Performance attached hereto as Exhibit C ("**Schedule of Performance**"), as such time periods may be extended upon the mutual written consent of the Parties. Subject to force majeure, and the City's issuance of permits and approvals, Stay Cal shall commence construction of the Project not later than the date specified in the Schedule of Performance, and Stay Cal shall diligently prosecute the construction work to completion in order to allow City to issue a final certificate of occupancy within twelve (12) months following commencement of construction, but in no event later than the date specified in the Schedule of Performance. Subject to force majeure, the availability of financing, and the City's issuance of permits and approvals, Stay Cal's failure to commence or complete the Project or satisfy any other obligations of Stay Cal under this Agreement in accordance with the time periods specified in this Section 4.7 or the Schedule of Performance shall be an Event of Default hereunder.

4.8 Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Stay Cal shall permit representatives of the City to enter upon the Property following 24 hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

4.9 City Disclaimer. Stay Cal acknowledges that the City is under no

obligation, and City does not undertake or assume any responsibility or duty to Stay Cal or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Stay Cal and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, contractors, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Stay Cal is properly discharging its obligations under this Agreement, and shall not be relied upon by Stay Cal or any third party as a warranty or representation by the City as to the quality of the design or rehabilitation of the improvements or otherwise.

4.10 Construction Plans. By the date set forth in the Schedule of Performance, Stay Cal shall submit to City's Building Department for approval detailed construction plans for construction of the Project on the Property (the "**Construction Plans**"). As used herein "**Construction Plans**" means all construction documents upon which Stay Cal and Stay Cal's contractors shall rely in constructing the Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of the City.

4.11 Construction Pursuant to Plans. Stay Cal shall construct the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Stay Cal shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

4.12 Change in Construction Plans. If Stay Cal desires to make any material change in the approved Construction Plans, Stay Cal shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by the City after the Effective Date. Unless a proposed change is approved by City within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved

Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

4.13 Defects in Plans. The City shall not be responsible to Stay Cal or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Stay Cal shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees (defined below) from and against all Claims (defined below) arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Stay Cal's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Stay Cal which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Stay Cal's deposit with City of any of the insurance policies described in this Agreement. Stay Cal's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

4.14 Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City and the written request of Stay Cal, the City will provide an instrument ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all applicable work has been completed. The Certificate of Completion shall be conclusive evidence that Stay Cal has satisfied its obligations regarding construction of the Project.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit D, and at Stay Cal's option, shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Stay Cal to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Stay Cal has satisfied any obligation that survives the expiration of this Agreement.

4.15 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 Stay Cal shall direct its contractors and subcontractors to refrain from discrimination on such basis.

4.16 Prevailing Wage Requirements. To the full extent required by all applicable state and federal laws, rules and regulations, Stay Cal and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Stay Cal

shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Stay Cal's expense. Stay Cal may terminate this Agreement if the City's entitlements, permits or approvals are conditioned upon use of any union labor for construction or operations.

To the fullest extent permitted by law, Stay Cal shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (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 Stay Cal 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. It is further agreed that City does not and shall not waive any rights against Stay Cal which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Stay Cal's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 4.16 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Stay Cal's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

4.17 Compliance with Laws. Stay Cal shall carry out and shall cause its contractors to carry out construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, 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.* Stay Cal shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Stay Cal's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Stay Cal which it

may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Stay Cal's deposit with City of any of the insurance policies described in this Agreement. Stay Cal's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees. Stay Cal's defense and indemnification obligations set forth in this Section 4.17 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

4.18 Liens and Stop Notices. Until the expiration of the term of the Note and the Deed of Trust, Stay Cal shall use commercially reasonable efforts to 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 Stay Cal. If a claim of a lien or stop notice is given or recorded affecting the Project, Stay Cal shall within forty-five(45) 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. Notwithstanding any provision to the contrary, Stay Cal shall have the right to dispute the validity of any lien or stop notice given or recorded affecting the Project.

4.19 Right of City to Satisfy Liens on the Property. If Stay Cal fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 4.18 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Stay Cal's expense and without further notice to Stay Cal and all sums advanced by the City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Stay Cal shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Stay Cal 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 Stay Cal. Stay Cal 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.

4.20 Performance and Payment Bonds. Prior to commencement of construction work on the Project, Stay Cal shall cause its general contractor to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the City as a co-obligee.

4.21 Insurance Requirements. Stay Cal shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

ARTICLE V CITY FINANCIAL ASSISTANCE

5.1 Loan and Note. To assist in the acquisition of the Property, City shall provide a Loan in the form of seller-financing to cover the Purchase Price in the principal amount of One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,110.00) (the "**Loan**"). The Loan shall be evidenced by a secured promissory note dated as of the Closing Date and executed by Stay Cal substantially in the form attached hereto as Exhibit E (the "**Note**"), and shall be secured by the Deed of Trust (the "**Deed of Trust**") which shall be recorded against the Property subject only to City's Permitted Exceptions.

Provided that Stay Cal has complied with all conditions precedent to disbursement of the Loan set forth in Section 5.8, City will provide the Loan at Closing.

5.2 Interest. Commencing on the Closing Date and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Note are paid in full, interest on the Loan shall accrue at the rate of two percent (2%) simple interest per annum on the unpaid principal outstanding from time to time, computed on a basis of a 365 day year. Interest is due and payable upon an event of default under Article IX hereof.

5.3. Term; Extension of Term. The term of the Loan is the earlier of (i) the sale or transfer of the Property and the Project by Stay Cal, or (ii) 20 years from the Closing Date (the "**Maturity Date**"). Notwithstanding the foregoing, the City shall have the right to accelerate the maturity date and declare all sums payable under the Note immediately due and payable upon the occurrence of an Event of Default.

5.4 Repayment. Stay Cal shall make monthly principal and interest payments to the City, under this Agreement, commencing on the earlier to occur of the following: (i) the first day of the calendar month after the Courtyard by Marriott or equivalent hotel brand that Stay Cal constructs on the Property opens to the public, or (ii) two (2) years from the Closing Date, regardless of whether a Courtyard by Marriott or equivalent hotel brand has been constructed on the Property and/or is open to the public ("Monthly Payment Commencement Date") and shall continue making such monthly payments until that date that is twenty (20) years after the Monthly Payment Commencement Date (the "Maturity Date"). For purposes of illustration only: (i) if the Courtyard by Marriott or equivalent hotel brand on the Property were to open to the public on October 25, 2019, the Monthly Payment Commencement Date as defined in this Agreement would be November 1, 2019, and Stay Cal would then be obligated to commence making the required monthly principal and interest payments to City through October 1, 2039, which would represent the Maturity Date pursuant to this hypothetical example; and (ii) in the event that the Closing date of this Agreement is March 1, 2019, and the Buyer has failed to construct a Courtyard by Marriott or equivalent hotel brand that is open to the

public on or before March 1, 2021, the Monthly Payment Commencement Date shall be March 1, 2021 and the Maturity Date would be February 1, 2041.

5.5 Security. As security for repayment of the Note, Stay Cal shall execute the Deed of Trust in favor of City as beneficiary pursuant to which City shall be provided a lien against Stay Cal's interest in the Property and the Project. The Deed of Trust shall be dated as of the Closing Date, shall be substantially in the form attached hereto as Exhibit F, and shall be recorded in the Official Records on the Closing Date. The Deed of Trust may be subordinated only to the City's Permitted Exceptions and such liens and encumbrances as City shall approve in writing. The City shall subordinate to any construction or permanent financing for this Project.

5.6 Use of Loan. The Loan shall be used solely to fund acquisition of the Property.

5.7 Prepayment. Stay Cal shall have the right to prepay the 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.

5.8 Conditions to Loan. City's obligation to fund the Loan is conditioned upon the satisfaction of all of the conditions set forth in Sections 2.3 and 3.8 and all of the following conditions:

5.8.1 The conveyance of the Property to Stay Cal;

5.8.2 Stay Cal's execution and delivery to City of this Agreement, the Note and the Deed of Trust;

5.8.3 Recordation of the Deed of Trust in the Official Record;

5.8.4 Stay Cal'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 Stay Cal's provision to City of full waivers or releases of lien claims if required by City;

5.8.5 Stay Cal's delivery to the City of evidence of property and liability insurance coverage and payment and performance bonds in accordance with the requirements set forth herein;

5.8.6 No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or the Project or in the financial or other condition of Stay Cal since the Effective Date of this Agreement;

5.8.7 Stay Cal's delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Stay Cal is properly

organized and authorized to do business in the State of California, (ii) a certified resolution indicating that Stay Cal has authorized this transaction and that the persons executing the City Documents on behalf of Stay Cal have been duly authorized to do so, and (iii) certified copy of Stay Cal's articles of incorporation and bylaws; and

5.8.8 City's receipt of a written estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Stay Cal's acquisition of the Property.

5.9 No Obligation to Provide Loan Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to Close if any of the following circumstances occur:

5.9.1 the failure of any of Stay Cal's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;

5.9.2 the termination of this Agreement by mutual agreement of the Parties;

5.9.3 the occurrence of an Event of 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 Default under any City Document.

5.10 Due On Sale 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 absent the prior written consent of City of all or any part of or interest in the Property except as otherwise permitted pursuant to this Agreement.

5.11 Fee Deferral Agreement. City agrees to permit Stay Cal to defer certain City controlled permit and entitlement fees, pursuant to that certain Fee Deferral Agreement executed by Stay Cal substantially in the form attached to this Agreement as Exhibit H, and incorporated herein by this reference. Pursuant to the Fee Deferral Agreement, Stay Cal must repay all deferred fees within ten years of the closing date. Stay Cal will collect an additional two percent (2%) to the initial ten percent (10%) of transient occupancy tax to pay for certain City controlled fees and charges until the total deferred amount is repaid.

5.12 Offsite Improvements. Stay Cal hereby agrees to share in the cost of certain public improvements, as set forth in Exhibit I, that are required to be constructed in conjunction with the Project. Costs are to be shared on a pro-rata basis, and the non-Stay Cal share is not to exceed Five Hundred Thousand Dollars (\$500,000). Stay Cal will collect an additional two percent (2%) to the initial ten percent (10%) of transient occupancy tax until Stay Cal has been completely reimbursed for its cost to construct the non-Stay Cal share of certain public improvements.

ARTICLE VI USE OF THE PROPERTY

6.1 Use. Stay Cal covenants and agrees for itself and its successors and assigns that the Property shall be used solely for the development and operation of at least 125 room Courtyard by Marriott or equivalent hotel brand in accordance with the terms and conditions of this Agreement.

6.2. Transit Occupancy Tax. Stay Cal shall charge guests using the Project a Transit Occupancy Tax of Twelve Percent (12%) of the room rate per day, as authorized pursuant to Pittsburgh Municipal Code Chapter 3.12. Ten percent (10%) will be paid to the City and two percent (2%) shall be used in the following order: (i) to reimburse Stay Cal for the cost of the non-Stay Cal pro rata share of certain public improvements until Stay Cal is completely reimbursed, (ii) pay certain City controlled fees and charges pursuant to the Fee Deferral Agreement until all deferred fees are repaid, and (iii) repayment of the Loan, only if Stay Cal still has an outstanding balance.

6.3 Maintenance. Stay Cal shall, at its own expense, maintain the Property, including the landscaping and common areas 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, Stay Cal agrees to maintain the Property (including without limitation, the 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. Stay Cal shall use reasonable efforts to prevent and/or rectify any physical deterioration of the Property and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair.

6.4 Other Taxes and Assessments. Stay Cal 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 and payable by Stay Cal, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Stay Cal shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Stay Cal exercises its right to contest any tax, assessment, or charge, Stay Cal, 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.

6.4.1 Financial Obligations. Stay Cal agrees to pay its fair share of any levies imposed by any assessment district, enhanced infrastructure financing district, landscaping and lighting districts, community facilities districts, tax-exempt

financing mechanisms, or other funding mechanisms related to public safety; traffic; parks; sewer; water; fire; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs).

a. Landscape and Lighting. Stay Cal agrees that the

Project and Property will be subject to the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88-7324. Stay Cal shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Property into the City's existing Lighting and Landscaping District prior to issuance of any permits for the Project.

b. Police CFD. Stay Cal agrees to cooperate with City's efforts to annex the Project and Property into City of Pittsburg Community Facilities District No. 2004-01, as adopted pursuant to Resolution No. 04-10071 (the "Police Services District") in order to fund police services made necessary by the Project. Stay Cal shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Property into the City's Police Services District prior to issuance of any permits for the Project.

c. Fire District CFD. Stay Cal agrees to cooperate with City's efforts to annex the Project and Property into Contra Costa County Fire Protection Community Facilities District 2017-1, as established by Resolutions 17-13298 and 17-13311 and Ordinance 17-1428 (the "Fire Services District") in order to fund fire services made necessary by the Project. Stay Cal shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Property into the City's Fire Services District prior to issuance of any permits for the Project.

d. Property Taxes. Stay Cal shall not seek to reduce the Property's assessed value with the Contra Costa County Assessor greater than one percent (1%).

e. eBART CFD. Stay Cal agrees to cooperate with City's efforts to annex the Project and Property into the City of Pittsburg Community Facilities District No. 2014-01 for the Railroad Avenue Specific Plan Area (the "eBART District"), established by the City in order to finance the construction of the Pittsburg Center Station. Stay Cal shall take the steps necessary, as determined by the City Manager and City Attorney, to annex the Property into the City's eBART District prior to issuance of any permits for the Project.

f. Maintenance of Project Facilities. Stay Cal agrees that if its is unable to construct a facility to treat stormwater on the Property that it will cooperate with the City's efforts to annex the Project and Property in the the City of Pittsburg Community Facilities District 2016-1 Maintenance of Project Facilities.

g. Backhaul and Security Cameras. Stay Cal agrees to cooperate with City's efforts with the purchase and installation of a police radio relay

system, security cameras, and the necessary facilities (collectively, the "Equipment") that are determined by the City to be compatible to the Pittsburgh Police Department's system. Stay Cal shall contribute to the cost of the purchase of the Equipment and installation in an amount not to exceed Sixty Thousand Dollars (\$60,000). Upon completion of the Project and the issuance of a Certificate of Occupancy, the Equipment shall become the property of the City, to be maintained by the City. Stay Cal shall grant the City or its designee access to the Equipment at all times for maintenance and repair efforts.

h. Business License. At all times, the Stay Cal, its contractors and subcontractors are required to maintain an active business license with the City.

i. Continuing Obligations. Notwithstanding any other provision of this Agreement, Stay Cal's obligations under Section 3.8.1 (e), inclusive, shall constitute a continuing obligation and bind Stay Cal, its successors and/or assigns as long the Project exists. Stay Cal's obligations under Section 3.8.1 (e) shall survive this Agreement's termination and continue in full force and effect until the Project ceases and all entitlements are vacated. Failure by Stay Cal of any of the obligations listed in this Section 3.8.1 (e) will constitute a Default under Section 9.1.

6.5 Obligation to Refrain from Discrimination. Stay Cal 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. Stay Cal 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 Stay Cal or any person claiming under or through Stay Cal 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. Stay Cal shall include such provision in all deeds, leases, contracts and other instruments executed by Stay Cal, and shall enforce the same diligently and in good faith.

6.6 City Agreement regarding use of Hotel Rooms. Stay Cal agrees to enter into a separate agreement with City whereby City has the right to reserve up to fifty (50) rooms each year, subject to availability, at an agreed upon rate, for the use of dignitaries visiting the City.

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF STAY CAL; CITY OPTION

7.1 Change Pursuant to this Agreement. Stay Cal and its principals have represented that they possess the necessary expertise, skill and ability to carry out the construction of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Stay Cal 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 Stay Cal. No voluntary or involuntary successor, assignee or transferee of Stay Cal shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to expiration of the term of the Note, Stay Cal 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 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 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 expiration of the term of the Note, except as expressly permitted by this Agreement, Stay Cal 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 forty-nine percent (49%) in aggregate of the present ownership and/or control of Stay Cal.

7.3 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 rental of hotel rooms; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or (v) a Transfer to an entity which is under the direct control of Stay Cal (“**Controlled Affiliate**”).

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i) through (v) of Section 7.3):

7.4.1 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 the

Project and to otherwise fulfill the obligations undertaken by the Stay Cal under this Agreement.

7.4.2 Stay Cal and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

7.4.3 The proposed transferee shall expressly assume all of the rights and obligations of Stay Cal under this Agreement and the City Documents arising after the effective date of the Transfer and all obligations of Stay Cal arising prior to the effective date of the Transfer (unless Stay Cal expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Stay Cal's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

7.4.4 The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in a form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Stay Cal, it shall be deemed rejected.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Stay Cal shall be deemed to relieve the Stay Cal or any other party from any obligation under this Agreement.

7.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, it shall be an Event of Default hereunder entitling City to terminate this Agreement if without the prior written approval of the City, Stay Cal assigns or Transfers this Agreement or the Property prior to repayment of the Loan. This Section 7.5.2 shall not apply to Transfers described in clauses (i) through (v) of Section 7.3.

7.5.3 If, in violation of this Agreement, Stay Cal Transfers all or any part of the Property or the Project, the City shall be entitled to receive from Stay Cal the amount by which the consideration payable for such Transfer exceeds the sum of (a) Purchase Price, and (b) the costs incurred by Stay Cal in connection with the improvement and development of the Property, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to the City by the Stay Cal and until so paid, the City shall have a lien on the Property for such amount. The provisions of this Section 7.5.3 have been agreed

upon so as to discourage land speculation by Stay Cal; accordingly, these provisions shall be given a liberal interpretation to accomplish that end.

7.6 Recovery of City Costs. Stay Cal 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 Stay Cal of an invoice detailing such costs. Stay Cal's obligation to pay an invoice from the City shall be conditioned upon the City delivering a written quote to Stay Cal as to the cost of providing any contemplated services under this provision prior to commencing such work.

ARTICLE VIII

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

8.1 Definitions.

8.1.1. **"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 methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

8.1.2 **"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 Materials, 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), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 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.).

8.2 Property Sold "AS IS." Stay Cal specifically acknowledges that the City is selling and Stay Cal is purchasing the Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Stay Cal is not relying on any representations or warranties of any kind whatsoever, express or implied, from City or its employees, City Council members, agents, or brokers as to any matters concerning the Property. The City makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the Property, (ix) the condition of title to the Property, (x) the leases, service contracts, or other agreements affecting the Property, or (xi) the economics of the operation of the Property.

8.3 Stay Cal to Rely on Own Experts. Stay Cal understands that notwithstanding the delivery by City to Stay Cal of any materials, including, without limitation, third party reports, Stay Cal will rely entirely on Stay Cal's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Property.

8.4 Right of Entry. Prior to the Close of Escrow, Stay Cal and Stay Cal's authorized representatives may enter upon and conduct further reviews and assessments of the physical and environmental condition of the Property and the condition of the existing improvements. City may require Stay Cal to execute a right of entry agreement satisfactory to City prior to entry onto the Property for such purpose and shall require Stay Cal to provide proof of liability insurance acceptable to City. Stay Cal's inspection, examination, survey and review of the Property shall be at Stay Cal's sole expense. Stay Cal shall provide City with copies of all reports and test results

promptly following completion of such reports and testing. Stay Cal hereby agrees to notify the City twenty-four (24) hours in advance of its intention to enter the Property and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Stay Cal must keep the Property in a safe condition during its entry. Stay Cal shall repair, restore and return the Property to its condition immediately preceding Stay Cal's entry thereon at Stay Cal's sole expense. Stay Cal will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Property prior to Close of Escrow. Without limiting any other indemnity provisions set forth in this Agreement, to the fullest extent permitted by law, Stay Cal shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Property by Stay Cal or Stay Cal's agents, employees, consultants, contractors or subcontractors pursuant to this Section 8.5. Stay Cal's indemnification obligations set forth in this Section 8.5 shall survive the Close of Escrow and the termination of this Agreement.

8.5 Release by Stay Cal. Effective upon the Close of Escrow, Stay Cal WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the City, its officers, City Council members, employees, agents, consultants and contractors, and any other person acting on behalf of the City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Stay Cal now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Materials in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws.

STAY CAL ACKNOWLEDGES THAT STAY CAL IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, STAY CAL EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Stay Cal's initials: _____

8.6 Stay Cal's Post-Closing Obligations. Stay Cal hereby covenants and agrees that:

8.6.1 Stay Cal shall not knowingly permit the Property, the Project or any portion of either to be a site for the use, generation, treatment, manufacture,

storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Property or Project with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Property and used, stored and disposed of in compliance with Environmental Laws.

8.6.2 Stay Cal shall keep and maintain the Property, the Project 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.

8.6.3 Upon receiving actual knowledge of the same, Stay Cal 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 Stay Cal, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against Stay Cal or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Property; or (iv) Stay Cal's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) 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.

8.6.4 Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Stay Cal shall not take any remedial action in response to the presence of any Hazardous Materials 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.

8.7 Environmental Indemnity. To the greatest extent allowed by law, Stay Cal 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 Stay Cal, Stay Cal'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 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.

8.8 No Limitation. Stay Cal hereby acknowledges and agrees that Stay Cal'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 Stay Cal or from its own investigations, unless such information was known to the City at the time of execution of this Agreement and/or the time of the close of escrow for the conveyance of the Property to the Stay Cal but not disclosed to Stay Cal.

ARTICLE IX DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Default. The following events shall constitute an event of default on the part of Stay Cal ("**Event of Default**"):

9.1.1 Stay Cal fails to commence or complete construction of the Project within the times set forth in Section 4.7, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

9.1.2 Stay Cal fails to pay when due the principal and interest (if any) payable under the Note or the Fee Deferral Agreement and such failure continues for thirty (30) days;

9.1.3 A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

9.1.4 Stay Cal fails to maintain insurance as required pursuant to this Agreement, and Stay Cal fails to cure such default within ten (10) days;

9.1.5 Subject to Stay Cal's right to contest the following charges pursuant to Section 6.3, if Stay Cal fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Stay Cal fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

9.1.6 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;

9.1.7 Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to City in connection with this Agreement or Stay Cal'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;

9.1.8 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**"), Stay Cal or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Stay Cal or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Stay Cal 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;

9.1.9 A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging Stay Cal to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of Stay Cal or seeking any arrangement for Stay Cal 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 Stay Cal in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Stay Cal;

9.1.10 Stay Cal 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 sixty (60) days after such event (unless a lesser time period is permitted for cure under 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;

9.1.11 The Stay Cal shall have voluntarily suspended its business or Stay Cal shall have been dissolved or terminated;

9.1.12 An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

9.1.13 Stay Cal defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 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 Stay Cal; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if Stay Cal 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 and in no event later than sixty(60) days after receipt of notice of the default.

9.2 City's Right to Terminate Agreement. If an Event of 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 Stay Cal, all limited partners of Stay Cal 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 Stay Cal under this Agreement, shall expire and terminate.

9.3 City's Remedies and Rights Upon an Event of Default. Upon the occurrence of an Event of 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 Stay Cal, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

9.3.1 Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;

9.3.2 Seek specific performance to enforce the terms of the City Documents;

9.3.3 Foreclose on the Property pursuant to the Deed of Trust;

9.3.4 Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

9.4 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by City 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 Stay Cal.

9.5 Inaction Not a Waiver of Default. No failure or delay by City 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 City 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.

9.6 Right of Reverter. If following conveyance of the Property to Stay Cal, Stay Cal (i) fails to begin construction of the Project within the time specified in Section 4.7 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the Project for a period of sixty (60) days after written notice from City unless, within such 60-day period, either the limited partners of Stay Cal or a lender holding a senior encumbrance against the Property that constitutes a Permitted Exception has declared Stay Cal to be in default for suspension of construction and has commenced action to cure the default and thereafter fully resumes construction by no later than ninety (90) days after receipt of notice of the default, which action shall constitute cure for purposes of this paragraph, or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Property or this Agreement in violation of Article VII, the City may re-enter and take possession of the Property or any portion thereof with all improvements thereon without payment or compensation to Stay Cal, and revert in the City the estate theretofore conveyed to Stay Cal. The interest created pursuant to this Section 9.6 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from the City's option to purchase the Property under the same or similar conditions specified in Section 9.7. City's rights pursuant to this Section 9.6 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The rights established in this Section 9.6 are to be interpreted in light of the fact that the City will convey the Property to the Stay Cal for completion of the Project as specified herein and not for speculation.

9.7 Option to Purchase, Enter and Possess. The City shall have the additional right at its option to purchase, enter and take possession of Property with all improvements thereon (the "**Repurchase Option**"), if after conveyance of the Property, Stay Cal (i) fails to begin construction of the Project within the time specified in Section 4.7 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the Project for a period of sixty (60) days after written notice from City unless, within such 60-day period, either the limited partners of Stay Cal or a lender holding a senior encumbrance against the Property that constitutes a Permitted Exception has declared Stay Cal to be in default for suspension of construction and has commenced action to cure the default and thereafter fully resumes construction by no later than ninety (90) days after receipt of notice of the default, which action shall constitute cure for purposes of this paragraph, (iii) fails to complete construction of the Project by the time specified in Section 4.7 as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property or this Agreement in violation of Article VII.

To exercise the Repurchase Option, the City shall pay to Stay Cal cash in an amount equal to:

- (i) The Purchase Price; plus

(ii) The fair market value of any new improvements existing on the Property at the time of exercise of the Repurchase Option; less

(iii) Any gains or income withdrawn or made by the Stay Cal from the applicable portion of the Property or the improvements thereon; less

(iv) The value of any liens or encumbrances on the applicable portion of the Property the City assumes or takes subject to; less

(v) Any damages to which the City is entitled under this Agreement by reason of Stay Cal's default.

In order to exercise the Repurchase Option, City shall give Stay Cal notice of such exercise, and Stay Cal shall, within thirty (30) days after receipt of such notice, provide City with a summary of all of Stay Cal's costs incurred as described in this Section. Within thirty (30) days of City's receipt of such summary, City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.7, and Stay Cal shall execute and deposit into such escrow a grant deed transferring to City all of Stay Cal's interest in the Property, or portion thereof, as applicable and the improvements located thereon.

9.8 Opportunity to Cure. Notwithstanding Sections 9.6 and 9.7, prior to exercising any rights of reverter or repurchase or any other rights granted under Sections 9.6 or 9.7, City shall give Stay Cal and the limited partners of Stay Cal written notice of its intent to exercise such right(s). Stay Cal and/or Stay Cal's limited partners shall have the right to cure the default giving rise to any right City asserts. If such default continues for 30 days after the date upon which City shall have given written notice of the default to Stay Cal and Stay Cal's limited partners, City may then proceed to exercise any rights it may have under Sections 9.6 or 9.7. For purposes of this Section, the following shall be deemed to cure any alleged default specified in subparagraphs (i)-(iii) of Sections 9.6 and 9.7:

- (i) If the alleged default or defect is in failing to timely commence construction, commencement of construction within the 30-day cure period shall be deemed to cure the alleged default;
- (ii) If the alleged default or defect is in failing to complete construction, substantial completion of construction within the 30-day cure period shall be deemed to cure the alleged default;
- (iii) If the alleged default or defect is in abandoning or suspending construction, resuming construction within the 30-day cure period shall be deemed to cure the alleged default;
- (iv) If the alleged default or defect is in making or allowing an improper Transfer, effective cancelation or novation of such Transfer within the 30-day cure period shall be deemed to cure the alleged default;

9.9 Memorandum of Right of Reverter/Option to Purchase. The Parties shall cause a memorandum or memoranda of the rights granted to the City in Sections 9.6 and 9.7 of this Agreement to be recorded in the Official Records at the time of the Close of Escrow for conveyance of the Property to Stay Cal. In lieu of such memorandum, the rights afforded City pursuant to Sections 9.6 and 9.7 may be described in the Grant Deed.

9.10 Construction Plans. If this Agreement is terminated pursuant to Section 9.2, the Stay Cal, at no cost to the City, shall deliver to City copies of any construction plans and studies in Stay Cal's possession or in the possession of the Stay Cal's consultants related to development of the Project on the Property, subject to the rights of third parties. In the event the City utilizes the construction plans or studies, the City shall indemnify Stay Cal for any claims arising from the use of construction plans or studies by the City pursuant to this Section 9.10.

9.11 Rights of Mortgagees. Any rights of the City under this Article IX 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. Any conveyance or reverter of the Property to the City pursuant to this Article IX shall be subject to mortgages and deeds of trust permitted by this Agreement.

ARTICLE X INDEMNITY AND INSURANCE.

10.1 Indemnity. To the fullest extent permitted by law, Stay Cal shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Stay Cal's or Stay Cal's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Stay Cal's performance under this Agreement. Stay Cal's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Stay Cal that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Stay Cal, of any of the insurance policies described in this Agreement.

10.2 Liability and Workers Compensation Insurance. Prior to initiating work on the Project and continuing through the issuance of the Certificate of Completion, Stay Cal and all contractors working on behalf of Stay Cal shall maintain and keep in force at Stay Cal's expense, insurance coverage with respect to the Property and the Project in

accordance with the requirements set forth in Exhibit G attached hereto and incorporated herein.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Parties (the City acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the City Council). The Parties acknowledge that 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.

11.3 Notices. Except as otherwise specified in this Agreement, 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 on receipt if delivery is confirmed by a return receipt;
- (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;
- (iv) facsimile or email transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail.
- (v.) mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 95465
Attention: City Manager

Stay Cal: Stay Cal Pittsburg, LLC
2110 S. El Camino Real
San Mateo, CA 94403
Attention: Hiten Suraj

11.4 Attorneys' Fees. If any 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.

11.5 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.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, 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.

11.7 Survival. All representations made by Stay Cal hereunder and Stay Cal's obligations pursuant to Sections 4.13, 4.16, 4.17, 8.5, 8.8, 10.1 and 11.18 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying the Property to Stay Cal or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein.

11.8 Construction. 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.

11.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

11.10 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.

11.11 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 email and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 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.

11.13 No Third Party Beneficiaries. 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.

11.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Stay Cal or its successors in interest in the event of any default or breach by City or for any amount which may become due to Stay Cal or its successors in interest pursuant to this Agreement.

11.16 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 California.

11.17 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 in the Superior Court of Contra Costa County, California or in the Federal District Court for the Northern District of California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

CITY

CITY OF PITTSBURG,
A MUNICIPAL CORPORATION

By: _____
Joe Sbranti, City Manager

ATTEST:

By: _____
Alice Evenson, City Clerk

APPROVED AS TO FORM:

By: _____
Donna Mooney, City Attorney

STAY CAL

STAY CAL PITTSBURG, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

By: _____

Its: _____

By: _____

Its: _____

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

RECORDED AT THE REQUEST OF:

copy/duplicate has not been
compared to original document

RETURN RECORDED COPY TO:
CITY OF PITTSBURG
ENGINEERING RECORDS SECTION
65 CIVIC AVENUE
PITTSBURG, CA 94565-3814

08/10/2018, 20180128209

PARCEL MAP WAIVER FOR A LOT LINE ADJUSTMENT PMW 18-02

OWNER: Garaventa Enterprises, Inc
PROPERTY ADDRESS: Center Drive
Pittsburg, CA 94565
ASSESSOR PARCEL NO.: 086-100-040 & 086-100-041

I, Richard Abono, City Engineer for the City of Pittsburg, do hereby waive the parcel map requirements (pursuant to the State of California Subdivision Map Act Section 66412 and the City of Pittsburg Municipal Code Section 17.04.050) for the lot line adjustment described and shown on the attached Exhibits "A" and "B".

The resulting parcels conform to the City of Pittsburg ordinances as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary sewer facilities, water supply availability, environmental protection and other requirements pursuant thereto.

This certificate and the attached exhibits do not constitute a parcel map or legal record of survey and are only to certify that this lot line adjustment does not require the filing of a parcel map.

I certify that this Parcel Map Waiver conforms to the requirements of the Subdivision Map Act and local ordinances.

Date 8/10/18
Richard Abono
City Engineer PE 65440
City of Pittsburg
Exp. 09/30/2019

ACKNOWLEDGEMENT

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 Contra Costa

On August 10, 2018 before me, Amanda J. McVey, Notary Public

personally appeared Richard Abono,
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 Amanda J. McVey



AUGUST 9, 2018
JOB NO. 1504-000

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 1

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 1 AND A PORTION OF PARCEL 2, AS SAID PARCELS ARE DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET;

THENCE, LEAVING SAID SOUTHWEST LINE, NORTH 17°42'22" EAST, 326.07 FEET TO A POINT ON THE NORTHWEST LINE OF SAID PARCEL 2;

THENCE, ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 AND SAID PARCEL 1 THE FOLLOWING SEVENTEEN (17) COURSES:

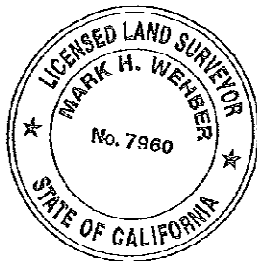
- 1) SOUTH 72°17'38" EAST, 13.83 FEET,
- 2) SOUTH 27°17'38" EAST, 7.44 FEET,
- 3) SOUTH 72°17'38" EAST, 10.22 FEET,
- 4) SOUTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS NORTH 86°22'10" WEST, THROUGH A CENTRAL ANGLE OF 14°04'32", AN ARC DISTANCE OF 4.79 FEET,
- 5) SOUTH 72°17'38" EAST, 28.00 FEET,
- 6) NORTHERLY, ALONG THE ARC OF A NON-TANGENT 19.50 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 72°17'38" EAST, THROUGH A CENTRAL ANGLE OF 11°28'15", AN ARC LENGTH OF 3.90 FEET,
- 7) SOUTH 74°03'49" EAST, 9.86 FEET,
- 8) NORTH 62°42'22" EAST, 8.23 FEET,
- 9) SOUTH 72°17'38" EAST, 135.81 FEET,
- 10) ALONG THE ARC OF A NON-TANGENT 192.46 FOOT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 17°44'07" WEST, THROUGH A CENTRAL ANGLE OF 5°40'02", AN ARC LENGTH OF 19.04 FEET,

- 11) ALONG THE ARC OF A COMPOUND 40,493.50 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $00^{\circ}01'42''$, AN ARC LENGTH OF 20.10 FEET,
- 12) ALONG THE ARC OF A REVERSE 210.50 FOOT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $5^{\circ}43'29''$, AN ARC LENGTH OF 21.03 FEET,
- 13) SOUTH $72^{\circ}17'38''$ EAST, 83.39 FEET,
- 14) ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $91^{\circ}58'34''$, AN ARC LENGTH OF 40.13 FEET,
- 15) ALONG THE ARC OF A COMPOUND 420.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $10^{\circ}28'47''$, AN ARC LENGTH OF 76.82 FEET,
- 16) ALONG THE ARC OF A REVERSE 1,010.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $8^{\circ}57'26''$, AN ARC LENGTH OF 157.90 FEET,
- 17) THROUGH THE ARC OF A REVERSE 80.00 FOOT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $32^{\circ}25'04''$, AN ARC LENGTH OF 45.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 111,874 SQUARE FEET, OR 2.57 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



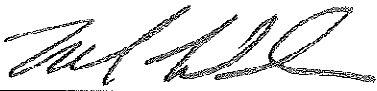

MARK H. WEHBER, P.L.S.
L.S. NO. 7960

EXHIBIT A
LEGAL DESCRIPTION
LOT LINE ADJUSTMENT PMW 18-02
PARCEL 2

REAL PROPERTY SITUATE IN THE CITY OF PITTSBURG, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS DESCRIBED IN THAT GRANT DEED TO GARAVENTA ENTERPRISES RECORDED SEPTEMBER 19, 2014, AS DOCUMENT NUMBER 2014-0160037, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH CORNER OF SAID PARCEL 2;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWEST LINE OF SAID PARCEL 2, NORTH 75°42'43" WEST, 286.48 FEET;

THENCE, CONTINUING ALONG SAID SOUTHWEST LINE, ALONG THE ARC OF A TANGENT 514.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 5°06'42", AN ARC DISTANCE OF 45.86 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG THE EXTERIOR BOUNDARY LINE OF SAID PARCEL 2 THE FOLLOWING FOURTEEN (14) COURSES:

- 1) CONTINUING ALONG THE ARC OF A 514.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 09°10'35" WEST, THROUGH A CENTRAL ANGLE OF 01°12'45", AN ARC DISTANCE OF 10.88 FEET,
- 2) ALONG THE ARC OF A REVERSE 514.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 04°36'45", AN ARC DISTANCE OF 41.38 FEET,
- 3) NORTH 77°25'24" WEST 362.34 FEET,
- 4) NORTH 17°42'22" EAST 262.92 FEET,
- 5) NORTH 14°10'19" EAST 49.50 FEET,
- 6) ALONG THE ARC OF A NON-TANGENT 2.50 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 76°33'57" EAST, THROUGH A CENTRAL ANGLE OF 89°27'52", AN ARC DISTANCE OF 3.90 FEET,
- 7) ALONG THE ARC OF A REVERSE 265.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 30°26'12", AN ARC DISTANCE OF 140.77 FEET,
- 8) ALONG THE ARC OF A NON-TANGENT 289.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT OF SAID CURVE BEARS SOUTH 85°57'59" WEST, THROUGH A CENTRAL ANGLE OF 21°44'23", AN ARC DISTANCE OF 109.66 FEET,
- 9) SOUTH 17°42'22" WEST 30.87 FEET,

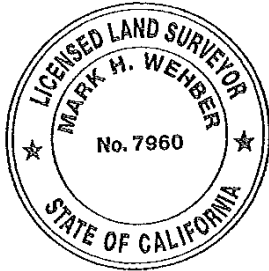
- 10) SOUTH 72°17'38" EAST 54.10 FEET,
- 11) ALONG THE ARC OF A TANGENT 88.00 FOOT RADIUS CURVE TO THE LEFT,
THROUGH A CENTRAL ANGLE OF 33°22'16", AN ARC DISTANCE OF 51.25
FEET,
- 12) NORTH 74°20'06" EAST 97.04 FEET,
- 13) NORTH 17°42'22" EAST 72.94 FEET,
- 14) SOUTH 72°17'38" EAST 78.60 FEET;

THENCE, LEAVING SAID EXTERIOR BOUNDARY LINES, SOUTH 17°42'22" WEST
326.07 FEET TO SAID POINT OF BEGINNING.

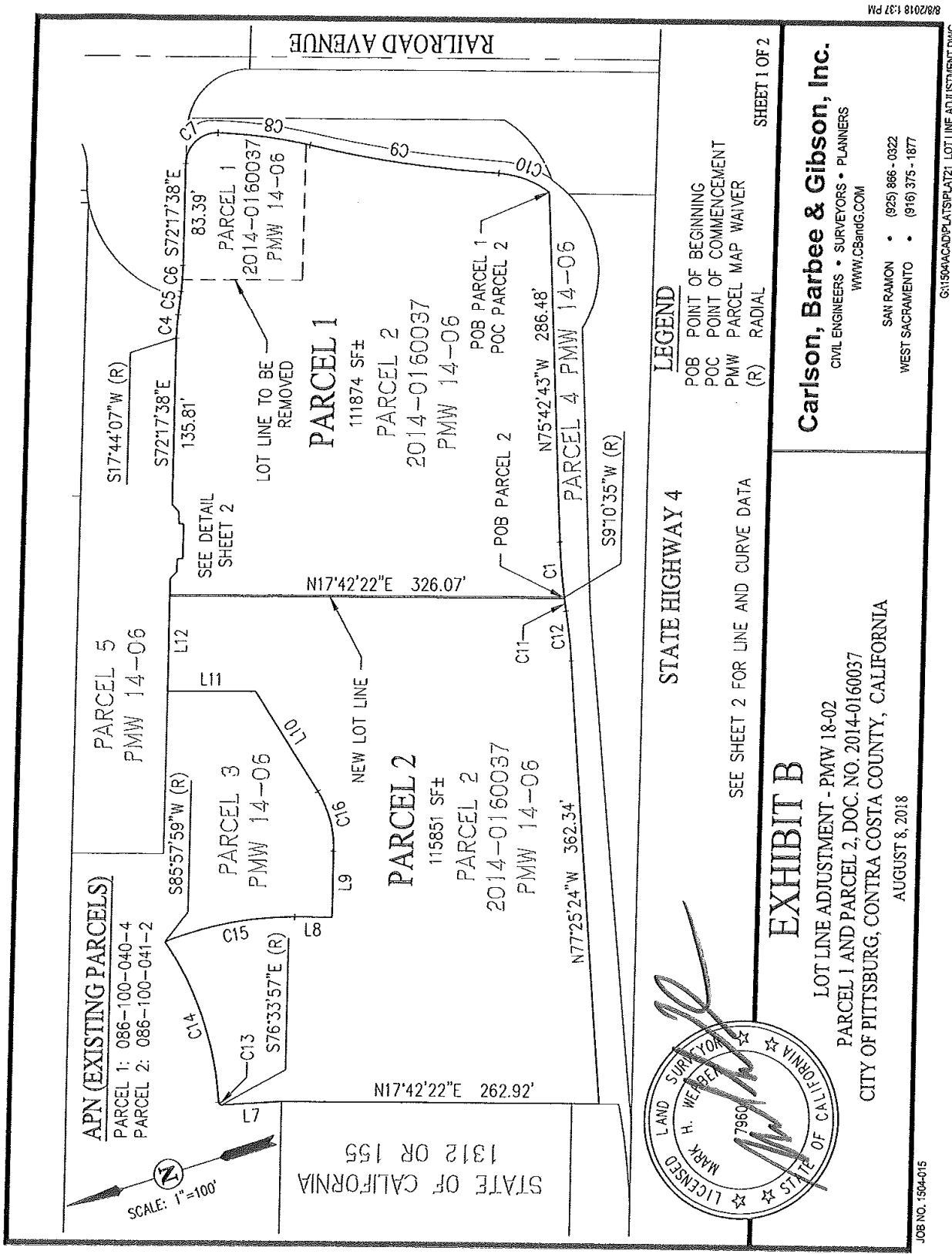
CONTAINING 115,851 SQUARE FEET, OR 2.66 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, EXHIBIT B,
AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION




MARK H. WEHBER, P.L.S.
L.S. NO. 7960



8/8/2018 1:37 PM

G:\1504\ACAD\PLAT\PLAT21 LOT LINE ADJUSTMENT.DWG

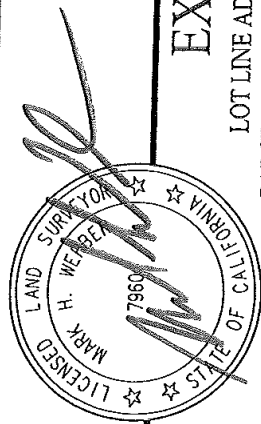


EXHIBIT B

LOT LINE ADJUSTMENT - PMW 18-02
PARCEL 1 AND PARCEL 2, DOC. NO. 2014-0160037
CITY OF PITTSBURG, CONTRA COSTA COUNTY, CALIFORNIA
AUGUST 8, 2018

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
WWW.CBANDG.COM

SAN RAMON • (925) 866 - 0322
WEST SACRAMENTO • (916) 375 - 1877

LEGEND

- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- PMW PARCEL MAP WAIVER
- (R) RADIAL

STATE HIGHWAY 4

SEE SHEET 2 FOR LINE AND CURVE DATA

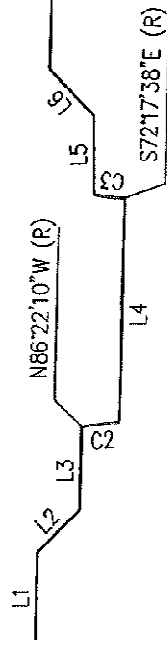
SHEET 1 OF 2

JOB NO. 1504-015

LINE TABLE		
NO	BEARING	LENGTH
L1	S72°17'38"E	13.83'
L2	S27°17'38"E	7.44'
L3	S72°17'38"E	10.22'
L4	S72°17'38"E	28.00'
L5	S74°03'49"E	9.86'
L6	N62°42'22"E	8.23'
L7	N14°10'19"E	49.50'
L8	S17°42'22"W	30.87'
L9	S72°17'38"E	54.10'
L10	N74°20'06"E	97.04'
L11	N17°42'22"E	72.94'
L12	S72°17'38"E	78.60'

CURVE TABLE				
NO	RADIUS	DELTA	LENGTH	
C1	514.00'	5°06'42"	45.86'	
C2	19.50'	14°04'32"	4.79'	
C3	19.50'	11°28'15"	3.90'	
C4	192.46'	5°40'02"	19.04'	
C5	40493.50'	0°01'42"	20.10'	
C6	210.50'	5°43'29"	21.03'	
C7	25.00'	91°58'34"	40.13'	
C8	420.00'	10°28'47"	76.82'	
C9	1010.00'	8°57'26"	157.90'	
C10	80.00'	32°25'04"	45.26'	
C11	514.00'	1°12'45"	10.88'	
C12	514.00'	4°36'45"	41.38'	
C13	2.50'	89°27'52"	3.90'	
C14	255.00'	30°25'12"	140.77'	
C15	289.00'	21°44'23"	109.66'	
C16	88.00'	33°22'16"	51.25'	

PARCEL 5
PMW 14-06



PARCEL 1
DETAIL
NOT TO SCALE

EXHIBIT B

LOT LINE ADJUSTMENT- PMW 18-02
PARCEL 1 AND PARCEL 2, DOC. NO. 2014-0160037
CITY OF PITTSBURG, CONTRA COSTA COUNTY, CALIFORNIA
AUGUST 8, 2018

SHEET 2 OF 2

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
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SAN RAMON • (925) 866-0322
WEST SACRAMENTO • (916) 375-1377

Exhibit B

FORM OF GRANT DEED

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Stay Cal Pittsburg, LLC
2110 S. El Camino Real
San Mateo, CA 94403
Attention: Hiten Suraj

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Pittsburg, a municipal corporation (the "**City**"), hereby grants and conveys to Stay Cal Pittsburg LLC, a California limited liability company ("**Stay Cal**"), real property adjacent to the intersection of Railroad Avenue and Center Drive in the City of Pittsburg, County of Contra Costa, State of California, identified as Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02 (the "**Property**"), which encompasses approximately 111,874 square feet, as more particularly described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed**") by this reference.

RECITALS

A. The City and Garaventa Enterprises Inc., a California corporation ("**Garaventa**") executed a Development Agreement relating to the Property, dated May 5, 2014, and thereafter recorded in the official records of the Contra Costa County Recorder, and as may be amended from time to time.

B. The City and Garaventa amended the Development Agreement on _____, 2018, and thereafter recorded in the official records of the Contra Costa County Recorder.

C. Garaventa and Stay Cal executed a Purchase and Sale Agreement ("**PSA**"), dated [INSERT DATE] for the sale and purchase of Parcel 1.

D. Garaventa and City have executed an Assignment and Assumption Agreement of Purchase and Sale Agreement, whereby Garaventa has assigned its rights and responsibilities to the City and the City has assumed those rights and responsibilities pursuant to the PSA.

E. The City and Stay Cal Pittsburg LLC executed an Amended and Restated Purchase and Sale Agreement ("**Amended and Restated PSA**") on _____,

2018, and thereafter recorded in the official records of the Contra Costa County Recorder.

F. The City desires to sell to Stay Cal and Stay Cal desires to purchase from City the Property.

NOW THEREFORE, in consideration of the foregoing recitals and for the purposes and consideration of the covenants hereinafter contained, City and Agency agree as follows:

1. Resolution to Transfer. The Property is conveyed subject to Resolution 18-XXXXX adopted on _____, 2018 by the City Council.

2. Development of Property. Stay Cal hereby covenants and agrees to develop the Property into a Courtyard by Marriott or an equivalent hotel brand consisting of at least 125 rooms, an on-site restaurant, a full service bar, and a conference room, as more thoroughly described in the Amended and Restated PSA (the "**Project**"). Development of the Project will be in the best interests of the City and will materially contribute to the health and welfare of the citizens of the City.

3. Schedule of Performance. Stay Cal is subject to Section 4.7 of the Amended and Restated PSA, Schedule of Performance (the "**Schedule**") and failure to meet the specified dates in the Schedule is a default. The City shall have all remedies available under the Amended and Restated PSA.

4. Right of Reverter. If following conveyance of the Property to Stay Cal, Stay Cal (i) fails to begin construction of the Project within the time specified in Section 4.7 as such date may be extended pursuant to the terms, (ii) abandons or suspends construction of the Project for a period of sixty (60) days after written notice from City unless, within such 60-day period, either the limited partners of Stay Cal or a lender holding a senior encumbrance against the Property that constitutes a Permitted Exception has declared Stay Cal to be in default for suspension of construction and has commenced action to cure the default and thereafter fully resumes construction by no later than ninety (90) days after receipt of notice of the default, which action shall constitute cure for purposes of this paragraph, or (iii) directly or indirectly, voluntarily or involuntarily transfers the Property or this Amended and Restated PSA in violation of Article VII, the City may re-enter and take possession of the Property or any portion thereof with all improvements thereon without payment or compensation to Stay Cal, and revert in the City the estate theretofore conveyed to the Stay Cal. The interest created pursuant to Section 9.6 of the Amended and Restated PSA shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from the City's option to purchase the Property under the same or similar conditions specified in Section 9.7 of the Amended and Restated PSA. City's rights pursuant to Section 9.6 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by the Amended and Restated PSA or any rights or interests provided in the Amended and Restated PSA for the protection of the holders of such mortgages or deeds of trust.

The rights established in Section 9.6 are to be interpreted in light of the fact that the City will convey the Property to the Stay Cal for completion of the Project as specified in the Amendment to PSA and not for speculation.

5. Option to Purchase, Enter and Possess. The City shall have the additional right at its option to purchase, enter and take possession of Property with all improvements thereon (the "**Repurchase Option**"), if after conveyance of the Property, Stay Cal (i) fails to begin construction of the Project within the time specified in Section 4.7 of the Amended and Restated PSA, as such date may be extended pursuant to the terms, (ii) abandons or suspends construction of the Project for a period of sixty (60) days after written notice from City unless, within such 60-day period, either the limited partners of Stay Cal or a lender holding a senior encumbrance against the Property that constitutes a Permitted Exception has declared Stay Cal to be in default for suspension of construction and has commenced action to cure the default and thereafter fully resumes construction by no later than ninety (90) days after receipt of notice of the default, which action shall constitute cure for purposes of this paragraph, (iii) fails to complete construction of the Project by the time specified in Section 4.7 as such date may be extended pursuant to the terms, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property or this Agreement in violation of Article VII.

To exercise the Repurchase Option, the City shall pay to Stay Cal cash in an amount equal to:

- (i) The Purchase Price; plus
- (ii) The fair market value of any new improvements existing on the Property at the time of exercise of the Repurchase Option; less
- (iii) Any gains or income withdrawn or made by the Stay Cal from the applicable portion of the Property or the improvements thereon; less
- (iv) The value of any liens or encumbrances on the applicable portion of the Property the City assumes or takes subject to; less
- (v) Any damages to which the City is entitled under the Amended and Restated PSA by reason of Stay Cal's default.

In order to exercise the Repurchase Option, City shall give Stay Cal notice of such exercise, and Stay Cal shall, within thirty (30) days after receipt of such notice, provide City with a summary of all of Stay Cal's costs incurred as described in Section 9.7 of the Amended and Restated PSA. Within thirty (30) days of City's receipt of such summary, City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to Section 9.7, and Stay Cal shall execute and deposit into such escrow a grant deed transferring to City all of Stay Cal's interest in the Property, or portion thereof, as applicable and the improvements located thereon.

6. Nondiscrimination. Stay Cal shall not restrict the rental, lease, sublease, 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. Stay Cal covenants for itself and all persons claiming under or through it, and this Grant Deed 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 lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Stay Cal or any person claiming under or through Stay Cal 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.

7. Term. The covenants contained in Section 2 regarding the development of the Property shall remain in effect until a certificate of occupancy is issued for the Project on the Property.

8. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, City and Stay Cal have executed this GrantDeed as of
this _____ day of _____, 2018.

CITY

CITY OF PITTSBURG,
a municipal corporation

By: _____
Joe Sbranti, City Manager

ATTEST:

By _____
Alice Evenson, City Clerk

APPROVED AS TO FORM:

By _____
Donna Mooney, City Attorney

STAY CAL

STAY CAL PITTSBURG LLC,
a California limited liability company

By: _____

Its: _____

Exhibit C

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Agreement(the "Agreement" or the "Amended and Restated Purchase and Sale Agreement") to which this exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect.

Whenever this Schedule of Performance requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, the Stay Cal shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

<u>Action</u>	<u>Date</u>
1. <u>Conceptual Development Documents</u> . Stay Cal shall submit the Conceptual Development Documents to the City for the City's review and receive the City approval.	November 30, 2018.
2. <u>Application for Applicable Land Use Approvals</u> . Stay Cal shall apply for the Applicable Land Use Approvals necessary for the construction of the Project and receive the City Approval.	February 28, 2019 .
3. <u>Construction Plans</u> . Stay Cal shall submit proposed Construction Plans for the Project to the City for the City's review and receive the City approval. [Amended and Restated PSA § 4.10]	June 1, 2019
4. <u>Financing Plan</u> . Stay Cal shall submit evidence of financing, acceptable to the City, for development of Project. [Amended and Restated PSA § 4.06]	Within sixty (60) days but no later than thirty (30) days from the Closing Date.
5. <u>Building Permits</u> . Stay Cal shall obtain the Building Permits for construction of Project.	No later than September 15, 2019.
6. <u>Construction Contract</u> . Stay Cal shall submit, and receive, City approval of the construction contract for the construction of the Project.	September 1, 2019.
7. <u>Payment and Performance Bonds</u> . Stay Cal shall submit for and receive City approval of the payment and performance bonds for the construction of the Project. [Amended and Restated PSA § 4.20]	No later than 15 days prior to the start of construction.
8. <u>Insurance</u> . Stay Cal shall submit evidence of insurance to the City and receive City approval thereof.	Within 10 days prior to the start of construction.

<u>Action</u>	<u>Date</u>
9. <u>Commencement of Construction.</u> Stay Cal shall commence construction of the Project. [DA § 6.19]	No later than October 1, 2019.
10. <u>Completion of Construction.</u> Stay Ca shall complete construction of the Project.	No later than September 30, 2020.

Exhibit D

FORM OF CERTIFICATE OF COMPLETION

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Stay Cal Pittsburg, LLC
2110 S. El Camino Real
San Mateo, CA 94403
Attention: Hiten Suraj

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION (the "Release") is made by the **CITY OF PITTSBURG**, a municipal corporation (the "City"), in favor of **STAY CAL PITTSBURG LLC**, a California limited liability company ("Stay Cal"), as of [INSERT DATE].

RECITALS

A. The City and Stay Cal have entered into that certain Amended and Restated Purchase and Sale Agreement ("**Amended and Restated PSA**") dated [INSERT DATE], concerning the development of Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02, which encompasses approximately 111,874 square feet, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. As referenced in Section 4.14 of the Amended and Restated PSA, the City is required to furnish Stay Cal or its successors with a Certificate of Completion upon completion of construction of the Project, which Certificate of Completion is required to be in such form as to permit it to be recorded in the Recorder's office of the Contra Costa County. This Certificate of Completion is conclusive determination of satisfactory completion of the construction and development required by the Amended and Restated PSA.

C. The City has conclusively determined that such construction and development has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Project to be constructed by Stay Cal have been fully and satisfactorily completed in conformance with the Amended and Restated PSA. Except as otherwise

provided in the Amended and Restated PSA, the provisions of the Amended and Restated PSA are hereby terminated and of no further force or effect. The Grant Deed and other documents executed and recorded pursuant to the Amended and Restated PSA shall remain in effect and enforceable according to their terms.

IN WITNESS WHEREOF, the City has executed this Certificate of Completion as of the date set forth above.

CITY OF PITTSBURG,
a municipal corporation

By: _____
, Mayor

ATTEST:

, City Clerk

APPROVED AS TO FORM:

, City Council

APPROVED BY STAYCAL:

STAY CAL PITTSBURG LLC,
a California limited liability company

By: _____
Hiten Suraj, President

EXHIBIT “A”
SITE DESCRIPTION

Exhibit E

FORM OF NOTE

PROMISSORY NOTE SECURED BY DEED OF TRUST AND SECURITY AGREEMENT

Pittsburg, California

[INSERT DATE]

FOR VALUE RECEIVED, the undersigned, Stay Cal Pittsburg LLC, a California limited liability company (the “**Maker**” or “**Borrower**”), promises to pay to the order of the City of Pittsburg, a municipal corporation (“**City**” or “**Holder**”), the principal sum of One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,100.00), or so much thereof that may be advanced hereunder, together with interest at an annual rate as set forth below. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Amended and Restated Purchase and Sale Agreement (the “**Amended and Restated PSA**”) (defined below).

1. This Promissory Note (this “**Note**”) has been executed and delivered in accordance with an Amended and Restated PSA dated [INSERT DATE], between Maker and Holder, which details the terms under which Holder agrees to lend Maker One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,100.00). The rights and obligations of Maker under this Note shall be governed by the Amended and Restated PSA, the Deed of Trust (defined below) and by the terms set forth in this Note.

2. Terms of Promissory Note.

(a) Loan Amount. City agrees to lend to Borrower, subject to the terms of the Amended and Restated PSA, an acquisition loan not to exceed One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,100.00).

(b) Interest Rate. Interest shall accrue at a rate of two percent (2%) and be paid in accordance with the following terms:

(1) Commencing on earlier to occur of the following: (i) the first day of the calendar month after the Courtyard by Marriott or equivalent hotel brand that Stay Cal constructs on the Property opens to the public, or (ii) two (2) years from the Closing Date, regardless of whether a Courtyard by Marriott or equivalent hotel brand has been constructed on the Property and/or is open to the public (“Monthly Payment Commencement Date”) and shall continue making such monthly payments until that date that is twenty (20) years after the Monthly Payment Commencement Date (the “Maturity Date”).

(c) Loan Repayment. The principal balance and interest shall be repaid over the term of two hundred thirty-nine (239) months in equal monthly payments of Eight Thousand Four Hundred Eighty-nine Dollars and Twenty-Eight Cents (\$8,489.28) and one (1) final payment of Eight Thousand Four Hundred Seventy-Five Dollars and Fifteen Cents (\$8,475.15) (the "Monthly Payments").

(1) Late Payment Fees. For any monthly payment that is not received by the fifteenth (15th) calendar day after which it was due, Borrower shall pay a late fee of ten percent (10%) of the amount unpaid. City and Borrower agree that the actual damages and costs sustained by the City due to failure to make timely payments would be extremely difficult to measure and that the charges specified in this paragraph represent a reasonable estimate by City and Borrower of fair average compensation for such damages and costs. Such charges shall be paid by Borrower without prejudice to the right of the City to collect any other amounts provided to be paid under the Amended and Restated PSA, Promissory Note, or Deed of Trust, or with respect to late payments, to declare default.

(d) Term. Maturity Date is a date that is twenty (20) years after the Monthly Payment Commencement Date

(e) Prepayment. The Note or any portion of the outstanding principal balance due under the Note may be prepaid at any time and from time to time, without premium or penalty. Any prepayment of principal must be accompanied by interest accrued but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest and then to principal.

(f) Security. This Note is hereby secured by that certain Deed of Trust and Security Agreement ("**Deed of Trust**") dated [INSERT DATE], executed by Borrower as trustor for the benefit of Holder and all sums advanced hereunder are secured thereby.

3. Terms of Payment.

(a) Place and Manner of Payment. Payment shall be made in lawful money of the United States at Holder's address for notices set forth in Section 8 of this Note.

(b) Lawful Interest. Notwithstanding any other provisions of this Note, or any instrument securing the obligations of Maker under this Note, if, for any reason whatsoever, the payment of any sums by Maker pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then the amount by which payment exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Maker be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

4. Default.

(a) Events of Default. Each of the following events will constitute an event of default ("Event of Default") under this Note:

(1) Amended and Restated Purchase and Sale Agreement /Promissory Note Default. Maker's breach of any other promise or obligation in this Note, the Amended and Restated PSA or in any other instrument now or hereafter securing the indebtedness evidenced by this Note.

(2) False Representations. Any material representation or disclosure made to Holder by Maker in this Note that proves to be false or misleading in any way.

(3) Bankruptcy. The filing by or against Maker of a voluntary or involuntary petition in bankruptcy or the adjudication of Maker as bankrupt or insolvent, or the filing of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver, liquidator of Maker or any substantial part of or all of the property of Maker, and if any such proceeding is not dismissed within sixty (60) days; the Maker is named in any such proceeding and the same is not dismissed within one hundred twenty (120) days.

(b) Default Interest. Upon the occurrence of any Event of Default all amounts owing under this Note shall accrue interest at the rate of 10% per annum.

5. Remedies. Upon the occurrence of any Event of Default, in addition to its other rights in this Note, the Deed of Trust, and the Loan Agreement, at law, or in equity, Holder may exercise any one or more of the following rights and remedies without prior demand:

(a) Acceleration. Holder may declare the outstanding principal balance of this Note, all interest accrued thereon, if any, and all other sums owing to Holder immediately due and payable; and

(b) Foreclosure. Holder may foreclose under the Deed of Trust.

(b) Proceed as Authorized at Law or in Equity. Holder may proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Note, or the Amended and Restated PSA.

6. Maker's Waivers.

(a) Additional Security. Maker expressly agrees that Holder may accept further security for this Note, all without in any way affecting the obligations of Maker under this Note.

(b) Original Liability. No extension of time for payment of this Note or any installment hereof made by agreement by Holder with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

(c) Obligations Absolute. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

(d) Waivers. Maker hereby waives (i) any notice of default or delinquency in addition to any notice expressly required by this Note; (ii) notice of acceleration; (iii) any notice of nonpayment in addition to any notice required by this Note; (iv) notice of costs, expenses, losses and interest thereon; (v) notice of interest on interest and late fees; (vi) diligence in taking any action to collect any sums owing under the Promissory Note or in proceeding against any of the rights and interest in and to properties securing payment of the Promissory Note; and (vii) presentment for payment, demand, protest, and notices of dishonor and/or protest.

7. Holder Forbearance. No waiver of any breach, default or failure of condition under the terms of this Note or the Amended and Restated PSA or the obligations secured thereby shall be implied from any failure of Holder to take, or any delay by Holder in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Note, or the Amended and Restated PSA or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

8. Miscellaneous Provisions.

(a) Notices. All notices, requests and demands given to, or made upon, any party to this Agreement shall be deemed to have been given or made when properly deposited in the U.S. mail and addressed as follows:

If to Borrower:	Stay Cal Pittsburg, LLC
	2110 S. El Camino Real
	San Mateo, CA 94403
	Attention: Hiten Suraj

If to City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Att: City Manager

With copy to: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Att: City Attorney

or to such other addresses as the parties may designate by notice as set forth above.

(b) Successors and Assigns. This Promissory Note (i) may not be assigned by Maker, (ii) may be assigned by Holder, at its sole option, and (iii) shall be binding on all successors and assigns of Holder and Maker.

(c) Attorneys' Fees. If any action is instituted by Holder to enforce this Note or to collect any sums due hereunder, Holder shall be entitled to collect from Maker all costs and expenses of such action, including, but not limited to, reasonable attorneys' fees.

(d) Severability. If a court of competent jurisdiction finds any provisions of this Note invalid or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby, and all other provisions of this Note shall remain in full force and effect.

(e) Time. Time is of the essence in the performance of the terms and conditions of this Note.

(f) Governing Law. The laws of the State of California shall govern this Note.

(g) Joint and Several Liability. Maker consists of more than one person, each of whom is jointly and severally liable to City for the performance of this Note.

(h) Amendment. This Promissory Note may not be changed orally, but only by an amendment in writing signed by Maker and approved by Holder.

(i) Headings. The headings within this Note are for the purpose of reference only and shall not limit or otherwise affect any of the terms of the Promissory Note.

(j) Assumptions. This Promissory Note, may not be assumed in whole or in part without the prior written consent of Holder, which consent shall be given or withheld at the sole discretion of Holder. Holder may condition its consent to an assumption of this Note on the satisfaction of conditions reasonably required by Holder

at the time of the assumption. Conditions may include, but not be limited to, Holder's satisfaction, in its sole discretion, with the proposed assuming party's ability to meet the obligations required hereunder, the payment of an assumption fee and reimbursement of Holder's fees and costs incurred by reason of the assumption.

EXECUTED IN PITTSBURG, CALIFORNIA AND DELIVERED AS OF
THE ?DAY OF ?201?.

Hiten Suraj, [INSERT TITLE]

Exhibit F

FORM OF DEED OF TRUST

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use

FOR: Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "**Deed of Trust**") is made as of [INSERT DATE], by Stay Cal Pittsburg LLC , a California limited liability corporation ("**Trustor**") to [INSERT TITLE COMPANY ONCE CONFIRMED], as trustee ("**Trustee**") for the benefit of the City of Pittsburg, a municipal corporation ("**Beneficiary**").

RECITALS

A. Trustor owns Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02, which encompasses approximately 111,874 square feet, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Land**").

B. Trustor and Beneficiary have entered into an Amended to Purchase and Sale Agreement dated [INSERT DATE] (the "**Amended and Resated PSA**") pursuant to which Beneficiary will carry an acquisition loan to Trustor in the amount of One Million Six Hundred Seventy-Eight Thousand One Hundred Ten Dollars (\$1,678,110) (the "**Acquisition Loan**"). Trustor has also executed a promissory note evidencing the amount of the Acquisition Loan ("**Note**").

C. Trustor and Beneficiary have entered into a Fee Deferral Agreement dated [INSERT DATE] (the "**FDA**") pursuant to which Beneficiary will defer certain City controlled fees and charges in connection with the processing of permits and approvals in the amount not greater than Four Hundred Thirty Thousand Dollars \$430,000, shall be deferred and repaid by Trustor in monthly payments until fully repaid.

D. Together, Acquisition Loan and FDA, are secured by this Deed of Trust.

E. As a condition to Amended and Restated PSA, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Land(as defined below) to secure repayment of the Acquisition Loan and FDA.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustee agrees as follows:

1. Grant in Trust. Trustor irrevocably grants and conveys the Land to Trustee, in trust, with power of sale, together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain a part of the Land secured by this Deed of Trust; and all of the foregoing, together with the Land are hereinafter referred to as the "Property."

Trustor covenants that it lawfully holds the estate hereby conveyed and has the right to grant and convey the Property, and that, to the best of Trustor's knowledge, the Property is unencumbered except for encumbrances of record. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of all present and future indebtedness evidenced by the Note, the Amended and Restated PSA and any amendment thereof, including principal, interest, and the FDA all other amounts payable under the Amended and Restated PSA, the Note, and FDA.

3. Preservation and Maintenance of Property. Trustor agrees to keep the 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 the 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 the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

4. Hazardous Materials. Trustor shall not cause or permit any Hazardous Materials (as defined in below) to be brought upon, kept, stored or used in, on, or about the Land by Trustor, or the agents, employees, contractors or invitees of Trustor except for materials commonly used in operation and maintenance of the Property, in each case in compliance with all applicable laws, and shall not cause any release of

Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at Trustor's sole expense as are necessary to comply with all Hazardous Materials Laws (as defined below).

Trustor shall indemnify, defend (with counsel approved by Beneficiary) and hold Beneficiary harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in value of the Property, and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arise during or after the term of this Deed of Trust as a result of any breach, contamination, discharge, or release of Hazardous Materials. This indemnification of Beneficiary by Trustor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in, on or under the Land or adjacent property caused by or a result of Trustor's activities. If any Hazardous Materials are discharged, released, dumped, or spilled in, on, under, or about the Land after Trustor obtains ownership and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Hazardous Materials Laws.

4.1 As used in this Deed of Trust, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," or any other terms comparable to the foregoing terms under any provision of California law or federal law as any such statutes and regulations now exist or may hereafter be amended, (ii) petroleum or petroleum products; (iii) asbestos; (iv) polychlorinated biphenyls, (v) radioactive chemicals, (vi) any material determined to hazardous based on deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, (vii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317); (viii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (42 U.S.C. § 6903); (ix) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*; or (x) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

4.2 As used in this Deed of Trust "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining

to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 4.1, as they may be amended from time to time.

5. Charges; Liens. Trustor shall pay at least ten days before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor shall pay when due, all obligations secured by or reducible to a lien, charge or encumbrance which does now or later may encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall give prompt notice to Beneficiary of any default under any mortgage, deed of trust or other security agreement with a lien on the Property.

6. Insurance. At all times during the term hereof, Trustor shall at Trustor's expense, maintain the insurance policies required under Article X of the Amended and Restated PSA. Trustor shall file with Beneficiary prior to recordation of this Deed of Trust, certificates (or such other proof as Beneficiary may reasonably require, including without limitation copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy. If any insurance policy required pursuant to this Deed of Trust is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7. Defense of Security. Trustor agrees to appear in and defend an 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 attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

8. Reimbursement of Costs. Trustor agrees to pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the amount allowed by law in effect at the date hereof.

9. Right to Cure. Should Trustor fail to make any payment or to comply with any provision herein, then Beneficiary or Trustee, each shall have the right but not the obligation, to make such payment or comply with such provision 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 and Trustee are hereby authorized to enter upon the Land 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; to 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, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel, and pay reasonable attorney's fees. Beneficiary may make or cause to be made reasonable entries upon the Land and inspections of the Property, provided that Beneficiary shall give Trustor reasonable notice prior to any such inspection.

10. Condemnation Award. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys received by it to any 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.

11. Late Payment. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare an event of default under the Amended and Restated PSA, Note, or FDA for failure so to pay.

12. Release and Subordination. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust, Amended and Restated PSA, Note, and FDA for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey all or 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.

13. Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the Property. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees to Trustee and all recordation fees related to such reconveyance.

14. Indemnification. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Beneficiary from and against all claims arising directly or indirectly in any manner in connection with or as a result of (i) any breach of Trustor's covenants under the Amended and Restated PSA, the Note, FDA, or this Deed of Trust (collectively the "**Amended and Restated PSADocuments**"), (ii) any representation by Trustor in any Amended and Restated PSADocuments which proves to be false or misleading in any material respect when

made, (iii) injury or death to persons or damage to Property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, and (iv) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against Beneficiary which relates to or arises out of the Property, or any Amended and Restated PSADocuments or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that Beneficiary shall not be entitled to indemnification under this Section for matters caused Beneficiary's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Amended and Restated PSA, Note, FDA, and Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, any reversion in interest, and any release or reconveyance of this Deed of Trust.

15. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor or any third parties, or (iv) any dangerous or defective condition of the Property. Trustor hereby expressly waives and releases all liability of the types described in this Section, and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

16. Notice. Except for any notice required under applicable law to be given in another manner, any notice, request or consent required pursuant to this Deed of Trust shall be deemed delivered upon receipt when delivered personally or by facsimile transmission, provided that a transmission report is generated reflecting the accurate transmission thereof, or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, or one (1) day after deposit with a nationally recognized overnight carrier addressed as follows:

City: City Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Manager

Copy to: City Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Attorney

Developer: Stay Cal Pittsburg, LLC
2110 S. El Camino Real
San Mateo, CA 94403
Attention: Hiten Suraj

or to such other addresses as the parties may designate by notice as set forth above.

17. Due On Sale Without the Consent of Beneficiary. If the Property, any part of it, or interest in it is sold, or if Trustor agrees to sell, convey, or alienate said property, by operation of law or otherwise pursuant to the transfer provisions of Section 7.2 of the Amended and Restated PSA, all obligations secured by this Deed of Trust shall immediately become due and payable.

18. Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust due to Trustor's breach, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to entry of a judgment enforcing this Deed of Trust if: (i) Trustor pays Beneficiary all sums which would be then due under this Deed of Trust if the Amended and Restated PSA had no acceleration provision; (ii) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (iii) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (iv) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Successors and Assigns. The terms, covenants and conditions of this Deed of Trust shall be binding on and inure to the benefit of the heirs, legatees, devisees, administrators, executors, successors in interest, transferees and assigns of the Trustor, Beneficiary and Trustee.

20. Substitution of Trustee. Beneficiary may from time to time or at any time substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the recorder in Contra Costa County, it shall be conclusive evidence of the appointment of such Trustee or

Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

IN WITNESS WHEREOF, the Trustor has executed this Deed of Trust.

Trustor,

**HITEN SURAJ, [INSERT TITLE]
STAY CAL PITTSBURG LC**

By: _____

Exhibit G

INSURANCE REQUIREMENTS

Stay Cal and all contractors working on behalf of Stay Cal shall procure and maintain the insurance coverage set forth herein. Said insurance shall be maintained in full force and effect until the Certificate of Completion is issued by the City. Additionally, completed operations coverage shall be maintained in full force and effect for three years after the acceptance date of the public improvements. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office form number CG0001 covering Commercial General Liability on an "occurrence" basis.
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance

- (1) Comprehensive General Liability: Prior to initiating work on the Project and continuing through the issuance of the Certificate of Completion, Stay Cal's general contractor shall maintain limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations. 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. Such policy shall name Indemnitees and Stay Cal as additional insureds.
- (2) Automobile Liability: Until issuance of a Certificate of Completion, Stay Cal and all contractors working on behalf of Stay Cal shall maintain limits no less than \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Until issuance of a Certificate of Completion, Stay Cal and all contractors working on behalf of Stay Cal shall maintain limits no less than Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$2,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Stay Cal shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages

(a) The Indemnitees are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Stay Cal, and with respect to liability arising out of activities performed by or on behalf of the Stay Cal including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Stay Cal's insurance (at least as broad as ISO Form CG 20 10, 11 85 or later revised), or as a separate owner's policy.

(b) For any claims related to the Project or the Property, the Stay Cal's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Stay Cal's insurance and shall not contribute with it.

(2) Workers' Compensation and Employer Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Stay Cal pursuant to this Agreement.

(3) All Coverages

(a) Insurance is to be placed with insurers with a current A.M. Best rating of "A:VII" or better, and who are either "admitted" by the California Department of Insurance or who are listed on the "List of Eligible Surplus Line Insurers" as maintained by the California Department of Insurance. (Note: The List of Eligible Surplus Line Insurers is also known as the "LESLI List").

(b) Stay Cal shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those

endorsements or policies conform to the City's requirements. Initial certificates and endorsements are to be received and approved by the City before construction work commences. Updated certificates and endorsements are to be provided to the City prior to each policy expiration date. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(c) Stay Cal and/or Stay Cal's general contractor shall include all subcontractors as insureds under their policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(d) Stay Cal hereby grants to City a waiver of any right to subrogation that any insurer of Stay Cal may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether the City has requested or received a waiver of subrogation endorsement from the insurer.

(e) Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. If any insurance policy or coverage required hereunder is canceled or reduced, Stay Cal shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Stay Cal's expense, and Stay Cal shall promptly reimburse City for such expense upon receipt of billing from City.

(f) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Section 2782 of the Civil Code.

(g) Upon commencement of construction of the Project and continuing until issuance of a Certificate of Completion, Stay Cal or the Stay Cal's contractor working on behalf of Stay Cal shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as a loss payee.

(h) Stay Cal shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as a loss payee.

Exhibit H

FEE DEFERRAL AGREEMENT

RECORDING REQUESTED BY:

CITY OF PITTSBURG

When Recorded Mail To:
City Clerk
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

**FOR: Parcel 1 of Parcel Map
Waiver for a Lot Line Adjustment
PMW 18-02**

Space above this line for Recorder's use.

FEE AGREEMENT

This Agreement ("**Agreement**") is entered into effective as of _____ ("**Effective Date**") by and between the City of Pittsburg, a municipal corporation ("**City**") and Stay Cal Pittsburg LLC, a California limited liability company (the "**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties**."

Recitals

A. Developer is the owner of certain real property, which is located at the intersection of Railroad Avenue and Center Drive in the City of Pittsburg, County of Contra Costa, State of California, identified as Parcel 1 of Parcel Map Waiver for a Lot Line Adjustment PMW 18-02, which encompasses approximately 111,874 square feet, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. The City and Developer executed an Amended and Restated Purchase and Sale Agreement ("**Amended and Restated PSA**") on _____, 2018, and thereafter recorded in the official records of the Contra Costa County Recorder

C. Pursuant to the Amended and Restated PSA, Developer is required to construct a Courtyard by Marriott or equivalent hotelbrand on the Property with at least 125 rooms, on-site restaurant, full service bar, and conference room (the "**Project**").

D. Recognizing the benefit to the Project, Developer has agreed to execute and record this Agreement prior to obtaining its grading permit.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The Parties have agreed to that certain development fees in the amount not greater than Four Hundred Thirty Thousand Dollars \$ 430,000 shall be deferred (the "Deferred Amount").

Fee	Estimated Amount
Water Connection Fee (FRC) 2" domestic	\$ 121,645
Water Connection Fee (FRC) 1" domestic	\$ 50,000
Sewer Connection Fee (FRC)	\$ 142,557
Pittsburg Local Traffic Mitigation Fee	\$ 114,931
TOTAL	\$ 429,133

2. Term of Agreement.

2.1 Term. Developer shall collect a total of twelve percent (12%) transient occupancy tax ("TOT"), pursuant to Pittsburg Municipal Code Chapter 3.12, and remit the full amount monthly to City. Of the twelve percent (12%), two percent (2%) shall be applied to the Deferred Amount owed until fully paid. When Deferred Amount is fully paid, Developer shall collect a total of ten percent (10%) TOT, or amount as established by City Council, and remit the full amount monthly to City. In addition to the above, Developer shall pay two percent (2%) interest on the Deferred Amount until fully paid.

2.2 Effectiveness Succeeds Conveyance of Property. This Agreement is effective and fully binding for the term set forth above, regardless of any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein unless this Agreement is terminated or modified earlier by City in a recorded writing.

3. Binding Upon Successors; Covenants to Run with the Land. Developer hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Developer hereby declare their express intent that the covenants and restrictions set forth herein are covenants running with the land and are binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Developer 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 Developer, 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) will be subject to all of the duties and obligations imposed hereby for the full term of this Agreement.

4. Property Management; Repair and Maintenance; Marketing.

4.1 Management Responsibilities. Developer shall be responsible for all management functions with respect to the Property and the Project including without limitation administration and operation of Project, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as City may otherwise agree in writing, City shall have no responsibility for management or maintenance of the Property or the Project.

5. Repair, Maintenance and Security. Throughout the term of this Agreement, Developer shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer agrees to maintain the Project and the Property (including without limitation, common areas, landscaping, driveways 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 Project. Developer shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Developer shall provide adequate security services for occupants of the Project.

5.1 City's Right to Perform Maintenance. In the event that Developer breaches any of the covenants contained in Section 5, 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, constitute an indebtedness, and must be paid by Developer to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor will bear interest at the rate of 10% per annum and may be collected by the City by recording a lien on the property and/or placing the cost thereof on the County tax roll for collection with property taxes on the Property.

6. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Contra Costa County. Developer hereby represents, warrants and covenants that with the exception of the easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments, encumbrance, or other interest in the Property or the Project. If at

the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Developer hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request.

7. Default and Remedies.

7.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) Subject to Developer's right to contest the following charges, Developer'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 Developer's failure to cure such default within 10 days.

(b) Developer's default in the performance of any term, provision or covenant under this Agreement or under any other City Document 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 provides written notice of the default to Developer, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Developer'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, but in no event longer than 120 days from receipt of the notice of default.

7.2 Remedies. If within the applicable cure period, Developer fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, City may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and enjoining, abating, or preventing any violation of such terms and conditions, and seeking declaratory relief; and

(b) Pursue any other remedy allowed at law or in equity.

7.3 Remedies Cumulative. 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.

8. Indemnification. Developer shall defend (with counsel approved by City), indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Developer's failure to perform any obligation as and when required by this Agreement; (2) any failure of Developer's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Developer, or any of Developer's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Project or the Property, except to the extent that such losses are caused by the sole negligence, gross negligence or willful misconduct of such Indemnified Party. Developer shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Developer to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Project or the Property with counsel reasonably approved by City. Developer's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

9. Miscellaneous.

9.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties. Alternatively, if the City Manager determines, in the City Manager's sole discretion that such amendment is minor and consistent with the overall intent of this Agreement, the City Manager shall have the discretion to approve such minor amendment.

9.2 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 Developer 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.

9.3 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:

(a) personal delivery, in which case notice is effective upon delivery;

(b) 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;

(c) 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;

(d) facsimile or email transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile or email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City:

City of Pittsburg
65 Civic Ave
Pittsburg, CA 94565
Attention: City Manager

Developer:

Stay Cal Pittsburg, LLC
2110 S. El Camino Real
San Mateo, CA 94403
Attention: Hiten Suraj

9.4 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.

9.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

9.6 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 Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

9.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Developer 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 Developer or its successor or for any obligation of City under this Agreement.

9.8 Headings; Construction. 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.

9.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

9.10 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. Venue for any litigation shall lie in Contra Costa County Superior Court.

9.11 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.

9.12 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.

9.13 Entire Agreement; Exhibits. This Fee 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. The exhibits attached hereto are incorporated herein by this reference. This section, however, shall not be construed to modify the conditions of approval and other terms and conditions imposed by the City of Pittsburg, through its rules, regulations and ordinances and the actions of the City Council and/or Planning Commission, all of to which the Developer has agreed.

9.14 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.

9.15 Incorporation of Recitals. The Recitals set forth above are incorporated herein as if fully set forth here.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

DEVELOPER

Stay Cal Pittsburg LLC, a California limited liability company,

By: _____
Hiten, Suraj
Its: _____

CITY OF PITTSBURG

By: _____
Joe Sbranti, City Manager

Attest: _____
Alice Evenson, City Clerk

Approved as to form:

Donna Mooney, City Attorney

Exhibit A

PROPERTY DESCRIPTION

Real property in the City of Pittsburg, County of Contra Costa, State of California,
described as follows:

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 Contra Costa)

On _____ before me, _____, Notary Public,
personally _____ appeared,

proved to me 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 _____

Exhibit I

SHARED PUBLIC IMPROVEMENTS

	Parcel 1	Parcel 2	City	Total
On-Site Joint Trench	N/A	\$25,000	\$0	\$25,000
On-Site Waterlines	N/A	\$60,000	\$95,000	\$155,000
RR Ave Median & Striping Modifications	\$50,000	\$50,000	\$50,000	\$150,000
Traffic Signal Dog House (Center/RR Ave)	\$15,000	\$15,000	\$15,000	\$45,000
RR Ave Lane Design	\$8,000	\$8,000	\$8,000	\$24,000
Microwave Signal Relay		\$0	\$10,000	\$10,000
Backhaul and Security Cameras	\$60,000		\$20,000	\$80,000
Contingency	\$2,000	\$2,000	\$2,000	\$6,000
Total	\$135,000	\$160,000	\$200,000	\$495,000

**CITY OF PITTSBURG
CITY COUNCIL/AGENCY CONCURRENT MEETING MINUTES**

DATE: October 15, 2018

LOCATION: Council Chamber, City Hall, 65 Civic Avenue, Pittsburg, CA 94565

CITY COUNCIL/AGENCY MEMBERS

Dwaine "Pete" Longmire, Mayor/Chair
Sal Evola, Vice-Mayor/Chair
Juan Antonio Banales, Council/Agency Member
Jelani Killings, Council/Agency Member
Marilyn Craft, Council/Agency Member
S.L. Floyd, Agency Member
Annie Hill Herring, Agency Member

APPOINTED OFFICIALS

Joe Sbranti, City Manager/Executive Director
Donna Mooney, City Attorney/Legal Counsel
Alice E. Evenson, City Clerk/Agency Secretary (elected)
Nancy Parent, City Treasurer (elected)

Vice Mayor Evola was absent from Closed Session.

Mayor Longmire called the meeting of the City Council to order at 7:00 P.M. in the City Council Chamber at City Hall, 65 Civic Avenue, Pittsburg, CA after convening at 6:15 P.M. for Closed Session for the following items:

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Section 54956.8):

Property: 764 E. 11th Street; Agency Negotiators: Joe Sbranti and Maria Aliotti;
Negotiating Parties: Kevin Harrell; Under negotiation: both price and terms of payment

2. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION FOR THE CITY OF PITTSBURG; Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9:

One (1) case

Mayor Longmire stated there was no reportable action taken in Closed Session.

ROLL CALL

All Members were present.

PLEDGE OF ALLEGIANCE

Captain Wentz led the Pledge of Allegiance.

PRESENTATIONS

Sister City Delegation

The students from the Sister City Delegation that traveled to Shimonoseki, Japan reported their experiences on the trip and thanked the Council for the opportunity to participate.

Anchor Awards

Police Chaplains Father Helmut Richter, Pastor Henry Perkins, Pastor Juan Castro, and Pastor Tim Manly were awarded Anchor Awards for their community service and leadership with the Police Department.

CITY MANAGER'S REMARKS

Assistant City Manager Evans reported on upcoming events throughout the city.

CITIZENS REMARKS

Bruce Ohlson, Pittsburg, noted that 50% of the police chaplains were immigrants, which shows the quality of the immigrants in our community.

PUBLIC HEARING

5. Introduction and Waive First Reading of an Ordinance Amending Pittsburg Municipal Code Section 7.04.010 Relating to the Adoption of Contra Costa County Animal Control Regulations

Mayor Longmire opened the Public Hearing.

Siu Ling Kobata, Pittsburg, looked forward to adoption of the Ordinance for enforcement of nuisance animals.

There being no one to speak further to the issue, Mayor Longmire closed the Public Hearing.

On motion by Member Killings, seconded by Vice Mayor Evola to introduce and waive first reading of the Ordinance and approved unanimously.

Vice Mayor Evola recused himself from Item 6 due to his financial interest in the applicant which is a source of his income. He left the dais at this time.

6. Introduction and Waive First Reading of an Ordinance Approving an Amendment to the Development Agreement between Garaventa Enterprises, Inc. and the City of Pittsburg, AP-18-1368 (DA)

Mayor Longmire opened the Public Hearing.

Tim Barrett, Pittsburg, spoke in favor of the project.

Bruce Ohlson, Pittsburg, spoke in favor of the project.

German Jimenez, General Manager of Hampton Suites in Pittsburg, felt the project does not fully meet the needs of the community as there is no planned meeting room.

Julie Ann Talbo, representing the hotel developer, stated they were eager to begin the project.

Bill Whitney, Contra Costa Building Trades Council, stated he was in favor of the project.

Kish Rajan, Garaventa Enterprises, also spoke in favor of the project.

There being no one to speak further to the issue, Mayor Longmire closed the Public Hearing.

On motion by Member Banales, seconded by Member Killings to introduce and waive first reading of the Ordinance and approved by the following vote:

AYES: Banales, Craft, Killings, Longmire

ABSENT: Evola [Recused]

Vice Mayor Evola returned to the dais at this time.

CONSIDERATION

7. Adoption of a City Council Resolution to Authorize the City Manager to Execute a Project Stabilization Agreement and Side Letter with the Contra Costa Building & Construction Trades Council, and Direct the City Manager to Revise the City's Purchasing Policy Accordingly.

Tom Hansen, Business Manager of IBEW Local 302, thanked the staff for their efforts with this agreement.

Bill Whitney, Contra Costa Building Trades Council, looked forward to adoption of this agreement.

On motion by Member Craft, seconded by Vice Mayor Evola to adopt and approved unanimously.

8. Adoption of a City Council Resolution Allocating Additional Funds and Approving a Consultant Agreement Amendment No. 1 for Phase II of Design of Contract 2018-01, James Donlon Boulevard Extension Project

Mayor Longmire left the dais during the presentation and prior to the vote on this item.

On motion by Member Killings, seconded by Member Craft to adopt and approved by the following vote:

AYES: Banales, Craft, Evola, Killings
ABSENT: Longmire

Mayor Longmire returned to the dais at this time.

CONFLICT OF INTEREST STATEMENT

Vice Mayor Evola stated he would recuse himself from Item 21 due to his financial interest and his employer.

Member Killings stated his vote on Item 21 should reflect a “no” vote for him.

Member Killings asked that Item 20 be removed from the Consent Calendar and considered separately.

COMBINED CITY COUNCIL, PITTSBURG POWER COMPANY, AND SOUTHWEST PITTSBURG GHAD II CONSENT CALENDAR

On motion by Vice Chair/Mayor Evola, seconded by Member Banales to adopt the Consent Calendar without Item 20, and approved unanimously.

9. Minutes of October 1, 2018

10. Adoption of A Pittsburg Power Company Resolution to Renew Island Energy “On-Call” General Engineering Support Services Contract with Gas Transmission Systems, Inc.

11. Adoption of A Pittsburg Power Company Resolution to Renew Island Energy “On-Call” General Engineering Support Services Contract with EETS, Inc.

12. Adoption of A Pittsburg Power Company Resolution to Approve Island Energy “On-Call” General Engineering Support Services Contract with ConneXsys, Inc.

13. Adoption of City Council and Power Company Resolutions Approving the Carryover of FY 2017-18 Capital Improvement Project Budget Balances into the Current Fiscal Year 2018-19 Budget

14. Adoption of a City Council Resolution Approving the Transfer of Prior Year Grant and Special Revenue Fund Balances as of June 30, 2018 into the FY2018-19 Budget for the City of Pittsburg in the amount of \$2,535,238 in Revenue and \$3,039,199 in Expenses

15. Adoption of a City Council Resolution Approving the Carryover of FY 2017-18 Designated Operating Budget Balances into the FY 2018-19 Budget

16. Adoption of a City Council Resolution to Create a Master Pay Schedule as Required by California Public Employees’ Retirement System

17. Adoption of a Minute Order Approving Leave of Absence for Planning Commissioner
18. By Minute Order, Authorization of a Memorial Plaque Dedicated to Timi Tumbaga Installed at John Buckley Square
19. Adoption of a City Council Resolution to Establish a Salary Range for Revenue Operations Supervisor, Amend AFSCME-MPC MOU, and Approve a Reclassification
21. Adoption of an Ordinance Amending Title 18 of the Pittsburg Municipal Code Related to Permitting small Recycling Facilities and Mail Order or Direct Selling Establishments in the M District Ap-17-1235 (RZ)

The following item was removed from the Consent Calendar and considered separately:

20. Adoption of a City Council Resolution Declaring a Shelter Crisis Pursuant to SB 850 (Chapter 48, Statutes of 2018 and Government Code § 8698.2)

Lavonne Martin, Director of Health, Housing and Homeless Services for Contra Costa County, explained the program and the need for the declaration to obtain funding.

On motion by Member Craft, seconded by Vice Chair/Mayor Evola to adopt and approved unanimously.

COUNCIL MEMBER REPORTS/REMARKS

Member Craft attended the CASA Evening of Promise event along with Mayor Longmire last Friday. The City of Pittsburg received the Light of Hope Award for "City-Wide Goals" in both 2017-18 and 2018-19 which include "Improve the Quality of Life for Pittsburg Residents."

Mayor Longmire also stated he was honored to receive the award from CASA.

Member Killings attended the Cease Fire Walk last Friday. Pittsburg Police Department's Sgt. Cassie Wilkerson was commended for her participation and organization of this event.

ADJOURNMENT

The City Council meeting was adjourned at 9:24 P.M. to October 15, 2018.

Respectfully submitted,

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/10/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution Approving an Exclusive Negotiating Rights Agreement between the City of Pittsburg and Clear Channel Outdoor Inc. for the Proposed Construction and Operation of a Digital Billboard

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City of Pittsburg, a municipal corporation and Clear Channel Outdoor, Inc., a Delaware corporation ("CCO"), propose to enter into an Exclusive Negotiating Rights Agreement ("ENRA") for the proposed construction and operation of a digital billboard.

FISCAL IMPACT

There is no fiscal impact to the City's General Fund by considering and executing an ENRA. The purpose of the ENRA is to establish procedures and standards for negotiation by the City with CCO of (i) a lease agreement and (ii) a relocation and removal agreement.

RECOMMENDATION

City Council adopt the Resolution approving the ENRA between the City and CCO.

BACKGROUND

The City is the owner, as of October 11, 2006, of that certain property located at or nearby State Highway 4, north of Dover Way and Frontage Road in Pittsburg, CA 94565, as more particularly described in Exhibit A of the ENRA (the "Property").

On April 15, 2013, the City Council adopted a list of goals for 2013-14 in which Goal 1 (Increase Revenues and Reduce Expenses) included a specific program that supported the installation of a digital billboard at select locations along the Highway 4 corridor as a source of revenue for the City.

City Ordinance 15-1388, adopted January 20, 2015, amended Pittsburg Municipal Code Title 19, removing the prohibition on the installation of billboard and allowing billboard subject to certain standards.

The City commenced a Request for Proposal (“RFP”) process to solicit for a developer/advertiser who will design, construct, and operate a digital billboard (collectively, the “Project”) on a portion of the Property.

SUBCOMMITTEE FINDINGS

The proposed lease with CCO was discussed with the Finance Subcommittee on August 30, 2018.

STAFF ANALYSIS

There were three (3) developer/advertisers who responded the RFP: 1) CCO; 2) Mesa Outdoor, and 3) Outfront Media. All responses showed extensive experience in the industry.

CCO was selected because it offered a lease payment of \$180,000 minimum annual guarantee (“MAG”) for a 20-year term. Upon each annual anniversary of the Lease commencement date during the lease term, the then prevailing MAG will be increased by the San Francisco Consumer Price Index for All Urban Consumers (CPI-U). In no event shall the MAG be reduced from the then prevailing MAG. In addition to the MAG, CCO offered a revenue sharing of 30% so that if for example, CCO generates \$900,000 in revenue, the City would be provided an additional \$120,000 (\$300,000 less the MAG). During the first year of the lease term, CCO offered a \$100,000 one-time payment, making the City’s first year revenue from CCO to be at least \$280,000. Finally, CCO is providing the City advertising space for public announcements and proposes to remove two static billboards equaling three faces. Attachment A to this Staff Report compares all three RFP responses.

With the execution of the ENRA, CCO will be provided a 120-day negotiating period.

ATTACHMENTS: Resolution
Attachment A
Exclusive Negotiating Rights Agreement

Report Prepared By: Maria M. Aliotti, Director of Community Services

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Approving an)
Exclusive Negotiating Rights Agreement between)
The City of Pittsburgh and Clear Channel Outdoor)
Inc. for the Proposed Construction and Operation)
Of a Digital Billboard)

RESOLUTION NO. 18-

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, the City is the owner, as of October 11, 2006, of that certain property located at or nearby State Highway 4, north of Dover Way and Frontage Road in Pittsburgh, CA 94565, as more particularly described in Exhibit A of the ENRA (the "Property"); and

WHEREAS, on April 15, 2013, the City Council adopted a list of goals for 2013-14 in which Goal 1 (Increase Revenues and Reduce Expenses) included a specific program that supported the installation of a digital billboard at select locations along the Highway 4 corridor as a source of revenue for the City; and

WHEREAS, City Ordinance 15-1388, adopted January 20, 2015, amended Pittsburgh Municipal Code Title 19, removing the prohibition on the installation of billboard and allowing billboard subject to certain standards; and

WHEREAS, the City commenced a Request for Proposal ("RFP") process to solicit for a developer/advertiser who will design, construct, and operate a digital billboard (collectively, the "Project") on a portion of the Property; and

WHEREAS, the City and Clear Channel Outdoor, Inc. ("CCO"), propose to enter into an Exclusive Negotiating Rights Agreement ("ENRA") for the proposed construction and operation of a digital billboard; and

WHEREAS, there is no fiscal impact to the City's General Fund by considering and executing an ENRA. The purpose of the ENRA is to establish procedures and standards for negotiation by the City with CCO of (i) a lease agreement and (ii) a relocation and removal agreement.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1.

All the recitals above are true and correct and incorporated herein.

Section 2.

The City Council hereby adopts the Resolution approving ENRA.

Section 3.

The City Manager is hereby authorized to execute the ENRA and to execute such other

documents and take such further actions as may be necessary or appropriate to carry out the City Council's obligations pursuant to this Resolution.

Section 4.

The City Clerk shall certify to the adoption of this Resolution.

Section 5.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 5^h day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Attachment A

	Clear Channel	Mesa Outdoor	Outfront Media
Lease term (years)	20	25	20
Additional Extension	two 5-year	NA	10 years
Minimum Annual Guarantee (MAG)	\$180,000	\$100,000	\$125,000
Bonus Amount	\$100,000	\$150,000	\$0
Minimum Revenue During Initial Term	\$3,700,000	\$2,650,000	\$2,500,000
Revenue Sharing	30%	30%	35%

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
BETWEEN THE CITY OF PITTSBURG AND CLEAR CHANNEL OUTDOOR INC.

This Exclusive Negotiating Rights Agreement (this "Agreement") is entered into as of November 5, 2018 (the "Effective Date"), by and between the City of Pittsburg, a California municipal corporation (the "City"), and Clear Channel Outdoor, Inc., a Delaware corporation ("CCO") with reference to the following facts:

Recitals

A. The City is the owner of that certain property located at or nearby State Highway 4, north of Dover Way and Frontage Road in Pittsburg, CA 94565, as more particularly described in Exhibit A attached to this Agreement and incorporated herein (the "Property").

B. On April 15, 2013, the City Council adopted a list of goals for 2013-14 in which Goal 1 (Increase Revenues and Reduce Expenses) included a specific program that supported the installation of a digital billboard at select locations along the Highway 4 corridor as a source of revenue for the City.

C. City Ordinance 15-1388, adopted January 20, 2015, amended Pittsburg Municipal Code Title 19, removing the prohibition on the installation of billboard and allowing billboard subject to certain standards.

D. The City commenced a Request for Proposal ("RFP") process to solicit for a developer/advertiser who will design, construct, and operate a digital billboard (collectively, the "Project") on a portion of the City owned property described in Exhibit A (the "Property").

E. CCO submitted a response to the RFP and was selected by the City because of the proposed rent paid to the City, the proposed number of static signs to be removed by CCO, and proposed schedule.

F. The purpose of this Agreement is to establish procedures and standards for negotiation by the City with CCO of (i) a lease agreement ("Lease") for the lease of the Property to CCO and (ii) a relocation and removal agreement ("Relocation and Removal Agreement"). The Lease shall include, but is not limited to, the minimum annual guarantee ("MAG"), the revenue share above the MAG, the "one time" payment for lease of the Property, and the term of the Lease. The Relocation and Removal Agreement shall include, but is not limited to, the conditions under which CCO will remove static signs within the City, and the number of static signs to be removed and their locations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1 EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Good Faith Negotiations. The City and CCO shall negotiate diligently and in good faith, during the negotiating period (defined in Section 1.2 below), the terms of the Lease and the Relocation and Removal Agreement. During the negotiating period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 3 to facilitate negotiation of a mutually satisfactory Lease and the Relocation and Removal Agreement. This Agreement does not impose a binding obligation on City to convey any interest in the City Property to CCO, nor does it obligate City to grant any approvals or authorizations required for the proposed Project or improvements constructed on the Property. Notwithstanding the foregoing, the City shall not engage in negotiations with, any third party regarding the Property while the negotiating period (defined below, and as potentially extended) is in effect.

The issues to be addressed include, but are not limited to, conditions by which the City will lease the Property to CCO, a development schedule for the proposed Project, management and maintenance of the proposed Project, design and aesthetic considerations of the proposed Project, and conditions for removal of existing static signs.

Section 1.2 Negotiating Period. The negotiating period (the "Negotiating Period") under this Agreement shall commence on the Effective Date of this Agreement and terminate one hundred twenty (120) calendar days from the Effective Date of this Agreement. If, during the initial Negotiating Period, negotiations with the Developer have progressed sufficiently to the point where there is a draft Lease and Relocation and Removal Agreement that, in the opinion of the City Manager, warrants initiation of the environmental review process required by the California Environmental Quality Act ("CEQA"), then the City Manager may extend the Negotiating Period by written notice to CCO for the period of the environmental review process required by CEQA if anticipated to extend beyond the Negotiating Period established under this Agreement (but in no event shall such extension exceed a six (6) month period). If, as a result of the environmental review process required by CEQA, there is an administrative or legal challenge, all of the timeframes set forth in this Agreement shall be stayed for the duration of any such challenge, through any appeal periods. The Developer understands that such an extension in no way obligates the City to approve the Lease, the Relocation and Removal Agreement, or any other agreement at the conclusion of the environmental review process.

In addition, the City may extend the Negotiating Period for up to sixty (60) days by written notice to CCO from the City Manager if, in the City Manager's judgment, sufficient progress toward a mutually acceptable Lease and Relocation and Removal Agreement has been made during the initial Negotiating Period to merit such extension.

If a Lease and the Relocation and Removal Agreement have not been presented to the City Council, with staff's supporting recommendation and approved by the CCO by the expiration of the Negotiating Period (as may be extended under this Section), then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement except as set forth in Sections 3.2(d), 3.2(e), 4.2 and 4.6. If the City and CCO (or a related entity approved by the City Manager in writing) execute a Lease and the Relocation and Removal Agreement, then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed Lease and the Relocation and Removal Agreement.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the City shall not negotiate with any entity, other than CCO, regarding the proposed project and the development of the Property or any portion thereof, or solicit or entertain bids or proposals to do so. This provision shall not preclude the City from providing copies of documents or information related to the Property in response to a request under the California Public Records Act or other applicable statutory provisions.

ARTICLE 2 THE DEVELOPER

Section 2.1 Identification of Developer/Advertiser Representatives. CCO, its address, and its authorized representatives to negotiate the Lease and the Relocation and Removal Agreement with the City is as follows:

Clear Channel Outdoor Inc.
555 12 Street, Suite 950
Oakland, CA 94607
Attn: Bruce Qualls, Vice President, Real Estate and Public
Affairs - San Francisco Division

Section 2.2 Development /Advertiser Entity. CCO shall make full disclosure to the City of all information pertinent to the ownership, control, and financial capacity of the development entity that is proposed to serve as developer/advertiser under the Lease and the Relocation and Removal Agreement, including, but not limited to, the members of CCO's development team.

ARTICLE 3 NEGOTIATION/PRE-LEASE AND RELOCATION AND REMOVAL TASKS

Section 3.1 Overview. During the Negotiating Period, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 and to accomplish the negotiation of a mutually acceptable Lease and Relocation and Removal Agreement.

Section 3.2 Developer's Studies; Right of Entry.

(a) During the Negotiating Period, CCO will use its best efforts to prepare and pursue, at CCO's expense, any studies, surveys, plans, specifications and reports ("CCO's Studies") CCO deems necessary or desirable in CCO's sole discretion, to complete its due diligence for the Property. CCO's Studies may include, without limitation, title investigation, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. CCO will have rights of access to the Property to prepare the CCO's Studies.

(b) CCO hereby agrees to notify the City twenty-four (24) hours or at least one business day, whichever is greater, in advance of CCO's intention to enter the Property.

(c) CCO will provide the City with work plans, drawings, and descriptions of any intrusive sampling CCO intends to perform. CCO must keep the Property in a safe condition during its entry. CCO shall repair, restore and return the Property to its condition immediately preceding CCO's entry and sampling thereon at CCO's sole expense.

(d) Without limiting any other indemnity provisions set forth in this Agreement, CCO shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its officials, officers, employees, agents and volunteers harmless from and against all claims resulting from or arising in connection with entry and sampling upon the Property by CCO or CCO's agents, employees, consultants, contractors or subcontractors pursuant to this Section. CCO's indemnification obligations set forth in this Section 3.2 shall survive the termination of this Agreement for a period of three (3) years.

(e) If upon expiration of this Agreement the Parties have not successfully negotiated a Lease and Relocation and Removal Agreement, and no uncured default by City has occurred, CCO will provide City, only upon City's written request and within fifteen (15) days following such request, copies of the CCO's Studies completed by such date. If, upon expiration of this Agreement, the Parties have not successfully negotiated a Lease and Relocation and Removal Agreement, and no uncured default by City has occurred, CCO will provide City, only upon City's written request, and within fifteen (15) days following such request, copies of the CCO's Studies completed after the expiration of the Negotiating Period if CCO does not intend to complete such CCO Studies commenced prior to the expiration of the Negotiating

Period. CCO shall only provide those quantitative reports such as soils studies, generated by consultants for use in the design and construction of the proposed sign and not reports that are proprietary to CCO. "Successful negotiation" for the purposes of this Agreement shall mean CCO approval and staff supporting recommendation to the City Council of the affected agreements.

Section 3.3 City Reports. The City shall provide CCO with copies of all reports, studies, analyses, and similar documents prepared or commissioned by the City with respect to this Agreement, the Property, and the proposed Project, promptly upon their completion, as long as the CCO has paid the City for the costs and expenses relating thereto. Nothing in this Section 3.3 obligates the City to undertake any studies or analyses.

Section 3.4 Planning Approvals. CCO acknowledges that the proposed Project requires approvals and entitlements from the City (the "Planning Approvals"). During the Negotiating Period, the CCO shall submit preliminary Property plans and designs for the proposed Project and architectural designs for the proposed Project, included but not limited to, the Project description in Exhibit B, to the City and the appropriate City departments for their informal review. CCO understands that a formal application for the Planning Approvals and issuance of the Planning Approvals (in accordance with all applicable requirements of CEQA) will be a condition under the Lease and the Relocation and Removal Agreement, in addition to other conditions.

Section 3.5 Utilities. The CCO shall consult with the utility companies serving the Property to determine if utility capacity exists to serve the proposed Project and if existing utility facilities require expansion, relocation, or underground installation in connection with development of the proposed Project. The City shall assist and cooperate with CCO in such consultations.

Section 3.6 California Department of Transportation Approval. CCO shall consult with the California Department of Transportation ("CalTrans") on the development of the Property with the proposed Project..

Section 3.7 Progress Reports. Upon reasonable notice, as from time to time requested by the City in writing, CCO shall make oral or written progress reports advising the City on studies being made and matters being evaluated by the CCO with respect to this Agreement and the proposed Project, including but not limited to, the status of the environmental site assessments, geotechnical investigations, biological assessments, traffic impacts, cultural and archaeological studies, and general site planning and architectural design work.

ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either the City or CCO to enter into a Lease, a Relocation and Removal Agreement, or any other agreement. This

Agreement (and any extension of the Negotiating Period) shall not obligate the City to lease, or otherwise transfer, the Property, or any portion thereof, to CCO or any other entity, nor does it grant CCO the right to develop the proposed Project. This Agreement (and any extension of the Negotiating Period) shall not obligate the City to dispose of the Property or any portion of the Property. This Agreement (and any extension of the Negotiating Period) shall not obligate the City to provide any financial assistance to CCO. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City and City Council action the final discretion and approval regarding the execution of a Lease and Relocation and Removal Agreement, and all proceedings and decisions in connection therewith. Any Lease or Relocation and Removal Agreement resulting from negotiations pursuant to this Agreement shall become effective only if and after such Lease and Relocation and Removal Agreement have been considered and approved by the City Council of the City, following conduct of all legally required procedures.

Section 4.2 Indemnification. CCO agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement, excepting therefrom any and all administrative, legal or equitable actions or other proceedings alleging gross negligence or willful misconduct by the City. City agrees to indemnify, defend, and hold harmless CCO, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement, excepting therefrom any and all administrative, legal or equitable actions or other proceedings alleging gross negligence or willful misconduct by CCO. Each party shall be responsible for its own legal defense and associates costs. This Section 4.2 shall survive the termination, invalidation or nullification of this Agreement.

Section 4.3 Notices. Formal notices, demands, and communications between the City and CCO shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, with signature required, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Manager

Developer/ Advertiser: Clear Channel Outdoor Inc.
555 12 Street, Suite 950
Oakland, CA 94607
Attn: Bruce Qualls, Vice President, Real Estate and Public

Affairs – San Francisco Division

Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.4 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against the Property or any portion of the Property, with respect to this Agreement or any dispute or act arising from it.

Section 4.5 Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement.

Section 4.6 No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or Lease that may result from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and CCO shall defend, indemnify, and hold the City harmless from any claims by any broker, agent, or finder retained by CCO. The terms of this Section will survive the expiration or earlier termination of this Agreement for a period of three (3) years.

Section 4.7 Default and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, CCO's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy, or obligation under this Agreement; provided, however, indemnification obligations pursuant to Sections 3.2(d), 4.2 and 4.6 shall survive such termination. In the event of an uncured default by the City, CCO will retain certain CCO Studies resulting from this Agreement.

In the event of an uncured default by CCO, the City's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, indemnification obligations pursuant to Sections 3.2(d), 4.2 and 4.6 shall survive such termination for the time periods provided therein. In the event of an uncured default by CCO, City may request, and CCO may not unreasonably withhold, CCO's Studies resulting from this Agreement.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

Section 4.8 Assignment. CCO may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void.

Section 4.9 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and CCO and no other person shall have any right of action under or by reason of this Agreement.

Section 4.10 Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover reasonable fees and costs from the other party.

Section 4.11 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Contra Costa County, California.

Section 4.12 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement. This Agreement has been mutually prepared by the parties and the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to this Agreement (including, but not limited to, California Civil Code Section 1654, as may be amended from time-to-time.

Section 4.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 4.14 Authority to Execute. The undersigned represent and warrant they are each duly authorized to execute this Agreement on behalf of their respective party and to take the actions necessary to perform hereunder without the need to seek further authorization from the entity each represents.

Section 4.15 No Agency, Joint Venture or Partnership. City and CCO hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and CCO and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and CCO.

Remainder of Page Left Intentionally Blank

WHEREFORE, the parties have executed this Agreement on or as of the date first above written.

CITY:

CITY PITTSBURG, a California municipal corporation

By: _____
Joe Sbranti, City Manager

ATTEST:

By: _____
Alice Evenson
City Clerk

APPROVED AS TO FORM:

By: _____
Donna Mooney,
City Attorney

DEVELOPER:

CLEAR CHANNEL INC., a Delaware corporation

By: _____
Bruce Qualls, Vice President, Real Estate and Public Affairs

EXHIBIT A

Recorded at the request of:
City of Pittsburg

Return to:
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attention:

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2006-0322835-00
Wednesday, OCT 11, 2006 13:53:45
FRE \$0.00
Ttl Pd \$0.00 Nbr-0003438631
lrc/R9/1-8

District	County	Route	Post Kilometer	Project No.
4	CCC	SR4BP	35.6	56736-3

QUITCLAIM DEED

For a valuable consideration, receipt of which is hereby acknowledged,

CONTRA COSTA COUNTY, a political subdivision of the State of California,

Does hereby remise, release and forever quitclaim to the CITY OF PITTSBURG, a Municipal Corporation, the following described real property in the City of Pittsburg, State of California,

FOR DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

CONTRA COSTA COUNTY

Date: SEPTEMBER 12, 2006

By 
Chair, Board of Supervisors

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

On SEPT. 12, 2006 before me, EMILDA L. SHARP
Deputy Clerk of the Board of Supervisors, Contra Costa
County, personally appeared SUP. JOHN GIOTI
who is personally known to me (or 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.

WITNESS my hand and official seal.

By: 
Deputy Clerk

DB:ld
G:\GrpData\RealProp\06-8\City of Pittsburg.doc

322835

City of Pittsburg
County of Contra Costa

04-CC-Route 4.
Contra Costa County
56736-3

Exhibit "A"

(56736-3)

A portion of Parcel 2 as said Parcel is described in the "Relinquishment of State Highway in the County of Contra Costa, Road IV-C. C-75-F" recorded October 23, 1958 in Liber 3251 at page 159 Official Records, in the Office of the County Recorder of Contra Costa County, California, said portion of Parcel 2 being more particularly described as follows:

BEGINNING at the northwestern corner of above referenced Parcel 2; thence along the general northern line of said Parcel 2, S88°45'42"E, 336.921 meters; thence leaving last said line S01°14'10"W, 10.130 meters; thence S88°45'51"E, 369.742 meters; thence along a tangent curve to the right having a radius of 755.441 meters through a central angle of 08°44'53" an arc distance of 115.343 meters; thence S17°44'02"W, 7.695 meters to the southern line of said Parcel 2; thence along said southern line the following three (3) courses:

1. N79°37'46"W, 46.666 meters;
2. along a tangent curve to the left having a radius of 365.737 meters through a central angle of 09°07'56" an arc distance of 58.294 meters;
3. N88°45'42"W, 715.065 meters to the southwestern corner of said Parcel 2;

thence along the western line of said Parcel 2, N00°29'11"E, 14.233 meters to the **Point of Beginning**.

Containing 6,943.2 square meters (74,736 square feet) more or less.

Bearings and distances used in the above descriptions are based on the California Coordinate System of 1983, Zone III (1986 Adjustment). Multiply distances shown by 1.0000639 to obtain ground distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature Edward A. Krumer
Registered Professional Engineer

Date 8/21/06



EXPIRES 12/31/07

City of Pittsburgh Certificate of Acceptance

This is to certify that the interest in real property conveyed by a deed or grant dated September 12, 2006, from Contra Costa County, a political subdivision of the State California, to the CITY OF PITTSBURG, a municipal corporation, is hereby accepted by the undersigned City Engineer of the City of Pittsburg on behalf of the City Council pursuant to authority conferred by Resolution No. 03-9950 of the City Council, adopted on November 17, 2003 and the grantee consents to recordation thereof by the City Engineer.

10-10-6
Date


Joseph A. Sbranti, City Engineer

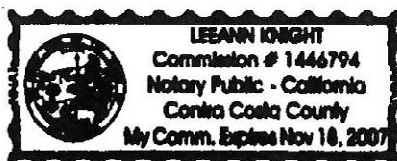
State of California)
County of Contra Costa) ss.

On 10-10-06, before me LEEANN KNIGHT, a Notary Public
personally appeared - - - Joseph A. Sbranti - - -

☒ personally known to me -OR- ☐ 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.

WITNESS my hand and official seal.

Signature of Notary



TO: BOARD OF SUPERVISORS
FROM: MAURICE SHIU, PUBLIC WORKS DIRECTOR
DATE: September 12, 2006

322835



Contra
Costa County

SUBJECT: APPROVE the conveyance of surplus County property, located at Frontage Road and Dover Way, to the City of Pittsburg, Pittsburg area. District V [CDD-CP#90-6]

Project No. 4660-6X4258 Org: 9553 Sub Account: 3580

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

Recommended Action:

1. DETERMINE the property, located at Frontage Road and Dover Way in Pittsburg, to be no longer necessary for County purposes.
2. APPROVE the conveyance of surplus County property, located at Frontage Road and Dover Way, to the City of Pittsburg, a municipal Corporation (City) pursuant to Streets and Highway Code § 960 and AUTHORIZE the Chair, Board of Supervisors, to execute the Quitclaim Deed on behalf of the County.
3. DIRECT Real Property to deliver the Quitclaim Deed to Grantee for acceptance and recording.

Continued on Attachment: ☒

SIGNATURE:

☒ RECOMMENDATION OF COUNTY ADMINISTRATOR
☐ RECOMMENDATION OF BOARD COMMITTEE
☒ APPROVE ☐ OTHER

SIGNATURE(S):

ACTION OF BOARD ON September 12, 2006 APPROVED AS RECOMMENDED ☒ OTHER ☐

VOTE OF SUPERVISORS
☒ UNANIMOUS (ABSENT None)
AYES: _____ NOES: _____
ABSENT: _____ ABSTAIN: _____

DB:lad
G:\GrpData\RealProp\2006 Files\BOS & RES\BO Highway 4-Frontage- RRR to City.doc
Orig. Div: Public Works (Real Property Division)
Contact: Debra Baker (313-2224)
cc: County Administrator
Assessor's Office
L. Bergeron

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: September 12, 2006
JOHN CULLEN, Clerk of the Board of Supervisors and County Administrator

By Deputy

322835

SUBJECT: APPROVE the conveyance of surplus County property, located at Frontage Road and Dover Way, to the City of Pittsburg, Pittsburg area. District V
Project No. 4660-6X4258.
DATE: September 12, 2006
PAGE: 2 of 2

Fiscal Impact:

The County is transferring fee-owned excess county road right of way to the City which will relieve the County of maintenance and potential liability costs.

Reason for Recommendation and Background

Contra Costa County acquired certain real property in 1958 through a Relinquishment from the State of California, for road purposes. The property became excess when the adjacent Frontage Road near Dover Court in Pittsburg was installed. The 74,736 square foot parcel described in Exhibits "A" attached hereto, is excess and no longer required for either the County's current or future use. A portion of this property was incorporated into State Route 4 and the remainder is required for city facilities and public utilities as part of the widening of State Route 4, Bailey Road to Rail Road Avenue, constructed by the Contra Costa Transportation Authority,

Consequences of Negative Action:

The County would own and be liable for a property heavily encumbered with city facilities and public utilities.

RECORDING REQUESTED BY
City of Pittsburg

WHEN RECORDED MAIL TO:

Engineering Records Division
65 Civic Avenue
Pittsburg, CA 94565-3814

322835

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2003-0576884-00
Wednesday, NOV 26, 2003 11:35:55
FRE \$0.00
Ttl Pd \$0.00 Nbr-0001875572
Irc/R3/1-4

THIS SPACE FOR RECORDER'S USE ONLY

DOCUMENT TITLE

City Of Pittsburg
City Council Resolution No. 03-9950

THIS PAGE IS ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFO

ADDITIONAL RECORDING FEES APPLY

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing the City Engineer to take action)
concerning the acceptance of, and consent)
for recordation of, deeds and grants)

RESOLUTION NO. 03-9950

The PITTSBURG City Council DOES RESOLVE as follows:

BACKGROUND

WHEREAS, Section 27281, Government Code, State of California, provides that deeds or grants conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes shall not be accepted for recordation without the consent of the grantee evidenced by its certificate or resolution of acceptance attached to or printed on the deed or grant; and

WHEREAS, a political corporation or governmental agency, by a general resolution, may authorize one or more officers or agents to accept and consent to such deeds or grants; and

WHEREAS, the construction, operation, and maintenance of improvements constructed for a public purpose on occasion necessitates the acquisition of right-of-way; and

WHEREAS, the City Engineer is generally responsible to determine the property requirements for such improvements; and

WHEREAS, it is in interests of convenience and efficiency to designate and authorize the City Engineer to accept deeds and grants.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. The City Engineer is authorized to take action concerning the acceptance of, and consent for recordation of, deeds and grants of a satisfactory form, which convey the right, title, and interest in real property to the City of Pittsburg for a public purpose.

322835

Section 2. The City Engineer is authorized to execute a certificate of acceptance in substantially the following form:

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from _____ to City of Pittsburg, a municipal corporation, is hereby accepted by the undersigned City Engineer of the City of Pittsburg on behalf of the City Council pursuant to authority conferred by Resolution No. _____ of the City Council adopted on _____, and the grantee consents to recordation thereof by the City Engineer.

Dated _____ By _____

Section 3. The authority conferred in the City Engineer by this resolution shall not be construed as an authority for the expenditure of funds for acquisition of a right, title, or interest in real property.

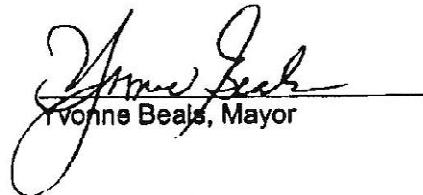
PASSED AND ADOPTED by the City Council of the City of PITTSBURG at a regular meeting on the 17th day of November, 2003 by the following vote:

AYES: Council Member Rios, Parent, Kee, Glynn & Mayor Beals

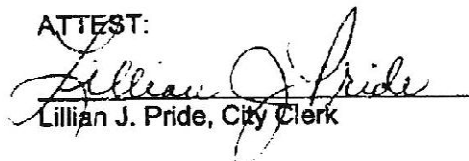
NOES: None

ABSTAINED: None

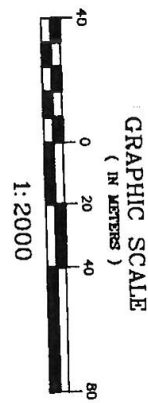
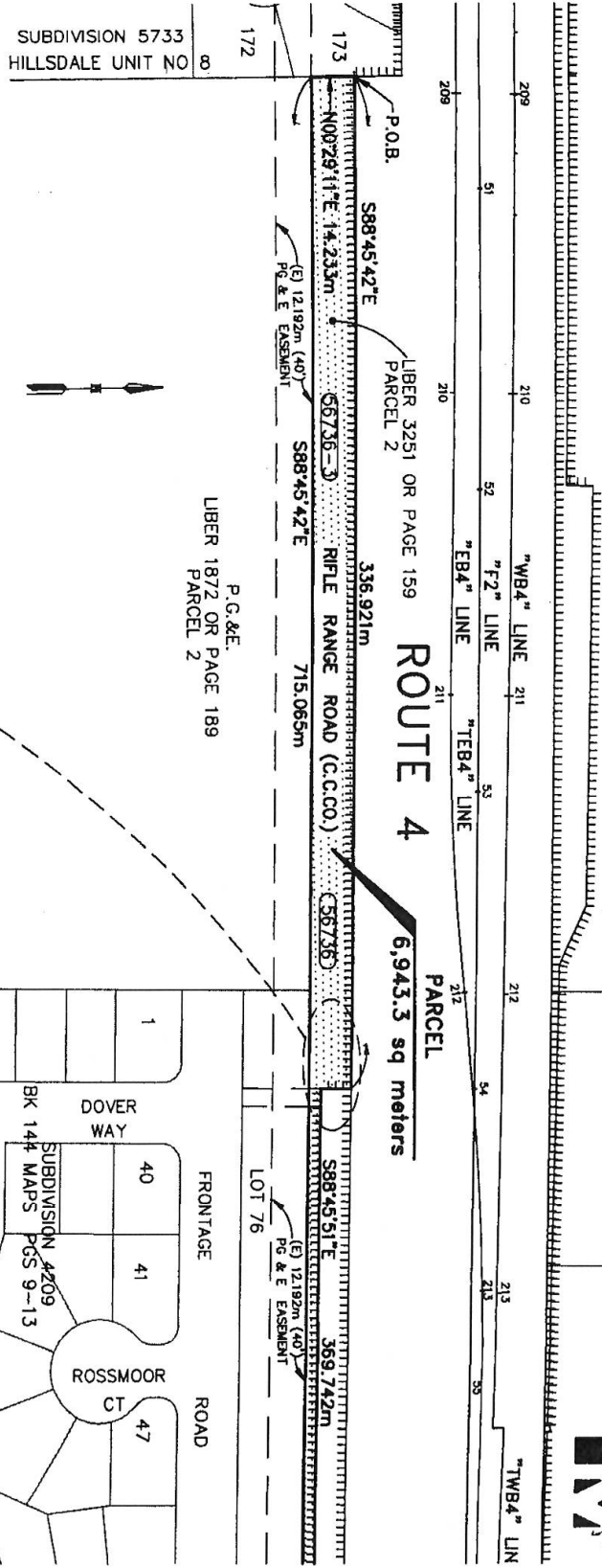
ABSENT: None


Yvonne Beals, Mayor

ATTEST:


Lillian J. Pride, City Clerk

COORDINATES, BEARINGS AND DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3 (1986 ADJ.). MULTIPLY DISTANCES SHOWN BY 1.0000693 TO OBTAIN GROUND DISTANCES.



- LEGEND**
- Access Prohibited
 - P.O.B. Point of Beginning
 - Parcel

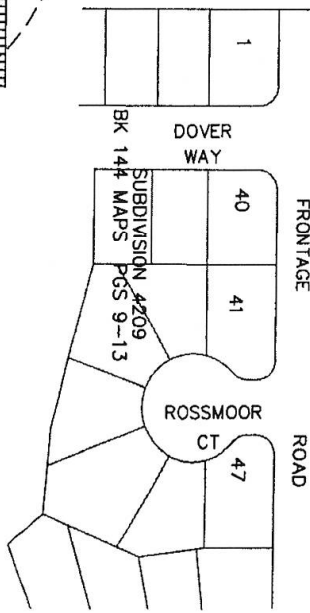
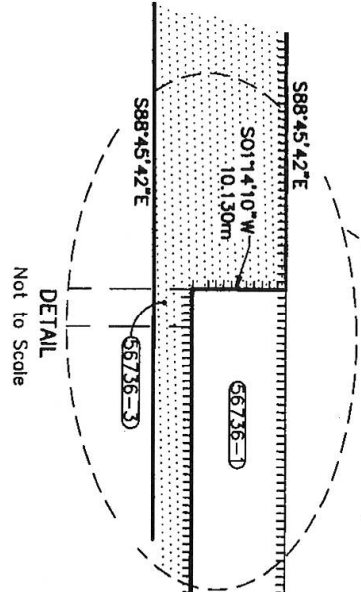
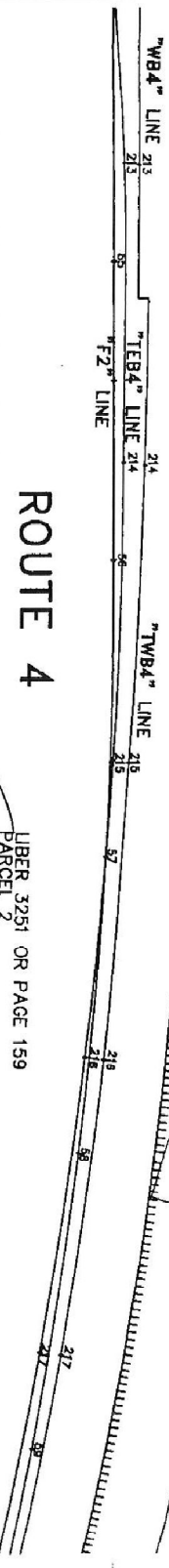


EXHIBIT "B"

CHAUDHARY & ASSOCIATES INC.			
851 NAPA VALLEY CORPORATE WAY			
SUITE G			
NAPA, CA. 94558-6251			
DR. BY EDM	DATE: 10/28/05		
CKD. BY EAK	SCALE 1:2000		
COUNTY	ROUTE	KP	DR. NO.
CC	4	35.6	1 OF 2

0:\186\3\3406-46726-3 P1

COORDINATES, BEARINGS AND DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3 (1996 ADJ.). MULTIPLY DISTANCES SHOWN BY 1.0000693 TO OBTAIN GROUND DISTANCES.



ROUTE 4

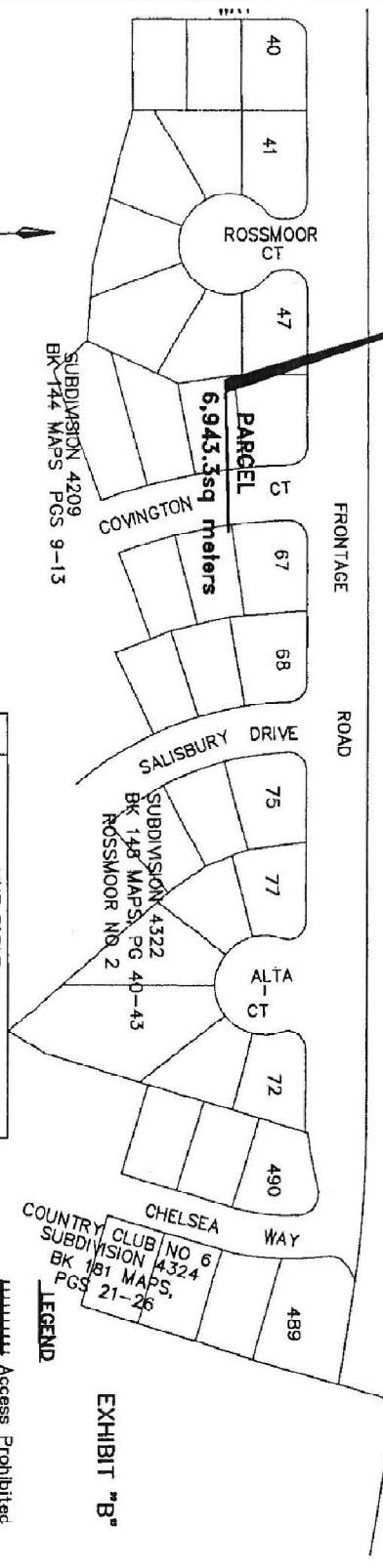
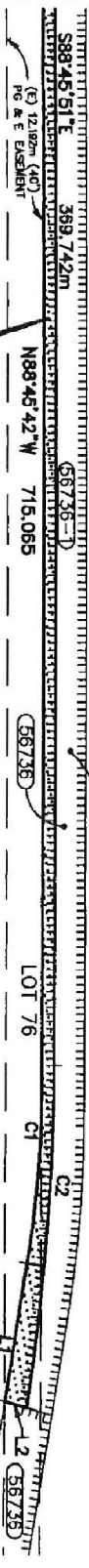


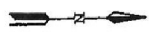
EXHIBIT "B"

SUBDIVISION 4209 BK 144 MAPS PGS 9-13

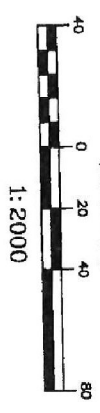
SUBDIVISION 4322 BK 148 MAPS PG 40-43 ROSSMOOR NO 2

COUNTRY CLUB NO 6 SUBDIVISION 4324 BK 161 MAPS PGS 21-26

Access Prohibited



GRAPHIC SCALE (IN METERS)



1:2000

LINE TABLE		
#	BEARING	LENGTH
L1	N79°37'46"W	46.666m
L2	S17°44'02"W	7.895m

CURVE TABLE			
#	RADIUS	LENGTH	DELTA
C1	365.737m	58.294m	09°07'56"
C2	755.441m	115.343m	08°44'53"

CHAUDHARY & ASSOCIATES INC. 851 NAPA VALLEY CORPORATE WAY SUITE 6 NAPA, CA 94558-6251			
DR. BY EDM	DATE 10/28/05		
CKD. BY EAK	SCALE 1:2000		
COUNTY	ROUTE	KP	DR. NO.
CC	4	35.6	2 OF 2

C:\1084\10840000\108400-108400-1-1.dwg

Exhibit B
Project Description

CCO to construct, operate and maintain an outdoor advertising structure, specifically one (1) V-shaped sign, with two (2) 14' x 48' (total maximum advertising space of 672 square feet per face (excluding any borders, framing or cabinetry)) LED (Light Emitting Diode) faces (the "Digital Displays"), with an orientation showing to Highway 4; one (1) supporting structure, fixture connections, electrical supply equipment, and connections; and any other equipment necessary for the operation of the Digital Displays.



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/5/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution to Approve the Lease Agreement by and between the City of Pittsburg and Global Resources Trading, LLC.

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City of Pittsburg desires to lease a modular building at 27 Marina Blvd. to Global Resources Trading, LLC doing business as Fisherman's Catch (Lessee) as a bait store and fish market in the marina area, for a term of eighteen months while a permanent structure is proposed and constructed on adjacent parcels.

FISCAL IMPACT

The City will receive \$710 each month for at least eighteen months, totaling \$12,780 in rent proceeds.

RECOMMENDATION

City Council approve the terms of the lease and authorize the City Manager to execute the agreement and related documents for Fisherman's Catch to provide bait shop and fish market services in the marina area.

BACKGROUND

Twenty-seven Marina Blvd. located on Assessor Parcel Number 085-071-046 (Property) was transferred from the Redevelopment Agency of the City of Pittsburg (Agency) to the City in March of 2011. The Agency has leased a modular building that has been placed on the Property and enclosed by a fence (Premises). Lessee has requested a lease of the Premises from the City for the purpose of operating a bait store and fish market (Business).

The property is also partially located on sovereign tidelands that have been granted to the City of Pittsburg under Senate Bill 551, Chapter 422, Statutes of 2011. These granted lands, also referred to as Trust Lands, are held in trust for the people of California. The City is required to operate its granted Trust Lands in conformance with the California Constitution, granting statutes and the Public Trust Doctrine.

Case law interpreting the Public Trust Doctrine has found that Trust Lands can only be used for purposes beneficial to the State in its entirety (the statewide public), as does the City's granting statute. These operational requirements have introduced hurdles for the use and sale of the parcels. The parcels, for example, cannot be sold by the City, and any user other than the City must have an executed long-term Tidelands Lease for use of the parcels.

The business proposal on the Premises includes a bait store and fish market that will cater to customers looking to purchase high quality products to use for recreational fishing or prepare meals at home. The applicant, Global Resources Trading LLC, is a premier wholesaler of Seafood and Meat based out of Hayward, which distributes to many local restaurants and grocers including Whole Foods. Prior to creating Global Resources Trading LLC, Mr. Peter Nguyen successfully owned and operated his own commercial fishing vessel from 1985 to 1995.

SUBCOMMITTEE FINDINGS

The Economic Development and Waterfront Subcommittee supported pursuit of a building lease for this project at the October 2, 2018 Subcommittee Meeting.

STAFF ANALYSIS

Development of the Premises is anticipated to jumpstart public interest and showcase goods that will be offered at a permanent Fisherman's Catch location on the Property, still in preliminary planning phases. The proposed use of the Premises aligns with the City's California State Lands Commission-approved Trust Lands Use Plan (TLUP) and General Plan goals of creating pedestrian-friendly connectivity between downtown and the Pittsburg Marina. It fits the existing Marine Commercial zoning designation, and has the potential to decrease blight experienced by the surrounding community as a result of the surrounding Properties' historic vacancy.

ATTACHMENTS: Resolution
Building Lease

Report Prepared By: Sara Bellafronte, Administrative Analyst II

LEASE AGREEMENT
By and between
THE CITY OF PITTSBURG
and
GLOBAL RESOURCES TRADING LLC

This LEASE AGREEMENT (this "**Lease**" or this "**Agreement**"), dated as of May 1, 2018 November 6, 2018 (the "**Effective Date**"), is entered into by and between the City of Pittsburgh, a municipal corporation (hereafter the "**City**" or the "**Landlord**") and Global Resources Trading LLC (the "**Tenant**"). Landlord and Tenant are hereafter collectively referred to as the "**Parties**."

RECITALS

A The City is the owner of fee title to real property located at 27 Marina Blvd. in Pittsburgh, CA known as Assessor Parcel Number 085-071-046, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

C. The Property was transferred from the Redevelopment Agency of the City of Pittsburgh (the "Agency") to the City in March of 2011.

D. The Agency leases a modular building that has been placed on the Property and enclosed by a fence for use by Tenant (the "Premises").

E. Tenant has requested a lease of the Premises from the City for the purpose of operating a bait store and fish market (the "Business").

F. The City desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from the City subject to the terms and conditions of this Lease.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows.

ARTICLE I
DEFINITIONS; DEMISE OF PROPERTY

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth in this Section. Additional definitions are set forth in the Recitals and the text of this Agreement.

- (i) "**Applicable Laws**" is defined in Section 4.7.

- (ii) **"Commencement Date"** is defined in Section 2.1.
- (iii) **"Default Rate"** is defined in Article VIII.
- (iv) **"Expiration Date"** is defined in Section 2.1.
- (v) **"Force Majeure"** is defined in Section 12.1.
- (vi) **"Hazardous Materials"** is defined in Section 5.5.1.
- (vii) **"Hazardous Materials Claims"** is defined in Section 5.2(c).
- (viii) **"Hazardous Materials Laws"** is defined in Section 5.5.2.
- (ix) **"Indemnitees"** is defined in Section 3.2.
- (x) **"Late Payment Penalty"** is defined in Section 2.2.
- (xi) **"Lease Termination"** is defined in Section 2.1.
- (xii) **"Property"** is defined in Recital A.
- (xiii) **"Remedial Work"** is defined in Section 5.2(e).
- (q) **"Rent"** is defined in Section 2.2.
- (r) **"Term"** is defined in Section 2.1.

1.2 Incorporation of Recitals The Parties acknowledge the truth of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.

1.3 Creation of Lease. City hereby leases to Tenant, and Tenant hereby leases from City, the Premises for the Term subject to the terms and conditions and for the purposes set forth in this Agreement.

1.3 Termination of Prior Lease. City and Tenant hereby agree to terminate the Prior Lease effective on the Commencement Date.

ARTICLE II TERM OF LEASE; RENT; SECURITY DEPOSIT

2.1 Term. The term of this Agreement (the **"Term"**) shall commence on November 6, 2018 (the **"Commencement Date"**), and unless terminated earlier or extended pursuant to the provisions hereof, shall expire on May 1, 2020 (the **"Expiration Date"**). The

expiration of the Term or the sooner termination of this Agreement is referred to herein as the **"Lease Termination."**

2.1.1 Mutual Option to Extend. The Tenant has the option to extend the Term of this Lease annually for a one-year period upon one hundred twenty (120) days notice to the City. The City has the sole right to approve or disapprove the extension of the Term. In the event the City disapproves the extension of the Term, the City must notify Tenant within ninety (90) days of the Lease Termination.

2.2 Rent. Commencing on the Effective Date, Tenant shall pay to Landlord as rent for the Premises, the sum of seven hundred and ten dollars (\$710) per month (**"Rent"**) for the first year of the Term. Commencing on July 1, 2019 and on each July 1 thereafter during the Term, or any extension of the Term under Section 2.1.1, the amount of Rent payable to City will increase by 5% of the previous years rental payments.

Rent is due and payable on the first day of each month to the City at the address shown in Section 12.5.2 or such other place as the City may designate in writing. In the event the Tenant fails to pay Rent by the close of business on the fourth day of each month or the Tenant's check is returned by the financial institution which it is drawn for insufficient funds, the Tenant shall pay the City (i) One Hundred Dollars (\$100) as a late fee (the **"Late Payment Penalty"**) and (ii) five percent (5%) interest accrued daily on such Late Rent due to the City, which must be included with the payment of Rent.

2.3 Additional Rent. As additional rent (the **"Additional Rent"**), the Tenant shall pay and discharge when due, all insurance premiums, utility costs, and all other liabilities and obligations which the Tenant assumes or agrees to pay or undertake pursuant to this Lease.

ARTICLE III ALTERATIONS AND NEW CONSTRUCTION

During the Term of this Agreement, the Tenant shall not make any permanent change, alteration or addition to the Premises (collectively, the **"Improvements"**) without the prior written consent of the City.

ARTICLE IV MANAGEMENT, USE AND OPERATION OF THE PROPERTY

4.1 Permitted Uses. The Tenant may use the Premises to operate and maintain a bait store and fish market and for no other purposes without the prior written consent of the City. The Tenant shall not use or permit the Premises to be used in whole or in part during the Term for any purpose other than as permitted pursuant to this Agreement or by the City's written consent. Tenant shall continuously use the Premises for the uses specified in this Section.

4.2 Nondiscrimination. The Tenant herein covenants by and for the himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: 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 leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased.

4.3 Easements; Reservation of Rights. The City reserves the right to locate and construct its own utilities and to grant nonexclusive easements across the Property and Premises for utility and other purposes including the installation, maintenance, repair and replacement of utilities; provided that the exercise of such rights do not unreasonably interfere with the Tenant's use of the Premises for the purposes set forth herein.

4.4 Maintenance and Inspection of the Premises.

4.4.1 Maintenance. At the Tenant's sole cost and expense throughout the Term, the Tenant shall operate, maintain and manage the Premises in good order and repair and in neat, clean sanitary and safe condition in compliance with all local, state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Premises. The Tenant shall ensure that the Premises is served by adequate lighting in accordance with applicable building codes. The Tenant shall promptly, at the Tenant's own cost and expense, make all necessary repairs, including replacements or renewals when necessary, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. The Tenant shall keep and maintain all portions of the Premises in a reasonably clean and orderly condition, free of accumulation of rubbish, graffiti and noxious weeds, and keep the Premises in condition not detrimental to the surrounding properties and free from hazards to the general public. The Tenant's failure to maintain the Premises in accordance with this Agreement shall, in the City's discretion, be grounds for termination of this Agreement pursuant to Article XI.

4.4.2 Inspection. At any time during the Term, upon reasonable advance notice and during normal business hours, the City may conduct inspections of the Premises to confirm that it is being properly maintained as required herein. Following its inspection, the City may deliver to the Tenant written notification of any portions of the Premises which the City has determined are not being properly maintained, and the Tenant shall promptly prepare and deliver to the City the Tenant's proposed plan for remedying the indicated deficiencies. The Tenant's failure to deliver a remedial plan and to complete

remedial work within a reasonable time as determined by the City in its reasonable discretion shall be a default under this Agreement.

The failure of the City to inspect or to notify the Tenant of any deficiency shall not be a waiver of default or of the City's right to enforce the Tenant's maintenance and repair obligations. The Tenant shall defend (with counsel reasonably acceptable to the City), indemnify and hold the Indemnitees harmless from and against any and all Claims arising out of the Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Premises as required hereunder.

4.5 City's Right to Perform Tenant Obligations. If following notice and the expiration of any applicable cure period as set forth in Section 11.2.1, the Tenant fails to perform its obligations to maintain the Premises in accordance with the standards set forth in this Agreement, the City shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Tenant, and the Tenant shall reimburse the City for all expenditures the City incurs in connection with such work together with interest thereon at the Default Rate specified in Article VIII. The City's election to undertake such obligation shall not operate as a waiver of any other right or remedy the City may have pursuant to this Agreement.

4.6 City Not Obligated to Perform Repairs. Notwithstanding any contrary provision herein, the City shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Premises during the term of this Agreement nor shall the City be obligated to maintain or operate the Premises.

4.7 Compliance with Laws. Tenant, at its sole cost and expense, shall comply with all applicable state and federal laws and regulations, including without limitation, all applicable state and federal labor laws and standards, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Section 51, et seq. Tenant shall comply with all City ordinances and regulations relating to noise, business hours, pertaining to the use, operation, and management of the Premises. (All of the foregoing state, federal and local laws, regulations and ordinances are referred in this Lease as the "**Applicable Laws.**") The Tenant shall not itself use the Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Premises which would result in a nuisance or a violation of law. The Tenant shall use its best efforts to not permit any permittees, licensees, guests or invitees to use the Premises for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Premises which would result in a nuisance or a violation of law.

4.8 Tenant Right to Contest. The Tenant shall have the right to contest by appropriate proceedings, in the name of the Tenant, and without cost or expense to the City, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed pending the prosecution of any such proceeding without the

incurrence of any lien, charge or liability against the Premises or Tenant's interest therein, and without subjecting the Tenant or the City to any liability, civil or criminal, for failure so to comply therewith, the Tenant may delay compliance therewith until the final determination of such proceeding. The Tenant shall indemnify, defend (with counsel approved by the City), protect and hold the Indemnitees harmless from and against all Claims arising in connection with any such contest brought by the Tenant. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

ARTICLE V

CONDITION OF THE PREMISES; ENVIRONMENTAL MATTERS

5.1 Condition of the Premises.

5.1.1 AS-IS Condition. The Tenant will lease the Premises in its "AS IS" condition as such condition exists as of the Commencement Date, without any warranties whatsoever regarding its condition except as specifically described in this Agreement, and with all faults and defects, if any, that may be located on, under, or around the Premises, whether known or unknown, suspected or unsuspected, actual or potential.

5.1.2 No Representations. The Tenant acknowledges that except as expressly set forth herein, the City makes no representations or warranties expressed or implied regarding the condition of the Premises or the fitness or suitability thereof for the Tenant's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Premises shall affect the rights of the Tenant or the City hereunder. The Tenant shall rely solely on its own independent investigation and judgment as to all matters relating to the Premises. The Tenant acknowledges and agrees that prior to the Effective Date it has made such investigations of the Premises, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as Tenant deemed necessary to determine the condition of the Premises, and has approved all such characteristics and conditions and shall lease the Property in its condition as of the Effective Date "AS-IS" "WHERE-IS" AND WITH ALL FAULTS. The Tenant further acknowledges that the City has made available all data and information on the Premises available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information, except as otherwise set forth in this Agreement.

5.2 Tenant's Covenants. The Tenant hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and the Tenant shall not cause or permit the Property or any portion thereof to be in violation of any Hazardous Materials Laws.

(b) The Tenant shall not permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall the Tenant permit the presence or release of Hazardous Materials in, on, under, about or from the Premises with the exception of materials customarily used as part of a boat haul-out facility, marine repair yard and retail business for boat supplies, provided such materials are used, stored and disposed of in compliance with Hazardous Materials Laws.

(c) Upon receiving knowledge of the same, the Tenant shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Tenant or the Premises pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against the Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Premises pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) 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, and to have its reasonable attorney's fees in connection therewith paid by the Tenant.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, the Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Premises (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 with respect to any Hazardous Materials Claim.

(e) If the presence of any Hazardous Material on the Premises results in any contamination of the Property and/or Premises in violation of Hazardous Materials Laws, except to the extent such contamination is caused by the City, the Tenant shall promptly take all actions at its sole expense as are necessary to remediate the Property and/or Premises as required by law; provided that the City's approval of such actions shall first be obtained, which approval may be withheld in the City's reasonable discretion. All costs and expenses of any Remedial Work shall be paid by the Tenant, it being understood that the City shall incur no cost, expense or liability in connection with

any Remedial Work. The City shall have the right, but no obligation, to join and participate in, as a party if it so elects at the City's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims. For purposes of this Agreement, "**Remedial Work**" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Hazardous Materials Laws, (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Hazardous Materials Laws or the presence or release of any Hazardous Material in, on, under or from the Property and/or Premises.

5.3 Release of Claims. The Tenant hereby waives, releases and discharges forever the Indemnitees from all present and future Claims the Tenant may have arising directly or indirectly from the presence or alleged presence of Hazardous Materials on, under, in or about the Premises; provided however, this release excludes and shall not apply to (i) any Hazardous Material that originates from any City- or City-owned property other than the Premises and which migrates onto the Premises after the Commencement Date, or (ii) any Hazardous Materials that are generated or caused by the Indemnitees' acts or omissions after the Commencement Date.

The Tenant is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

As such relates to this Section 5.3, the Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Tenant Initials

5.4 Environmental Indemnity. The Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against all Claims arising during the Term and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Premises during the Term, (ii) the failure of the Tenant, the Tenant's employees, agents, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the

foregoing to comply with Hazardous Materials Laws, or (iii) the breach by the Tenant of any of its covenants contained in this Article V. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Premises 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 and shall include, without limitation, any Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section 5.4 shall survive the expiration or earlier termination of this Agreement.

5.5 Definitions.

5.5.1 Hazardous Materials. As used herein, “**Hazardous Materials**” means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

5.5.2 Hazardous Materials Laws. As used herein “**Hazardous Materials Laws**” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 5.5.1, as any of the foregoing may be amended from time to time.

ARTICLE VI INDEMNITY AND INSURANCE

6.1 Indemnity. The Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) the operation or management of the Premises, (ii) any work or thing done on or in the Premises, (iii) any condition of any alteration or addition constructed by the Tenant on the Premises, (iv) any breach or default by the Tenant in the performance of any covenant or agreement to be performed by the Tenant pursuant to the terms of this Agreement, (v) any negligence of the Tenant, or any of its agents, contractors, subcontractors, employees, or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Premises, and (vii) the furnishing of labor or materials by the Tenant or its contractors, subcontractors, employees, or agents. In the event any such action or proceeding is brought against the City by reason of any such Claim, the Tenant, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. If an insurer under insurance required to be maintained by the Tenant hereunder shall undertake to defend the City under a reservation of rights with respect to ultimate coverage and the City shall reasonably deem it necessary to retain independent counsel with respect to such matter, the Tenant shall pay the reasonable fees of such counsel. The obligations of the Tenant under this Article XIII shall not apply to any Claim or other matter to the extent such arises as a result of the gross negligence or willful misconduct of the Indemnitees. This Section shall survive the expiration or earlier termination of this Agreement.

6.2 Insurance Requirements. The Tenant shall procure, at its sole expense, and maintain in full force and effect during the Term, the following insurance naming the City as additional insured and/or loss payee:

a. Comprehensive General Liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the Tenant's use of the Property and the operation of a business thereon, with a policy limit of at least Two Million Dollars (\$2,000,000) per occurrence.

b. Tenant shall maintain property insurance covering all risks of loss including flood (if required) for 100% of the replacement value of the Premises, the Fixtures and any Improvements, naming the City as loss payee as its interests may appear.

c. Workers' compensation insurance that complies with the statutory requirements of the state of California.

d. Automobile liability insurance for owned, hired and non-owned vehicles, with a combined single limit of at least One Million Dollars (\$1,000,000).

If the Tenant undertakes the construction of any improvements pursuant to Article VI, the Tenant shall ensure that its general contractor carries liability, property damage, workers' compensation, and builder's risk insurance throughout construction of the Improvements, naming the Indemnitees as additional insureds and otherwise in compliance with all requirements set forth in this Section 6.2.

ARTICLE VII DAMAGE AND DESTRUCTION

7.1 Damage or Destruction. In the event of any damage to or destruction of the Premises during the Term, the City shall elect by written notice delivered to Tenant within sixty (60) days following the date of the occurrence of the damage to either remove the Premises or restore and rebuild the Premises as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in any Applicable Law. If the City elects to restore the Premises, the City shall commence diligently and continuously to carry out such rebuilding to full completion as soon as possible and shall commence reconstruction of the Premises within the earlier of ninety (90) days following the date of occurrence of the damage or the date upon which insurance proceeds are made available for such work. Upon the occurrence of damage or destruction, all insurance proceeds paid in respect of such damage or destruction shall be applied to the payment of the costs of the restoration and rebuilding required to be performed by the City pursuant to this Agreement. If the City does not elect to restore the Premises and the City does not exercise its right to terminate this Agreement pursuant to Section 11.3 within 120 days following the date of the occurrence of the damage, then at the City's option this Agreement shall terminate upon delivery of written notice to the Tenant. If the City elects to restore the Premises, the City shall confer with the Tenant regarding the design and plans for such restoration of the Premises.

7.2 Notice Required. In the event of material damage to or destruction of the Premises, or any part thereof, the Tenant shall promptly give the City notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article VII, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Fifty Thousand Dollars (\$50,000).

ARTICLE VIII AGENCY'S RIGHT TO PERFORM TENANT'S COVENANTS

If the Tenant shall at any time fail to pay any Imposition or other charge payable by the Tenant to a third party as required by this Agreement, or to comply with the

requirements set forth in Section 6.2 pertaining to insurance, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Agreement, then the City, after thirty (30) days' written notice to the Tenant and without waiving or releasing the Tenant from any obligation of the Tenant hereunder, may (but shall not be required to): (i) pay such Imposition or other charge payable by the Tenant; (ii) pay for and maintain the insurance policies required pursuant to this Agreement, or (iii) make such other payment or perform such other act on the Tenant's part to be made or performed under this Agreement; and the City may enter upon the Premises for such purpose and take all such action thereon as may be reasonably necessary therefor.

All sums paid by the City and all costs and expenses incurred by the City in connection with any such payment or the performance of any such act (together with interest thereon at the Default Rate from the respective dates of the City's making of each such payment) shall constitute additional Rent payable by the Tenant under this Agreement and shall be paid by the Tenant to the City on demand. The "**Default Rate**" shall mean interest calculated at an annual rate equal to the lesser of twelve percent (12%) or the maximum rate of interest permitted by law.

ARTICLE IX MORTGAGES

9.1 Non-Subordination of Fee. Nothing in this Agreement shall be construed as an agreement by the City to subordinate its fee interest in the Premises or its right to rent payments hereunder or any other right of the City herein. Except as expressly set forth in this Agreement, the Tenant shall not mortgage its interest in the Premises without the City's prior written approval. Notwithstanding anything to the contrary, the City shall have no obligation to encumber or otherwise subordinate its fee interest in the Premises or approve any mortgage of the Tenant's leasehold estate.

ARTICLE X ASSIGNMENT, TRANSFER, SUBLETTING; NONDISTURBANCE AND ATTORNNMENT

10.1 Restrictions on Transfer, Assignment and Encumbrance. The Tenant shall have no right to sell, transfer, sublet, assign, encumber, hypothecate or otherwise convey ("**Transfer**") its leasehold interest hereunder or any portion of its interest in the Premises or this Agreement voluntarily, involuntarily, by operation of law, or otherwise, without the City's prior written consent. No voluntary or involuntary assignee, subtenant, or successor in interest of the Tenant shall acquire any rights or powers under this Agreement absent such consent.

10.2 No Involuntary Transfers. Without limiting any other restrictions on transfer contained in this Agreement, no interest of the Tenant in this Agreement, the Premises

or part thereof shall be assignable or transferable: (i) pursuant to any voluntary or involuntary proceeding under federal or state bankruptcy or insolvency law; (ii) pursuant to any assignment of the Tenant's assets for the benefit of its creditors; or (iii) pursuant to any order of attachment, garnishment, receivership, or similar action.

Any transfer described in this Section 10.2 shall constitute an Event of Default under this Agreement by the Tenant, and the City shall have the right to terminate this Agreement pursuant to Article XI as a result of any such transfer taking place, in which case this Agreement shall not be treated as an asset of the Tenant.

10.3 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to the City an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes such obligations as arise and/or accrue at any time after such Transfer takes place; and whereby such transferee assumes liability for the obligations of this Agreement.

10.4 Sale by City. Nothing contained in this Agreement shall be deemed in any way to limit, restrict or otherwise affect the right of the City to sell, transfer, assign or convey all or any portion of the right, title and estate of the City in the Property or Premises and in this Agreement; provided, however, that in each such instance any such sale, transfer, assignment or conveyance shall be subject to this Agreement, and the Tenant's other rights arising out of this Agreement shall not be affected or disturbed in any way by any such sale, transfer, assignment or conveyance. At such time as the City shall sell, transfer, assign or convey the entire right, title and estate of the City in the Premises and in this Agreement, all obligations and liability on the part of the City arising under this Agreement after the effective date of such sale, transfer, assignment or conveyance shall terminate as to the City, and thereupon all such liabilities and obligations shall be binding upon the transferee.

10.5 Nondisturbance. Provided that the Tenant is not in default under this Agreement, the Tenant's possession, use and enjoyment of the Premises shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of the City, or any exercise of any remedies under this Agreement.

ARTICLE XI DEFAULT, REMEDIES AND TERMINATION

11.1 Event of Default. The Tenant shall be in default under this Agreement upon the occurrence of any of the following ("**Events of Default**"):

(a) Payment of Rent. The Tenant at any time is in default hereunder as to payment of Rent and such default continues for three (3) days. City is not required to provide written notice of Tenant's failure to pay Rent.

(b) Other Monetary Obligations. The Tenant at any time is in default hereunder as to any monetary obligation (including without limitation, the Additional Rent and the Tenant's obligation to pay taxes and assessments due on the Premises or part thereof, subject to the Tenant's rights to contest such charges pursuant to Section 2.3), and such default continues for thirty (30) days after the date upon which the City shall have given the Tenant a Notice of Default (as defined in Section 11.2.1);

(c) Insurance. The Tenant fails to obtain and maintain any insurance required pursuant to Section 6.2 of this Agreement, and the Tenant fails to cure such default within ten (10) days following receipt of Notice of Default;

(d) Abandonment. The Tenant abandons the Premises and ceases to use it for the purposes authorized hereby for a period of ninety (90) days or more or as established pursuant to Section 1951.3 of the California Civil Code except when prevented by Force Majeure.

(e) Transfer. A voluntary or involuntary Transfer of all or any portion of the Tenant's interest in this Agreement occurs in violation of the provisions of Article X;

(f) Non-Monetary Obligations. The Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 11.1, and unless a shorter cure period is specified for such default, the default continues for thirty (30) days after the date upon which the City shall have given written notice of the default to the Tenant; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if the Tenant 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 and in no event later than one hundred and eighty (180) days after receipt of a Notice of Default;

(g) Bankruptcy. The Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(h) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the first date of entry thereof, or any trustee receiver

or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, such sixty (60) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;

(i) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of the Tenant in the Premises and such execution, attachment or similar process is not released, bonded, satisfied, or vacated or stayed within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant;

11.2 Notice and Opportunity to Cure.

11.2.1 Notice of Default. Upon the occurrence of a default hereunder, the non-defaulting party shall deliver a notice to the nonperforming party (the “**Notice of Default**”), stating the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

11.2.2 Failure to Give Notice; No Waiver. Failure to give, or delay in giving, the Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. No failure or delay by either party in asserting any rights and remedies as to any breach shall operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

11.3 Remedies Upon Default.

11.3.1 City's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of the City hereunder and/or provided by law, the City shall have the right to terminate this Agreement and/or the Tenant's possessory rights hereunder, in accordance with Applicable Law to re-enter the Premises and take possession thereof and of the Fixtures and any Improvements, and except as otherwise provided herein, to remove all persons and property therefrom, and to store such property at the Tenant's risk and for the Tenant's account, and the Tenant shall have no further claim thereon or hereunder. The City's re-entry or taking of possession of the Premises shall not be construed as an election on the City's part to terminate this Agreement unless the City shall have given written notice of such intention to the Tenant. In no event shall this Agreement be treated as an asset of the Tenant after any final adjudication in bankruptcy except at the City's option so to treat the same but no trustee, receiver, or liquidator of the Tenant shall have any right to disaffirm this Agreement.

11.3.2 Remedies Upon Abandonment. If the Tenant should default under this Agreement and abandon the Premises, the City may, at its option, enforce all of its rights and remedies under this Agreement, including the right to recover the rent as it becomes due hereunder. Additionally, the City shall be entitled to recover from the Tenant all costs of maintenance and preservation of the Premises, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Premises and the City's interest under this Agreement.

11.3.3 City Right to Continue Lease. In the event of any default under this Agreement by the Tenant (and regardless of whether or not the Tenant has abandoned the Premises), this Agreement shall not terminate (except by an exercise of the City's right to terminate under Section 11.3.1) unless the City makes such election by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate the Tenant's right to possession. For so long as this Agreement continues in effect, the City may enforce all of the City's rights and remedies under this Agreement, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Agreement, the following shall not constitute termination of the Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Premises; or (b) the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement.

11.3.4 Right to Injunction; Specific Performance. In the event of a default by the Tenant under this Agreement, the City shall have the right to commence an action against the Tenant for damages, injunction and/or specific performance. The Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Agreement.

11.3.5 Right to Receiver. Following the occurrence of an Event of Default, if the Tenant fails after receipt of a Notice of Default to cure the default within the time period set forth in this Agreement, the City, at its option, may have a receiver appointed to take possession of the Tenant's interest in the Premises with power in the receiver (a) to administer the Tenant's interest in the Premises, (b) to collect all funds available in connection with the operation of the Premises, and (c) to perform all other acts consistent with the Tenant's obligations under this Agreement, as the court deems proper.

11.4 Remedies Cumulative. No remedy specified in this Article XII shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth herein.

11.5 No Election of Remedies. The rights given in this Article XI to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Agreement, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of the City upon the conditions and subject to the provisions in this Agreement to terminate the Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Agreement beyond the applicable cure period.

11.6 Survival of Obligations. Nothing herein shall be deemed to affect the right of the City under Article VI of this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, nor shall anything herein be deemed to affect the right of the City to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Improvements or any part thereof shall relieve the Tenant of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

ARTICLE XII GENERAL PROVISIONS

12.1 Force Majeure; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control (all of the foregoing "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Tenant and the City (acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the City Council). 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.

12.3 City's Right to Enter the Property. The City and its agents may enter the Premises from time to time with reasonable notice, except in the case of emergency in which case no notice shall be required, to inspect the same, to post notices of nonresponsibility and similar notices, and to discharge the Tenant's obligations hereunder when the Tenant has failed to do so within a reasonable time after written notice from the City.

12.4 Representations of City and Tenant.

12.4.1 The Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) The Tenant has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Tenant.

12.4.2 Representation of the City. City hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) The City has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the City or any provision of any indenture, agreement or other instrument to which the City is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the City.

12.5 Miscellaneous.

12.5.1 Holding Over/Month to Month. If Tenant is or remains in possession of the Premises after the expiration of termination of this Lease, the Lease shall continue on a month to month basis with the right of either party to terminate it upon 30 days written notice to the other, and the monthly Rent will be due and payable on the first day of the rollover term and each month thereafter until such time as this Lease is terminated or renewed under different rent terms.

12.5.2 Binding on Successors and Assigns. Each provision of this Lease to be performed by Tenant shall be deemed both a covenant and a condition. The terms, conditions, and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the Parties and their personal representatives, successors, and assigns.

12.5.3 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 on receipt if delivery is confirmed by a return receipt;
- (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; or

City: City of Pittsburg
65 Civic Drive
Pittsburg, CA 94565
Attention: City Manager

Tenant: Global Resources Trading LLC
3524 Investment Blvd.
Hayward, CA 94545
Attn: Peter Nguyen

12.5.3 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Lease. 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 with the advice of counsel, 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.

12.5.4 Successors and Assigns. Subject to the restrictions on transfer set forth in Article XII, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Lease 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 as if in every case so expressed.

12.5.5 Short Form of Lease. A memorandum of lease shall be executed by the Parties and recorded in the Official Records of Contra Costa County upon the request of either Party.

12.5.6 Governing Law. 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 in the Superior Court of Contra Costa County, California or in the Federal District Court for the Northern District of California.

12.5.7 Attorney's Fees. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

12.5.8 Indemnity Includes Defense Costs. In any case where either Party is obligated under an express provision of this Lease, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

12.5.9 No Third-Party Beneficiaries; Disclaimer of Partnership, Lender/Borrower Relationship. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the parties under this Agreement is solely that of landlord and tenant, and it is expressly understood and agreed that the City does not as a result of this Agreement in any way nor for any purpose become a partner of the Tenant or a joint venturer with the Tenant in the conduct of the Tenant's business or otherwise. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the City and the Tenant. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the City does not, solely as a result of this Agreement, become a lender to the Tenant.

12.5.10 Entire Agreement. This Agreement, together with Exhibit A, which by this reference is hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

12.5.11 Waiver; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. 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 waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.5.12 Time is of the Essence. Time is of the essence of this Agreement and of each provision hereof.

12.5.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

12.5.14 Action by the Parties. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City in its capacity as landlord hereunder 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 Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council unless the City Manager determines in his or her discretion that such matter requires consideration by the City Council.

12.5.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Tenant or its successors in interest in the event of any default or breach by the City or for any amount which may become due to the Tenant or the Tenant's permitted successors in interest pursuant to this Agreement.

12.5.16 Severability. The determination by a court of competent jurisdiction that a provision of this Lease is illegal or unenforceable shall not affect any other provision of this Lease.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the Effective Date.

TENANT:

Peter Nguyen,
Global Resources Trading LLC

LANDLORD:

CITY OF PITTSBURG,
a municipal corporation

By: _____
Peter Nguyen, CEO

By: _____
Joe Sbranti
City Manager

ATTEST:

Alice E. Evenson, City Clerk

APPROVED AS TO FORM

Donna Mooney, City Attorney

Exhibit A

PROPERTY

A certain parcel of land situated in the City of Pittsburg, County of Contra Costa, State of California and more particularly described as follows:

Resultant parcel 2 of parcel map waiver 08-01, as described in document number 2008-0036864, recorded on February 21, 2008 in the Office of the Recorder, County of Contra Costa, State of California..

Excepting there from parcel B of parcel map waiver 09-06, as described in document number 2009-0223504, recorded on September 21, 2009 in the office of the Recorder County of Contra Costa, State of California.

Containing approximately 1,420 square feet of building and 2,688 square feet of fenced-in back yard space.

Accessor's Parcel No. 085-071-046.

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution)
Approving the Lease Agreement by and)
between the City of Pittsburgh and Global) RESOLUTION NO. 18-
Resources Trading LLC.)

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, the premises is located on property with Accessor Parcel Number 085-071-046 (Property) which is fully or partially located on sovereign tidelands that have been granted to the City of Pittsburgh under Senate Bill 551, Chapter 422, Statutes of 2011; and

WHEREAS, Granted Trust Lands can only be used for purposes beneficial to the State in its entirety (the statewide public), and users of the Parcels must execute a Tidelands Lease with the City of Pittsburgh for use of the Parcels; and

WHEREAS, development of the Premises is in anticipation of a more permanent restaurant, bait store, and fish market proposal on the Property that is anticipated to be a catalyst for additional commercial waterfront tenants and increased recreational use of the waterfront; and

WHEREAS, Global Resources Trading LLC, Inc's proposal to open a bait store and fish market at the Premises satisfies the SLC's operational requirements, and aligns with the City's Trust Lands Use Plan, General Plan, and Zoning Ordinance; and

WHEREAS, on October 2, 2018 the Economic Development and Waterfront Subcommittee expressed support for the pursuit of a building lease for this project; and

WHEREAS, the City and Global Resources Trading LLC (Developer) entered into an Exclusive Negotiating Rights Agreement for the development of the Property on August 21, 2018.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1.

All the recitals above are true and correct and incorporated herein.

Section 2.

The City Council hereby approves the lease between the City and the Developer.

Section 3.

The City Manager is hereby authorized to execute the lease and to execute such other documents and take such further actions as may be necessary or appropriate to carry out the City's obligations pursuant to this Resolution.

Section 4.

The City Manager is hereby authorized to modify the lease, provided that such modifications do not materially alter the business terms set forth in the lease.

Section 5.

The City Clerk shall certify to the adoption of this Resolution.

Section 6.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November, 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

Dwaine "Pete" Longmire, Mayor

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/9/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of an Ordinance Amending Pittsburg Municipal Code Section 7.04.010 Relating to the Adoption of Contra Costa County Animal Control Regulations

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The Contra Costa County Animal Services Department provides animal control services within the City of Pittsburg. Pittsburg Municipal Code Section 7.04.010 incorporates the Contra Costa County Animal Control Ordinance by reference to enable enforcement of animal control within the City. Contra Costa County has amended its Animal Control Ordinance to include a new section: Article 416-12.2 Nuisances. This update will allow enforcement of this new section.

FISCAL IMPACT

There is no fiscal impact to include this section in our Municipal Code.

RECOMMENDATION

That the City Council adopt the attached Ordinance amending Pittsburg Municipal Code Section 7.04.010 and incorporating the Contra Costa County Animal Control Ordinance by reference.

BACKGROUND

The City of Pittsburg has adopted the Contra Costa County Animal Control Ordinance by reference. This Ordinance amends our Municipal Code to include Article 416-12.2 Nuisances, of the County's Animal Control Ordinance and allows enforcement of those provisions. This ordinance was introduced at the meeting of October 15, 2018.

SUBCOMMITTEE FINDINGS

Not applicable.

STAFF ANALYSIS

Government Code Section 50022.9 authorizes the City to adopt county ordinances by reference. Section 7.04.010 of the Pittsburg Municipal Code adopts the Contra Costa County Animal Control Ordinance by reference. This Ordinance incorporates the County's updated regulations into the Pittsburg Municipal Code.

The Contra Costa County Animal Control Ordinance is on file with the City Clerk and available for public inspection. It is also available at <http://www.co.contra-costa.ca.us/1432/Animal-Ordinance>.

ATTACHMENTS: Ordinance

Report Prepared By: Alice E. Evenson, City Clerk

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Ordinance Amending Municipal Code)
Section 7.04.010 Relating to the)
Adoption of Contra Costa County)
Animal Control Regulations)

ORDINANCE NO. 18-1457

The City Council of the City of Pittsburg DOES ORDAIN as follows:

SECTION 1. Findings.

- A. Pittsburg Municipal Code Section 7.04.010 incorporates the Contra Costa County Animal Control Ordinance by reference to enable enforcement of animal control by the Contra Costa County Animal Services Department.
- B. Contra Costa County Ordinance 2017-12 adopted a new section to be added to the Ordinance.
- C. The purpose of this ordinance is to amend Pittsburg Municipal Code Section 7.04.010 to incorporate the revised Contra Costa County Animal Control Ordinance into the City's Municipal Code.

SECTION 2. Amendment to Municipal Code Section 7.04.010.

Section 7.04.010 of Chapter 7.04 "County Control Ordinance" of Title 7 "Animals" of the Pittsburg Municipal Code is amended to read as follows:

7.04.010 Adoption by Reference

The Board of Supervisors of the County of Contra Costa, an agency of the State of California within the meaning of Government Code Section 50022.1, has adopted County Ordinances No. 80-97, 83-10, 85-23, 87-74, 2005-24, 2006-05, 2011-08, 2011-09, and 2017-12 regarding animal control. These ordinances are codified as Chapters 416-2 to 416-12.4 of Division 416 of the County Ordinance Code, which is a code within the meaning of Government Code Section 50022.2. Certified copies of Division 416 are and have been on file with the City Clerk where they are open to public inspection as required by Government Code Section 50022.3. This Animal Control Code, Division 416, is referred to and adopted by this reference as a part of the Pittsburg Municipal Code under Government Code Section 50022.2.

SECTION 3. Effective Date.

This ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. Publication.

The City Clerk shall either (a) have this ordinance published once within 15 days after adoption in a newspaper of general circulation or (b) have a summary of the

ordinance published twice in a newspaper of general circulation, once 5 days before its adoption and again 20 days after its adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Pittsburg held on October 15, 2018, and was adopted and ordered published at a meeting of the City Council held on November 5, 2018 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/26/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution to Approve the Purchase of CityWorks Software and Allocate Funds for Implementation

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

To improve efficiency and monitoring of the maintenance of the City's water and sewer infrastructure, staff reviewed software readily available on the market and recommends the purchase of CityWorks to improve efficiency and monitoring of infrastructure maintenance.

FISCAL IMPACT

Staff recommends purchase of CityWorks software with services from Miller Spatial Services for implementation of the program, for a total project cost of \$130,000. If approved, the resolution will allocate \$100,000 from the previously approved FY 2018-19 Information Technology budget (Fund 110), and \$30,000 from Geographic Information System (GIS) Update Fees (Fund 110) for the purchase. No new funds are requested.

RECOMMENDATION

City Council approve the purchase of CityWorks software and implementation services from Miller Spatial Services, allocate funds and authorize the City Manager to enter into necessary agreements for the purchase and implementation of the system.

BACKGROUND

In 2017, staff from the Public Works and Finance departments, Engineering Division, and the City's Information Technology consultant formed a task force to research, review and recommend a software product to improve scheduling, tracking and management of service requests, work orders and inspections of the City's sewer collection, storm drain and water distribution systems.

On June 18, 2018, the City Council approved Resolution 18-13499, adopting the City's Operating Budget for Fiscal Year 2018-19, which included funds for the Information Technology budget to purchase a cross-department work order and scheduling system linked to the City's current Geographic Information System (GIS.)

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

Staff from several City departments sought out and reviewed proposals for software systems that improve efficiency, control costs and improve accuracy of monitoring and maintenance of the City's infrastructure.

Software compatible with the City's current Geographic Information System (GIS), EDEN financial and permitting software and Granite Net camera inspection system were reviewed in detail. Data management products not compatible with the City's current technology were not considered, due to the substantial added expense that would be required.

Staff from Public Works, Finance, Engineering and Information Technology divisions reviewed proposals the City received for CityWorks and Cartegraph software, and proposals from vendors to manage implementation and data transfer from the City's current GIS, work order and accounting systems.

The Cartegraph product is not recommended by staff. The initial proposal submitted was incomplete. Specifically, it did not respond to the City's specific requirements for integration with its current Eden software system that links multiple department functions. The firm did not respond to several requests for this information.

From the information provided, the Cartegraph software cost of \$111,000 did not include integration into the City's current software, and recurring fees of \$55,000 per year.

The CityWorks proposal is for an amount not to exceed \$125,400, including assistance from Miller Spatial Services for data transfer into the new system, staff training over approximately four months, and a software license through an annual subscription at a cost of approximately \$25,000 per year. After the first year, the expense of the license will be included in the annual operating budget for departments using the software, including Public Works.

Staff recommends the City Council approve the attached resolution to approve the allocation of funds and authorize the City Manager to enter into appropriate agreements for the purchase of CityWorks software with implementation services from Miller Spatial Services of Riverside, California.

ATTACHMENTS: Resolution
Vendor Proposals
CityWorks Licensing Agreement (Proposed)

Report Prepared By: Jill Hecht, Director of Community Development

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

A Resolution Approving Allocation Of) RESOLUTION NO. 18-_____
Funds for Purchase of CityWorks and)
Implementation Services)

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, the City owns, operates and maintains extensive systems for water distribution, sewer collection, storm drain and other infrastructure necessary for the health and property of the public; and,

WHEREAS, on April 2, 2018, the City Council approved a Minute Order adopting City Goals and Priorities that included Goal 3: Improve Public Facilities and Infrastructure and Goal 5: Increase Efficiency of City Operations and Services; and,

WHEREAS, on June 18, 2018, the City Council approved Resolution 18-13499, adopting the City's Operating Budget for Fiscal Year 2018-19, which included funds for the Information Technology budget to purchase a cross-department work order and scheduling system linked to the City's current Geographic Information System (GIS); and,

WHEREAS, staff solicited and received proposals for CityWorks and Cartegraph software systems and proposals from consultants for implementation with the City's current Geographic Information System (GIS), EDEN financial and permitting software and Granite Net camera inspection system; and,

WHEREAS, staff recommends purchase of CityWorks and associated services as proposed by Miller Spatial of Riverside, California, with an estimated budget of \$130,000; and,

WHEREAS, the project will be implemented during FY 2018-19.

NOW, THEREFORE, the City Council finds and determines as follows:

- Section 1. The City Council hereby finds and determines that the above recitals are true and correct and incorporated herein.
- Section 2. The purchase of CityWorks software with associated services from Miller Spatial Services of Riverside, California, is authorized with an approved budget of \$130,000.
- Section 3. The allocation of \$100,000 from the Information Technology budget (Fund 110) and \$30,000 from the Geographic Information System Update Fee Revenues (Fund 110) for the purchase is approved.
- Section 4. The City Manager is authorized to take such actions as reasonably necessary to facilitate the purchase and the implementation of the software program identified in the attachments to the Staff Report accompanying this resolution.

Section 5. The City Clerk shall certify to the adoption of this Resolution.

Section 6. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November, 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk



PROPOSAL

CITYWORKS IMPLEMENTATION

*SUBMITTED TO: CITY OF PITTSBURG
SUBMITTED ON: 9/11/18*

PROPOSAL VALID THROUGH 12/31/2018

Miller Spatial Services
3499 10th Street
Riverside, CA 92501



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About Our Company

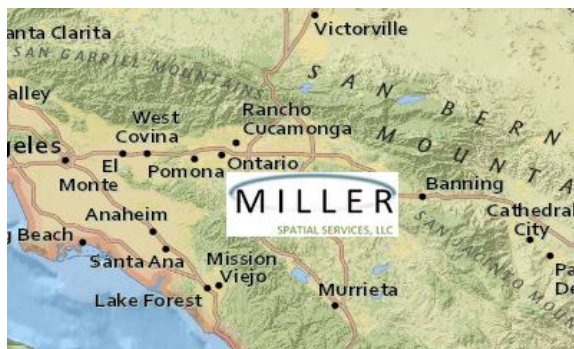
Introduction

Miller Spatial Services, LLC is a GIS Consulting company offering implementation, data, and application development services. Our founder, Bruce Miller, has 20 years of experience in GIS, Asset Management, and systems integration. All of our technical staff have at least 5 years of expertise in their discipline.

In addition to providing services for specific projects, we are also able to augment an agency's staff by providing resources such as programmers, analysts, and technicians on site. Typically, agencies need temporary staff to assist with updating their GIS data.

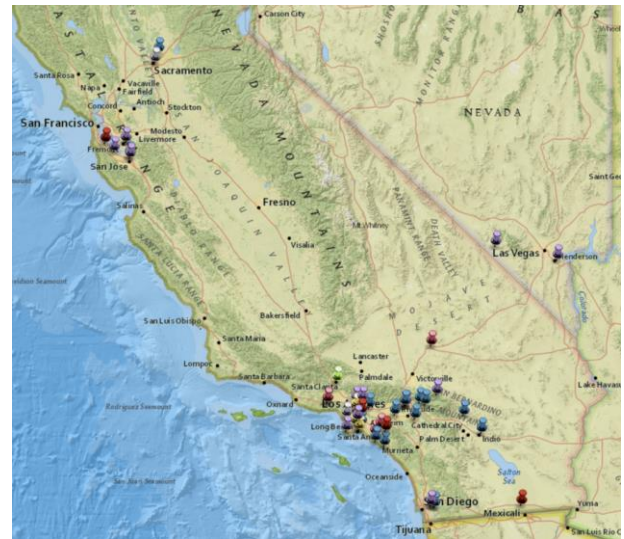
Miller Spatial Services (MSS) is Cityworks and Esri Business Partner specializing in CMMS and GIS services for public agencies such as Cities, Counties, and Water Agencies. As a partner, we specialize in the implementation of Esri technologies. From out of the box using Esri's ArcGIS for Local Government solutions to custom implementations, we can help agencies realize their return on investment as quickly as possible.

We are located in Riverside, California, about 30 minutes from Esri headquarters.



Experience

Our team has successfully completed over 44 GIS projects over their combined careers.



References

The following are current clients of MSS, and they can be contacted for references:

East Valley Water District, Highland, CA
Robert Peng, IT Manager
rpeng@eastvalley.org
909-806-4097

Fontana Water Company, Fontana, CA
Aaron Yamamoto, GIS Coordinator
atymamoto@sgvwater.com
909-201-7375

City of Lemon Grove, Lemon Grove, CA
Mike James, Public Works Director
mjames@lemongrove.ca.gov
(619)825-3814

I. Firm Description & Project Organizations

Miller Spatial Services, LLC (MSS) is a multi-service organization providing specialized services in Field Asset Surveying, Geographic Information Systems (GIS) and application software services. MSS provides professional services including consulting, training, staffing and technical support.

We continue to set the standard for high quality GIS implementation projects, especially in utility industry for Water, Sewer, Storm, Gas and Electric backed by staff with a wide range of industry and technical experience having over 20 years of experience in GIS.

MSS is fully insured and bonded for all services that we offer. We are a Dun & Bradstreet verified business (DUNS 03-076-7626). We have been contracted for over \$1,000,000 in services over the past 4 years, and the company has no debt.



Partners: ESRI Business partner, Cityworks and USA-imaging



Management

Mr. Bruce Miller, founder of Miller Spatial Services, LLC, graduated with a B.S. degree in Environmental science from the University of California, Riverside, USA. He is certified as a Geographic Information Systems Professional (GISP). He has over 20 years of professional experience in GIS and within the engineering industry and has successfully completed over 50 GIS projects. Most of his project experience is in implementing GIS systems with government agencies throughout California. His core competency is in implementing GIS solutions for Water and Wastewater agencies.

Mr. Miller manages the strategic planning, business development and company operations for MSS. He also serves as client liaison officer on all the projects by overseeing scope, schedule, budget and time frame.

Specialties: Asset Management, Utility Data Conversion, and Project Implementation.

Services

GIS CONSULTING:

- Needs Assessment
- Strategic Planning
- Business Process Workflow - Design, Mapping and Analysis
- Feasibility & Return on Investment
- Operation and Maintenance

We offer custom-made unique solutions for each industry based on the client's needs and requirements. Our Core Functional Consulting:

- Utilities - Water, Reclaimed Water, Sewer, Storm, Gas and Electric.
- Land Information Systems - Base map creation using various sources including Tract Maps, Record of Survey, Parcel Maps and BLM (Bureau of Land Management) data, Creating Building Footprints from the Satellite Imagery.

GIS DATA MANAGEMENT:

Our expertise is in the development of GIS for AM/FM (Automated Mapping/Facility Management), Asset Management, and analysis of geospatial information.

We also specialize in the implementation of ESRI technologies. From out-of-the-box applications using ESRI's ArcGIS for Local Government solutions to custom implementations, we can help agencies realize their return on investment as quickly as possible.

- Database Design
- Data Conversion
- Data Migration
- Data Maintenance
- Land Information Systems
- Survey Data Integration
- Raster to Vector Map Conversion
- Geocoding
- Engineering As-built Design

GIS APPLICATION DEVELOPMENT:

Custom application development built on ESRI technologies for ArcGIS Server, ArcGIS Online, and mobile solutions to support field maintenance.

GIS DATABASE DEVELOPMENT:

Development and administration services for SQL Server, Geodatabase, and Access databases.

GIS STAFFING:

We provide highly qualified GIS professionals who can supplement your office staff. They can work on site or remotely and can be dedicated to your agency for any number of hours per week. We can provide GIS consultants, developers, analysts, and technicians. Our rates are very competitive and we only provide staffing from our own trusted network of resources. We will not search job posting boards to fill a position.

Software Skills

GIS Software: ArcGIS 10.3 Desktop, ArcGIS Online, ArcGIS Server, ArcSDE: ArcGIS Extensions: Data Reviewer, Geostatistical Analyst, Network Analyst, Spatial Analyst and Tracking Analyst

Other GIS Software: Google Earth, GRASS, Quantum GIS

Asset Management Software: Cityworks AMS

CADD & Graphic Software: AutoCAD 3D Map, AutoCAD civil 3D, Microstation, Visio, Photoshop, 3D Max

Databases: Access, SQL Server, Geodatabase

GIS Programming: Python, Javascript, ArcGIS API for Flex, ArcGIS API for Silverlight and ArcIMS, ESRI Arc Objects

Other programming environments: C#, Microsoft C++, HTML, KML, XML, UML, VBA, Visual Basic, and .NET Framework.

II. Experience and Past Performance

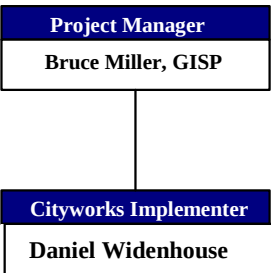
The following table shows the combined project experience of our team.

CLIENT	GIS Data Conversion	Implementation	Application Development	Cityworks	Asset Collection	Water	Sewer	City
City of Lemon Grove	✓	✓		✓				✓
Indio Water Authority				✓				
San Gabriel Valley Water District, CA		✓	✓			✓		
East Valley Water District, CA	✓	✓	✓	✓	✓	✓		
City of Rancho Palos Verdes		✓		✓				✓
City of Big Bear Lake, CA		✓						✓
City of Barstow, CA	✓						✓	
City of Orange, CA	✓						✓	
City of Los Angeles, CA	✓				✓		✓	✓
County of Los Angeles, CA	✓							
City of Long Beach, CA	✓							✓
City of Newport Beach, CA	✓							✓
City of Pasadena, CA	✓							✓
City of Fremont, CA	✓							
City of Fontana, CA	✓				✓			
California State University, East Bay, Hayward, CA	✓	✓			✓			✓
California State University, Pomona, CA	✓	✓			✓			✓
Los Angeles World Airports (LUSAD)	✓	✓			✓			
University of California, San Francisco, CA	✓	✓		✓	✓			

III. Statement of Experience & Qualifications of Project Assigned Personnel

Miller Spatial is comprised of a core group of GIS, networking and programming professionals with extensive experience in the industry and hold various certifications.

The Organization chart shown below highlights all key personnel who will work on this project.



BRUCE MILLER GISP, PRESIDENT | PROJECT MANAGER

The Project Manager will be Bruce Miller, GISP. Mr. Miller has his GIS Professional (GISP) certification and brings over 20 years of experience providing GIS services to public agencies and over 5 years of Cityworks implementation experience. Mr. Miller will also be responsible for all GIS related tasks.

DANIEL WIDENHOUSE | CITYWORKS IMPLEMENTER

The Cityworks Implementer will be Daniel Widenhouse. Mr. Widenhouse has over 10 years of experience providing Cityworks and PLL implementation experience. Mr. Widenhouse will be the primary resource for deliverables and project implementation. Mr. Widenhouse will have access to all technical staff at Miller Spatial as needed.



Bruce Miller, GISP
President/Project Oversight

Mr. Miller has his GIS Professional (GISP) certification and has over 20 years of experience providing GIS and asset management related services to public agencies. Mr. Miller has been responsible for directing complex mapping projects addressing logistical and technical concerns.

EDUCATION

Bachelor of Science Degree,
 Environmental Science, University
 of California, Riverside

CERTIFICATIONS

2012 – Geographic Information
 Systems Professional (GISP)

PUBLICATIONS

2017 – Discovering Insights for
 ArcGIS, IEGIS User Group

2015 – Using ArcGIS as a Project
 Management Platform, Esri UC

2015 – Conservation Through
 Transformation, Esri Water Group

2013 – The Benefits of Following
 the Strategic Plan, Esri UC

Services include database development/administration and maintenance, map creation, needs assessment, implementation and integration. Integration services include integrating GIS databases (SQL Server or Oracle) with other systems such as CCTV, Customer Billing, Document Management (Laserfiche), and Work Orders. He also provides field data capture automation, training, and general IT consulting services.

Summary of Skills

- Expertise using ESRI's ArcGIS software products, ArcGIS Desktop 10.x, ArcGIS Server, ArcGIS Online, and ArcGIS Pro
- Experience in administration of Cityworks® AMS
- Expertise in Mapping, GIS Data Modeling, Systems Integration, Needs Assessments
- Over 15 years of Project Management experience
- Experience with GPS data collection using Trimble
- GPS units and post processing data by differential correction
- Database experience with SQL Server, Oracle, and Microsoft Access
- Programming experience in Python, Visual Basic, HTML

Representative Projects

- East Valley Water District, Cityworks® AMS Implementation and GIS Support, GraniteNet Implementation
- City of Lemon Grove, Cityworks® AMS Implementation and GIS Support, GraniteNet Implementation
- City of Redlands Cityworks® PLL/AMS enhancements project oversight
- West Valley Water District, GIS data conversion and implementation
- San Gabriel Valley Water Company ArcGIS Online application support

- Western Municipal Water District – GIS support services oversight
- Fontana Water Company, Quality Control for GIS Data Conversion
- Indio Water Authority, GIS Support
- California Water Service Company, GIS Conversion Quality Control
- Laguna Beach County Water District, GIS Conversion
- Alameda County Water District, GIS Conversion
- Otay Water District, GIS Data Maintenance
- **Mission Springs Water District, GIS Conversion**



EDUCATION

Bachelor of Arts Degree, Political Science, Brigham Young University – Idaho

Master of Arts Degree, Public Administration, University of North Carolina – Chapel Hill

CONTACT INFO

Phone: (801)919-6553

Email:
dwidenhouse@millerspatial.com

Office:
3343 E Bernada Dr. Salt Lake City, UT 84124

Daniel Widenhouse, MPA *Asset Management Consultant*

Mr. Widenhouse has over 5 years of experience providing project management and technical support for various clients. He has been responsible for organization-wide implementations and providing expert guidance for customizations and change management. Services include CMMS implementation and project management, technical support, and needs assessment. Integration support includes integrations with external customer interaction portals and citizen engagement apps.

Summary of Skills

- Expertise in administration of Cityworks® PLL and AMS
- Expertise in implementing mobile/field technology
- Experience in integration with customer/citizen engagement applications
- Over 3 years of project management experience
- Expertise developing Crystal Reports using SAP Crystal Reports
- Database experience with SQL Server

Representative Projects

- City of Saratoga Springs, Cityworks® PLL Implementation for Stormwater Inspections for State Compliance.
- City of Rexburg, Cityworks® PLL Implementation and Paperless Initiative
- City of Saratoga Springs, CitySourced Citizen Engagement App integration and Implementation.
- City of Redlands, Fire Department Implementation via Cityworks® PLL
- City of Saratoga Springs, Cityworks® AMS Implementation for Sewer Main Flushings, Jettings, and Coordination with 3rd Party Inspections.
- City of Saratoga Springs, Cityworks® AMS Implementation for Water Meter Maintenance, Valve Turnings, Backflows, Well Maintenance, and Capital Projects.

IV. Scope of Work

A. INTRODUCTION

This scope of work identifies the tasks required for the successful implementation of Cityworks AMS. Miller Spatial Services (MSS) understands that the following requirements have been identified by the City, and will be included in implementation:

- Cityworks AMS will be configured for Sewer & Water (Optional) LGT (Local Government Templates) Service Requests, Work Orders, and Inspections. Including Employees, Material and Equipment.
- Cityworks AMS will be configured for 12 users and an administrator (as a part of the 5 users)
- Data Conversion/Linking to existing Cartegraph Data.
- Services for GraniteNet Integration for Cityworks.

The following tasks are included in this scope of work:

TASK 1: INITIAL CONFIGURATION MEETING

We will meet with city personnel to document information needed for the initial configuration of Cityworks AMS using the Local Government Templates (LGT). Information collected will include project team information contact information, the GIS data available and a list of users, and remote access details. This meeting will be on site at the City.

Deliverable Milestones:

- a. Meeting Notes

TASK 2: INITIAL CITYWORKS CONFIGURATION

Using the structure of the GIS database, we will configure the data and GIS layers into Cityworks. MSS will be utilizing Cityworks LGT workflows to align workflows with industry best practices for Sewer and Water (Optional).

The configured database and Cityworks software package (Cityworks Server AMS) will be installed remotely in the client's environment. Changes to the configuration can be made during this time.

MSS will install all software needed for Cityworks. The standard report templates will be configured for Cityworks. Saved searches for the reports below can be exported to Excel.

The following reports will be setup:

- Employee Actual Labor
- Employee Projected Labor
- Equipment Report
- Scheduled Inspections Report
- Inspection Summary Report
- Material Report
- Project Detail Report
- Service Request Listing
- Service Request Summary
- Work Order Details
- Work Order Listing
- Work Order Task Duration
- Work Order Task Duration Average By Type
- Work Order Summary by Type

Deliverable Milestones:

- a. Cityworks AMS Software installed on Server
- b. Initial Cityworks Configuration complete

TASK 3: STAFF CONFIGURATION REVIEW MEETING

MSS will review the configuration of Cityworks AMS with City staff. All functionality and workflows for Cityworks AMS will be reviewed. The goal of this meeting is for staff to learn enough to test the initial Cityworks configuration in order to provide feedback for necessary changes such as service request and work order types. After the meeting staff will be able to thoroughly test Cityworks AMS in their environment.

This task will take place onsite in a workshop-style meeting. It is recommended that the City start internal meetings first to look at their current workflows. Providing any written documents, work orders, service requests, service orders, inspection forms, etc. will greatly improve the quality of the conversion.

Deliverable Milestones:

- a. Workflow listings of processes that will be incorporated into Cityworks from existing workflows.
- b. Minutes of Meeting Notes

TASK 4: FINAL CITYWORKS CONFIGURATION

Changes to the Cityworks AMS configuration will be made based on staff findings during their testing of the initial Cityworks configuration. Once the configuration changes have been made, staff will be able to test the final configuration.

Deliverable Milestones:

- b. Asset Inventory Configuration
 - Assets for WO/SR/INs have been loaded into Cityworks and linked to the proper WO/SR/IN types
- c. GIS Integration
 - GIS data displays in Cityworks map
 - GIS assets can be attached to proper WO/SR/IN
 - GIS attributes can be updated through Cityworks
- d. Service Request, Work Order, Inspection Configuration
 - WO/SR, and Inspections work as defined in workflow meetings (Task 3) and LGT.
 - Basic user Inboxes are configured
 - Defined Users are able to login
- e. Workflow Implementation
 - Defined Workflows defined in Task 3 are being routed correctly in Cityworks
 - Mobile Devices in field can access Citywork's database
- f. Report configuration
 - Reports listed above are displaying correct information
 - Report user permissions are set correctly

TASK 5: CARTEGRAPH DATA LINKAGE IN CITYWORKS (OPTIONAL)

After the Cityworks configuration, we will provide Data Linking Services for the City to the Historical Cartegraph Work Order data. During the Initial Configuration meeting we will meet with City staff to determine the best approach to linking Cityworks to the existing Cartegraph Data

Deliverable Milestones:

- a. Customized Button in Cityworks linking Cityworks and Cartegraph Historical Data

TASK 6: GRANITENET CITYWORKS INTEGRATION IMPLEMENTATION (OPTIONAL)

After the Cityworks configuration and assuming GraniteNet has previously been setup by Cues, MSS will provide services to integrate GraniteNet software with the Cityworks implementation.

Deliverable Milestones:

- a. Cityworks integrated with previously installed and configured GraniteNet software platform.

TASK 7: TRAINING

MSS will provide onsite training for the primary, or “Administrator” users of Cityworks. The city will provide the training facility and computers necessary for staff use. This training can also be provided remotely if no training facility is available and it is more convenient for the City.

Following the training of Administrator users, MSS will conduct a “Train-the-Trainer” style session with key department staff. The purpose of this training is to provide knowledge and steps necessary to train all other field personnel who will use the system.

Training will occur over 3 days

Deliverable Milestones:

- a. Admin and User Training completed
- b. Copy of training material used in training session delivered in digital format (Microsoft Word)
- c. Go-live

TASK 8: IMPLEMENTATION CUSTOMIZATION (OPTIONAL)

This task will be used to provide services for customizing Cityworks such as customized inspections, forms and reports. MSS will work with the City in prioritizing customizations that can be done within the 20 budgeted hours.

Deliverable Milestones:

- a. 20 hours Implementation Customization

TASK 9: POST-INSTALLATION SUPPORT (OPTIONAL)

After the configuration, installation and training phases have concluded, we will provide troubleshooting and support services of up to 40 hours. This support will primarily be remote and take place offsite.

Deliverable Milestones:

- b. 40 hours Post-Installation support

TASK 10: CITYWORKS IMPLEMENTATION FOR WATER (SHUTOFFS AND WTP) (OPTIONAL)

Using the structure of the GIS database, we will configure the data and GIS layers into Cityworks. MSS will be utilizing Cityworks LGT workflows to align workflows with industry best practices for Water and WTP.

The standard report templates will be configured for Cityworks. Saved searches for the reports below can be exported to Excel.

Deliverable Milestones:

- a. Cityworks Configuration for WTP & Water Shutoffs
SR's complete

TASK 11: CITYWORKS INTEGRATION WITH EDEN (TYLER) (OPTIONAL)

Using the structure of the Cityworks Service Request API, we will configure Cityworks system to integrate with the Eden Work Order system. MSS will be utilizing Cityworks SR API to interface and work with the Meter Reads for meters

to go back and forth to Eden. Because of the uncertainty and unknowns of the Eden system, MSS will utilize a bucket of hours to pull from in order to accomplish this task not to exceed 120 hours.

Deliverable Milestones:

- a. Cityworks Configuration and Integration for Service Requests with Eden system.

V. Project Implementation Schedule

The schedule to complete this project is below.

We are prepared to begin work on this project Aug 1st upon your Authorization to Proceed and will coordinate with you, as required.

Task	Description	Month 1	Month 2	Month 3	Month 4
1	Initial Configuration Meeting				
2	Initial Cityworks Configuration				
3	Staff Configuration Review Meeting				
4	Final Cityworks Configuration				
5	Configuration and Setup for Cartegraph Linkage (Optional)				
6	GraniteNet Cityworks Integration (Optional)				
7	Training				
8	Implementation Customization (Optional)				(40 Hrs)
9	Post-Installation Support (Optional)				(40 Hrs)
10	Implementation for Water & WTP (Optional)				
11	Cityworks Integration with Eden (Tyler)				

Notes:

Task 3 schedule will be dependent on City staff availability to attend workflow meetings.

Task 9 will start once all deliverables are accepted under the scope of work and will continue until all hours are used.

VI. Cityworks Implementation Cost

A detail cost and Milestone billing schedule based on the scope of work is below. It is based on the completion of milestones in the agreed upon Scope of Work. The amounts for each task will be billed at the completion of the milestones.

Task	Milestone	Description	Total Cost
1		Initial Configuration Meeting	\$ 1,800
	a	Meeting Notes (1 Day On-Site)	
	b	(1 Additional Day if Task 10 is included) (Optional)	\$ 1,800
2		Initial Cityworks Configuration	\$ 15,000
	a	Software Installed on Server	
		Initial Cityworks Configuration Complete (Sewer)	
3		Staff Configuration Review Meeting	\$ 3,600
	a	Workflow listings of processes (2 Days On-Site)	
	b	Meeting Notes	
4		Final Cityworks Configuration	\$ 5,500
	a	Asset Inventory Configuration	
	b	GIS Integration	
	c	SR, WO, PM, Inspections	
	d	Workflow Implementation	
	e	Report Configuration	
5		Configuration and Setup for Cartegraph Linkage (Optional)	\$ 17,500
	a	Customized UI for Cityworks with History Button	
6		GraniteNet Cityworks Integration (Optional)	\$ 10,000
	a	GraniteNet Integration to Cityworks	
7		Training	\$ 9,000
		Admin/User Training (5 Days Onsite)	
	a	(Training for Task 10 Included)	
	b	Go-live	
8		Implementation Customization (Optional)	\$ 3,000
	a	20 hours implementation customization. Billed time & material	
9		Post-Installation Support (Optional)	\$ 6,000
	a	40 hours Post-Installation support. Billed time & material	
10		Water & WTP Cityworks Configuration (Optional)	\$ 30,000
	a	Cityworks configuration for Water (Shutoffs) and WTP. Connecting GIS layers to Cityworks and configuring functionality and workflows.	
11		Cityworks Integration with Eden (Tyler)	\$ 22,200

- a Cityworks Integration using Cityworks Service Request API to interface with Eden Work Order system. (Billed Hourly: Max 120 Hours - Developer Rate)

Total	\$	34,900
Optional Costs	\$	90,500

Total Cityworks Implementation Project Cost (Including Optional Tasks: **Not to exceed \$125,400**

Tasks 1 through 7 & 10 will be billed fixed fee and include travel costs.
Tasks 8 and 9 will be billed based on Time and Materials. The following rate schedule will be used:

- Cityworks Implementer/Project Manager \$150/hour
- Developer \$185/hour

Assumptions:

- Cityworks AMS will only be configured for Service Requests, Work Orders, and Inspections
- Cityworks will be configured for up to 12 users and an administrator
- GraniteNet software will be previously installed and setup.
- Eden Integration, Assumes Cityworks Service Request API has been purchased.

Miller Spatial Services, LLC

Bruce Miller, GISP
Founder/President

3499 10th Street
Riverside, CA 92501
www.MillerSpatial.com

E: brucemiller@MillerSpatial.com
P: 951-505-9276





Azteca Systems, LLC
11075 South State Street, Suite 24
Sandy, UT 84070
Corporate Main 801-523-2751
Corporate Fax 801-523-3734

Pricing Quotation

Quote Number	00002390	Created Date	9/12/2018
		Expiration Date	12/31/2018

Contact Info

Company Name	City of Pittsburg, CA	Prepared By	Emily Davies
		Email	edavies@cityworks.com

Product Code	Product	Line Item Description	Quantity	Sales Price	Total Price
CW.AMSWGS.5PK	Server AMS Standard Workgroup Starter 5-Pack		1.00	\$9,000.00	\$9,000.00
CW.AMSWGS.6Plus	Server AMS Standard Workgroup Logins 6+	Logins 6-12 discounted years 1 and 2. Pricing schedule shown below.	7.00	\$500.00	\$3,500.00
CW.AMSWGS.6Plus	Server AMS Standard Workgroup Logins 6+		2.00	\$1,200.00	\$2,400.00
CW.SUBWOAPI.0002	Work Order API - Extended	Discounted for for use with GraniteNET Integration only	1.00	\$19,000.00	\$7,600.00
CW.SUBINSPAPI.0001	Inspection API	Discounted for for use with GraniteNET Integration only	1.00	\$6,000.00	\$2,400.00
			Total Price	\$24,900.00	
			Grand Total	\$24,900.00	

Support Period Notes and Amounts

Support Notes #1	10/15/2018 - 10/14/2019 14 AMS Logins with Discount + GraniteNet APIs (\$14,900 + 10,000)	Support Amount	\$24,900 - -
Support Notes #2	10/15/2019 - 10/14/2020 14 AMS Logins with Discount + GraniteNet APIs (\$17,400 + \$10,000)	Support Amount	\$27,400 - -
Support Notes #3	10/15/2020 - 10/14/2021 14 AMS Logins + GraniteNet APIs (\$19,800 + \$10,000)	Support Amount	\$29,800 - -

Notes

Quote Notes Workgroup Server AMS Standard 14 Named Logins for:
Office
Tablet
Respond
Mobile Native Apps (for iOS/Android)

--Includes the following Add-ons:
Work Order API - Extended for use with GraniteNet Integration only
Inspection API for use with GraniteNet Integration only
Web Hooks
Local Government Templates (LGT)
Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners



Azteca Systems, LLC
11075 South State Street, Suite 24
Sandy, UT 84070
Corporate Main 801-523-2751
Corporate Fax 801-523-3734

AZTECA SYSTEMS QUOTATION TERMS AND CONDITIONS COPYRIGHT 1995 - 2018

All quotations are valid for ninety-days (90) from the date above, unless otherwise stated in this quotation form. All prices quoted are in USD, unless specifically provided otherwise, above. These prices and terms are valid only for items purchased for use and delivery within the United States.

Unless otherwise referenced, this quotation is for the Cityworks software referenced above only. Pricing for implementation services (installation, configuration, training, etc.), or other software applications is provided separately and upon request.

The procurement, installation and administration of the Esri software utilized in conjunction with Cityworks will be the responsibility of the customer.

The procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the customer. Currently, Cityworks supports Oracle and SQL Server.

The procurement, installation and administration of the infrastructure (hardware and networking) utilized in conjunction with Cityworks will be the responsibility of the customer.

This quotation information is confidential and proprietary and may not be copied or released other than for the express purpose of the current system selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, LLC.

Order Process

The order process is initiated when Azteca Systems receives either a Purchase Order with invoicing instructions or some form of advance payment. Additional documents will be required including, the Cityworks Software License Agreement, Addendums to the software license agreement, and Cityworks Site Profile to complete your order. The need for these documents may vary by the type of software ordered or generally accepted industry practices. Please consult your Account Representative for assistance. If delivery must be expedited, please notify your Account Representative.

To expedite your order, please reference this quotation number.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense, and is subject to the terms and conditions of the "Cityworks Software License Agreement" and any and all addendums or amendments thereto. A fully executed copy of the Software License Agreement and any addendum(s) is required before delivery and installation.

These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee, client, licensee, or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Delivery

Allow thirty-days (30) from Azteca System's receipt of the Purchase Order, signed Software License Agreement, Maintenance Addendum, and other documents, as required.

Delivery method is by way of download through Azteca Systems, LLC customer support web portal.

Payment Terms

Net thirty (30) days.

Taxes

Prices quoted do not include any applicable state, sales, local, or use taxes unless so stated. In preparing your budget and/or Purchase Order, please allow for any applicable taxes, including, sales, state, local or use taxes as necessary. Azteca Systems reserves the right to collect any applicable sales, use or other taxes assessed by or as required by law. Azteca Systems reserves the right to add any applicable tax to the invoice, unless proof with the order is shown that your organization or entity is tax exempt or if it pays any applicable tax directly.

Accepted by: _____

Title

_____/_____/_____
Date

CITYWORKS® LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement made by and between Azteca Systems, LLC (“Azteca Systems”) a Delaware limited liability company, with a place of business at 11075 South State, Suite 24, Sandy, Utah 84070 USA and [____], using certain of Azteca Systems Licensed Products hereinafter referred to as “Licensee.” This Agreement is effective immediately upon delivery of Licensed Products (the “Effective Date”).

Azteca Systems Products are licensed under the terms and conditions of the Agreement. This agreement, when executed by the licensee named below (“Licensee”) and Azteca Systems, LLC (Azteca Systems), as licensor of the Software, Online, Services, and Documentation licensed under the License Agreement, will supersede any previous Agreements including the License Agreement presented in the installation process requiring acceptance by electronic acknowledgement and will constitute a signed License Agreement.

This signed Agreement includes (i) this License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support and (iv) Addendum #3 – Third Party Contractor Acknowledgment.

This signed Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party’s original signature is not delivered.

ARTICLE 1—DEFINITIONS

1.1 Definitions. The terms used are defined as follows:

- a. "Agreement" means this Software License Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee’s employees; (ii) Licensee’s consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software’s public web portal (if applicable). Other than limited use of the Products through the software’s web portal, the public is not considered an authorized user.
- d. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- e. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.
- f. "Deployment Server License" means a license that, in addition to providing staging server License rights, authorizes Licensee to install and use the Software for deployment in Licensee’s internal use.
- g. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee’s internal use to provide testing License rights prior to deployment.
- h. "Documentation" means all user reference documentation that is delivered with the Software.
- i. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee’s internal operations but does not include access of the Licensed Products by, or use of the Licensed Products in the provisions of services to, Licensee’s clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.
- j. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the

Documentation to which Licensee has purchased a License as identified as specified in Addendum #1 attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software, Online Services, and Documentation licensed under the terms of this license Agreement.

- k. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
- l. "Online Services" means any Internet-based system, including applications and associated APIs, hosted by Azteca Systems or its licensors, for storing, managing, publishing, and using Cityworks software and data, and other information.
- m. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- n. "Preview" means any alpha, beta, or prerelease Product.
- o. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
- p. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- q. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, updates, upgrades, and service packs.
- r. "Standard Maintenance" or "Maintenance Addendum" shall mean the Standard Software Maintenance & Support Addendum #2.
- s. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Products are licensed, not sold. Azteca Systems and its licensors own Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. This Agreement does not transfer ownership rights of any description in the Software, materials, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. Azteca Systems and its third-party licensors reserve all rights not specifically granted in this Agreement including the right to change and improve Products.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms of this Agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in Addendum #1 – Product Licensing (i) for which the applicable license fees have been paid; (ii) for Licensee's own internal use; and (iii) in accordance with this Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems; and (iv) for the applicable Term or until terminated in accordance with Article 5. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) Licenses. Licensee may allow Third Party Contractors to access and use the licensed Software, provided Licensee and Third Party Contractor agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum #1 – Product Licensing which applies to specific Products, Addendum #2 – Standard Maintenance and Support, and Addendum #3 – Third Party Contractor Acknowledgment (if applicable) collectively, are incorporated in this Agreement.

- a. *Software.* Use and License for specific Software products are set forth in Addendum 1- Product Licensing Addendum, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum 2, - Standard Maintenance and Support which terms are incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third Party Contractor software usage (if applicable) are set forth in Addendum #3, which is incorporated by reference.

3.2 Preview Release Licenses. Products acquired under an evaluation license or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Licensee's own risk, and the Products do not qualify for Azteca or distributor maintenance.

3.3 Special Use Programs. If Licensee acquires Products under a special program for noncommercial, nonprofit, educational, or other limited-use license, Licensee's use of the Products is subject to the terms set forth in the applicable enrollment form or as described on Azteca's website in addition to the non-conflicting terms of this Agreement. All such program terms are incorporated herein by reference.

3.4 Delivery. Unless otherwise requested by Licensee, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Property by electronic download and a license key to activate the Licensed Property.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. For Products delivered to Licensee, Licensee may:
 1. Install and store Products on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity; and
 4. Move the Software in the licensed configuration to a replacement Server.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this License Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Azteca Systems, LLC. and its licensors. All rights reserved."
- c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum #3, Azteca Systems grants Licensee the right to permit Licensee's Third Party Consultants or Contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum #3 and provide a copy to Azteca. Licensee shall be solely responsible for compliance by Third Party Consultants and Contractors with this License Agreement and shall ensure that the Third Party Consultant or Contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by Third Party Consultants or Contractors not exclusively for Licensee's benefit is prohibited.

4.2 Uses Not Permitted. Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not:

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Products;
- b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Redistribute Authorization Codes;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;

- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- k. Separate from the licensed use of APIs, Licensee may not unbundle or independently use individual or component parts of the Products, Software, or Online Services;
- l. Unbundle or independently use the individual or component parts of Software or Online Services;
- m. Incorporate any portion of the Software into a product or service that competes with the Software;
- n. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or
- o. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

ARTICLE 5—TERM AND TERMINATION

5.1. This License Agreement is effective upon date and signature of Licensee below. The initial term of this License Agreement will begin upon the dates set forth in Addendum 1 and provided the fees are paid. This License agreement and its maintenance provisions may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum 1.

5.2. Either party may terminate this License Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure.

5.3. Termination for Convenience: Either party may terminate this Agreement by giving the other party thirty (30) days' written notice prior to the end of the current Term Maintenance Period.

5.4. In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to normal completion, the parties shall have the authority to exercise the Termination for Convenience option to terminate this Agreement in whole or in part. If a party to this Agreement chooses to terminate for convenience that party may do so by thirty (30) days' written notice to the other party.

5.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

5.6. If this Agreement is terminated for convenience, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance and support services rendered or products and software received and accepted prior to the effective date of termination.

5.7. If this Agreement is terminated under section 5.3 or 5.4 above, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then for no additional charge to Licensee and at Licensee's option either grant a license to the Licensee, for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software or allow Licensee to create digital copies of all files needed by the Licensee for the same period. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

5.8. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems

shall remain in force should breach or termination of any kind occur.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided in this Article 6, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

6.2 Special Disclaimer. CONTENT, DATA, SAMPLES, NEW VERSIONS, HOT FIXES, PATCHES, SERVICE PACKS, UPDATES, UPGRADES, AND ONLINE SERVICES PROVIDED ON A NO-FEE BASIS, AND EVALUATION, TEST AND BETA SOFTWARE ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND.

6.3 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES.

6.4 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, AZTECA SYSTEMS DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. AZTECA SYSTEMS DOES NOT WARRANT THAT PRODUCTS, MAINTENANCE OR ANY TECHNICAL SUPPORT SERVICES PROVIDED HEREIN WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. LICENSEE SHOULD NOT FOLLOW ANY SUGGESTIONS OR INSTRUCTIONS THAT APPEAR TO BE HAZARDOUS, UNSAFE, OR ILLEGAL. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.5 Exclusive Remedy. Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Azteca Systems' sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Azteca Systems Maintenance Services and Support Addendum; or (iii) return of the license fees paid by Licensee for the current period, prorated for the current period, for Software or Online Services that do not meet Azteca Systems limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

6.6 If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure delivery of parts, supplies, services, or power; war, threat of actual terrorist act, cyberattack, or other violence; any law order, proclamation, regulation, ordinance, or demand; or any condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention interference, or restriction.

ARTICLE 7—LIMITATION OF LIABILITY

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THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. AZTECA SYSTEMS DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

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8.1 Azteca Systems shall defend, indemnify as described below, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, arising out any claims, actions, or demands by a third party legally alleging that Licensee's licensed use of Software or Online Services infringe a US patent, copyright, or trademark, provided:

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- b. Licensee provides documents describing the allegations of infringement;
- c. Azteca Systems has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
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9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

9.3 Taxes and Fees, Shipping Charges. License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this License Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this License Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding on the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this License Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this License Agreement.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement, and the provisions of section 4.1 of Addendum 2, shall survive the expiration or termination of this License and Maintenance Agreement.

9.8 Equitable Relief. Licensee agrees that any breach of this License Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Azteca Systems shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

9.9 US Government Licensee. The Products are commercial items, developed at private expense, provided to Licensee under this License Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this License Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

9.10 Governing Law, Disputes, and Arbitration. This License Agreement shall be governed by and construed

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- *Consultation and negotiation in good faith and a spirit of mutual cooperation;*
- Mediation, by a mutually acceptable mediator chosen by the parties, which cost is shared equally;
- If the matter cannot be settled through negotiation or mediation, then it shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. If Licensee is a US government agency, this License Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613), in lieu of the arbitration provisions of this clause. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

9.11 Maintenance. Maintenance for qualifying Software consists of updates and other benefits, such as access to technical support, are provided during the Term of Use. Maintenance is specified as set forth in Addendum #2.

9.12 Feedback. Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Cityworks Software or Products, and any related intellectual property, are owned by Azteca Systems.

9.13 Patents. Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

9.14 Entire Agreement. This License Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this License Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed and made effective by their respective authorized representatives.

AZTECA SYSTEMS, LLC

[ENTITY NAME] – (LICENSEE)

By: _____

By: _____

Name: Brian L. Haslam

Name: _____

Title: President - CEO

Title: _____

Date: ____/____/____

Date: ____/____/____

ADDENDUM #1

PRODUCT LICENSING

1. **Licensed Software:**

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2. **Notices & Licensee Information: Until or unless otherwise, modified, all notices relevant to this agreement shall be sent to the following address:**

Azteca Systems, LLC 11075 South State, Suite 24 Sandy, Utah 84070	[Licensee]
	Attn:
	Phone
	E-mail

3. **Delivery Date/Effective Date of Software**

MM/DD/YYYY

4. **Schedule of Payments and Fees under License and Maintenance Agreement**

Support Period	Date From/To (mm/dd/yyyy)	Amount
Period 1		\$
Period 2		\$
Period 3		\$

5. **Additional**

Updates to the above licensed software means a subsequent release of the program which Azteca generally makes available to its supported customers as part of the annual maintenance plan for which fees have been paid.

Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed above changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license fees have been paid.

Updates may not always include any release, option or future program that Azteca licenses separately. Updates are provided when available (as determined by Azteca). Azteca is under no obligation to develop any future programs or functionality. Any updates made available will be delivered to you, or made available to you for download. You shall be responsible for copying, downloading and installing the updates.

ADDENDUM #2

STANDARD MAINTENANCE AND SUPPORT

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca, Systems, LLC. Maintenance and Support are provided subject to the terms and conditions of the signed License Agreement and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT:** Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support Services consist of the following benefits: Technical support, new version software, service packs, software upgrades, and software updates.

1.1. Azteca Systems will ensure upward compatibility for the Covered Software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for Covered Software Applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

- (a) Software Updates. Software Updates includes Upgrades and service packs which are a collection of files that enhance or correct the Covered Software and which will be available for Licensee to download during the Maintenance Term/Period. Updates and Upgrades may also include new versions;
- (b) Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
- (c) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee's systems in order to perform thorough remote diagnostics.

1.3 The following items, among others, however, are specifically excluded as support services under this section of this Maintenance and Support:

- (a) Support for applying or installing upgrades and service packs;
- (b) Assistance with questions related to third party software, computer hardware, networking, and other similar items that are not provided by Azteca;
- (c) Assistance with computer operating system questions not directly pertinent to the Covered Software or Program Modifications;
- (d) Licensee Data debugging and/or correcting;
- (e) Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the Covered Software, including but not limited to neglect, abuse, unauthorized modifications and/or unauthorized updates;
- (f) Consulting regarding customizations created to function with the Covered Software unless the customization is identified and listed as Covered Software in Addendum 1;
- (g) Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
- (h) Questions such as configuration, implementation and walk-throughs.

1.4 Support Periods are renewable unless terminated as provided in Section 4 below. The Maintenance Services consists of software and documentation updates and access to technical support via telephone, email, web-based (www.MyCityworks.com) and after hours support as set forth in Section 1 of this Addendum.

1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers.** Licensee may designate a limited number of authorized callers per software product listed in Addendum 1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal.** Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at <http://www.mycityworks.com>.

2. PROCEDURES FOR ACCESSING SUPPORT:

2.1. All problem categories from routine, non-critical and critical that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within 4 hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur with the System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide, an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number or pager number that will forward the call to the currently assigned Azteca Systems support representative. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within 4 hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems Licensee will submit support requests during normal business hours as outline in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.

3. **CHARGES/FEES**

3.1. License, Maintenance and Support Services herein are included in the payment of annual fees as set forth in Addendum #1, and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1, and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum 1 subsequent to year three (3) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. Azteca Systems will notify Licensee of the new pricing no later than ninety (90) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration.** Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. Azteca Systems will continue to provide technical support for an additional thirty (30) days, but Licensee will no longer receive Software updates released after the Maintenance term's expiration. If Licensee does not reinstate Maintenance within thirty (30) days of the expiration date, Licensee will no longer receive technical support. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance.** Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

4. **MISCELLANEOUS**

4.1. **Data Confidentiality Statement:** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing The Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

4.2. **No Implied Waivers:** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems

ADDENDUM #3

THIRD PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Licensee engages any Third Party Contractor and desires to grant access to or permission to use the licensed software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by any third party is solely for Licensee's benefit;
2. The Third Party Contractor (or, if applicable, its employee) shall be considered, as applicable, the Authorized User for purposes of the applicable license type, and all use by such contractor shall be in accordance with the terms and conditions of the License and Maintenance Agreement;
3. Before accessing the Licensed Products, the Third Party Contractor agrees in writing that (a) the software shall be used solely in accordance with the terms of this Agreement and solely for Licensee's benefit and (b) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be liable for any and all actions or omissions of the Third Party Contractor with respect to the use of the Licensed Products, as if such actions or omissions were the Licensee's;
5. Upon expiration or termination of this License Agreement, the rights of usage to any Third Party Contractor shall immediately terminate;
6. Use of the Software by such Third Party Contractors on Licensee's behalf will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by such contractor;
7. Any breach of this Agreement by any Third Party Contractor(s) will be deemed to be a breach by Licensee;
8. Licensee will ensure that Third Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee; and
9. Any Third Party Contractor must sign a copy of this Addendum acknowledging that it has a copy of the License Agreement and agrees to the terms herein, further Licensee shall provide a signed copy of this Addendum for every Third Party contractor to which it has granted permission to access and/or use the licensed software;

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third-Party Contractor acknowledges acceptance by signing below, and providing a copy to Azteca Systems at contracts@cityworks.com.

Third Party Contractor Name (Print)

By: _____
Authorized Signature

Date: _____



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/18/2018
TO: Mayor and Council Members
FROM: Joe Sbranti, City Manager
SUBJECT: Adoption of a City Council Resolution to Create a Master Pay Schedule as Required by California Public Employees' Retirement System
MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

To comply with CalPERS' interpretation of the requirements of Code of Regulations section 570.5 by affirming the single master pay schedule already on the City's website representing all previously approved actions on the individual classifications of the pay schedule. The single master salary schedule will be submitted to Council for approval each time any single MOU or compensation plan is brought to the City Council for approval.

FISCAL IMPACT

The affirmation of previously approved separate pay schedules as a single master pay schedule has no fiscal impact to the City for preparation or distribution, as the actions already occurred.

RECOMMENDATION

The City Council adopt a resolution creating and affirming the City of Pittsburg's master pay schedule for all employee classifications, so the City is in compliance with the requirements of the California Code of Regulations section 570.5 and the California Public Employees' Retirement System (CalPERS) relating to publically available pay schedules for purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1.

BACKGROUND

CalPERS, pursuant to their interpretation of California Code of Regulations section 570.5, recommends all CalPERS employers to maintain their compensation levels in one publicly available document, approved and adopted by the governing body, which must meet all of the following requirements:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identifies the position title for every employee position;
- Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates an effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years; and
- Does not reference another document in lieu of disclosing the pay rate.

Currently, the City attaches salary schedule information by represented bargaining group to the memorandum of understanding (MOU) governing each bargaining group, and for unrepresented employees includes such salary information in compensation plans approved by City Council. Following City Council approval of these various salary schedules, the approved schedules are incorporated into one master salary schedule. However, this master salary schedule has customarily not been approved by Council as a single document, even though it contains the collective salary information derived from individual MOUs which have been approved by Council. As such, the recommendation to list compensation levels for all positions on one document duly approved and adopted by the Council has not been satisfied consistent with CalPERS' interpretation of California Government Code of Regulations section 570.5.

SUBCOMMITTEE FINDINGS

Not applicable.

STAFF ANALYSIS

The adoption of the resolution will comply with CalPERS' interpretation of the requirements of Code of Regulations section 570.5 by affirming the single master pay schedule already on the City's website representing all previously approved actions on the individual classifications of the pay schedule.

ATTACHMENTS: Resolution, Salary Schedule

Report Prepared By: Griselda Clift, Senior Human Resources Analyst

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Affirming)
Previously Adopted Employee Pay and Listing) Resolution No. 18-
All Employee Compensation Levels on a)
Publicly Available Master Pay Schedule)

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, the California Public Employees' Retirement System (CalPERS), has requested all CalPERS employers list their compensation levels on one document, approved and adopted by the governing body, in accordance with California Code of Regulations section 570.5, and meeting all of the following requirements thereof:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identifies the position title for every employee position;
- Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates an effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years; and
- Does not reference another document in lieu of disclosing the pay rate; and

WHEREAS, the City now desires to affirm previously approved compensation levels for all bargaining groups and all compensation plans of the City of Pittsburg in one publicly available master pay schedule;

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. The recitals set forth above are true and correct statements and are hereby incorporated.

Section 2. The City Council adopt this Resolution affirming previously approved compensation levels for all bargaining groups and all compensation plans of the City of Pittsburg in one publicly available master pay schedule.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

Dwaine "Pete" Longmire, Mayor

Alice E. Evenson, City Clerk

CLASSIFICATION	RANGE	START	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Max/w incentives	UNIT
Account Clerk (Part 1 of 2)	109	07/01/18	3,719	3,905	4,100	4,305	4,520			4,570	AFSCME
Account Clerk (Part 2 of 2)	170	07/01/18	4,266	4,479	4,703	4,938	5,185			5,235	AFSCME
Accountant I	350	07/01/18	5,639	5,921	6,217	6,528	6,854			6,904	MPC
Accountant II	500	07/01/18	6,312	6,628	6,959	7,307	7,672			7,722	MPC
Accounting Technician	220	07/01/18	4,981	5,230	5,492	5,767	6,055			6,105	AFSCME/MPC
Administrative Analyst I	390	07/01/18	5,826	6,117	6,423	6,744	7,081			7,131	MPC
Administrative Analyst II	700	07/01/18	6,746	7,083	7,437	7,809	8,199			8,249	MPC
Administrative Assistant (Part 1 of 2)	100	07/01/18	3,711	3,897	4,092	4,297	4,512			4,562	AFSCME
Administrative Assistant (Part 2 of 2)	160	07/01/18	4,297	4,512	4,738	4,975	5,224			5,274	AFSCME/MPC
Administrative Officer	860	07/01/18	9,137	9,594	10,074	10,578	11,107			11,157	MPC
Administrative Specialist	290	07/01/18	5,324	5,590	5,870	6,164	6,472			6,522	MPC
Assistant City Engineer	920	07/01/18	10,272	10,786	11,325	11,891	12,486			12,536	MPC
Assistant City Manager	950	07/01/18	14,384				18,356			18,356	Sr. Exec Team
Assistant Director of Economic Development and Recreation	887	07/01/18	10,439				12,687			12,687	Mgmt Group
Assistant Director of Finance	887	07/01/18	10,439				12,687			12,687	Mgmt Group
Assistant Director of Public Works	895	07/01/18	11,195	11,755	12,343	12,960	13,608			13,658	MPC
Assistant Planner	450	07/01/18	6,212	6,523	6,849	7,191	7,551			7,979	MPC
Assistant to the City Manager	835	07/01/18	10,027				12,187			12,187	Mgmt Group
Associate Planner	740	07/01/18	7,191	7,551	7,929	8,325	8,741			9,228	MPC
Building Inspection Supervisor	810	07/01/18	8,755	9,193	9,653	10,136	10,643			10,693	MPC
Business Development Manager	860	07/01/18	9,137	9,594	10,074	10,578	11,107			11,157	MPC
Business License Coordinator	315	07/01/18	5,500	5,775	6,064	6,367	6,685			6,735	AFSCME
Chief Building Official	895	07/01/18	11,195	11,755	12,343	12,960	13,608			13,658	MPC
Chief of Police	955	07/01/18	14,656				18,528			22,512	Sr. Exec Team
City Attorney	943	07/01/18					15,417			15,417	Contract
City Clerk							470			470	Elected Official
City Council							500			500	Elected Official
City Council -- member of a different governing board											
if serving on Tri Delta Transit		\$100 per meeting		visit www.TriDeltaTransit.com							
if serving on Delta Diablo Sanitation District		\$209 per meeting			visit ddsd.org						
City Engineer	935	07/01/18	11,176				13,583			13,583	Mgmt Group
City Manager	960	07/01/18					22,017			22,017	Contract
City Treasurer							470			470	Elected Official
Civil Engineer I	510	07/01/18	6,494	6,819	7,160	7,518	7,894			8,339	MPC
Civil Engineer II	780	07/01/18	7,519	7,895	8,290	8,705	9,140			9,647	MPC
Combination Building Inspector	520	07/01/18	6,522	6,848	7,190	7,549	7,926			7,976	AFSCME
Community Outreach Coordinator	315	07/01/18	5,500	5,775	6,064	6,367	6,685			6,735	AFSCME
Community Relations Manager	700	07/01/18	6,746	7,083	7,437	7,809	8,199			8,249	MPC
Community Services Specialist	258	07/01/18	5,184	5,443	5,715	6,001	6,301			6,351	AFSCME
Compliance Principal	830	07/01/18	8,261	8,674	9,108	9,563	10,041			10,593	MPC
Contract Analyst	390	07/01/18	5,826	6,117	6,423	6,744	7,081			7,131	MPC
Crime Analyst	700	07/01/18	6,746	7,083	7,437	7,809	8,199			8,249	MPC
Customer Service Representative	95a	07/01/18	3,372	3,541	3,718	3,904	4,099			4,149	AFSCME

*Please see Benefit Matrix for education incentives, holiday pay and shift differential.

Council Approved on: 8/6/18; 8/20/18; 9/17/18; 10/15/18; 11/5/18

CLASSIFICATION	RANGE	START	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Max/w incentives	UNIT
Deputy City Clerk	330	07/01/18	5,590	5,870	6,164	6,472	6,796			6,846	MPC
Development Manager	890	07/01/18	10,272	10,786	11,325	11,891	12,486			12,536	MPC
Director of Community Development	940	07/01/18	12,300				15,547			15,547	Sr. Exec Team
Director of Community Services	940	07/01/18	12,300				15,547			15,547	Sr. Exec Team
Director of Finance	940	07/01/18	12,300				15,547			15,547	Sr. Exec Team
Director of Human Resources	940	07/01/18	12,300				15,547			15,547	Sr. Exec Team
Director of Public Works	945	07/01/18	13,292				16,158			16,158	Sr. Exec Team
Director of Records and Council Services	8351	07/01/18	10,027				12,187			12,187	Sr. Exec Team
Director of Recreation and Maintenance Serv	920	07/01/18	11,176				13,583			13,583	Mgmt Group
Director of Water Utilities	935	07/01/18	12,792				15,547			15,547	Mgmt Group
Electrician	420	07/01/18	6,011	6,312	6,628	6,959	7,307			7,892	Teamsters
Electrician Apprentice	200	07/01/18	4,801	5,041	5,293	5,558	5,836			6,128	Teamsters
Engineering Analyst	820	07/01/18	7,809	8,199	8,609	9,039	9,491			9,541	MPC
Engineering Technician I	310	07/01/18	5,444	5,716	6,002	6,302	6,617			6,667	AFSCME
Engineering Technician II	460	07/01/18	6,304	6,619	6,950	7,297	7,662			7,712	AFSCME
Environmental Affairs Manager	890	07/01/18	10,272	10,786	11,325	11,891	12,486			12,536	MPC
Environmental Health Specialist	470a	07/01/18	6,243	6,555	6,883	7,227	7,588			7,638	AFSCME
Equipment Mechanic	270	07/01/18	5,310	5,576	5,855	6,148	6,455			6,971	Teamsters
Equipment Shop Supervisor	530	07/01/18	6,601	6,931	7,278	7,642	8,024			8,074	MPC
Executive Assistant	400	07/01/18	5,871				7,136			7,136	Mgmt Group
Executive Secretary to the Chief of Police	330	07/01/18	5,590	5,870	6,164	6,472	6,796			6,846	MPC
Finance Division Manager	855	07/01/18	8,985	9,434	9,906	10,401	10,921			10,971	MPC
Financial Analyst	580	07/01/18	7,083	7,437	7,809	8,199	8,609			8,659	MPC
GIS Coordinator	760	07/01/18	7,328	7,694	8,079	8,483	8,907			8,957	MPC
Harbormaster	830	07/01/18	8,261	8,674	9,108	9,563	10,041			10,091	MPC
Housing Inspector	315	07/01/18	5,500	5,775	6,064	6,367	6,685			6,735	AFSCME
Housing Manager	855	07/01/18	8,985	9,434	9,906	10,401	10,921			10,971	MPC
Housing Specialist	210	07/01/18	4,898	5,143	5,400	5,670	5,954			6,004	AFSCME
Human Resources Analyst	700	07/01/18	6,746	7,083	7,437	7,809	8,199			8,249	MPC
Human Resources Manager	890a	07/01/18	10,027				12,187			12,187	Mgmt Group
Human Resources Specialist	330	07/01/18	5,590	5,870	6,164	6,472	6,796			6,846	MPC
Information Technology Manager	855	10/01/18	8,985	9,434	9,906	10,401	10,921			10,971	MPC
Finance Division Manager	855	07/01/18	8,985	9,434	9,906	10,401	10,921			10,971	MPC
Lead Community Services Specialist	415	07/01/18	6,001	6,301	6,616	6,947	7,294			7,344	AFSCME
Lead Marina Services Worker	320	07/01/18	5,558	5,836	6,128	6,434	6,756			7,094	Teamsters
Lead Police Records Clerk	255	07/01/18	5,225	5,486	5,760	6,048	6,350			6,400	AFSCME
Lead Public Works Superintendent	885	07/01/18	10,685	11,219	11,780	12,369	12,987			13,037	MPC
Maintenance Assistant	95	07/01/18	3,372	3,541	3,718	3,904	4,099			4,304	Teamsters
Maintenance Lead Worker - Env. Services/Fac.	320	07/01/18	5,558	5,836	6,128	6,434	6,756			7,296	Teamsters
Maintenance Worker I - Env. Services/Fac. U	140	07/01/18	4,148	4,355	4,573	4,802	5,042			5,445	Teamsters
Maintenance Worker II - Env. Services/Fac. U	200	07/01/18	4,801	5,041	5,293	5,558	5,836			6,303	Teamsters
Marina Maintenance Worker	140	07/01/18	4,148	4,355	4,573	4,802	5,042			5,294	Teamsters
Office Assistant	95a	07/01/18	3,372	3,541	3,718	3,904	4,099			4,149	AFSCME
Payroll Specialist	330	07/01/18	5,590	5,870	6,164	6,472	6,796			6,846	MPC
Permit Technician	260	07/01/18	5,253	5,516	5,792	6,082	6,386			6,436	AFSCME

*Please see Benefit Matrix for education incentives, holiday pay and shift differential.

Council Approved on: 8/6/18; 8/20/18; 9/17/18; 10/15/18; 11/5/18

CLASSIFICATION	RANGE	START	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Max/w incentives	UNIT
Pest Control Specialist	470	07/01/18	6,243	6,555	6,883	7,227	7,588			7,967	Teamsters
Planning Manager	890	07/01/18	10,272	10,786	11,325	11,891	12,486			12,536	MPC
Planning Technician	260	07/01/18	5,253	5,516	5,792	6,082	6,386			6,436	AFSCME
Police Captain	650	07/01/18	12,419	13,040	13,692	14,377	15,096	15,850		20,050	PMG
Police Evidence Technician	260	07/01/18	5,253	5,516	5,792	6,082	6,386			6,436	AFSCME
Police Lieutenant	640	07/01/18	10,827	11,368	11,937	12,533	13,160	13,818		17,480	PMG
Police Officer	600	07/01/18	5,906	6,201	6,511	6,837	7,178	7,537	7,914		POA
Police Officer (Continuation of Steps)	600	07/01/18						8,310 (H)	8,725 (I)	12,782	POA
Police Records Clerk (Part 1 of 2)	110	07/01/18	3,898	4,093	4,298	4,513	4,739			4,789	AFSCME
Police Records Clerk (Part 2 of 2)	180	07/01/18	4,512	4,738	4,975	5,224	5,485			5,535	AFSCME
Police Records Supervisor	540	07/01/18	6,590	6,920	7,266	7,629	8,010			8,060	MPC
Police Sergeant	625	07/01/18	8,389	8,809	9,249	9,711	10,197	10,707		15,686	POA
Police Services Administrator	830	07/01/18	8,261	8,674	9,108	9,563	10,041			10,091	MPC
Power Company Manager	920a	07/01/18	11,176				13,583			13,583	Mgmt Group
Property and Evidence Coordinator	410	07/01/18	5,999	6,299	6,614	6,945	7,292			7,342	AFSCME
Public Works Superintendent	880	07/01/18	9,230	9,691	10,176	10,685	11,219			11,269	MPC
Public Works Supervisor	530	07/01/18	6,601	6,931	7,278	7,642	8,024			8,074	MPC
Purchasing Analyst	720	07/01/18	7,037	7,389	7,758	8,146	8,553			8,603	MPC
Records Specialist	330	07/01/18	5,590	5,870	6,164	6,472	6,796			6,846	AFSCME
Recreation Coordinator	230	07/01/18	5,055	5,308	5,573	5,852	6,145			6,195	AFSCME
Recreation Supervisor	550	07/01/18	6,603	6,933	7,280	7,644	8,026			8,076	MPC
Redevelopment Project Manager	820	07/01/18	7,809	8,199	8,609	9,039	9,491			9,541	MPC
Revenue Operations Supervisor	745	10/15/18	7,238	7,600	7,980	8,379	8,798			8,848	
Senior Administrative Analyst	820	07/01/18	7,809	8,199	8,609	9,039	9,491			9,541	MPC
Senior Civil Engineer	860	07/01/18	9,137	9,594	10,074	10,578	11,107			11,157	MPC
Senior Combination Building Inspector	760	07/01/18	7,328	7,694	8,079	8,483	8,907			8,957	MPC
Senior Financial Analyst	790	07/01/18	8,200	8,610	9,040	9,492	9,967			10,017	MPC
Senior Human Resources Analyst	820	07/01/18	7,809	8,199	8,609	9,039	9,491			9,541	MPC
Senior Planner	840	07/01/18	8,326	8,742	9,179	9,638	10,120			10,676	MPC
Senior Redevelopment Project Manager	860	07/01/18	9,137	9,594	10,074	10,578	11,107			11,157	MPC
Sweeper Operator	140	07/01/18	4,148	4,355	4,573	4,802	5,042			5,294	Teamsters
Utility Lineworker	200	07/01/18	4,801	5,041	5,293	5,558	5,836			6,128	Teamsters
Utility Supervisor	810	07/01/18	8,755	9,193	9,653	10,136	10,643			10,693	MPC
Utility Technician I	705	07/01/18	6,794	7,134	7,491	7,866	8,259			8,672	Teamsters
Utility Technician II	805	07/01/18	7,711	8,097	8,502	8,927	9,373			9,842	Teamsters
Water Instrument/Maintenance Technician I	480	07/01/18	7,040	7,392	7,762	8,150	8,558			8,986	Teamsters
Water Instrument/Maintenance Technician II	750	07/01/18	8,150	8,557	8,985	9,434	9,906			10,401	Teamsters
Water Maintenance Mechanic I	480	07/01/18	7,040	7,392	7,762	8,150	8,558			8,986	Teamsters
Water Maintenance Mechanic II	750	07/01/18	8,150	8,557	8,985	9,434	9,906			10,401	Teamsters
Water Plant Apprentice Operator	200	07/01/18	4,801	5,041	5,293	5,558	5,836			6,128	Teamsters
Water Plant Operator	560	07/01/18	7,071	7,425	7,796	8,186	8,595			9,755	Teamsters
Water Plant Superintendent	883	07/01/18	9,692	10,177	10,686	11,220	11,781			12,231	MPC
Water Plant Supervisor	810	07/01/18	8,755	9,193	9,653	10,136	10,643			11,935	MPC
Water Quality Analyst I	380	07/01/18	6,198	6,508	6,833	7,175	7,534			7,911	Teamsters
Water Quality Analyst II	710	07/01/18	7,462	7,835	8,227	8,638	9,070			9,524	Teamsters

*Please see Benefit Matrix for education incentives, holiday pay and shift differential.

Council Approved on: 8/6/18; 8/20/18; 9/17/18; 10/15/18; 11/5/18

CLASSIFICATION	RANGE	START	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Max/w incentives	UNIT
SEASONAL CLASSIFICATIONS ARE NOT ELIGIBLE FOR INCENTIVES											
Expert Consultant	0910	03/16/15	30.00				100.00				n/a
High School Intern	0550	01/01/18					11.00				n/a
Intern (college-level)	0510	01/01/18	12.50		14.00		15.50		17.00		n/a
Maintenance Aide	0530	01/01/18	11.21	11.78	12.37	13.03	13.74	14.48	15.25	16.06 (H)	16.92 (I)
Maintenance Helper	0520	01/01/18					11.00				n/a
Police Officer Trainee	6009	07/01/18	28.39	20% less than Police Officer Step A							n/a
Recreation Leader I	0550	01/01/18					11.00				n/a
Recreation Leader II	0560	01/01/18	11.50		12.00		12.50				n/a
Recreation Leader III	0570	06/17/13	13.00	14.00	15.00	16.00	17.00	18.00	19.00		20.00 (H)



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/23/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of City Council Resolution Allocating Funds and Authorizing a Consultant Agreement for Environmental Consultant Services for the Alves Ranch Development

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The applicant, William Lyon Homes, has requested approval to build 346 housing units and 140,000 square feet of commercial space within a 57.81-acre site located at the northern terminus of West Leland Road and Alves Ranch Road. An addendum to a previously certified Environmental Impact Report (EIR) was prepared; however, the applicant has requested that the City elevate the environmental documentation associated with the project to include a new EIR, rather than the previously prepared addendum. The environmental consultant, First Carbon Solutions, submitted a new proposal to prepare a full EIR for the project for an amount not to exceed \$163,760. City staff is requesting an additional authorization equal to 15% of the contract total (\$24,564) to use as a contingency fund.

FISCAL IMPACT

If approved, the resolution would authorize allocation of up to \$188,324 from funds to be deposited by the applicant into a refundable deposit account (6083-1101) and authorize the City Manager to execute an agreement with First Carbon Solutions, in an amount not to exceed \$163,760. Any unexpended funds would be returned to the applicant following completion of the CEQA process. The applicant would also reimburse the City for all staff time associated with processing the project, in accordance with the terms of a reimbursement agreement executed on June 4, 2018.

RECOMMENDATION

City Council adopt the attached resolution authorizing execution of a consultant service agreement with First Carbon Services, Inc. to provide the City with environmental review services for the Alves Ranch Project.

BACKGROUND

In 2004, William Lyon Homes, Inc. and Alves Ranch LLC submitted a plan to develop approximately 293-acres of the Alves' property as a residential and commercial subdivision, known as the Vista Del Mar development. In August 2008, a revised development plan was proposed for the approximately 57.81-acre portion of the 2004 Vista Del Mar development, located north of West Leland Road. On June 18, 2018, William Lyon Homes submitted a further-revised development plan, and filed Planning Application No. AP-18-1348, requesting approval of a zoning map amendment, vesting tentative map, and design review of architectural and landscape plans.

On August 21, 2018, the Planning Commission held a public hearing, and subsequently voted 3 to 1 to recommend City Council approval of the proposed project. On September 4, 2018, the applicant requested the City Council public hearing on this item be continued to a date uncertain to allow the City additional time to elevate the environmental documentation associated with the project, including a potential new EIR, rather than the previously prepared addendum.

SUBCOMMITTEE FINDINGS

Not applicable.

STAFF ANALYSIS

First Carbon Solutions, Inc. have requested a total of \$163,760 to provide environmental review services for the Alves Ranch project. Staff is also requesting an additional authorization equal to 15% of the contract total (\$24,564) to use as a contingency fund. This would allow the City Manager to authorize potential future additional work requests and budget increases, should the initial project budget be exceeded, without halting work on the EIR. The applicant has agreed to deposit the funds to cover the initial contract amount as well as the contingency, and as such, it is recommended that the Council authorize execution of a contract with the consultant, as included in Attachment 2.

ATTACHMENTS: 1. Resolution
2. Contract for Services
3. Scope of Work (Exhibit A to Contract for Services)
4. Alves Ranch Reimbursement Agreement (Executed on June 4, 2018)

Report Prepared By: Jordan Davis, AICP, Senior Planner

Attachment 1

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Resolution Authorizing the City Manager	)	RESOLUTION NO. 18-
to Execute a Consultant Service	)	
Agreement with First Carbon Solutions	)	
<u>for the Alves Ranch Project</u>	)	

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, on June 18, 2018, Mandy Leung of William Lyon Homes, Inc., filed Planning Application No. AP-18-1348, requesting approval of: 1) a zoning map amendment rezoning the site from a combination of RH-P (High Density Residential with a Master Plan Overlay) and CO-P (Office Commercial with a Master Plan Overlay) Districts to PD (Planned Development) District; 2) a vesting tentative map subdividing the 57.81-acre site to allow for the construction of a 346-unit, single family development as well as a 12-acre commercial site; and 3) design review of architectural and landscape plans. The project site is located along the north side of West Leland Road, south of State Route 4. Assessor's Parcel Nos. 097-700-001; 097-700-002; and 097-700-005; and

WHEREAS, before the City can consider such a proposal, the project must be reviewed in accordance with the California Environmental Quality Act (CEQA, Public Resources Code 21000 et seq.), which requires agencies to assess whether a proposed project might have significant impacts on the environment; and

WHEREAS, on October 18, 2004, the City Council adopted Resolution No. 04-10168 certifying that the Final Environmental Impact Report (2004 FEIR) for the Vista Del Mar project (SCH # 2004012097) was prepared in accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. On November 29, 2004, after having reviewed and considered the environmental documentation prepared for the Vista Del Mar project, the City Council adopted Resolution No. 04-10191, approving CEQA findings, adopting a Statement of Overriding Considerations, and a Mitigation and Monitoring and Reporting Program (MMRP) for the Vista Del Mar project. The 2004 FEIR certified by the City Council included a programmatic plan for the Aves Ranch site; and

WHEREAS, on January 20, 2009, the City Council adopted Ordinance No. 08-1312, approving the Alves Ranch Master Plan and an EIR addendum. The previously approved master plan contemplated up to 560 residential units, as well as up to 14 acres of office commercial space; and

WHEREAS, since adoption of the Alves Ranch Master Plan, the project proposal for the site has been further refined based on current market conditions, as well as the desire of residents for additional retail commercial opportunities within the area of the City west of Bailey Road; and

WHEREAS, staff previously determined the revised project proposal was consistent with the development program originally reviewed in the 2004 EIR, and an Addendum to

the 2004 EIR was prepared pursuant to CEQA Guidelines section 15164 (“Addendum to an EIR or Negative Declaration”); and

WHEREAS, on August 21, 2018, after conducting a duly noticed public hearing, the Planning Commission adopted Resolution No. 10102, recommending approval the requested zoning map amendment; and

WHEREAS, on September 4, 2018, the applicant requested the City Council public hearing on this item be continued to a date uncertain to allow the City additional time to elevate the environmental documentation associated with the project, including a potential new EIR, rather than the previously prepared addendum; and

WHEREAS, the City of Pittsburg has received a proposal from First Carbon Solutions to provide environmental review services for an amount not to exceed \$163,760; and

WHEREAS, staff has requested an additional authorization equal to 15% of the contract total (\$24,564) to use as a contingency fund; and

WHEREAS, William Lyon Homes, Inc., has agreed to deposit funds with the City of Pittsburg sufficient to reimburse the cost of project management and environmental review services.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1.

The consultant service agreement with First Carbon Solutions, as substantially presented in Exhibit A of this resolution, is hereby approved.

Section 2.

The City Manager is hereby authorized to execute an agreement with First Carbon Solutions in the amount of \$163,760, and any necessary amendment(s) to increase compensation up to \$188,324 for unforeseen additional work.

Section 3.

The Finance Director is hereby authorized to issue new purchase orders to First Carbon Solutions to implement the approved agreement.

Section 4.

The agreement shall be administered by the Planning Manager.

Section 5.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

Dwaine "Pete" Longmire, Mayor

Alice E. Evenson, City Clerk

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
FIRST CARBON SOLUTIONS
FOR ALVES RANCH EIR
(Standard Agreement)**

This Agreement ("Agreement") for consulting services is made by and between the City of Pittsburgh ("City") and First Carbon Solutions ("Consultant") (together referred to as the "Parties") as of November 5, 2018 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on the date the Consultant completes the services specified in Exhibit A, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City's request, reassign such persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed one hundred, sixty-three thousand, seven hundred sixty dollars (\$163,760), as set forth in Exhibit A, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60-day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 Reimbursable Expenses. Reimbursable expenses, if any, are specified in Exhibit A and included in the total compensation referenced in Section

2. Expenses not listed in Exhibit A are not chargeable to, or reimbursable by, City.

2.5 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis.

Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than

\$1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Requirement. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, costs and fees of litigation, (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any

applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of City.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall be determined to apply.

- 5.2 PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and

will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

- 7.4 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the

subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.

8.4 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.

8.5 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.5.1 Immediately terminate the Agreement;

8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily

suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.8 Notices.** Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant: _____

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: City Manager

- 10.9 Professional Seal.** Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled “Seal and Signature of Registered Professional with report/design responsibility.”

- 10.10 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the

extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant's Proposal, the Exhibits shall control.

Exhibit A Scope of Services and Schedule

- 10.11 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.
- 10.12 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 10.13 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

CONSULTANT

Joe Sbranti, City Manager

Name:
Title:

Attest:

Alice E. Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

2784980.1

SEPTEMBER 25, 2018

SCOPE OF SERVICES

Task 1: EIR Notice of preparation and Scoping Meeting

FCS will prepare a Notice of Preparation (NOP) in accordance with requirements of CEQA Guidelines Section 15082. Issuance of the NOP is the first milestone in the CEQA process and announces a lead agency's intent to prepare an EIR. The NOP shall identify the Project location, provide a summary of the Project characteristics, and list probable environmental effects, supported by color graphics. FCS shall provide the final NOP for distribution by the City to the State Clearinghouse and for local distribution. This Scope of Work assumes that an Initial Study shall not be prepared.

Following release of the NOP, this scope of work assumes that the City shall hold a scoping meeting, which FCS's representatives shall attend. FCS shall be available to present an overview of the NOP and CEQA process. FCS shall document all public comments received at the scoping meeting in the Draft EIR.

The scope assumes that several of the topics can be adequately addressed in the "Effects found not to be Significant" section of the EIR. The Notice of Preparation will summarize the topics recommended for further study in the EIR and will also list the following topics that are assumed to be addressed within the "Effects found not to be Significant" section: Aesthetics, agricultural resources, geology, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities.

Deliverables

- One (1) electronic version (via email) of the Administrative Draft NOP to Contra Costa City
- Ten (10) hard copies and one (1) electronic version (via email) of the final NOP to City
- 15 hard copies and the Notice of Completion to the State Clearinghouse

Task 2: Air Quality Analysis

FCS shall prepare an Air Quality Analysis to evaluate criteria pollutant emissions. The analysis shall be wholly contained in the EIR and the supporting technical shall be appended to the document. FCS shall follow guidance presented by the Bay Area Air Quality Management District (BAAQMD) in its CEQA Air Quality Guidelines. The analysis shall evaluate regional and localized short-term construction emissions and long-term operational emissions associated with implementation of the project. FCS shall provide the City with a Request for Information (RFI) that includes all necessary construction and operational parameters required to model air quality emissions. FCS shall document the project's components relative to the BAAQMD's screening criteria and thresholds of significance to support the impact determinations.

Since the proposed project will be located adjacent to existing multifamily residences to the west and south of the project site, the air quality analysis shall include a construction Health Risk Assessment

(HRA) consistent with the BAAQMD CEQA Guidelines. The analysis shall be based on diesel particulate matter measuring 2.5 micrometers in diameter or less (PM_{2.5}) emissions from on-site construction equipment and off-site truck emissions up to 1,000 feet from the project site. FCS shall summarize the impacts and findings of the construction HRA in the Air Quality section of the EIR. FCS shall prepare the construction HRA analysis in the form of a memorandum which shall be included as an appendix to EIR.

When siting a new sensitive receptor (such as residential land uses), the BAAQMD also recommends that the analysis include an evaluation of toxic air contaminants that could adversely affect individuals within the planned project. For example, State Route 4 is located directly to the north of the project site and generates emissions from approximately 157,000 vehicles per day. Therefore, FCS shall also include a screening analysis of TAC and particulate matter measuring 2.5 micrometers in diameter or less (PM_{2.5}) sources located within a 1,000-foot radius of the proposed project site. FCS assumes that dispersion modeling and an operational HRA will not be warranted to identify and quantify the potential cumulative health risks during project operations

FCS shall quantify the proposed project’s construction and operational GHG emissions using assumptions and methodologies consistent with those used in the Air Quality analysis. BAAQMD quantitative thresholds of significance will be used to determine the project’s generation of GHG emissions would exceed existing thresholds. Pursuant to the CEQA Guidelines Appendix G, FCS will also evaluate the project’s design and purpose in the context of consistency with applicable GHG reduction plans.

Task 3: Biological Analysis

FCS will analyze potential impacts to biological resources. All analysis and recommended mitigation will be provided in the Biological Resources section of the EIR with supporting data provided in an appendix. This assessment will focus on a review of the recent Biological Report prepared by LSA and of publicly available existing information regarding the project and vicinity to identify protected biological resources that may be present, including species listed as endangered or threatened under the state and federal Endangered Species Acts, wetlands or other sensitive natural communities, rare plants, etc. Existing information such as maps, aerial photographs, documents, and correspondence relative to the project site will be reviewed and analyzed. Data to be reviewed include but are not limited to:

- Existing documentation and studies of the biological resources within vicinity of the project site;
- The Federal Register listing package for each federally listed endangered or threatened species potentially occurring in the site action area;
- The California Department of Fish and Wildlife (CDFW) Annual Report on the status of California’s listed threatened and endangered plants and animals;
- Literature pertaining to habitat requirements of special-status species potentially occurring in or adjacent to the project site including the CDFW’s California Wildlife Habitat Relationships (CWHHR) system;

- California Natural Diversity Database (CNDDDB) information regarding sensitive habitat areas, and special-status plant and wildlife species potentially occurring in and adjacent to the project area;
- California Native Plant Society Electronic Inventory (CNPSEI) information regarding special-status plant species potentially occurring on the project site and;
- United States Geological Service (USGS) topographic maps and current aerial photos will be reviewed for evidence of United States Army Corps of Engineers (USACE), state and/or CDFW jurisdictional special aquatic areas pursuant to Section 404 and 401 of the Clean Water Act, the Porter Cologne Water Quality Act and Section 1602 of the California Fish and Game Code.

Resource agencies—including but not limited to the U.S. Fish and Wildlife Service (USFWS) and CDFW, which have jurisdiction over the natural resources potentially located on the property—may be contacted for updated information pertinent to the property. Any proposed project plans will be confidential, and consultation will include a request only of known occurrences of sensitive biological resources in the general area.

General locations of sensitive biological resources identified during the survey will be mapped with the aid of topographic maps, GPS units (Trimble R1), and current aerial photographs. Sensitive biological resources include any plants, animals, or habitats considered rare, endangered, threatened, sensitive, or otherwise unique by government agencies, such as CDFW and USFWS, or recognized conservation organizations, such as the CNPS. Suitable habitat for special-status plants, animals, or sensitive habitats on the project site will be determined and mapped, and considered in the biology section for potential project-related impacts and mitigation measures.

Finally, this scope of work does not include a standalone Biological Resources Assessment. As stated above, impact analysis and recommended mitigation will be contained solely in the EIR.

Task 4: Cultural Resources

FCS will assess the potential for existing and undiscovered cultural resources at the project site, the results of which will be compiled into a stand-alone Phase I Cultural Resources Assessment (PI-CRA). This document will meet the Office of Historic Preservation (OHP) standards for Phase I evaluations and can be used to support determinations in any additional CEQA reporting. The Cultural Resources section of the EIR will detail the results of the field investigation, record searches, and any additional resources discovered as a result of the assessment, a copy of which will be included as an appendix. This section will include recommendations for further study and/or mitigation within the project area, as needed. Should significant cultural resources be discovered during the records search or pedestrian survey, the optional Site Recordation task line will be utilized as described below.

FCS will review and incorporate records search information from the Northwest Information Center affiliated with Sonoma State University and located in Rohnert Park. The record search will include a search of previous studies and identified cultural resources within the project area and a 1/2-mile radius.

The National Register of Historic Places, the California Register of Historical Resources, the California Inventory of Historic Resources, the California Historical Landmarks, the California Points of Historical Interest listings, the Historic Property Data File, historic maps and photographs will be consulted along with other pertinent historic data.

As part of the records search, FCS will prepare and submit a request to the Native American Heritage Commission (NAHC) to check their Sacred Lands File for Tribal Cultural resources (TCRs) that may be adversely impacted by the project. The request will include lists of Native American representatives that may wish to consult on the project pursuant to Public Resources Code Sections 21080.3.1 and 21080.3.2 (a.k.a. AB 52) as well as SB-18, which requires tribal notification and consultation in the event of a proposed general plan amendment. Compliance with tribal notification and consultation under AB-52 and SB-18 are the responsibilities of lead agencies under CEQA, and FCS is available to assist in the process if so desired. FCS will draft a notification letter for use by the client that will include a written summary of the project, a map illustrating the location and general features of the project, and will advise tribes of the required response times. Additional consultation services beyond the current scope of work are available upon request.

FCS will also attempt to locate and contact local historical societies that may have additional information about the project area, or interest in the project. A review of the geology and paleontology of the area as reported in scientific literature and a records search of the Regional Paleontological Locality Inventory at the University of California, Berkeley will also be requested. All records search results and correspondence will be included in the Phase I Cultural Resources Assessment, and will be summarized in the EIR along with recommendations for any mitigation measures deemed appropriate.

Task 5: Noise Analysis

FCS shall prepare the Noise Impact Analysis to evaluate project-related construction and operational noise impacts on surrounding and proposed land uses. FCS shall document the existing noise conditions at the project site through traffic noise modeling and ambient noise measurements (one long-term and up to three short-term measurements) to establish the baseline ambient noise environment conditions for comparison to applicable land use compatibility standards.

Construction of the project would require the short-term operation of heavy equipment within approximately 50 feet of the nearest residential land uses bordering the project site. FCS shall evaluate construction noise impact based on the sensitivity of the project area and the City's noise ordinance specifications. FCS shall analyze potential vibration impacts associated with construction activities through application of the methodology used in the Federal Transit Administration's Transit Noise and Vibration Impact Assessment.

FCS shall perform a quantitative assessment of long-term operational noise impacts related to existing and project-related vehicular trips based on the traffic analysis to be prepared for the project. Projections of the future traffic Community Noise Equivalent Level (CNEL) along selected roadway

segments, based on the traffic study to be prepared for the project, shall be provided in a table format to show the distance/contour relationship. Traffic noise impacts will be analyzed for comparison to the City’s land use compatibility standards and whether the project would result in a permanent substantial increase in traffic noise levels in the project vicinity. FCS will also quantify potential noise impacts from the nearby BART rail line. FCS shall evaluate potential operational noise impacts from project-related stationary noise sources, such as new mechanical ventilation system operations from the proposed land uses, for compliance with the City’s noise performance standards.

FCS shall identify mitigation measures, where appropriate, to reduce short- and long-term noise impacts. FCS shall provide both an evaluation of the potential mitigation measures and a discussion of their effectiveness. This technical analysis for potential noise impacts shall be directly incorporated into the EIR, with noise monitoring readouts and modeling data being placed in the Appendices. This task does not include the preparation of a separate, standalone technical noise study.

Task 6: Transportation Analysis

Subtask 6.1—Study Assumptions and Data Collection

Fehr & Peers will retain a traffic data collection firm to collect counts at the following study locations:

1. Evora Road at Willow Pass Road
2. State Route 4 Westbound Ramps at San Marco (data already collected)
3. State Route 4 Eastbound Ramps at San Marco (data already collected)
4. West Leland Road at San Marco (data already collected)
5. West Leland Road at Tomales Bay Drive (data already collected)
6. West Leland Road at Alves Ranch Road (data already collected)
7. West Leland Road at Woodhill Drive
8. West Leland Road at Southwood Drive
9. West Leland Road at BART Exit
10. West Leland Road at BART Entrance
11. West Leland Road at Oak Hills Drive
12. Bailey Road at Canal Road
13. Bailey Road/SR 4 Westbound Ramps
14. Bailey Road/SR 4 Eastbound Ramps
15. West Leland Road at Bailey Road (data already collected)
16. West Leland Road at Chestnut Drive
17. Bailey Road at Myrtle Drive (City of Concord/Contra Costa County)
18. Bailey Road at Concord Boulevard (City of Concord)
19. Willow Pass Road at Avila Road (City of Concord)

Fehr & Peers will collect morning (7:00 to 9:00 AM) and evening (4:00 to 6:00 PM) peak period turning movement counts at up to five intersections, including separate counts of pedestrian, bicycle and truck

activity. Fehr & Peers will conduct field reconnaissance to verify intersection configurations and traffic control. Traffic signal timings will be obtained from City staff. Information on transit services, bicycle, and pedestrian facilities within the study area will be collected.

Subtask 6.2—Impact Analysis

Peak-hour intersection operations will be evaluated for the following scenarios using the *2010 HCM* method for vehicles:

- Existing—Existing conditions based on traffic counts to be collected at the study locations.
- Existing Plus Project—Existing traffic counts plus traffic expected to be generated by the Project.
- Near-Term—Existing traffic counts plus traffic from approved projects expected to be developed in the next 5 to 10 years. We will confirm with City of Oakley staff the level of anticipated development in the study area to consider in the analysis of near-term conditions.
- Near-Term Plus Project—Near-term conditions plus traffic expected to be generated by the Project.
- Cumulative—Forecasts for the cumulative scenario will be based on traffic growth trends as described in the Pittsburg General Plan, and supplemented by a check of traffic forecasts for the study area in the 2035/2040 Contra Costa Countywide travel demand model. Vehicle trips generated under the project site current zoning would be subtracted from the base forecasts to develop the “no Project” traffic forecasts. Recent forecasts prepared for other projects will also be reviewed, if available. Land uses assumed on the parcels adjacent to the project site will be reviewed with the project team.
- Cumulative Plus Project—Cumulative forecasts plus traffic expected to be generated by the Project.

Fehr & Peers will report level of service at each study intersection for the AM and PM peak hours using the Synchro 10.0 analysis tool. For site access locations, we will also summarize vehicle queues.

For study locations that exceed the level of service standard, mitigation measures will be identified. Fehr & Peers’ assessment will include a qualitative assessment of the bicycle, pedestrian and transit systems within the study area and identify potential conflicts between the various travel modes.

Fehr & Peers will confirm with City staff the appropriate roadway improvements to include in each scenario. We will make use to the greatest extent feasible analysis already conducted for the site access intersections.

In addition to the intersection analysis described above, we will estimate the project’s effects on the Delay Index and HOV volumes for seven segments along State 4 from east of Bailey Road to west of State Route 242. The existing Delay Index, traffic volumes and speeds on those segments will be drawn from

the most current CCTA report on this topic (the 2013 CMP and MTSO Monitoring Report). The Delay Index for the future scenarios will be estimated based on the projected change in traffic volumes in the study area and the existing relationship between volume and travel speed on those segments.

Subtask 6.3—Site Plan Review

A site access, circulation, and parking assessment will be conducted to ensure safe and efficient circulation of vehicles, bicycles and pedestrians around the Project site and on the roadways adjacent to the Project site. The site plan will be reviewed for:

- Site access and interface with roadway network, including traffic control recommendations
- Sight distance at proposed access points
- Emergency vehicle access and circulation
- Vehicular circulation, intersection traffic control, and roadway sizing within the site, including turn pocket lengths
- Pedestrian access and circulation within and adjacent to the site
- Bicycle access and circulation within and adjacent to the site
- Transit access adjacent to the site
- Pedestrian access to and from transit stops
- Parking supply in comparison to City Code requirements and projected demand

As part of this task, Fehr & Peers will review the projects consistency with transportation related goals from the City of Pittsburg General Plan. Conflicts will be identified, if any. This task has been largely completed with the previous results incorporated into the transportation impact assessment.

Subtask 6.4—Vehicle Miles of Travel Assessment

Consistent with SB743 requirements, Fehr & Peers will estimate project daily vehicle miles of travel (VMT) using the Contra Costa County Transportation Authority (CCTA) Countywide Travel Demand Model. Total daily VMT can be converted into VMT per capita and employee estimates. Although local agencies have discretion to establish VMT-related significance criteria, Office of Planning and Research (OPR) guidance specifies that a project generating 15 percent less than regional VMT would be considered less-than-significant. The OPR guidance also excludes local serving retail uses. Fehr & Peers will coordinate with City staff to identify appropriate methodologies and CEQA Criteria of Significance for the VMT analysis to evaluate potential impacts on VMT.

Subtask 6.5—Documentation

The following documents will be prepared:

- Administrative Draft Transportation Impact Analysis
- Draft Transportation Impact Analysis
- Final Transportation Impact Analysis
- Response to Public Comments

This scope of work assumes that minor editorial comments are received on the Administrative Draft and Draft Transportation Impact Analysis. Fehr & Peers has have budgeted seven staff hours for the first round of revisions and four hours of staff time to prepare the final report.

Subtask 6.6—Meetings

Fehr & Peers anticipates attending one meeting with the project team and/or City staff throughout the project and participating in two conference calls. Fehr & Peers will be available to attend additional meetings on a time-and-materials basis.

Task 7: Administrative Draft EIR

FCS shall prepare an Administrative Draft EIR in accordance with the applicable requirements contained in CEQA Guidelines Sections 15120 through 15132. The Administrative Draft EIR shall contain analysis supported by graphics and tables. The document shall identify potentially significant impacts, feasible mitigation measures, and the residual significance after mitigation has been implemented. The contents of the Administrative Draft EIR, as prepared by FCS will be as follows:

Executive Summary

In accordance with CEQA Guidelines Section 15123, the Executive Summary shall contain a summary of the Project, list the Project alternatives, identify areas of controversy, and provide a matrix listing environmental impacts and mitigation measures, and the residual significance of all impacts.

Introduction

FCS shall prepare the introduction including the purpose and background of the Project, the determination of the lead agency, scope of the EIR, and the document’s organization.

Project Description

Pursuant to CEQA Guidelines Section 15124, the Project description, as prepared by FCS, shall identify the Project location, describe the Project characteristics, list the Project objectives, identify necessary approvals, and list other agencies that may use the document. FCS shall provide color graphics of Project boundaries and plans in this section.

The scope assumes that several of the topics can be adequately addressed in the “Effects found not to be Significant” section of the EIR. The Notice of Preparation will summarize the topics recommended for further study in the EIR and will also list the topics that are assumed to be addressed within the “Effects found not to be Significant” section. A preliminary breakdown is provided below:

- Executive Summary
- Introduction
- Project Description
- Air Quality
- Biological Resources
- Cultural
- Greenhouse Gas Emissions
- Noise
- Transportation/Traffic
- Utilities and Service Systems
- Alternatives to the Proposed Project
- Other CEQA Considerations
- Effects Found not to be Significant
- Persons and Organizations Consulted
- List of Preparers
- Technical Appendices

Aesthetics, Light, and Glare

FCS will summarize the project’s potential effects, noting the taking into account BART, Citywide, and local design plans and view protection policies. This scope assumes that no visual simulations would be required, and that the city’s design review process would ensure compliance with high quality of design and site standards to ensure compatibility with surrounding uses.

Air Quality/Greenhouse Gas Emissions

Construction and operational activities of the proposed Project would emit criteria air pollutants and GHG emissions. FCS shall prepare the Air Quality/GHG Emissions section using the previously described technical study and identify impacts and mitigation (as appropriate). The supporting technical data shall be provided as an appendix to the EIR.

Biological Resources

FCS will summarize the results of the data base research and field survey into the EIR biological resources section, which shall include discussions of potential Project impacts to biological resources including sensitive habitat types, special-status species, potentially jurisdictional features, and wildlife corridors. If feasible, FCS shall identify mitigation measures to offset any potentially significant impacts. FCS shall provide supporting technical data as an appendix to the EIR.

Cultural Resources

FCS shall prepare a cultural resources section of the EIR based on information obtained from the record searches, the field investigation, and any resources discovered. The EIR section shall include a discussion of the applicable Federal, State, and Local policies and regulations as well as a summary of the prehistory and history of the Project area. FCS shall provide the methodology used during the field survey and a listing of the criteria for determining significance as well as a list of all impacts and related mitigation measures, as required by CEQA. FCS shall also evaluate the potential for paleontological resources to be adversely affected by the Project. Finally, mitigation measures shall be provided for any impacts to resources found within the Project area.

Noise

The primary noise-related issues are the compatibility of the proposed Project with respect to the guidelines set forth in the Noise Element of the General Plan, the potential for permanent increases in noise occurring as a result of the Project, and temporary noise and vibration generated during construction. FCS shall prepare the Noise section using the technical analysis described and shall identify impacts and mitigation, as appropriate. FCS shall provide the supporting technical data as an appendix to the EIR.

Transportation

The Project involves the development of new residential uses that have the potential to generate new trips, alter traffic circulation patterns, create a need for roadway improvements, and increase the use of public transit, bicycle, and pedestrian modes of transportation. FCS shall use the Traffic Impact Analysis prepared by the applicant and peer reviewed by Fehr & Peers as the basis for assessing transportation impacts and identifying mitigation. FCS shall provide the Traffic Impact Analysis as an appendix to the EIR.

Utility Systems

Development of the Project will increase the demand for utilities and infrastructure improvements and increase water consumption and wastewater generation. As appropriate, FCS shall consult with utility providers and summarize the findings in the EIR. FCS shall analyze utility service systems including water supply, wastewater, stormwater, solid waste, and energy.

Cumulative Effects

In accordance with CEQA Guidelines Section 15130, the EIR, as prepared by FCS, shall address the cumulative effects of the proposed Project in combination with other projects. As set forth in the CEQA Guidelines, the cumulative analysis shall focus on impacts that the Project has a significant incremental contribution towards, reflect the severity of the impacts and their likelihood of occurrence, and be guided by standards of practicality and reasonableness. FCS shall coordinate with the City to obtain the list of current and reasonably foreseeable projects that shall form the basis of the cumulative impact analysis.

Alternatives

Pursuant to CEQA Guidelines Section 15126.6, the EIR, as prepared by FCS, shall evaluate a range of feasible alternatives to the proposed Project. One of the alternatives shall be the CEQA-mandated “No Project Alternative,” which is the circumstance under which the Project does not proceed. FCS shall evaluate up to two additional alternatives, likely consisting of a combination of a reduction in project size, and alternate uses, as agreed upon with the City. In addition, the Alternatives section shall address the feasibility of an alternative location, as well as any alternatives that were initially considered but rejected from further consideration.

FCS shall compare the impacts of each alternative to those associated with the Project. As required by CEQA, FCS shall discuss the advantages and disadvantages of each alternative and the reasons for

rejecting any alternative, including consistency with the Project’s defined goals and objectives. In accordance with CEQA (Section 15126.6(e)(2)), FCS shall identify the environmentally superior alternative among the two alternate development scenarios.

Effects Found not to be Significant

CEQA Guidelines Section 15143 establishes that EIRs shall focus on significant impacts on the environment and need not discuss in detail effects that are clearly insignificant or unlikely to occur. Accordingly, the topical areas anticipated to be scoped out to the Effects Found not to be Significant section of the EIR include aesthetics, agricultural resources, cultural resources, geology, hydrology, land use, mineral resources, population and housing, public services, and recreation.

Other CEQA Required Sections

Within this section, FCS shall address the CEQA-required issues of significant environmental effects that cannot be avoided (CEQA Guidelines Section 15126[b]), significant irreversible environmental changes (CEQA Guidelines Section 15126[c]), growth inducement (CEQA Guidelines Section 15126[d]), and energy conservation (CEQA Guidelines Appendix F).

Persons and Organizations Consulted/List of Preparers

In accordance with CEQA Guidelines Section 15129, the EIR, as prepared by FCS, shall identify all agencies, organizations, and individuals consulted during the preparation of the document, as well as the agency representatives, and firms that were involved with EIR preparation.

References

Within this section, FCS shall list all resources used in the preparation of the EIR.

Technical Appendices

Pursuant to CEQA Guidelines Section 15147, FCS shall append supporting technical information to the EIR as technical appendices. This includes but is not limited to technical studies, modeling data, and correspondence.

Deliverables

- One (1) electronic version (via FTP upload) of the Administrative Draft EIR to City

Task 8: Screencheck Draft EIR

Upon receipt of a single consolidated set of staff comments on the Administrative Draft EIR, FCS shall prepare a Screencheck Draft EIR for City Staff review. A total of 60 FCS staff hours are assumed to complete this task. FCS intends for the Screencheck Draft EIR to verify that staff comments were addressed and shall document text changes in strikeout–underline format. FCS shall flag unresolved comments for resolution.

Deliverables

- One (1) electronic version (via FTP upload) of the Screencheck Draft EIR to City

Task 9: Draft EIR

Once City Staff provides a single consolidated set of final comments on the Screencheck Draft EIR, FCS shall proceed with finalizing and producing the Draft EIR for public review. FCS shall provide copies of the Draft EIR to the City, which shall be responsible for distribution to the State Clearinghouse, as well as local distribution, noticing, and posting.

Deliverables

- 30 hard copies (appendices on CD), 20 CDs, and one (1) web-ready version of the Draft EIR to City
- 15 Executive Summary hard copies and 15 CDs of the Draft EIR and the signed Notice of Completion form to the State Clearinghouse

Task 10: Administrative Final EIR

FCS shall prepare an Administrative Final EIR in accordance with the applicable requirements contained in CEQA Guidelines Sections 15088 and 15089. Within the administrative Final EIR, FCS shall list all agencies, organizations, and individuals who submitted written comments on the Draft EIR during the public review period and provide written responses to those comments. In addition, this scope of work assumes that the City shall hold a public hearing on the Draft EIR, at which time oral testimony on the document will be received. To enhance readability and avoid redundancy, FCS shall use Master Responses to address frequent and reoccurring comments on the Draft EIR's analysis. Additionally, the Administrative Final EIR shall contain an Errata, in which FCS shall document minor changes to the Draft EIR text in strikeout–underline format.

This scope of work allocates a total of 40 hours for FCS technical staff to respond to comments received on the Draft EIR, in addition to administrative, editorial, GIS, and junior staff time to prepare the document. If the volume or complexity of comments require more than 40 hours to respond to comments, FCS will request authorization from the City for additional budget. FCS shall not spend additional hours on the Administrative Final EIR unless and until instructed to do so by City, after this contract is amended to incorporate that scope of work

Deliverables

- One (1) electronic version (via FTP upload) of the Administrative Final EIR to City

Task 11: Screencheck Final EIR

Upon receipt of a single consolidated set of City Staff comments on the Administrative Final EIR, FCS shall prepare a Screencheck Final EIR for City Staff review. A total of 20 FCS staff hours are assumed to complete this task. FCS intends that the Screencheck Final EIR shall verify that City Staff comments were

addressed and shall document text changes in strikeout–underline format. FCS shall flag unresolved comments for resolution.

Deliverables

- One (1) electronic version (via FTP upload) of the Screencheck Final EIR City

Task 12: Final EIR

Once City Staff provides a single set of consolidated final comments on the Screencheck Final EIR, FCS shall proceed with finalizing and producing the Final EIR for public review. FCS shall provide copies of the Final EIR to the City, which shall be responsible for local distribution, noticing, and posting. FCS shall send copies of the Final EIR directly to state agencies that commented on the Draft EIR.

Deliverables

- 15 hard copies (appendices on CD), 15 CDs, and one (1) web-ready version of the Final EIR to City.

Task 13: Mitigation Monitoring and Reporting Program

FCS shall prepare a comprehensive Mitigation Monitoring and Reporting Program (MMRP), pursuant to CEQA Guidelines Section 15097. The MMRP shall contain all mitigation measures identified in the EIR. This comprehensive MMRP shall provide the applicant team and City Staff with a single source of reference to the full range of mitigation measures to be implemented. For each measure or group of similar measures, FCS shall identify the agency responsible for ensuring proper implementation, along with the timing and method of verification. Copies of the MMRP shall be included in the Final EIR submittal.

Deliverables

- Three (3) hard copies of the MMRP to City (an electronic version will be provided on the same CD as the Final EIR)

Task 14: Meeting Attendance

FCS shall meet with City Staff during the EIR preparation process to discuss and resolve problems, develop strategies, and participate in communications. This proposal and its associated budget cover attendance by FCS's Project Manager at four (4) meetings (assumed to be a kick-off meeting, scoping meeting, and two public hearings). FCS has established a not-to-exceed budget to cover meeting attendance. If City Staff requests additional meeting attendance by FCS staff, or if the amount of time involved in these meetings exceeds the initial budget allocation, FCS shall notify City staff of the additional costs and obtain authorization for the extra meeting time. FCS shall not attend additional meetings unless and until instructed to do so by City, after this contract is amended to incorporate the additional costs.

Task 15: Project Management

In addition to the research, analysis, communications, and report writing tasks described above, FCS shall perform a variety of project management duties to ensure that the EIR meets the applicant and the City’s standards of quality, and that it is delivered on time and within budget. These duties shall include team supervision and coordination, oral and written communications with the applicant and City Staff, project accounting, and quality assurance review by FCS’s Project Director and Technical Editor of all deliverable products. These services shall also include ongoing support to applicant and City Staff, such as providing input to staff reports, regular schedule updates, and discussions of technical issues. This task assumes 40 hours of FCS’s staff time.

BUDGET

Task #	Task	Fee
Task 1	NOP / Scoping	\$3,790
Task 2	Air Quality/GHG/HRA	\$12,350
Task 3	Biological Resources	\$4,600
Task 4	Cultural Resources	\$4,620
Task 5	Noise Analysis	\$2,880
Task 6	Transportation Analysis	\$51,651
Task 7	ADEIR	\$34,630
Task 8	Screencheck EIR	\$9,780
Task 9	Draft EIR	\$4,250
Task 10	Admin FEIR and Responses to Comments	\$12,000
Task 11	Screencheck Final EIR	\$3,880
Task 12	Final EIR	\$1,110
Task 13	Mitigation Monitoring and Reporting Program	\$900
Task 14	Meetings	\$5,980
Task 15	Project Management	\$7,800
	Direct Costs	\$3,520
	Total	\$163,760

**REIMBURSEMENT AND INDEMNIFICATION AGREEMENT BY AND BETWEEN THE
CITY OF PITTSBURG AND WILLIAM LYON HOMES, INC.**

THIS REIMBURSEMENT AND INDEMNIFICATION AGREEMENT

("Agreement") is made and entered into on JUNE 4, 2018, by and between the City of Pittsburg, a California municipal corporation ("City"), and William Lyon Homes, Inc. ("Developer"), in Pittsburg, California, with respect to the matters hereinafter stated.

1. Intent.

Developer intends to build approximately 346 for sale residential dwellings as well as a community recreation facility, infrastructure for a future 12-acre commercial shopping center, and other necessary improvements, along the north side of West Leland Road, across from the existing Vista Del Mar residential development (Assessor's Parcel Nos: 097-700-001, 097-700-002, and 097-700-005) in the City of Pittsburg ("Project"). Developer must obtain several discretionary approvals from the City for the Project and enter into a separate agreement outlining the Developer's obligations as part of the Project. The City's decision to issue discretionary approval and enter into a separate agreement is subject to review under the Municipal Code and applicable law, as well as environmental review pursuant to the California Environmental Quality Act ("CEQA"). Pursuant to this Agreement, Developer intends to reimburse the City for these costs related to the City employees' and consultants' participation in the evaluation of the Project and any associated entitlements, approvals and analyses ("Project Evaluation"), which may include, but is not limited to, a General Plan map amendment, rezoning, vesting tentative map, and design review. Developer is also seeking an expedited Project Evaluation.

2. Reimbursement Payments.

A. Developer is willing to provide funds to the City for the Additional Project Evaluation Costs relating to the Project Evaluation.

B. The City will use the Reimbursement Payments by Developer to reimburse the City for its expenses incurred for Additional Project Evaluation Costs in providing and administering the services necessary and relating to the Project Evaluation. These services may include, but not be limited to:

- (1) Processing of a request for a General Plan map amendment and rezoning (including amendments to the previously approved Master Plan) for the project site;
- (2) Processing of a request to subdivide the Project site into

approximately 346 single-family residential lots, along with a 12-acre commercial area and multiple community open spaces;

(3) Preparation of a development agreement and/or any other separate agreement deemed necessary in order to fully comply with the adopted conditions of approval for the tentative subdivision map;

(4) Design review of architectural and landscape plans, including but not limited to, single-family homes and park and recreation facilities;

(5) An environmental analysis in accordance with the requirements of the California Environmental Quality Act including an assessment of potential major external impacts of the Project (such as traffic, air quality, noise, lighting, waste disposal, biological and visual impacts);

(6) An analysis of any trade secret claims related to Project documents utilized or retained by the City, including but not limited to document requests submitted by third parties; and

(7) Such other analyses or similar matters which the City may deem reasonably related to the Project Evaluation and/or Processing.

All of the analytical and processing services referenced above are referred to herein collectively as the "Project Services."

C. Developer acknowledges the Reimbursement Payments do not include any additional fees and charges required by law, ordinance or resolution to be paid to the City by Developer, such as application fees, inspection fees, and other processing fees for entitlements or permits that may be required for this Project, except those deposits to the Planning Division identified in section 3.

3. Initial Payment to the City.

Developer shall pay to the City one hundred thirty-one thousand, three hundred five dollars (\$131,305.00) as an initial deposit for Additional Project Evaluation Costs. The initial deposit amount corresponds to the Planning deposits required for General Plan Amendments, rezoning (Planned Unit Development), major subdivisions, and design review applications in accordance with the City's Master Fee Schedule effective January 1, 2018, as well as a ten thousand dollar (\$10,000.00) deposit related to amendments to the existing development agreement, and eighty thousand eight hundred five dollars (\$80,805.00) for CEQA services.

Developer acknowledges that the nature and scope of the Project Evaluation are dependent upon factors that may be largely outside of the control of the City. Accordingly, Developer acknowledges and agrees that the amount of the initial Reimbursement Payment made by Developer to the City for deposit in the Account

does not represent an estimate of the actual final costs of such services that may need to be rendered by the City in the performance of its duties under this Agreement.

4. Additional Payments to the City.

City will bill Developer on a monthly basis for reasonable expenses incurred by City Staff and/or the City Attorney for the services provided under this Agreement. The City will provide supporting documentation describing the services rendered and the time involved in each task. All bills for Additional Project Evaluation Costs with the supporting documentation shall be sent to the attention of:

Name: Scott Roylance

Address: 2603 Camino Ramon Suite 450, San Ramon, CA 94583

If the cumulative expenses incurred by the City exceed the Initial Deposit then the Developer shall provide Additional Reimbursement Payments to cover the balance. If Developer fails to make the Reimbursement Payment(s) within thirty (30) days of receipt of the bill, or within such greater periods of time as may be provided in the notice or as agreed upon by the Parties, then the City may direct that all work performed as Additional Project Evaluation Costs and the Project generally be suspended until Developer has made such additional Reimbursement Payment(s).

5. Authority and Obligations of the City.

Developer fully understands and agrees to each of the following:

A. City acknowledges that Developer shall only provide Reimbursement Payments for reasonable expenses incurred for Additional Project Evaluation Costs in connection with the Project Evaluation and Project Services.

B. Except as provided herein, City makes no promise, representation, or warranty, express or implied, that the City, its staff or consultants will provide the Project Services referenced in this Agreement by a certain date. Notwithstanding the foregoing, City staff and consultants will provide Project Services referenced in this Agreement in a timely manner without unreasonable delay.

C. The Reimbursement Payments under this Agreement shall in no way influence the actions of the City in respect to the review, processing or approval of agreements, permits or entitlements for the project or projects which may result from Project Services. Neither Developer nor any other person providing funding for the provision of Project Services under this Agreement shall, because of such payments under this Agreement, have any expectation as to the results of the City's review of and subsequent approval or denial of such approvals, permits, agreement or entitlements. Developer is expressly prohibited from directly or indirectly exercising any supervision

or control over the work of the officers, employees, agents, and consultants used by the City to provide Project Services. This prohibition shall not be construed to preclude the City, its agents, employees and consultants from consulting with Developer concerning matters affecting the provision of Project Services under this Agreement. No promises, representations, or warranties have been made, expressly or implicitly, by the City, its officials, agents, or employees and, it is specifically agreed no person has any authority to make any such representation, promise, or warranty, to Developer or any other person that the Reimbursement Payments will in any way influence the actions of the City in respect to the approval or denial of such approvals, agreements, permits or entitlements.

6. Authority and Obligation of DEVELOPER.

Developer agrees:

A. To make timely payments for expenses incurred for Additional Project Evaluation Costs in connection with the Project Evaluation and Project Services as specified in this Agreement

B. To cooperate fully in the implementation of this Agreement including, but not limited to, allowing the City reasonable access to the Project and Project documents for studies, analyses, and other matters relating to this Agreement.

C. To pay all City fees, assessments, and other levies which are applicable to this Project, at the rate in effect at the time the fee is paid to and accepted by the City.

D. To comply fully with all applicable City, local, regional, state, and federal rules, regulations, resolutions, ordinances, and laws, as they may exist now or in the future.

7. Amendment.

This Agreement, including any exhibits hereto, may be amended only by mutual written agreement of the parties.

8. No Agency, Joint Venture or Partnership.

City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

9. Indemnification.

A. Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement. The parties shall cooperate in defending such action or proceeding. Developer shall pay for the City's reasonable costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and reasonable attorneys' fees expended by the City in defense of any such action or proceeding, plus reasonable staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel. If the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis the City for all such court costs, attorney fees, and time referenced herein.

B. The parties agree that this Section 9 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9, which shall survive such invalidation, nullification, or setting aside.

10. Venue and Applicable Law.

Any action by any party to this Agreement shall be brought in the appropriate court of competent jurisdiction within the County of Contra Costa, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11. Entire Agreement.

Each party acknowledges that this Agreement sets forth all covenants, promises, conditions and understanding between the parties regarding the matters set forth herein, and there are no promises, conditions, or understanding either oral or in writing between the parties other than as set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by them.

12. Effect of Waiver.

No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

13. Interpretation of Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, and agreements whether oral or written. Any amendment to this Agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it will be effective. Both parties have had an equal opportunity to participate in the drafting of this Agreement. The usual construction of an agreement as to the drafting party shall not apply to this Agreement.

THE DEVELOPER

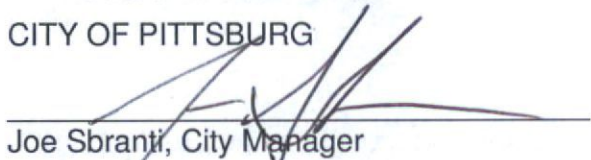


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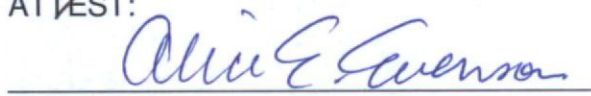
Scott T. Hilk

Vice President

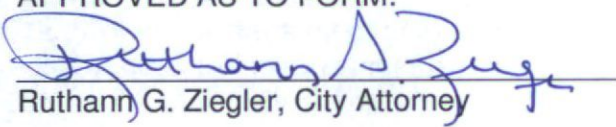
CITY OF PITTSBURG


Joe Sbranti, City Manager

ATTEST:


City Clerk

APPROVED AS TO FORM:


Ruthann G. Ziegler, City Attorney



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/25/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a Resolution Approving the Measure M Citizens Oversight Committee Report – Final FY 17-18 usage and Excess Carryforward to FY 2018-19

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

On June 5, 2012 the voters of Pittsburg passed the Pittsburg Preservation of Citywide Services Temporary Funding Transactions and Use Tax Ordinance. The ordinance established a one-half of one percent (0.5%) use and transaction tax. On June 7, 2016, the voters of Pittsburg passed Measure M, extending the use and transaction tax to June 30, 2035. The measures require the establishment of a Citizens Oversight Committee (“Committee”) charged with making recommendations to the City Council (“Council”) for the use of the Measures revenue. This item is the Committee’s report on the receipt and use of these Measures funds for FY 2017-18 and a recommendation for the excess over budget to be carried forward to FY 18-19.

FISCAL IMPACT

There is no fiscal impact in accepting the Committee’s report on the proposed uses of FY 2017-18 Measure M funds. The fiscal impact of allocating \$293,724 to FY 2018-19 operational budget will reduce General Fund, Fund Balance in the current year.

RECOMMENDATION

City Council accept final accounting for FY 2017-18 Measure M report as prepared by the Citizens Oversight Committee; and,

Approve an additional operating expense budget of \$293,724 to the General Fund.

BACKGROUND

On June 5, 2012 the voters of Pittsburg passed Measure P, establishing a one-half of one percent (0.5%) use and transaction tax. On June 7, 2016, the voters passed Measure M extending the use and transaction tax to June 30, 2035.

Both ballot measures required a Citizens Oversight Committee that is charged with reviewing the use of and making recommendations to the City Council for future uses of the tax revenues.

At the June 6, 2018 Council meeting, Council directed staff to account for and bring forward any excess revenues over budgeted revenues for Measure M for the FY 2017-18.

Staff has determined that actual revenues exceeded projected budget by \$297,724 for FY 2017-18. Staff worked with the Citizens Oversight Committee and the Finance subcommittee during the budget to bring this item forward.

SUBCOMMITTEE FINDINGS

The Finance subcommittee was informed of the excess revenues over budgeted revenues at the August 30, 2018 subcommittee meeting. The subcommittee recommend allocating the excess revenues as follows for the FY 2018-19:

Youth – General	\$ 73,431
Youth – Pittsburg Police Activities League	20,000
Streets	200,293

Total	\$ 293,724
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STAFF ANALYSIS

The Committee is to (1) receive information from City staff on the receipt of revenue and the expenditure of funds from the Measures, (2) provide recommendations to the City Council on the use of the Measures revenue, (3) shall produce a report that records the results of its recommendations for expenditure of the revenue generated from the tax, and (4) present the report to the City Council at a public meeting and be made a public record. Committee meetings will open to the public and subject to the Brown Act.

The Committee met on October 23, 2018 to review the FY 2017-18 spending of Measure M funds. The attached report shows that the funds were spent as prescribed in both Measure M.

ATTACHMENTS: Citizens Oversight Committee Opinion
Resolution to appropriate Funds for FY 2018-19.

Report Prepared By: Brad Farmer, Director of Finance



October 23, 2018

To: City Council

From: Measure M Oversight Committee

Re: Measure M Fund usage for FY 2017-18, and recommendations excess carryover to FY 18-19

We the members of the Measure M Oversight Committee have reviewed both the revenues generated and the expenditures of Measure M funds by the City of Pittsburgh for the fiscal year 2017-18. We find the City has met the requirements and has spent Measure M funds as allowed and established by the ballot presented to the voters for the original Measure P and subsequent Measure M.

For FY 2017-18 Measure M generated excess funds totaling \$293,724 over the projected or budgeted amounts. As recommended at the April 2, 2018 and May 11, 2018 meeting, any excess Measure M funds should be carried forward and allocated toward eligible expenses as determined by the Council.

The Committee will next meet in the spring of 2019 to recommend allocation of Measure M funds for FY 2019-20.

Respectfully,

Lamontay Marshall, Chairperson

Dennisha Marsh, Member

Faye Fields, Member

Nancy Hairsine, Member

Wolfgang Croskey, Member

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Approving the Carryover of FY 2017-18)
City of Pittsburgh Measure M)
Revenues into the FY 2018-19)
Budget)

RESOLUTION NO. 18-

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, at the close of the 2017-18 fiscal year, Measure P as extended by Measure M generated excess revenues over budgeted revenues that may be carried forward the next budget year; and

WHEREAS, in compliance with the Governmental Accounting Standards Board (GASB) Statement No. 54 requirements, it is necessary to identify and commit unencumbered operating budget carry-forwards soon after the end of a fiscal year; and

WHEREAS, funds previously approved by Council are available and will not exceed respective fund balances.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The recitals set forth are true and correct statements and are hereby incorporated in conjunction with the respective staff report.

Section 2. Authorization

A. The City Council does hereby authorize to carry forward into FY 2018-19 the programs and activities associated with Measure M funds received during FY 2017-18.

B. That the City Council of the City of Pittsburgh further authorizes the sum of \$293,724 from unreserved, designated funds be re-appropriated and may be expended as required to carry out completion of various operating programs and activities; and that the 2018-19 budget is amended and the appropriate line items in the following funds may be increased not to exceed the amounts shown:

General Fund	\$ 293,724
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PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/24/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution Amending the Purchasing Policy to Require Project Stabilization Agreement and Update Requirements

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City has adopted a Purchasing Policy which provides for the informal and formal purchasing requirements of supplies, general services, professional services, and public works projects. The proposed amendments add the requirement of a Project Stabilization Agreement on large public works projects, adds purchasing authority for the newly created position of City Attorney, and adds requirements consistent with state law and best practices

FISCAL IMPACT

None.

RECOMMENDATION

It is recommended that the City's Purchasing Policy be amended to add the requirement of a Project Stabilization Agreement on large public works projects, add purchasing authority for the newly created position of City Attorney, and add requirements consistent with state law and best practices

BACKGROUND

The City has adopted purchasing policies for the informal and formal purchasing requirements of supplies, general services, professional services, and public works projects. Supplies include the purchase or lease of goods and equipment required for the general conduct of the City's business, except supplies for a public works project which is regulated under the California Public Contracts Code. On October 15, 2018, the City Council voted to authorize the City Manager to execute a Project Stabilization Agreement and directed that the Purchasing Policy be revised accordingly. As stated in the Project Stabilization Agreement, it applies to public works projects of \$1 million or more, with specified

exemptions. The objective of the agreement is to minimize project disruptions due to labor disputes and maximize the opportunity of local residents to obtain employment on the projects.

In addition, the City Council earlier in 2018 created and filled the in-house position of City Attorney, which reports directly to the City Council. The proposed amendments reflect the position and establish the purchasing authority of the City Attorney.

The proposed amendments also require that contracts must be in writing and set forth the total maximum compensation, prohibit contract splitting, make subsequent years' appropriations for funding multi-year contracts subject to authorization by City Council, require City Attorney review and signature approving as to form those contracts of \$10,000 or more, and set forth the circumstances when staff may amend a contract to increase compensation to a contract already approved by City Council. The highest dollar authority for a purchase without City Council approval has been reduced to \$75,000.

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

Neighboring cities such as Concord, Brentwood and Martinez adopted project stabilization agreements and reported no quantifiable increase in the cost of the public works projects. In addition, cities typically provide purchasing authority for in-house city attorneys, and have purchasing policies that contain requirements applicable to staff to ensure prudent accounting, contractual provisions that protect the City, and transparency in the contracting process.

ATTACHMENTS: Resolution amending the City's Purchasing Policy

Amended Purchasing Policy

Report Prepared By: Brad Farmer, Director of Finance

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Amending the City's Purchasing Policy)
To Require Project Stabilization)
Agreement and Update Requirements)

RESOLUTION NO. 18-

The City Council of the City of Pittsburgh DOES RESOLVE as follows:

WHEREAS, the City has adopted a Purchasing Policy for the informal and formal bidding of supplies, general services, professional services, and public works projects; and

WHEREAS, the City Council authorized execution of a Project Stabilization Agreement and directed a revision to the Purchasing Policy accordingly; and

WHEREAS, the City Council in 2018 established and filled the in-house City Attorney position and City Council seeks to set forth the purchasing authority for the City Attorney; and

WHEREAS, it is prudent to expressly set forth contracting statutory requirements and/or best practices that contracts must be in writing and set forth the total maximum compensation, contract splitting is prohibited, subsequent years' appropriations for funding multi-year contracts are subject to authorization by City Council, contracts of \$10,000 or more require review and signature by the City Attorney, and circumstances when staff may amend a contract to increase compensation.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. All the recitals above are true and correct and incorporated herein.

Section 2. The City Council hereby adopts this Resolution and amends the City's Purchasing Policy as shown in Exhibit A to this Resolution.

Section 3. The City Clerk shall certify to the adoption of this Resolution.

Section 4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 5th day of November, 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwayne "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit A

**CITY OF PITTSBURG
PURCHASING POLICY**

REVISED NOVEMBER 2018

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CITY OF PITTSBURG PURCHASING POLICY

1. Authority Provided

In compliance with Pittsburgh Municipal Code Chapter 2.85.010, this Purchasing Policy was adopted by City Council Resolution No. _____.

2. Purchasing Authority

Except as authorized below, no purchase may be made without the City Council's prior approval.

For purposes of this Policy, "Executive Team Member" shall mean the Assistant City Manager(s), Police Chief, Director of Finance, Human Resource Director, Public Works Director, Director of Community Services, Director of Community Development and Director of Records and Council Services.

Employees in the following positions are authorized to execute on behalf of the City agreements in the amounts as follows:

Position	Supplies	General Services	Professional Services	Public Works Projects
City Manager	\$75,000 or less	\$75,000 or less	\$75,000 or less	\$75,000 or less
City Attorney	\$10,000 or less	\$75,000 or less	\$75,000 or less	N/A
Executive Team Member	\$50,000 or less	\$50,000 or less	\$50,000 or less	\$50,000 or less

As authorized by Pittsburgh Municipal Code Section 2.85.030, the City Manager may delegate his or her duties as chief purchasing officer to other city positions so long as such delegation is in writing and consistent with this Policy. By way of example, the City Manager may delegate purchasing authority of \$25,000 or less to the Planning Manager for professional services.

The City Attorney is authorized to purchase legal services, general services, and supplies for the City Attorney's Office.

All contracts must be in writing and set forth a total maximum compensation.

The contracting amounts set forth above are for one contract regardless of the duration of the contract. Contract splitting is prohibited. Contract splitting is dividing purchases into separate contracts, each below the amount of contracting authority, to avoid the requirement to obtain City Council approval or to competitive bidding.

For any multi-year contract, adequate funds must be available to fulfill the first fiscal year's obligation at the time of contract execution. Subsequent years' appropriations are subject to authorization by City Council unless allowed pursuant to state law and the terms of the contract.

Any contract for a duration of more than seven years must be approved by City Council regardless of the amount of compensation.

Any contract in an amount of \$10,000 or more must be reviewed and signed approving as to form by the City Attorney.

Purchasers may amend a contract that has been approved by City Council to increase compensation when 1) the City Council has approved a contingency amount and the increase is equal or less than the contingency amount, or 2) the amount of the increase is equal or less than the amount authorized for the purchaser as set forth above.

All contracts for outside legal counsel must be approved by the City Attorney.

Supplies are the purchase or lease of goods and equipment in the general conduct of the City's business, except supplies for a public works project governed by the California Public Contracts Code.

General Services are services such as uniform cleaning, maintenance or other services which do not require any unique skill, special background, training, and obtaining such services at the lowest cost is the highest weighted factor in selection, as opposed to personal performance.

Professional Services are services from a vendor who possesses a high degree of professional or technical skill. Professional services include legal, data processing and programming, planning, environmental, financial, architecture, engineering, etc. The selection must be based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services. State law does not require competitive bidding for these types of services.

Public Works Project has the same meaning as set forth in California Labor Code Section 1720. It is a project for the erection, improvement, painting or repair of public buildings and works; work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; street or sewer work except maintenance or repair; and/or furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

3. Informal Bidding Permitted

Informal bidding, as may be further defined through administrative procedures, is authorized with the following limitations:

	Supplies	General Services	Professional Services	Public Works Project
Suggestion of soliciting comparable quotes.	\$10,000 or less	\$10,000 or less	\$10,000 or less	See Public Works Project "Informal Bidding Procedure"
Must solicit comparable quotes/informal proposals.	\$10,001 to \$50,000 must solicit a minimum of three quotes	\$10,001 to \$50,000 must solicit a minimum of three quotes	\$10,001 to \$50,000 must solicit a minimum of one quote	See Public Works Project "Informal Bidding Procedure"
Must solicit formal proposals/bids.	\$50,001 or more	\$50,001 or more	\$50,001 or more *	More than \$125,000

* State law does not require competitive bidding for Professional Services; however, to promote fairness, the City strongly encourages the solicitation of competitive proposals for these services.

4. Informal Bidding Procedure, not a Public Works Project

The City Manager may issue administrative procedures setting forth requirements of informal bidding procedures for the purchase of supplies, general services, and professional services, consistent with state law and this Policy. Such procedures shall ensure uniformity of the City's purchasing practices.

5. Informal Bidding Procedure, Public Works Projects

As authorized by Pittsburgh Municipal Code Chapter 2.86, a public works project of \$175,000 or less may be accomplished by informal bidding in compliance with Pittsburgh Municipal Code Sections 2.86.030-060:

6. Formal Bids

6.1 For Supplies, General Services, and Professional Services

All purchases of supplies, general services, or professional services which may not be purchased under the City's informal bid thresholds shall be procured using a formal bid process. The City Manager may direct those purchases which fall within the informal bid thresholds to be formally bid, although there is no policy requirement for such a formal bid.

Formal bids for supplies, general services, or professional services shall contain the following elements and the City Manager may develop administrative procedures which adhere to these elements:

- Shall be prepared using a Request for Proposal (RFP) or a Request for Quote (RFQ) format; and
- Shall solicit potential vendors through the use of informal and/or formalized bidders lists; and

- Shall advertise the RFP or RFQ through an invitation to bid in a newspaper of general circulation, or through direct mailing, or through notices posted on the City's website; and
- Shall be publicly opened when required, in accordance with State Law, by the City Clerk or his/her designee or assignee; and
- For supplies, shall be awarded to the lowest responsive bidder; or
- For general services, shall be awarded based on best value to the City; or
- For professional services, shall be awarded in accordance with state law and this Policy.

Note: Best value is the valuation of price in conjunction with quality of service.

6.2 For Public Works Projects

Public works project purchases (including emergency purchases) which exceed the informal bid threshold shall be made in conformance with the California Public Contract Code.

A public works project of more than \$1 million is subject to a Project Stabilization Agreement unless exempt, as set forth in Resolution No. 18-13456, until November 5, 2023.

7. **Exemptions from Bidding**

7.1 Emergency Purchasing

In the event of an emergency for a non-public works project, the City Manager or designee may waive any purchasing procedure. An emergency is defined to mean any of the following:

- There is a great public calamity.
- There is immediate need to prepare for national or local defense.
- There is a breakdown in machinery or an essential service that requires the immediate purchase of supplies or services to protect the public health, welfare or safety, or to prevent financial loss, or for the continued conduct of City services.

7.2 "Piggyback" Purchasing

Purchases may be made through an agreement for supplies or services negotiated by another governmental agency if: (a) the agreement was awarded by a public agency situated within the State of California utilizing a quotation or bid procedure substantially similar to the City's required procedures for a contract of the same type and dollar amount; or (b) the agreement is identified on the California Multiple Award Schedules ("CMAS") listing maintained by the State of California Department of General Services – Procurement Division.

7.3 Other

Based on unique facts or circumstances and a recommendation with justification from the affected department director, the City Manager after consultation with the City Attorney may waive one or more purchasing procedures if he/she determines the interests of the City are best served; provided, however, such waiver is not in violation of City Council policy or applicable law.

8. **Local Preference**

The City shall provide a three percent (3%) preference for local vendors on all qualifying purchases up to \$50,000. To qualify for this preference, the purchase must be subject to sales tax collection. Also, the purchase order or contract must be issued to a business holding a current, valid City of Pittsburg business license and said business must be located in Pittsburg, California.

9. **Minority and Women Owned Businesses**

It is the City's policy to give minority suppliers an opportunity to compete on an equal basis with all other vendors in the competitive marketplace. One of the responsibilities of the Chief Purchasing Officer or his/her designee is to seek out and identify qualified, minority-owned firms and assist them in becoming familiar with the City's requirements for city purchases.

10. **Recycled Products Preference**

The City will consider preferences, when using competitive bids, in determining the lowest price(s) for products containing recycled materials. The following preferences are not cumulative; only one preference may be applied to a single product:

- Total aggregate purchase of ten thousand dollars (\$10,000.00) or less. The City will consider a five percent (5%) preference for products containing fifty percent (50%) or more post-consumer recycled content.
- Total aggregate purchase of five thousand dollars (\$5,000.00) or less. The City will consider a ten percent (10%) preference for products containing fifty percent (50%) or more post-consumer recycled content.
- Total aggregate purchase of one thousand dollars (\$1,000.00) or less. The City will consider a ten percent (10%) preference for products containing fifty percent (50%) or more post-consumer recycled content.

The following procurements are exempt from the requirements as mentioned above:

- Purchases made with federal or state grant funds.
- Purchases of construction or public works projects.
- Purchases made in cooperation with other public entities.



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/26/2018
TO: Mayor and Council Members
FROM: Joe Sbranti, City Manager
SUBJECT: Adoption of City Council Resolution Awarding a Contract for the 2018 Patch Paving Program
MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City's Annual Patch Paving Program involves removing failed asphalt concrete and base material, compaction of existing material, and replacing the same with an equivalent amount of asphalt concrete at various locations in the city. Staff recommends the City Council award a contract to continue this part of the City's ongoing 2018 road maintenance program.

FISCAL IMPACT

The Patch Paving Program will be funded with a portion of the previously approved budget from 2018/19 Citywide Pavement Management Project (Project 2217 \$200,000 Gas Tax (Highway Users Tax Account) Fund 203), and allocation of the remaining balance in the Railroad Avenue Improvements (Project 3331) of \$98,000.

RECOMMENDATION

City Council adopt the attached resolution and award the 2018 Patch Paving Program Contract to Pacific Coast General Engineering Inc. as the lowest responsible bidder, in the amount of \$177,270, allocate funds and approve the project contingency for a total project cost not to exceed \$300,000, and authorize the Finance Director to execute the Purchase Order on behalf of the City.

BACKGROUND

The Public Works Department annually contracts with private contractors to repair failed pavement areas around the City to prepare surfaces prior to the City's annual cape seal and slurry seal road maintenance programs.

The patch paving repairs the pavement, restoring the structural capacity of the pavement and provides a uniform pavement surface for cape or slurry sealant applied at a later date.

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

On October 25, 2018, Staff issued a Request for Quotation to area paving and construction firms and received proposals from six contractors in response.

Pacific Coast General Engineering Inc. was the apparent low bidder in the amount of one hundred seventy-seven thousand two hundred seventy (\$177,270).

The contractor's final payment is based on field measurement of the final square footage of pavement repaired by the Contractor. Public Works staff recommends awarding the contract for the 2018 Patch Paving Program to Pacific Coast General Engineering Inc. in the amount of one hundred seventy-seven thousand two hundred seventy (\$177,270).

ATTACHMENTS: Resolution
Draft Contract
Proposal Summary

Report Prepared By: Hilario J. Mata, Assistant Public Works Director

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter Of:

RESOLUTION NO. 18 - _____

Approve the Award of 2018 Patch)
Paving Program)

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, the City of Pittsburgh Public Works Department issued a Request for Quotations to solicit bids and contract proposals for the 2018 Patch Paving Program Contract; and,

WHEREAS, the Public Works Department is responsible for the care and maintenance of pavement in the City; and,

WHEREAS, the bid closing was October 25, 2018; and,

WHEREAS, staff received six proposals in response to the Request for Quotations; and,

WHEREAS, Pacific Coast General Engineering, Inc., of Pittsburgh, California, is the lowest apparent responsible bidder in the amount of \$177,270.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

- A. The recitals set forth above are true and correct statements and are hereby incorporated.
- B. The 2018 Patch Paving Program Contract is hereby awarded to Pacific Coast General Engineering, Inc. in the amount of \$177,720 with a total project cost not to exceed \$300,000.
- C. The Patch Paving Program will be funded with a portion of the previously approved budget from 2018/19 Citywide Pavement Management Project (Project 2217 Gas Tax (Highway Users Tax Account) Fund 203), and allocation of the remaining balance in the Railroad Avenue Improvements (Project 3331) of \$98,000.

Section 2. Authorization

- A. The Finance Director is hereby authorized and directed to execute a purchase order on behalf of the City of Pittsburgh.

- B. The City Manager is hereby authorized and directed to execute contract documents on behalf of the City of Pittsburg, and change orders in an amount not to exceed a total project expense of \$300,000.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwayne "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk

**REQUEST FOR QUOTATION
2018 PATCH PAVING PROGRAM CONTRACT**

THIS AGREEMENT, made and entered into this 5th day of November, 2018, by and between the **City of Pittsburgh**, hereinafter referred to as "City" and XXXXXXXXXXXXXXXXXX, hereinafter referred to as "Contractor".

WITNESSETH:

ARTICLE 1 - For and in consideration of the payment and agreements hereinafter mentioned, to be made and performed by said City and under the conditions expressed in the Faithful Performance and Labor & Materials Bond(s), bearing even date with these present, and hereunto annexed, Contractor agrees with City, at his own cost and expense, to do all the work and furnish all the materials, except such as are mentioned in the Specifications to be furnished by City, necessary to construct and complete in a good, workmanlike and substantial manner the work described in accordance with the Contract Plans and Specifications for **RFQ, 2018 Patch Paving Program**, which said plans and specifications are hereby specifically referred to, and by such reference made a part hereof.

ARTICLE 2 - City hereby employs Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the contract price stated herein, and hereby promises to pay the same at the time, in the manner and upon the conditions set forth herein; and said parties for themselves, their heirs, executors and administrators.

ARTICLE 3 - Contractor agrees to receive and accept the contract price of XXXXXXXXXXXXXXXXXX Dollars (\$XXX,XXX) as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Contract; also for any loss or damage arising out of the nature of the work aforesaid, or from any action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work, until it is accepted by the City of Pittsburgh and for all expenses incurred by or in consequence of the suspension of discontinuance of work; and for well and faithfully completing the work, and the whole thereof in the manner and according to the Contract Plans and Specifications, and the requirements of the City Engineer.

ARTICLE 4 - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

ARTICLE 5 - It is further expressly agreed by and between the parties hereto that the Notice to Contractors, Contract Proposal, Faithful Performance and Labor & Materials Bonds, Contract Plans, Contract Specifications and Standard Specifications are all essential parts of this Contract and are specifically referred to, and by such reference, made a part hereof. In the event of any conflict in the provisions thereof, the terms of said documents shall control, each over the other, in the following order:

1. Permits from other agencies as required
2. Contract Change Orders and Supplemental Agreements
3. Approved revisions to the plans
5. Addenda
6. Contract Bid Proposal
7. Special Provisions
8. Reference Specifications
9. Project Plans
10. Standards Specification
11. Standard Plans

Detailed plans will take precedence over general plans.

The Plans and Specifications and other contract documents will govern the work. The contract documents are intended to be complementary and cooperative and to describe and provide for a complete project. Anything in the Specifications and not on the Plans, or vice versa, shall be as though shown and mentioned in both.

ARTICLE 6 - By my signature hereunder, as Contractor, I agree to correct and repair all construction work for a minimum of one (1) year from the date of acceptance by the City of Pittsburgh against all defects. I also agree to furnish the City with a bond in the amount of ten (10) percent of the final contract price to remain valid for the duration of the correction and repair period. This correction and repair period shall not limit Contractor responsibility for any defects that may occur after the warranty period.

ARTICLE 7 - The work described in this Contract shall begin within ten (10) working days from the date the Notice to Proceed is received by Contractor; as determined by certified mail return receipt and shall be diligently prosecuted to completion within the number of days stated in the Special Provisions. If the work items are not completed by the date specified, including any extension of time for excusable delays, as provided herein, the Engineer shall deduct from the Contract price Five Hundred Dollars and no cents (\$500.00) for each working day of delay beyond the date of completion until the work is completed, as authorized per Government Code Section 53069.85.

ARTICLE 8 - The State general prevailing wage rates determined by the Director of Industrial Relations are hereby made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE 9 - Contractor, and any subcontractors, must be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with

Labor Code section 1725.5, except in limited circumstances as referenced in Labor Code section 1771.1(a).

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

ARTICLE 10 - Procedures for the Contractor to make claims for: (1) an extension of time, including relief from damages or penalties for delay; (2) payment by the City of money or damages arising from work done by, or on behalf of, the Contractor, where the underlying contract does not expressly provide for payment or payment to which the Contractor is not otherwise entitled; or (3) the payment of an amount disputed by the City are set forth in Section 7-2.01 of the Special Provisions.

IN WITNESS WHEREOF, the City and the Contractor have caused the names of said parties to be affixed hereto, the day and year first above written.

CITY OF PITTSBURG:

CONTRACTOR:

**JOE SBRANTI
CITY MANAGER**

BY:

ATTEST:

ATTEST:

**ALICE E. EVENSON
CITY CLERK**

BY:

**CITY OF PITTSBURG
PUBLIC WORKS DEPT.**

**REQUEST FOR QUOTATION
2018 Patch Paving Program**

**BID SUBMITTAL DEADLINE
DATE: October 25, 2018 TIME: 2:00 PM**

BID LIST

<u>CONTRACTOR</u>	<u>BID AMOUNT</u>
PACIFIC COAST GENERAL ENGR	\$177, 270
MCK SERVICES	\$186,000
HM CONSTRUCTION	\$231,585
G&S PAVING	\$262,250
SANDSTONE ENVIRONMENTAL ENGR.	\$264,500
TELFER PAVEMENT TECH.	\$306,375



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/25/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution to Approve a Lease Agreement for Public Works Equipment Financing

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City Public Works Department maintains a fleet with a replacement value of over \$6 million. The Finance Department solicited financing for replacement of three vehicles and one mower to replace equipment past its useful life and has a lower reliability and higher maintenance requirements. The bid exceeded the \$150,000 threshold and requires approval of the City Council.

FISCAL IMPACT

The City Council previously approved the financing of replacement equipment in the FY 2018/19 Public Works Department's Fleet Maintenance budget for this replacement. The lease payments are \$60,800.85 per year, including both principal and interest associated with this lease. No new additional funds are being requested. (Fund 611)

RECOMMENDATION

City Council adopt the attached resolution thereby approving a lease agreement between Holman Capital and the City and authorize the Finance Director to execute a lease financing agreement to purchase through a financing agreement, three (3) vehicles and one (1) mower.

BACKGROUND

The Public Works Department Fleet Maintenance Division is responsible for the maintenance of a vehicle fleet of 190 predominantly gas-powered cars, trucks, heavy equipment and other equipment. This includes police patrol cars, sedans, motorcycles, heavy-duty trucks and construction equipment and light- and medium-duty trucks, vans and

SUVs, and other pieces of equipment (compressors, mowers, train, carousel, etc.). The entire fleet has a replacement value of approximately \$6 million. Specific vehicles and equipment designated for purchase during FY 2018/19 are based on highest priority, on immediate need, and length of time required for delivery. The cost of the street sweeper is built into, and recovered from, the fees paid by Delta Diablo Sanitation District (DDSD) to the City for contractual street sweeping while the other equipment is part of the city's fleet.

The Public Works Fleet Maintenance Division obtained competitive bids on all equipment and the lowest bidder in all cases has been chosen. The street sweep was sourced from one manufacturer, TYMCO, to maintain the same type of equipment as the other TYMCO street sweeper in the fleet, however three bids were received from different vendors. The mower requirements were specified during the proposal process, two vendors brought different machines and the preferred mower came in at the lower price. The Terex Utility vehicle proposal was obtained by using Sourcewell.com, a purchasing cooperative. The Cargo Van was competitively bid among local and distant Ford dealers, the lowest bid was chosen.

The Finance Department requested bids from four financing sources, Wells Fargo and Morgan Stanley both declined to bid as the financing amount was too small given our banking relationship. Bank of the West informed staff that the rate would exceed more than 7% and Hoffman Capital came in with a 3.8% rate.

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

Existing equipment in the City's fleet is coming to the end of its useful life and was budgeted for replacement with the FY 2018-19 budget. Staff has obtained competitive proposals for a one (1) street sweeper, one (1) Jacobsen HR800 Mower, one (1) Terex Utility vehicle and one (1) 2019 Ford Transit Cargo Van to replace existing equipment that needs to be replaced due to their lack of efficiency and ability to effectively operate.

The total lease price/purchase price of the equipment will be \$608,008.50, \$549,017.42 for the equipment/fees and \$58,991.08 in interest payments over the 5-year lease term. At the end of the lease/purchase, the equipment becomes property of the City.

ATTACHMENTS: Resolution
Financing and Lease Agreement with Holman Capital
Vendor Cost Proposals

Report Prepared By: Hilario J. Mata, Assistant Director of Public Works

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter Of:

Approve Agreement with Holman Capital)
For Public Works Equipment)

RESOLUTION NO. 18-

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, the City of Pittsburgh operates a fleet of approximately 190 cars and trucks plus other equipment with an estimated value of over \$6,000,000; and,

WHEREAS, the Public Works Department is responsible for the care and maintenance of this equipment and annually replaces vehicles and equipment that have outlived their cost-effective usefulness to the City; and,

WHEREAS, it is in the best interests of the City and the citizens of Pittsburgh that the City's vehicle and equipment fleet be maintained in optimum working condition to preserve these equipment assets and provide the best and most cost-efficient service to the citizens of Pittsburgh; and,

WHEREAS, from time to time vehicles and equipment become old or worn out to the point where they are no longer able to provide optimum service to the City and/or are too costly to maintain; and,

WHEREAS, these old and worn out vehicles and equipment must routinely be replaced to provide City staff with adequate equipment to provide the best and most cost-effective services to the citizens of Pittsburgh; and

WHEREAS, the City of Pittsburgh solicited bids for one (1) street sweeper, one (1) gang mower, and one (1) cargo van. The Utility vehicle was bid through a cooperative governmental purchasing procedure using Sourcewell.gov; and

WHEREAS, the City of Pittsburgh selected the lowest bid received for each of the above equipment; and

WHEREAS, the City of Pittsburgh solicited financing solutions for the above equipment; and

WHEREAS, Holman Capital provided the lowest financing interest rate for the equipment.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

- A. The recitals set forth above are true and correct statements and are hereby incorporated.

- B. The bid for one (1) TYMCO 600 Sweeper as received by the City of Pittsburg is accepted and awarded to GCS Environmental Equipment Services, Inc. in the amount of \$249,581.25.
- C. The bid for one (1) Jacobsen HR800 Mower as received by the City of Pittsburg is accepted and awarded to Garton Tractor in the amount of \$97,893.80.
- D. The bid for one (1) Terex Utility vehicle as received by the City of Pittsburg is accepted and awarded to Terex. in the amount of \$156,2423.
- E. The bid for one (1) 2019 Ford Transit Cargo Van as received by the City of Pittsburg is accepted and awarded to Terex. in the amount of \$37,799.37.
- F. The City desires to enter in a lease agreement with Holman Capital for the Equipment.

Section 2. Authorization

- A. The Finance Director is hereby authorized and directed to execute this purchase orders on behalf of the City of Pittsburg.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk



GCS ENVIRONMENTAL EQUIPMENT SERVICES INC

July 23, 2018

**City of Pittsburg
259 East 12th Street
Pittsburg, CA 94565**

**Attention: Russell Tank, Equipment Shop Supervisor
Phone 925.252.4035 Email: RTank@ci.pittsburg.ca.us**

**PROPOSAL ON NEW 2018 TYMCO MODEL 600 / 2018 Freightliner M2 -
106 Chassis PM10 Certified**

STANDARD EQUIPMENT:

AUXILIARY ENGINE TIER 4 Final: John Deere diesel 4045T; 4 cyl.; 4.5 L (276 CID); 99 HP Tier 4 Final @ 2500 RPM; Torque 215 ft. lb. @ 1200 RPM; 4 cycle; 4.19" bore; 5.00" stroke.

AUTOMATIC SHUTDOWN SYSTEM: Automatic engine shutdown when engine coolant
Temperature is too high, coolant level is too low or oil pressure is too low.

DUST CONTROL SYSTEM: 220 gallon capacity polyethylene water tank; 5 GPM electric diaphragm type pump; low water warning light; external water level indicator; spray nozzles around pick-up head, gutter broom(s) and inside hopper.

INSTRUMENTS IN CAB: Oil pressure/coolant temperature gauges; starter; ignition; tachometer; auxiliary engine hour meter; throttle. Paddle switches have illuminated legend windows for easier night operation.

HYDRAULIC TANK SIGHT/TEMPERATURE GAUGE: External; mounted on tank.

DUAL STEERING: Right and left hand steering wheels with center mounted truck ignition; headlights, dimmer switch, windshield wipers; cigar lighter; integral power.

TWIN GUTTER BROOMS, FLOODLIGHTS, PARABOLIC MIRRORS: Left and right side mounted 43" diameter wire filled digger type; adjustable floodlight for each gutter broom; 8" convex mirrors on front fenders.

PRESSURE BLEEDER: Air pressure is deflected out, allowing additional suction across the front of pick-up head.

WATER FILL HOSE & RACK: Flexible 20 foot long water tank fill hose with 2-1/2 inch hydrant coupling with rack mount. System incorporates air gap.

AMBER HIGH POWERED STROBE LIGHT: 2,300,000 plus candle power with a minimum input of 23 Joules; 60 flashes per minute; with protective limb guard.

REAR MOUNTED ALTERNATING/FLASHING LIGHTS (2)

BACK-UP ALARM
FLOODLIGHTS ON REAR (2)
DUO SKIDS, warranted for two years/2000 hours prorated
RUBBER LINED BLOWER
SUCTION INLET LINER
SEVERE WEATHER WIRING

OPTIONAL EQUIPMENT INCLUDED:

Gutter Broom Tilt Curb Side
Gutter Broom Extensions Left and Right
Low Emission Package PM10 Certified
Abrasion Protection Package
Hopper Drain System
Front Curtain Lifter System
Auxiliary Hydraulic System
Dump Switch in Cab
Back-up camera and monitor (camera of rear and pick-up head)
Tier 4 Final Auxiliary Engine
Heavy Duty AOD Water System with handgun
Double DUO Skid Shoes with 3 inch ramps
Variable speed gutter brooms
Auto Sweep Interrupt System
Two - piece hopper screen
Pick-Up head water blast system
LED Stop/Turn/Tail Lights
Stainless Steel Limb Guard Curb Side
Linear Leaf Bleed with gauge
Sweeper Deluge System (additional clean out port on pressure transition)
Rear mounted Arrow Stick LED

TRUCK SPECIFICATIONS

Truck Chassis Year 2018
Freightliner M2-106
200 HP Diesel Engine Cummins 6.7L Latest Emissions
Allison Automatic Transmission RDS 2500
Two speed rear axle
AM/FM Stereo CD / Bluetooth
Air Ride Seats
Electric adjustable heated mirrors
Plus all standard features

New Discounted Sale Price \$229,500.00 plus tax

FOB: Pittsburg, CA
DELIVERY: Estimate 90/120 Days ARO
TERMS: Net 30
TAXES: Taxes are not included in above prices.

Tax 20,081.25

Total 249,581.25

We appreciate the opportunity to present this proposal and look forward to being further and continued service.

Accepted by: _____

Title: _____

Date: _____

Sincerely,

Tracy R. Pinkston
President / CEO
GCS Environmental Equipment Services Inc.
121 East Street Woodland, CA 95776
Office (530) 402-1850
Fax (530) 402-1851
Mobile (530) 681-1752
Email: tracygcs@aol.com
Web Site gcsees.com

2924 French Camp Turnpike Rd
PO Box 6219
Stockton, CA 95206
(209) 948-5401
Fax (209) 462-5794



Quality People Quality Products®

1-877-TRACTOR

(1-877-872-2867)

www.GartonTractor.com

NJPA QUOTE

Buyer: Pittsburg City of Russ Tank (925)252-4035

Date: 8/1/2018

Address: _____

City, State: Pittsburg, CA

Zip: _____

Invoice No. _____

Date: _____

Phone #: _____

Sales Tax District: _____

Fax: _____

E-Mail: rtank@ci.pittsburg.ca.us

P.O. # _____

New/ Used	Make	Model	Serial #	Stock #	Description	
New	Jacobsen	HR800			16' Wide Area Mower ROPS	\$84,681.16
					Mulching (Blades Only)	\$650.00
					Maintenance Free Wheels/Tires (72.96 x 10 = \$729.60 + \$500 Install)	\$1,229.60
					Road Light Kit - ROPS (\$834 + \$250 Install)	\$1,084.00
					Mirror and Install	\$250.00
					Beacon	\$650.00
					Canopy w/ Downdraft Fan	\$1,450.00
					NJPA Contract #062117-JCS	

TRADE-INS: Buyer Certifies Below Trade-Ins to be free of encumbrances except as noted.

Freight: _____

Year	Make	Model	Serial #	Stock #	Description	Trade-In Allowance	Subtotal:	
							Tax Rate: 8.750%	\$7,874.54
							Calif. Tire Fee:	\$24.50
							Extended Coverage:	
							UCC/DOC Fee:	
Trade-In Allowance: _____ Amount Owing: _____ Net Trade-In Allowance: _____							Total Delivered Price:	\$97,893.80

"Trade-In's must be turned in or picked up no later than 5 days after delivery of purchased equipment."

Financing Terms: _____

Trade-In Allowance _____

Less Cash Down Payment* _____

Total Down Payment _____

Unpaid Balance _____

\$97,893.80

PD Insurance: _____

Other Charges: _____

AMOUNT FINANCED OR DUE ON DELIVERY \$97,893.80

Notes

Warranty: _____

Extended Coverage: _____

Availability: _____

WE appreciate your business!

Giovanni Stagi gstagi@gartontractor.com

(209) 216-6230

Quotes are subject to change by availability or manufacturer programs

QUOTE



TEREX®

CUSTOMER ORDER ACKNOWLEDGEMENT

Terex Utilities, Inc. - 200 Eden Way - White House, TN 37188 - Phone: 605-882-4000 - Fax: 605-882-1842

Date: **9/26/2018**

NJPA Contract #:042815-TER

Reference Quote QU10305

Quote Number: QU11732

Unit: LTM40

Pittsburg, City of
37 E. 12th Street
Pittsburg, CA 94565

Attention: Russell Tank

Baseline Price QU10305: \$127,402

Open Market Items QU11732: \$28,841

Grand Total Each: \$156,243

Prices are subject to change until shipment. Applicable taxes and surcharges will be added. Taxes, shipping & handling and lead times are estimates and subject to change. Quoted prices are based on total quoted package and subject to change if all items not purchased. All prices quoted are in U.S. dollars unless otherwise specified. Payment by cash or certified check only. Chassis payment is due upon chassis receipt at our facility. Quote withdrawn after 30 days.

Please ensure the accuracy of the specifications and drawings you provide. Changes made after receipt of order may incur additional charges. If you are trading equipment in, you warrant that: You have good title to the trade-in; it is free of all liens and encumbrances; all information you have provided related to the trade-in is true and correct.

Notes:

- 1) Delivery Terms are: FCA, Shipping Point Delivery Prepaid and Included.
- 2) Terms: Net 30 days.
- 3) Delivery days from receipt of order shall be 210-270

Buyer hereby agrees to purchase the products in this quotation, subject to acceptance by Seller. Buyer has read and agrees to Seller's Terms and Conditions of Sale.

Terex Utilities Inc.

Dan Relph
Sales Coordinator

Bruce Morrow
Account Manager

Accepted By: _____

PO Number: _____

Quantity: _____

Grand Total: _____

Date: _____

 **WARNING** Cancer and Reproductive Harm
www.P65Warnings.ca.gov

Terex Utilities First Article Inspection Policy

To: Pittsburgh, City of

Re: QU11732

Date: 09/26/2018

By issuing a Purchase Orders and/or accepting the Customer Order Acknowledgment for an agreed upon specification, Pittsburgh, City of has agreed that the unit as presented in the quote documents meets Pittsburgh, City of's requirements and specifications. A First Article Inspection (FAI) should not be viewed as an opportunity to change the specification or customize the unit while production is being completed. It is an opportunity for Pittsburgh, City of's team members to familiarize themselves with their new unit and ensure conformity to the quoted specification.

As an alternative to an in-person inspection, Terex Utilities' can provide detailed digital and video inspections that allow Pittsburgh, City of's team members to avoid the expense and inconvenience of travel, as well as reduce the possibility of production delays. If a facility visit during the build process is scheduled, Pittsburgh, City of agrees to pay all travel and accommodation expenses associated with the inspection, either through the PO for the unit or directly.

Because the safety of our customers and team members is the paramount concern of Terex Utilities, facility guests will be required to wear appropriate Personal Protection Equipment including steel toed shoes, safety glasses, and hearing protection. Inspections will be limited to a maximum of four hours, and facility guests will be required to remain with their Terex guide at all times.

When scheduling a facility visit Terex will provide as much notice as possible based on our production schedule. Our goal is to notify Pittsburgh, City of three weeks prior to the appropriate date, and we request a response within one week of notification. If Pittsburgh, City of's designated team members are not available on the identified date, a digital and/or video inspection may be scheduled in place of the facility visit. In the event that no inspection is possible, production will proceed as documented per the approved drawings and quote documents.

Terex Utilities requests that in-person visits are limited to no more than two individuals, including at least one individual with the authority to accept any agreed upon changes on behalf of Pittsburgh, City of. Upon completion of the inspection Terex Utilities will compare the findings with the original quote documents. Any changes or action items will be documented on a new Change Order Form. Please note that Terex Utilities reserves the right to decline requested items not consistent with the original specification. If Terex Utilities accepts the requested items, additional charges may accrue.

Prior to departure, Terex Utilities and Pittsburgh, City of will meet to review the Change Order Form in order to address and agree upon any corrective actions. This may require additional engineering review, fabrication, or installation rework to ensure the safety and functionality of the unit, which may lead to additional delays. In the event that the desired changes are not compliant to the original specification, Pittsburgh, City of will be required to provide written authorization before Terex Utilities can resume work on the unit. If Pittsburgh, City of does not authorize such changes within 24 hours, Terex Utilities will proceed as documented on the original approved drawing and quote documents.

Terex Utilities deeply appreciates the opportunity to work with Pittsburgh, City of to ensure that each piece of equipment represents the quality and workmanship for which Terex Utilities is known.

TERMS & CONDITIONS OF SALE
TEREX SOUTH DAKOTA, INC./TEREX UTILITIES, INC.
U.S. and CANADA (except Quebec)

1. Terms and Conditions. These Terms and Conditions of Sale cancel and supersede any and all terms of sale pertaining to Parts and Equipment (and any supplements thereto) previously issued by Seller to Buyer and are subject to change without advance notice. "Seller" herein shall be the seller identified in the Sales Order Acknowledgement or other applicable sales documents. The prices, charges, discounts, terms of sale and other provisions referred to or contained herein shall apply to Seller's Parts and Equipment (hereinafter collectively referred to as "Products") sold and shipped to Buyer on and after August 1, 2016, and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Products by Seller shall be deemed to constitute a binding agreement between the parties pursuant to the terms and conditions contained herein and Buyer agrees that the order may not thereafter be cancelled, countermanded or otherwise changed without the prior consent of Seller. This agreement supersedes any prior agreements, representations, or other communications between the parties relating to the subject matter set forth herein. No other terms and conditions shall apply including the terms of any purchase order submitted to Seller by Buyer, whether or not such terms are inconsistent or conflict with or are in addition to the terms and conditions set forth herein. Seller's acceptance of Buyer's purchase order is conditional upon Buyer's acceptance of all the terms and conditions contained herein. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to the terms and conditions set forth herein. The Products are intended for industrial/commercial use by professional contractors and their trained employees and are not intended for use by consumers.

2. Terms of Payments. Payment for Products purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on net thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with Seller's written notices; or (4) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller. Seller shall have the right, at its option, to charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the rate of 1.5% per month or the maximum rate permitted by applicable law. Unless otherwise agreed in writing between Seller and Buyer, Seller may, in its sole discretion, increase or decrease the price of any Product, as Seller deems reasonably necessary, at any time prior to shipment and invoice Buyer for the same. If Buyer orders the chassis through Seller, the chassis payment is due upon receipt of chassis by Seller and the balance owed for the completed unit is due in accordance with agreed upon payment terms. When supplied by Buyer, Seller will inspect the chassis upon receipt and will notify Buyer of any chassis mounted components (including but not limited to fuel tanks, air tanks, battery boxes and exhaust systems) that require relocation. Buyer will be invoiced for such work upon completion of the finished Equipment.

3. Taxes and Duties. Unless otherwise noted, prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of the Products. In addition, in the event any other similar tax is determined to apply to Buyer's purchase of the Products from Seller, Buyer agrees to indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are U.S. dollars unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of the Products shall be paid by Buyer; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

4. Title, Property, Risk and Delivery. Unless otherwise stated in writing, for all intra-continental United States shipments, all prices and delivery are FCA, point of manufacture (Incoterms 2010); for all other shipments, all prices and delivery are FAS, named port of shipment (Incoterms 2010). Title and all risk of loss or damage to Products shall pass to Buyer upon delivery, as per Incoterms 2010. Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. Seller shall not be liable for any delay in performance of this agreement or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the delay is caused, directly or indirectly, by a force majeure event described in Section 20 herein or any other cause beyond Seller's control. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer. Delivery shall generally be 240 to 270 days after receipt by Seller of a signed Order, provided that, where applicable: (1) Seller receives the chassis a minimum of 90 days prior to scheduled delivery, (2) drawings are timely sent by Buyer and the approved drawings are returned to Seller by Buyer by the requested date, (3) all vendor-supplied components and Buyer-supplied accessories are received by Seller by the date necessary to comply with scheduled delivery. Seller shall not be liable for any delay in performance of this agreement or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the

delay is caused, directly or indirectly, by a force majeure event described in Section 20 herein or any other cause beyond Seller's control. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within fifteen (15) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Parts and or Equipment to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.

5. Delays Caused By Buyer. In the event of a delay in shipment or delivery due to delay by Buyer in furnishing delivery instructions, arranging a method of payment satisfactory to Seller, submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, if the Products are not shipped or delivered within five (5) days from the first date they are ready to be shipped or delivered, then Seller shall be entitled to charge, as compensation, any additional costs incurred related to such delay. If the Products are not shipped or delivered by the date which is ten (10) days from the first date they are ready to be shipped or delivered, then Buyer's order shall be deemed cancelled and Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. Seller shall have the right to keep payments on account already received from Buyer, and the difference between the sales price (increased by any other and all further costs, including but not limited to attorney's fees and expenses, storage and other costs, and interest accrued thereon) and the price received from another buyer shall constitute a debt of Buyer and bear interest at the same rate set forth in Section 2 herein. Seller shall be entitled to claim for any further damages suffered as a consequence of Buyer's breach of its obligations hereunder.

6. Cancellation. Prior to delivery to place of shipment, a Product order may be cancelled only with Seller's prior consent and upon terms indemnifying Seller from all resulting losses and damages. Seller shall have the right to cancel and refuse to complete a Product order if any term and/or condition governing this agreement is not complied with by Buyer. In the event of cancellation by Seller, or in the event Seller consents to a request by Buyer to stop work or to cancel the whole or any part of any order, Buyer shall, in the event that Seller asks Buyer to do so, make reimbursement to Seller, as follows: (i) any and all work that can be completed within thirty (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred, plus fifteen percent (15%). Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.

7. Inspection and Acceptance. Buyer agrees that it shall inspect the Products immediately after receipt and promptly (in no event later than fifteen (15) days after receipt) notify Seller in writing of any non-conformity or defect. Buyer further agrees that failure to give such prompt notice or the commercial use of the Products shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. The giving of any such notice by Buyer shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind. Seller shall not be bound by any agent's, employee's or any other representation, promise or inducement not set forth herein. Seller's catalogues, technical circulars, price lists, illustrations, drawings and any other similar literature are for Buyer's general guidance only and the particulars contained in them shall not constitute representations by Seller and Seller shall not be bound by them.

8. Warranty for New Products. Seller warrants its new Equipment and Parts manufactured and sold worldwide, to be free, under normal use and service, of any defects in material or workmanship for a period of twelve (12) months from the date of delivery (as limited by Seller's Limited Product Warranty); provided that Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Equipment has been operated and maintained in strict compliance with Seller's operating and maintenance manuals ; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction of Buyer, its agents or employees and (2) a new machine registration certificate has been completed, signed and delivered to the Seller within thirty (30) days of the Equipment's "in-service" date. If requested by Seller, Buyer must return any defective Product to Seller's manufacturing facility, or other location designated by Seller, for inspection, and if Buyer cannot establish that conditions (i) and (ii) above have been met, then this warranty shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it. Accessories, assemblies and components included in the Products of Seller, which are not manufactured by Seller, are subject to the warranty of their respective manufacturers. This warranty shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by this warranty and are the sole maintenance responsibility of Buyer. This warranty is limited to the original purchaser or end-user if sold to a distributor, and is not assignable or otherwise transferable without written agreement of Seller. **THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED HEREIN.** Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's Products. This warranty shall not apply to any of Seller's Products or any part thereof which has been subject to misuse, alteration, abuse,

negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive this limited warranty without prior written consent of Seller.

9. Warranty for Used Equipment. Used Equipment sold hereunder is sold on an “AS IS, WHERE IS, WITH ALL FAULTS” BASIS WITH NO WARRANTIES WHATSOEVER, EXCEPT AS TO TITLE, UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING BY BUYER AND SELLER. SELLER ASSUMES NO RESPONSIBILITY FOR THE CONDITION, SAFETY, LEGAL COMPLIANCE, OR USABILITY OF THE USED EQUIPMENT AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE USED EQUIPMENT INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONDITION OF THE USED EQUIPMENT, NOR THE SUFFICIENCY OF ANY WARNINGS, INSTRUCTIONS OR MANUALS PROVIDED WITH THE USED EQUIPMENT. Seller recommends and Buyer acknowledges that Buyer should contact the original manufacturer to obtain all available information for the used Equipment, including but not limited to product manuals, warnings, safety bulletins, recall notices, and instructional placards before using the used Equipment. Seller shall not be responsible for providing such information. Buyer agrees not to assert any claims against Seller with respect to the used Equipment or its use. Buyer agrees that it shall inspect the used Equipment prior to issuance of a purchase order for such Equipment and acknowledges that it is not relying upon any photographs, images, videos, representations, statements or other assertions made by Seller with respect to the used Equipment’s condition, but is relying upon its own knowledge and/or inspection of the used Equipment.

10. Remedies for Breach. IN THE EVENT OF ANY BREACH OF THE WARRANTY BY SELLER, THE PARTIES AGREE THAT SELLER’S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER’S SOLE DISCRETION) OF ANY DEFECTIVE EQUIPMENT COVERED BY THE WARRANTY. In no event shall any repair or replacement of any defective equipment covered by the Seller’s warranty extend the length of the warranty beyond the period specified in Section 8 herein.

11. Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SELLER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND SPECIFICALLY DISCLAIM, ANY LIABILITY FOR ANY: (A) LOST PROFITS AND/OR BUSINESS INTERRUPTION (WHETHER DIRECT OR INDIRECT); AND (B) INDIRECT, INCIDENTAL, CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT) OR OTHER DAMAGES OR LOSSES OF ANY KIND WHATSOEVER, including, without limitation, labor costs, lost profits, loss of use of other equipment, third party repairs, personal injury, emotional or mental distress, improper performance or work, penalties of any kind, loss of service of personnel, or failure of Products to comply with any federal, state, provincial or local laws, regardless of whether arising from a breach of contract, or warranty, legal claims or otherwise. **Nothing in this Section shall operate to exclude Seller’s liability for death or personal injury when directly related to Seller’s negligent act or omission.**

12. Limitation of Actions. Any action for breach of this agreement must be commenced within one (1) year after the cause of action has accrued.

13. Specification Changes. In the event Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event Seller is required to modify the ordered Equipment, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. Buyer must submit to Seller a revised purchase order specifying any and all requested changes. Upon receipt of Buyer’s revised purchase order, Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer.

14. Trade-in Offers. Trade-in offers are subject to Seller’s inspection and acceptance of the equipment, which must have been maintained to U.S. Department of Transportation operating and safety standards. All accessories on the equipment, including without limitation jibs, winches, pintle hooks and trailer connectors, must remain with the equipment unless otherwise agreed by Seller and Buyer in writing. Seller reserves the right to cancel any trade-in offers or agreements if these conditions are not met, or if Buyer has misrepresented any information about the trade-in unit.

15. Insurance. Until the purchase price of any Products is paid in full, the Buyer shall provide and maintain insurance equal to the total value of the Equipment delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, in the names of Seller and Buyer as their interest may appear, and in an amount satisfactory to Seller. If the Buyer fails to provide such insurance, it then becomes the Buyer’s responsibility to notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to affect such insurance shall be assumed by the Buyer.

16. Patents, Copyrights, Trademarks, Confidentiality. No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products hereunder. Buyer shall not identify as genuine products of Seller products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller’s trademarks to identify such products; provided, however, that Buyer may identify such products as utilizing, containing or having been manufactured from genuine products of Seller as treated, modified or altered by Buyer or Buyer’s representative, upon prior written approval of Seller. All plans,

photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this Agreement by Buyer; or (b) is already in Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.

17. Default and Seller's Remedies. In the event of default by Buyer, all unpaid sums and installments owed to Seller, shall, at Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity, including but not limited to any and all remedies available to it under the Delaware Uniform Commercial Code. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.

18. Indemnification by Buyer. Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property) arising out of or in any way connected with the performance or the furnishing of Products under this agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any Products furnished hereunder) of Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If Buyer fails to fulfill any of its obligations under this paragraph or this agreement, Buyer agrees to pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights. The provisions of this paragraph are in addition to any other rights or obligations set forth in this agreement.

19. Installation. Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and erection of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Products when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller harmless and at Seller's request, defend Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of said installation or start-up.

20. Force Majeure. Seller shall not be liable to Buyer or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of Seller's obligations in relation to the Products if the delay or failure was due to any cause beyond the reasonable control of Seller including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.

21. Anti-Corruption; Export Controls; No Boycotts. Buyer agrees that it shall, and that any party retained by the Buyer ("Retained Party") shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any Retained Party shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, shipment, distribution and/or sale of the Products, technology, information or warranty related services. Buyer further agrees that it shall comply with applicable laws pursuant to the Joint Comprehensive Plan of Action (JCPOA) of July 14, 2015 and any other applicable laws, resolutions, regulations or licenses for the export or re-export of Products, technology, information or warranty related services directly, or with its knowledge indirectly into Iran. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export the Products, technology, information or warranty related services directly, or with its knowledge, indirectly, into Sudan. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export the Products, technology, information or warranty related services directly or with its knowledge indirectly into Cuba without Buyer first obtaining written approval from Seller. Failure to comply strictly with this section and all applicable laws, regulations and licensing/approval requirements shall be grounds for immediate termination of this agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between the Buyer and Seller or in any other document or agreement relating to the Products sold hereunder, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.

22. Telematics. If a telematics system is included with the Equipment, the telematics system is administered by a third party ("Teleservice Provider") and collects a range of operational data about the Equipment including, but not limited to, usage, performance and reliability. Buyer consents to Seller's obtaining such data from the Teleservice Provider for warranty, product improvement and customer support purposes

23. Construction and Severability. These Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and shall be construed and enforced in accordance with the laws of Delaware. The United Nations Convention on Contracts for the International Sale of Goods (1980) (CISG) shall not apply. The invalidity or unenforceability of any provisions of this agreement shall not affect any other provision and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

24. Jurisdiction. The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any provisions herein shall be in United States District Court, District of Delaware or, if federal jurisdiction is lacking in such action, in New Castle County Superior Court in Delaware.

25. No Assignment. No rights arising under this agreement may be assigned by the Buyer unless expressly agreed to in writing by the Seller.

26. No Set-off. Buyer shall have no right to set-off any amounts it may owe Seller against amounts Seller may owe Buyer under this or any other agreement between Buyer and Seller.

27. Miscellaneous. Buyer represents that: (i) it is solvent and has the financial ability to pay for the Equipment and Parts purchased hereunder and (ii) it has all requisite right, power and authority to perform its obligations under this agreement.

Buyer's Initials: _____



Terex Utilities, Inc.
500 Oakwood Rd, Watertown, SD 57201
Phone: 605-882-4000 Fax: 605-882-1842

09/26/2018

PITTSBURG, CITY OF
357 EAST 12TH STREET
PITTSBURG, CA 94565
Attention: RUSSEL TANK

Phone: (925)252-4035

Qty. Description

UNIT

- 1 One (1) New Terex Hi-Ranger LTM40 Articulating / Telescoping Aerial Device providing a working height of 44.5 ft (13.6 m).
Unit will be mounted behind the cab.

Design Criteria:

* Design criteria is in accordance with current industry and engineering standards applicable and accepted for structural and hydraulic design.

Aerial device is designed as a Category C machine in accordance and is dielectrically tested and rated for operation on systems up to 46 Kv phase to phase per ANSI/SIA A92.2-2015

Hydraulic System:

- * Full pressure open center hydraulic system.
- * Hydraulic hoses are equipped with permanent type fittings.

Miscellaneous:

- * All metallic components of the complete aerial device are powder coat white.
- * The fiberglass upper boom, boom inserts, platforms, and covers are white.
- * Two complete manuals providing operation and maintenance procedures and a replacement parts listing.
- * Warning decals provided with unit.

- 1 Turntable and Lower Boom Assembly:

Lower Boom:

- * Filament wound high strength fiberglass insert providing an insulation gap.
- * The lower boom articulation is from -5 to 85 degrees.
- * Side reach of 30.0 ft.(9.1 m)

Lower Controls:

- * Individual control levers are located in an accessible location on the turntable.

Rotation:

- * Self-locking worm gear rotation drive is provided and equipped with bi-directional motor.

Upper Boom:

Qty. Description

- * Filament wound high strength fiberglass boom providing an insulation gap.
- * The upper boom has an articulation of -20 to 80 degrees

Second Section Boom:

- * Filament wound high strength fiberglass boom providing an insulation gap.
- * Tapered non-metallic rollers mounted at the end of the second section boom support the fiberglass boom under load minimizing scratches and abrasions.
- * The sides of the fiberglass boom are supported and guided by non-metallic rollers to reduce tracking.

- 1 Mounting Kit:
 - * Behind cab mount for use with (1) set of A-frame outriggers attached to tower and tie plates.
- 1 Controls For 1-Sets of Outriggers (Open center systems):
 - * Recessed at rear of truck each side for ease of view for outrigger placement.
 - * Includes switches and alarm for outrigger in motion alarm.
- 1 Outrigger Interlock:
 - * To operate the boom the outriggers must be extended.
- 1 Pedestal.
- 1 A 20-gallon hydraulic oil reservoir provided with a spin-on type 10-micron return line filter a 100-mesh filter screen baffles outlet filter screen clean out access hole dipstick and a ball type shut off valve.

Sight Gauge With Thermometer:

- * Mounted within an aluminum body to protect sight tube.
- * Installed on end of hydraulic oil reservoir.
- * Thermometer has a range of 0-300 degrees Fahrenheit.

- 1 Boom Tip with 4 Function Controls, Platform Rotator and 800 lb. removable top mounted jib that does rotate with platform.

Upper Controls: "Control-Plus" single stick controller.

- * Enable lever must be actuated before operation.

The end mount platform rotator offering 180 degrees of hydraulic rotation.

Hydraulic Platform Tilt is provided at platform and lower controls.

Engine Stop/Start controlled at platform and lower controls.

A demand throttle will increase the engine RPM automatically when a control is actuated. This signals the engine speed to increase therefore the pump output increases. The throttle activation used, electric or hydraulic, will depend on vehicle engine.

Hydraulic Tool Outlets At Platform.

Top mount, Removable Jib/Winch

- * Levels with platform.

Qty. Description

- * Does rotates with platform.
 - * Hydraulic articulation from 0 to 90 degrees.
 - * Minimum reach of 49" from the platform shaft.
 - * Sheave head can be manually extended to 56".
 - * Jib w/winch is removable and comes with ship loose socket to store the jib/winch when removed.
 - * Maximum jib capacity of 800 lb.
 - * Includes up to 65' of 3/8" winch rope and hook.
- 1 Platform with a rated capacity of 400 lbs.
- 1 Platform, End Mount, 24 x 30 x 42:
* Includes one outside access step with slip-resistant surface.
- 1 A safety harness with lanyard is provided for fall arrest.
- 1 A padded saddle rest provides platform support during road travel.
- 1 Insulated Platform Liner with Step for 24" x 30" x 42" Platform:
* Tested at 50 KV AC.
- 1 Scuff Pad with Step to fit inside of a platform liner for a 24" x 30" Platform:
* Non-skid standing surface.
- 1 Vinyl Foam Filled Platform Cover For 24" x 30" Platform:
* Water resistance with internal elastic cord around edge.
- 1 Dual Hydraulic Tool Outlets At Platform With Flow Control:
* Installed at the platform to accommodate two open center hydraulic tools.
* Provides 5 GPM at 2250 psi at engine idle.
- 1 Continuous And Unrestricted Rotation:
* A hydraulic rotary manifold provides a rotating oil distribution system for continuous and unrestricted rotation.
* A 4 channel electric collector ring is provided as standard.
- 1 Auxiliary Let Down for use with Open Center Hydraulics:
* Allows for the descent of the boom (platform) in the most direct manner for a time limited by the duty cycle of the electric motor.
* Includes 12 volt electric motor for use on a 12 volt chassis.
Note: This includes a switch for activation at pedestal for electric or air function.
- 1 Terex Chassis Controller (DTS50) 12 volt:
* Provides Inputs and Outputs indication for trouble shooting.
* LED indicators to show when active.
* Recommended for all Class 5 Chassis types.
* Controller programmable for communication with different Chassis manufacturers.
- 1 A boom rest with a cam style tie down strap is provided
- 1 Boom Stow Interlock In Addition to be used with Standard Boom Interlock:

Qty. Description

* To operate the outriggers the boom must be in the stowed position and to operate the boom the outriggers must be extended.

1 Tool Tray:

* Fiberglass tool tray fits upper edge of platform. 19" x 8" x 7" deep.

1 Pump for systems requiring 8 gallons per minute:

*Fixed displacement gear pump

BODY, INSTALLATION

** BODY INFORMATION **

1 126 Line Body 54 High x 94 Wide

1 Install Aerial Device Behind Cab And Install All Associated Components:

* Final test and inspect completed unit including stability and dielectric testing per manufacturers requirements and ANSI/SIA A92.2-2015.

1 Hose and fittings to connect the hydraulic system from the oil reservoir to the pump and unit.

1 Platform rest, bottom base

1 Chassis Spring Additions:

* Build up left rear chassis springs to level vehicle.

1 Power take off with indicator light for automatic transmission.

1 DOT Inspection.

1 Set chassis parameters.

1 Back-up alarm to sound when the vehicle is shifted into reverse.

2 Laminated wood outrigger pad 24" x 24" x 2-1/4" with rope handle.

* Includes outrigger pad storage.

2 Pendulum style retainer.

2 Rubber wheel chocks with eye bolt.

Store wheel chocks curbside body

1 Grab handles as necessary for 3-point contact.

1 (2) two S/L rear bumper steps

1 Rigid stirrup step mounted on side access for ground to body access.

Qty. Description

- 2 Mud flap with logo 18" tall.
Note: Trim As-Required.
- 2 Anti-sail bracket for mud flaps.
Note: Trim As-Required to fit mud flap.
- 1 Under body mounting kit for a pair of mud flaps.
- 1 Bracket for storing grounding cable.
- 1 2/0 Black Electrical Cable used for grounding per ASTM F855-04:
 - * 50' of multi-strand flexible copper cable, three grounding lugs, two ferrules and grounding clamp.
 - * Three point grounding system for grounding vehicle during work operations.
 - * Cable must be fully removed from bracket before use.
 - NOTE! Purchaser to verify this meets their company's requirements for fault current.
- 1 Grounding Loop Kit:
 - * Consists of (2) grounding copper rings located one at front and one at rear.
- 1 Ladder and Shovel Storage (S/L)
 - *Mount ladder hooks behind streetside compartments for a 10 ladder
 - *Mount Shovel storage TBD
- 1 Boom rest.
- 1 Peterson LED 7-lamp DOT Lighting Package:
 - * Complies with FMVSS 108.
 - * Includes required lights, junction box and wiring harness.
 - * Note: Back-up lights are incandescent.
- 1 Lighted license plate bracket kit with incandescent light.
- 2 110 volt outlet with GFI.

One streetside & One curbside at rear back of vertical boxes.
- 1 Dimensions 3000N inverter, 3000W continuous, 120VAC, Up to 25A.

Street side front compartment w/on off switch located in cab of truck.
- 2 Inverter Spacer Tube
- 2 Amber strobe light (LED) with 4" tall & 6" dia. lens, and branch guard.

(1) at top front Street and (1) top front curb compartment

Qty. Description

- 1 Whelen 2 corner LED, Amber Strobe Light Kit with 4" grommets.
*Wired into On/Off switch in cab.

(1) flush back of rear street compartment & (1) flush back rear curb compartment
- 2 Strobe post mount bracket weldment for small chassis.
- 1 Golight Stryker 3067 spotlight, permanent mount, programmable wireless remote, dash mount, hand held remote and white in color.

Locate on pedestal.
- 2 Underbody lighting for Illuminated Worksite:
* Two (2) Maxxima MWL-004 LED Work lights mounted (1) Streetside & (1) Curbside under body directly above the outriggers.
* Each light wired on a separate switch in chassis cab.
- 1 Whelen TAM-65 arrow directional LED light stick, 36" long, 6-lamp.

Located in rear tail shelf.
- 1 BH82000 Combination Pintle Hook And 2" Ball:
* Safety chain eyes.
"Pintle hook brackets and attachment methods are designed to meet the associated pintle hook ratings. They are not designed for recovery purposes. If recovery attachments are required, please order the appropriate tow eyes."
- 1 ICC rear bumper.
- 1 6-prong trailer socket.
- 1 Torsion bar stabilizer for rear axle.
- 1 Exhaust extension for light duty chassis.
- 1 Oil tank mounting for external reservoirs.
- 30 Fill with Hydraulic oil for general purpose use.
* Refer to the product maintenance manual for specific type to be used.
- 1 Hannay spring loaded hydraulic hose reel with 4-way roller assembly.
* 35' of 1/2" Hose Set.
* Quick disconnect HTMA male and female flush faced couplers and dust covers.
* Installed on hose reel with ball stop.
- 1 Safety Kit consists of the following:

Qty. Description

* 5-lb ABC fire extinguisher with bracket.

* James King triangle reflector kit.

- 1 James King triangle reflector kit.
- 1 Level indicator, Rieker inclinometer, +/- 5 Degrees.
- 1 Rear view vision 2.5" round red marker light camera & 5" monitor system.
- 1 Paint line body one color up to 156".
*Note - Paint under carriage black.
- 1 Paint TL, LTM & TPL aerial device one color.
- 1 Paint body floor with non-skid paint.
- 1 Paint compartment top with non-skid paint.
- 1 Opticom infrared System: P/N: TBD
* System to be wired to a switch in chasses dash.
* The system assists authorized priority vehicles through signalized intersections by providing temporary Right-of-Way through the use of common traffic controller functions.
- 1 Laptop Docking Station
*MES Companies PN:DS-DELL-406
*Docking station for Dell s Latitude 14 rugged and Latitude 12&14 Rugged Extreme Notebooks
*Basic port replication with Power Supply
*Terex PN: TBD
- 1 Console X by Mobile Desk
*PN s: Main Assembly (VC-8020-00) Support (CVB-8020-01) Radio Bracket (VC-URB-00) Pedestal Arm (VM-2082-10) File System (VC-FILERAIL-01) Side Pocket (VC-SIDEPCKT17) Wire Harness (VC-PDUHRNASMB8) Charge Plug (MD-DUALUSB3.1) Adapter plug (VC-12VPORT).
- SPECIAL CHARGES
- 1 Delivery to Customer.
- 1 First Article Inspection, Digital
- ** ALTERED FROM STANDARD **
- 1 .
- CHASSIS
- 1 Ford F550 4x2 (Spec # 29)

Qty. Description

- * 19,500 lbs GVWR
- * Wheelbase 169", CA 84"
- * 7,800-lb capacity front axle
- * 14,706-lb capacity rear axle
- * Powerstroke 6.7L 330 HP @ 2,600 rpm, torque 750 lb-ft @ 2,000 rpm
- * 6-speed torq shift automatic transmission, with overdrive
- * Oxford White

OPTIONS:

ADD

1. Federal Excise Tax will be added if certificate is not supplied with order.
2. The following items must be considered by the purchaser if not already included:
Back-up Alarm \$150.00; Strobe Light \$525.00; Wheel Chocks \$110.00;
Outrigger Pads \$200.00 to \$650.00 (based on pad size & type); Truck Grounding Cable \$550.00;
Barricade Kit \$895.00; Hydraulic Over Load Protection (derrick only, price will vary
based on final option selection); Boom / Boom Stow Interlock \$700.00; Engine Stop / Start
\$200.00 to \$795.00 (based on unit model); Auxiliary Let Down \$1500.00; and Platform
Liner \$380.00 to \$625.00 (based on platform size).
3. Terex Utilities, Inc. strongly recommends all installation accessories be located up front in
front in the quote or secondarily on the approved engineering drawing. Any accessories located
or relocated during manufacturing may be subject to additional charges.
4. Terex Utilities, Inc. - Assembly in Watertown, South Dakota is ISO 9001:2000 Certified.

B&G Bodies, Inc.

2925 9th Ave SW
Watertown SD
57201

QU11732

Quotation Number		BG9095A	
For the attention of	Daniel Relph	Name	Chad Noeldner
		Telephone	(605) 884-1023
		Terex	
Customer:	City of Pittsburg	Date	9/17/2018

DESCRIPTION

B&G Bodies Inc. 126" line body 54 inches high X 94 inches wide.

18 Inch compartment depth.

58 Inch bed area.

28 Inch top of floor to top of body.

24 Inch horizontal compartment height.

12 Ga. Treadplate Wheel wells.

16 Ga. body materials.

12 Ga. treadplate floor.

12 Ga. treadplate compartment tops.

Stainless Steel Automotive rotary type door latches.

Stainless steel rod and socket type door hinges.

Chain stops on all doors.

Double Panel Body Doors.

Rubber rolled crown type fenders. **(Ship Loose - No Cutouts)**

Master door lock system.

VISTA LED Rope light compartment lights in all body compartments with Weather Pack Connectors.

*Does not include Boxes or Tailshelf Compartments

Rope Lights Ship Loose.

Automotive Bulb Type Weatherstripping. (Ship Loose)

Front bulk head. (Ship Loose)

Streetside Compartmentation:

1st Vertical:

24 Inches wide with Five (5) fixed/adjustable material hooks 1-3-1.

2nd Vertical:

24 Inches wide with Two (2) adjustable shelves each with 4 adjustable dividers.

Horizontal:

54 Inch open compartment.

Rear Vertical:

24 Inches wide with Two (2) adjustable shelves each with 4 adjustable dividers.

Hotstick Shelf:

126 Inches long streetside with rear dropdown access door.

Curbside Compartmentation:**1st Vertical:**

24 Inches wide with Two (2) adjustable shelves each with 4 adjustable dividers.

2nd Vertical:

24 Inch wide gripstrut access steps to bed area.

Horizontal:

54 Inch compartment.

Eight (8) Adjustable dividers installed in compartment bottom.

Rear Vertical:

24 Inches wide with Five (5) fixed/adjustable material hooks 1-3-1.

Shovel Storage: (Ship Loose)

Four (4) - 2" Tubes x 8" Long.

Ladder Storage: (Ship Loose)

Two (2) Ladder Hooks.

Frame Installation:

Install Customer Supplied Insert in Frame and Floor.

Tailshelf:

Treadplate tailshelf 30 inches long X 94 inches wide x 6 inches high with 7-Lamp light bar installed at rear.

Bumper: (Ship Loose)

Recessed 2-section bumper 10" long X 94" wide with gripstrut top.

Wheel Chock Storage:

Two built into body wheelwells curbside.

Paint:

Prime Paint Gray, Interior and Exterior.



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Customer Proposal

Prepared for:

Mr. DAVID WEST
TEREX UTILITIES
Office: 262-547-4521
Email: david.west@terex.com

Prepared by:

KELLY RUTER
Office: 605-256-9111
Email: kelly@prostrollo.com

Date: 08/20/2018

Vehicle: 2019 F-550 Chassis XL
4x2 SD Regular Cab 169" WB DRW

Quote ID: 19PITTSBUR





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Office: 800-777-4146

2019 F-550 Chassis, SD Regular Cab
4x2 SD Regular Cab 169" WB DRW XL(F5G)
Price Level: 925 Quote ID: 19PITTSBUR

Selected Options

Code	Description
Base Vehicle	
F5G	Base Vehicle Price (F5G)
Packages	
660A	Order Code 660A <i>Includes:</i> - Engine: 6.8L 3-Valve SOHC EFI NA V10 - Transmission: TorqShift 6-Speed Automatic (6R140) Includes SelectShift. - 4.88 Axle Ratio - GVWR: 18,000 lbs Payload Package - Tires: 225/70Rx19.5G BSW AS - Wheels: 19.5" Argent Painted Steel - HD Vinyl 40/20/40 Split Bench Seat Includes center armrest, cupholder, storage and driver's side manual lumbar. - Radio: AM/FM Stereo Includes 4-speakers.
Powertrain	
99T	Engine: 6.7L 4V OHV Power Stroke V8 Turbo Diesel B20 <i>Includes Diesel Exhaust Fluid (DEF) tank, Intelligent Oil-Life Monitor, manual push-button engine-exhaust braking and split-shaft calibration compatibility.</i> <i>Includes:</i> - Dual 78-AH 750 CCA Batteries - 220 Amp Extra Heavy Duty Alternator
44W	Transmission: TorqShift 6-Speed Automatic (6R140). Includes SelectShift.
X8L	Limited Slip w/4.88 Axle Ratio
68M	GVWR: 19,500 lb Payload Plus Upgrade Package <i>Includes upgraded frame, rear-axle and low deflection/high capacity springs. Increases max RGAWR to 14,706. Note: See Order Guide Supplemental Reference for further details on GVWR.</i>
Wheels & Tires	
TFB	Tires: 225/70Rx19.5G BSW AS
64Z	Wheels: 19.5" Argent Painted Steel
Seats & Seat Trim	
A	HD Vinyl 40/20/40 Split Bench Seat <i>Includes center armrest, cupholder, storage and driver's side manual lumbar.</i>
Other Options	
PAINT	Monotone Paint Application
169WB	169" Wheelbase
96V	XL Value Package

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Prepared for: Mr. DAVID WEST, TEREX UTILITIES
By: KELLY RUTER Date: 08/20/2018



Selected Options (cont'd)

Code	Description
90L	<i>Includes:</i> - 4.2" Center-Stack Screen - Radio: AM/FM Stereo/MP3 Player <i>Includes 4 speakers.</i> - SYNC Communications & Entertainment System <i>Includes enhanced voice recognition with 911 Assist, 4.2" LCD center stack screen, AppLink, 1 smart-charging USB port and steering wheel audio controls.</i> - XL Decor Group - Chrome Front Bumper - Steering Wheel-Mounted Cruise Control Power Equipment Group <i>Deletes passenger side lock cylinder. Includes upgraded door-trim panel.</i> <i>Includes:</i> - Accessory Delay - Advanced Security Pack <i>Includes SecuriLock Passive Anti-Theft System (PATS) and inclination/intrusion sensors.</i> - Trailer Tow Mirrors w/Power Heated Glass <i>Includes manual telescoping, heated convex spotter mirror and integrated clearance lamps/turn signals.</i> - MyKey <i>Includes owner controls feature.</i> - Power Front Side Windows <i>Includes 1-touch up/down driver/passenger window.</i> - Power Locks - Remote Keyless Entry
67P	Extra Heavy-Duty Front End Suspension - 7,500 GAWR <i>Includes upgraded front axle and max 7,500 lbs. Front Springs/GAWR rating for configuration selected. Incomplete vehicle package - requires further manufacture and certification by a final stage manufacturer.</i>
63C	Aft-Axle Frame Extension Pack <i>32.4" aft-of-axle frame extension increases AF dimension to 79.6"</i>
41H	Engine Block Heater
62R	Transmission Power Take-Off Provision <i>Includes transmission mounted live drive and stationary mode PTO.</i>
18A	Upfitter Interface Module
872	Rear View Camera & Prep Kit Upfitters kit includes camera with mounting bracket, 14' jumper wire and camera mounting and aiming instructions. Kit requires video display option to be added to unit. Reference order guide for additional information. Related option content: 872, 585 and 96V. <i>Includes cab wiring, frame wiring to the rear most cross member and electrochromic mirror with video display. Video displayed in 4" display.</i>
585	Radio: AM/FM Stereo/MP3 Player <i>Includes 4 speakers.</i> <i>Includes:</i> - SYNC Communications & Entertainment System <i>Includes enhanced voice recognition with 911 Assist, 4.2" LCD center stack screen, AppLink, 1 smart-charging USB port and steering wheel audio controls.</i>
Fleet Options	
525_	Steering Wheel-Mounted Cruise Control
17F	XL Decor Group <i>Includes:</i> - Chrome Front Bumper

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Prostrollo Auto Plaza Co.
921 S. Washington Avenue, Madison, South Dakota,
57042
Office: 800-777-4146

2019 F-550 Chassis, SD Regular Cab
4x2 SD Regular Cab 169" WB DRW XL(F5G)
Price Level: 925 Quote ID: 19PITTSBUR

Selected Options (cont'd)

Code	Description
FLADCR	Fleet Advertising Credit
Emissions	
425	50-State Emissions System
Interior Colors	
AS_01	Medium Earth Gray
Primary Colors	
Z1_01	Oxford White

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Prepared for: Mr. DAVID WEST, TEREX UTILITIES
By: KELLY RUTER Date: 08/20/2018



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2019 F-550 Chassis, SD Regular Cab
4x2 SD Regular Cab 169" WB DRW XL(F5G)
Price Level: 925 Quote ID: 19PITTSBUR

Warranty - Selected Equipment & Specs

Warranty

Basic

Distance 36000 miles Months 36 months

Powertrain

Distance 60000 miles Months 60 months

Corrosion Perforation

Distance Unlimited miles Months 60 months

Roadside Assistance

Distance 60000 miles Months 60 months

Diesel Engine

Distance 100000 miles Months 60 months

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Selected Equipment & Specs

Dimensions

Exterior length: 287.2" * Cab to axle: 84.0" * Exterior width: 80.0" * Exterior height: 81.7" * Wheelbase: 169.0" * Front track: 74.8" * Rear track: 74.0" * Turning radius: 24.2' * Rear tire outside width: 93.9" * Min ground clearance: 8.3" * Front legroom: 43.9" * Front headroom: 40.8" * Front hiproom: 62.5" * Front shoulder room: 66.7" * Passenger volume: 64.6cu.ft. * Cargo volume: 11.6cu.ft. * Maximum cargo volume: 11.6cu.ft.

Powertrain

Powerstroke 330hp 6.7L OHV 32 valve intercooled turbo V-8 engine with diesel direct injection * Recommended fuel : diesel * federal * TorqShift 6 speed automatic transmission with overdrive * Rear-wheel drive * Limited slip differential * Fuel Economy Cty: N/A * Fuel Economy Highway: N/A * Transmission PTO provision

Suspension/Handling

Front Mono-beam non-independent suspension with anti-roll bar, HD shocks * Rear DANA 130 rigid axle leaf spring suspension with anti-roll bar, HD shocks * Firm ride Suspension * Hydraulic power-assist re-circulating ball Steering * Front and rear 19.5 x 6 argent steel wheels * LT225/70SR19.5 GBSW AS front and rear tires * Dual rear wheels

Body Exterior

2 doors * Driver and passenger power remote heated, manual folding door mirrors with turn signal indicator * Turn signal indicator in mirrors * Black door mirrors * Chrome bumpers * Trailer harness * Clearcoat paint * Front and rear 19.5 x 6 wheels * 2 front tow hook(s)

Convenience

Manual air conditioning with air filter * Cruise control with steering wheel controls * Power front windows * Driver and passenger 1-touch up * Driver and passenger 1-touch down * Remote power door locks with 2 stage unlock and illuminated entry * Manual tilt steering wheel * Manual telescopic steering wheel * Day-night rearview mirror with auto-dimming * 911 Assist emergency SOS * Wireless phone connectivity * AppLink smart device integration * 2 1st row LCD monitors * Front cupholders * Passenger visor mirror * Driver and passenger door bins * Upfitter switches

Seats and Trim

Seating capacity of 3 * Front 40-20-40 split-bench seat * 4-way driver seat adjustment * Manual driver lumbar support * 4-way passenger seat adjustment * Centre front armrest with storage

Entertainment Features

AM/FM stereo radio * SYNC external memory control * Steering wheel mounted radio controls * 4 speakers * Streaming audio * Fixed antenna

Lighting, Visibility and Instrumentation

Halogen aero-composite headlights * Delay-off headlights * Fully automatic headlights * Variable intermittent front windshield wipers * Light tinted windows * Front reading lights * Tachometer * Compass * Outside temperature display * Camera(s) - rear * Trip computer * Trip odometer

Safety and Security

4-wheel ABS brakes * Brake assist * 4-wheel disc brakes * Driveline traction control * Dual front impact airbag supplemental restraint system with passenger cancel * Dual seat mounted side impact airbag supplemental restraint system * Safety Canopy System curtain 1st row overhead airbag supplemental restraint system * Remote activated perimeter/approach lighting * Power remote door locks with 2 stage unlock and panic alarm * Security system with SecuriLock immobilizer * MyKey restricted driving mode * Manually adjustable front head restraints

Dimensions

General Weights

Curb	7615 lbs.	GVWR	19500 lbs.
Payload	12000 lbs.		

Front Weights

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Selected Equipment & Specs (cont'd)

Front GAWR	7500 lbs.	Front curb weight	4430 lbs.
Front axle capacity	7500 lbs.	Front spring rating	7500 lbs.
Front tire/wheel capacity	7500 lbs.		

Rear Weights

Rear GAWR	14706 lbs.	Rear curb weight	3185 lbs.
Rear axle capacity	14706 lbs.	Rear spring rating	15000 lbs.
Rear tire/wheel capacity	15000 lbs.		

Trailer Type

Harness	Yes	Trailer sway control	Yes
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General Trailering

5th-wheel towing capacity	23740 lbs.	Gooseneck towing capacity	23740 lbs.
Towing capacity	18340 lbs.	GCWR	32000 lbs.

Fuel Tank type

Capacity	40 gal.
----------------	---------

Off Road

Min ground clearance	8 "
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Interior cargo

Cargo volume	11.6 cu.ft.	Maximum cargo volume	11.6 cu.ft.
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Rear Frame

Height loaded	29 "	Height unloaded	34 "
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Powertrain

Engine Type

Brand	Powerstroke	Block material	Iron
Cylinders	V-8	Head material	Aluminum
Ignition	Compression	Injection	Diesel direct injection
Liters	6.7L	Orientation	Longitudinal
Recommended fuel	Diesel	Valves per cylinder	4
Valvetrain	OHV	Forced induction	Intercooled turbo

Engine Spec

Bore	3.90"	Compression ratio	16.2:1
Displacement	406 cu.in.	Stroke	4.25"

Engine Power

Output	330 HP @ 2,600 RPM	Torque	750 ft.-lb @ 2,000 RPM
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Alternator

Type	HD	Amps	220
------------	----	------------	-----

Battery

Amp hours	78	Cold cranking amps	750
Run down protection	Yes	Type	Dual

Engine Extras

Block heater	Yes
--------------------	-----

Transmission

Electronic control	Yes	Lock-up	Yes
Overdrive	Yes	Speed	6

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Selected Equipment & Specs (cont'd)

Type Automatic

Transmission Gear Ratios

1st	3.974	2nd	2.318
3rd	1.516	4th	1.149
5th	0.858	6th	0.674
Reverse Gear ratios	3.128		

Transmission Torque Converter

Stall ratio 1.90

Transmission Extras

Driver selectable mode	Yes	Sequential shift control	SelectShift
PTO provision	Yes		

Drive Type

Type Rear-wheel

Drive Feature

Limited slip differential	Mechanical	Traction control	Driveline
Power take-off provision	Yes		

Drive Axle

Ratio 4.88

Exhaust

Material	Stainless steel	System type	Single
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Emissions

CARB Federal

Fuel Economy

Fuel type Diesel

Engine Retarder

Type Yes

Driveability

Brakes

ABS	4-wheel	ABS channels	3
Type	4-wheel disc	Vented discs	Front and rear

Brake Assistance

Brake assist Yes

Suspension Control

Ride Firm

Front Suspension

Independence	Mono-beam non-independent	Anti-roll bar	Regular
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Front Spring

Type	Coil	Grade	HD
------------	------	-------------	----

Front Shocks

Type HD

Rear Suspension

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2019 F-550 Chassis, SD Regular Cab
4x2 SD Regular Cab 169" WB DRW XL(F5G)
Price Level: 925 Quote ID: 19PITTSBUR

Selected Equipment & Specs (cont'd)

Independence DANA 130 rigid axle
Anti-roll bar Regular

Rear Spring

Type Leaf
Grade HD

Rear Shocks

Type HD

Steering

Activation Hydraulic power-assist
Type Re-circulating ball

Steering Specs

of wheels 2

Exterior

Front Wheels

Diameter 19.5" Width 6.00"

Rear Wheels

Diameter 19.5" Width 6.00"
Dual Yes

Front and Rear Wheels

Appearance Argent Material Steel

Front Tires

Aspect 70 Diameter 19.5"
Sidewalls BSW Speed S
Tread AS Type LT
Width 225mm LT load rating G
RPM 647

Rear Tires

Aspect 70 Diameter 19.5"
Sidewalls BSW Speed S
Tread AS Type LT
Width 225mm LT load rating G
RPM 647

Wheels

Front track 74.8" Rear track 74.0"
Turning radius 24.2' Wheelbase 169.0"
Rear tire outside width 93.9"

Body Features

Front license plate bracket Yes Front splash guards Yes
Body material Aluminum Side impact beams Yes
Front tow hook(s) 2

Body Doors

Door count 2

Exterior Dimensions

Length 287.2" Body width 80.0"
Body height 81.7" Cab to axle 84.0"

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By: KELLY RUTER Date: 08/20/2018



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2019 F-550 Chassis, SD Regular Cab
4x2 SD Regular Cab 169" WB DRW XL(F5G)
Price Level: 925 Quote ID: 19PITTSBUR

Selected Equipment & Specs (cont'd)

Axle to end of frame	79.6"	Frame section modulus	17.2cu.in.
Frame yield strength (psi)	50000.0	Frame rail width	34.2"
Front bumper to Front axle	38.3"	Cab to end of frame	163.6"
Front bumper to back of cab	123.7"		

Safety

Airbags

Driver front-impact	Yes	Driver side-impact	Seat mounted
Overhead	Safety Canopy System curtain 1st row	Passenger front-impact	Cancellable
Passenger side-impact	Seat mounted		

Seatbelt

Height adjustable	Front
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Security

Immobilizer	SecuriLock	Panic alarm	Yes
Restricted driving mode	MyKey		

Seating

Passenger Capacity

Capacity	3
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Front Seats

Split	40-20-40	Type	Split-bench
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Driver Seat

Fore/aft	Manual	Reclining	Manual
Way direction control	4	Lumbar support	Manual

Passenger seat

Fore/aft	Manual	Reclining	Manual
Way direction control	4		

Front Head Restraint

Control	Manual	Type	Adjustable
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Front Armrest

Centre	Yes	Storage	Yes
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Front Seat Trim

Material	Vinyl	Back material	Vinyl
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Convenience

AC And Heat Type

Air conditioning	Manual	Air filter	Yes
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Audio System

Radio	AM/FM stereo	Radio grade	Regular
Seek-scan	Yes	External memory control	SYNC

Audio Speakers

Speaker type	Regular	Speakers	4
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Audio Controls

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.



Selected Equipment & Specs (cont'd)

Steering wheel controls	Yes	Voice activation	Yes
Streaming audio	Bluetooth yes		
Audio Antenna			
Type	Fixed		
LCD Monitors			
1st row	2	Primary monitor size (inches)	4.2
Cruise Control			
Cruise control	With steering wheel controls		
Convenience Features			
Retained accessory power	Yes	12V DC power outlet	2
Emergency SOS	911 Assist	Wireless phone connectivity	Bluetooth
Smart device integration	App link	Upfitter switches	Yes
Door Lock Activation			
Type	Power with 2 stage unlock	Remote	Keyfob (all doors)
Integrated key/remote	Yes		
Instrumentation Type			
Display	Analog		
Instrumentation Gauges			
Tachometer	Yes	Engine temperature	Yes
Turbo/supercharger boost	Yes	Transmission fluid temp	Yes
Engine hour meter	Yes		
Instrumentation Warnings			
Oil pressure	Yes	Engine temperature	Yes
Battery	Yes	Lights on	Yes
Key	Yes	Low fuel	Yes
Door ajar	Yes	Service interval	Yes
Brake fluid	Yes		
Instrumentation Displays			
Clock	In-radio display	Compass	Yes
Exterior temp	Yes	Systems monitor	Yes
Camera(s) - rear	Yes		
Instrumentation Feature			
Trip computer	Yes	Trip odometer	Yes
Steering Wheel Type			
Material	Urethane	Tilting	Manual
Telescoping	Manual		
Front Side Windows			
Window 1st row activation	Power		
Window Features			
1-touch down	Driver and passenger	1-touch up	Driver and passenger
Tinted	Light		
Front Windshield			
Wiper	Variable intermittent		

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Selected Equipment & Specs (cont'd)

Rear Windshield

Window Fixed

Interior

Passenger Visor

Mirror Yes

Rear View Mirror

Day-night Yes Auto-dimming Yes

Headliner

Coverage Full Material Cloth

Floor Trim

Coverage Full Covering Vinyl/rubber

Trim Feature

Gear shift knob Urethane Interior accents Chrome

Lighting

Dome light type Fade Front reading Yes
Illuminated entry Yes Variable IP lighting Yes

Storage

Driver door bin Yes Front Beverage holder(s) Yes
Glove box Locking Passenger door bin Yes
Illuminated Yes Instrument panel Bin
Dashboard Covered

Legroom

Front 43.9"

Headroom

Front 40.8"

Hip Room

Front 62.5"

Shoulder Room

Front 66.7"

Interior Volume

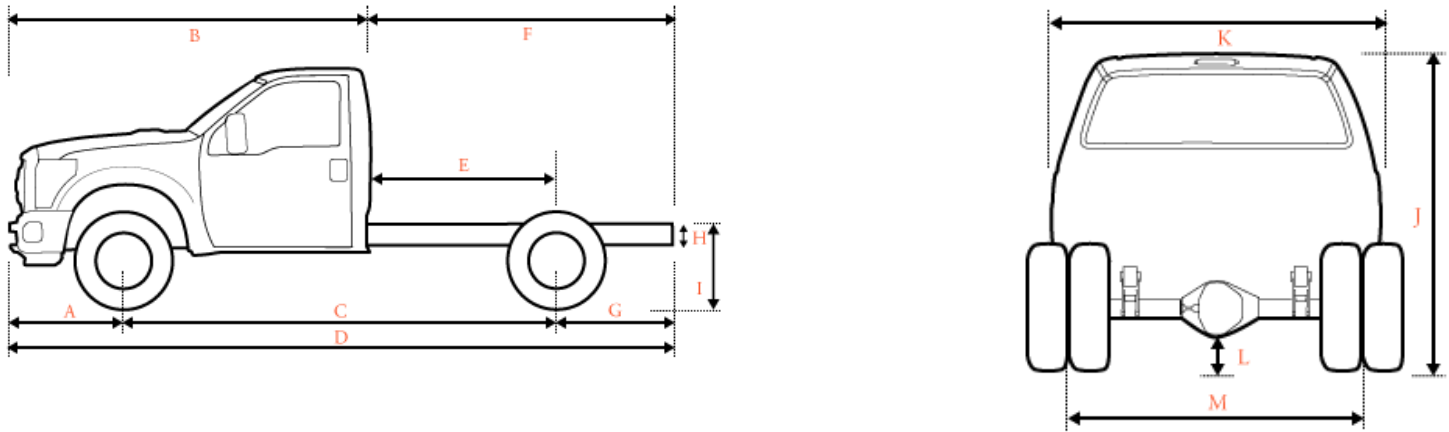
Passenger volume 64.6 cu.ft.

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Performance

Performance predictions in this report represent an estimate of vehicle performance based on standard operating conditions. Variations in customer equipment, load configuration, ambient conditions, and/or operator driving techniques can cause significant variations in vehicle performance. These values are not representative of results that may be shown in actual dynamometer tests. This report should therefore be used as a guide for comparative vehicle performance.



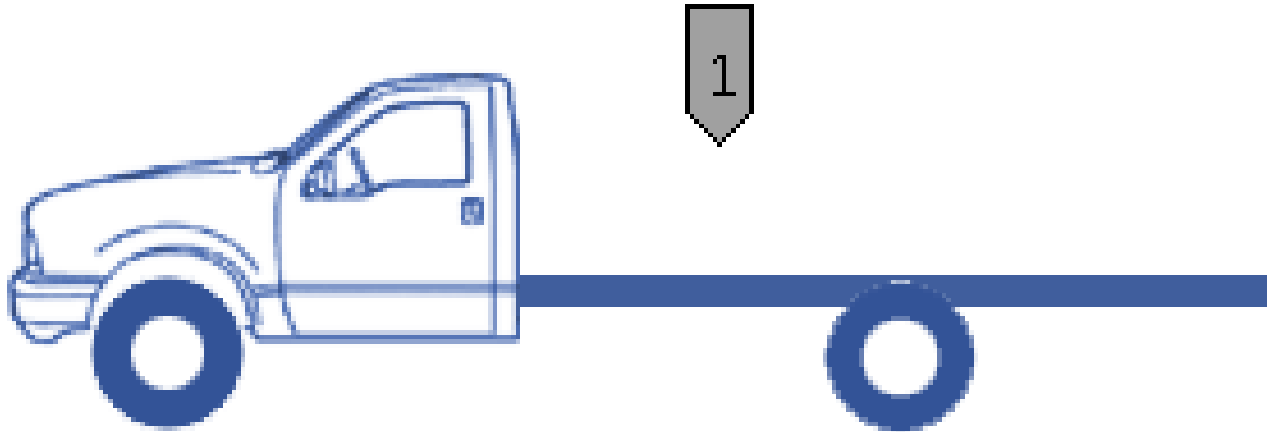
Dimensions

A	Front of Bumper to Front Axle	38.30 in.
B	Front Bumper to Back of Cab (BBC)	123.70 in.
C	Wheelbase (WB)	169.00 in.
D	Overall Length (OAL)	287.20 in.
E	Back of Cab to Rear Axle (CA)	84.00 in.
F	Back of Cab to End of Frame	163.60 in.
G	Rear Axle to End of Frame (AF)	79.60 in.
H	Frame Section Height	N/A
I	Rear Frame Height Unloaded	34.00 in.
I	Rear Frame Height Loaded	28.60 in.
J	Cab Height	81.70 in.
K	Body Width	80.00 in.
L	Maximum Ground Clearance	N/A
L	Minimum Ground Clearance	8.30 in.
M	Front Tread	74.80 in.
M	Rear Tread	74.00 in.

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Performance (cont'd)



Weight

GVW	Front Axle	Rear Axle	Totals
Chassis	4,433 lbs	3,187 lbs	7,620 lbs
Body	0 lbs	0 lbs	0 lbs
Occupants Weight	300 lbs	150 lbs	450 lbs
1 Max Payload - (Max Payload)	2,767 lbs	8,663 lbs	11,430 lbs
TOTAL	7,500 lbs	12,000 lbs	19,500 lbs

Ratings	Front Axle	Rear Axle	GVWR
GAWR	7,500 lbs	14,706 lbs	19,500 lbs
Wheels/Tires	7,500 lbs	15,000 lbs	
Suspension	7,500 lbs	15,000 lbs	
Axle	7,500 lbs	14,706 lbs	
Legal Axle Limit	0 lbs	0 lbs	

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Performance (cont'd)

Start, Grade and Speed

Start	Ratio	Desired	Calculated
Start grade capability in 1st gear	3.97	15.00 %	42.85 %
Start grade capability in reverse	3.13	15.00 %	33.73 %
Grade	Ratio	Desired	Calculated
Maximum grade in 4th gear	1.15	3.00 %	13.04 %
Maximum grade in 5th gear	0.86	3.00 %	9.74 %
Maximum grade in 6th gear	0.67	3.00 %	7.65 %
Speed		Desired	Calculated
Top Speed (level grade)		75 mph	88 mph
<i>To meet your requirement you need a maximum axle ratio of 5.72</i>			
Top Speed on 3.0% grade		55 mph	
<i>To meet your requirement you need a maximum of 122 hp</i>			
Cruise Speed		60 mph	65 mph
Engine RPM at desired cruise speed			2,128 rpm

Variables in Use

Rear axle ratio:	4.88/4.88	Governed RPM:	3,120 rpm
Tire size:	225/70R19.5 (647 rev/mile)	Frontal Area:	40.39 Sq.Ft.
Gross Vehicle Weight (GVW):	19,500 lbs	Cruising RPM	2,300 rpm
Clutch engagement torque:	375 ft.lbs.	Worst road surface	Typical Highway
Torque conversion ratio:	1.90	Final Drive Ratio:	0.67
Peak engine torque:	750 ft.lbs.	Drag Coefficient	0.80
Engine Power:	330 hp @ 2,600 rpm		

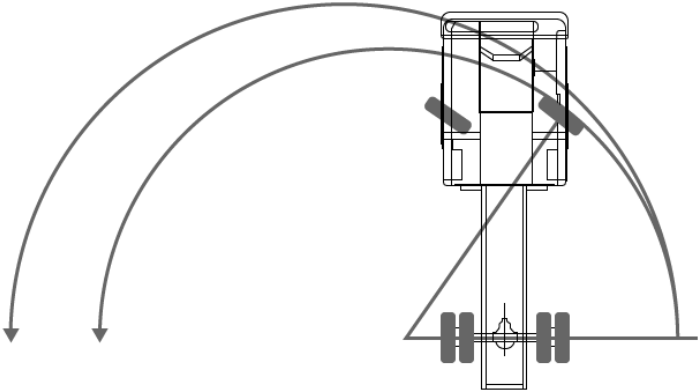
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Performance (cont'd)

Turning Radius

Turning Radius..... 24.25 ft



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Customer CITY OF PITTSBURGH
 Quote # QU11732
 Based On Q:\Quotes\Pittsburg, City of (CA)\QU11732 City of Pittsburg LTM40\DFA\QU11732 - WEIGHT STUDY.xls

PRELIMINARY WEIGHT RANGE ANALYSIS

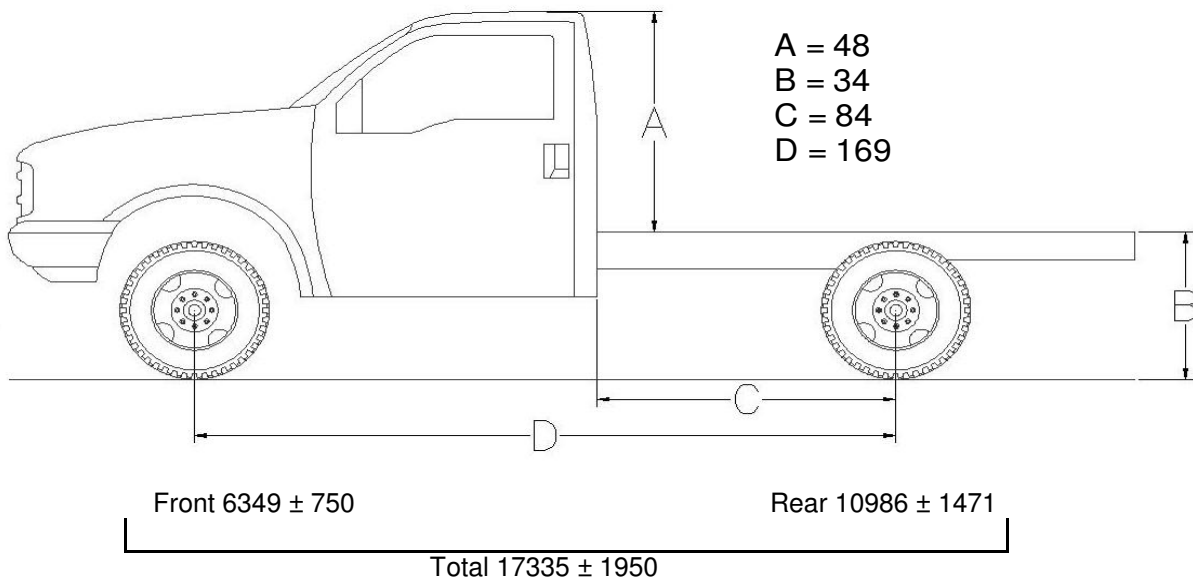
	Front	Rear	Total
*Estimated Bare Chassis Weight	4449	3185	7634
**Chassis Legal Limits	7500	14706	19500
Estimated Total	6349 ± 750	10986 ± 1471	17335 ± 1950
Estimated Reserve Capacity	1151 ± 750	3720 ± 1471	2166 ± 1950

Estimated Total Includes	
Personnel	500
Fuel	320
Payload	
Tongue Load	

If any cells are highlighted as such, estimated weight plus 10% of the chassis legal limit may exceed the legal limit of the chassis.

Notes:

- *CHASSIS WEIGHT IS BASED ON CHASSIS SPECS.
 ANY VARIATION IN ACTUAL CHASSIS WEIGHT WILL AFFECT ESTIMATED TOTAL.
 **LEGAL LIMIT IS MINIMUM VALUE OF CHASSIS RATING OR FEDERAL BRIDGE LAW.
 ***WEIGHTS ARE ESTIMATES ONLY PLEASE NOTE ANY SPECIAL REQUIREMENTS.



FEDERAL BRIDGE LAW LIMITS FRONT AXLE TO 7500LBS AND REAR AXLE TO 20000LBS.

ONE (1) - 2019 FORD TRANSIT 350 HIGH ROOF CARGO VAN

BID WORKSHEET

The Undersigned, as bidder, declares that the only person or parties interested in this RFQ as principals are those named herein; that this bid is made without collusion with any other person, firm, or corporation; that bidder and/or agent has carefully examined the location of the proposed work above described, that bidder and/or agent has examined the plans, terms and conditions and specifications therefore, and is familiar with all requirements, that bidder and/or agent has examined this Form and the provisions incorporated by reference herein; and bidder and/or agent hereby proposes, and agrees to the Contract apparatus, and other means of construction, and to do all the work and furnish all the materials in accordance with the scope of work in the time stated herein, for the unit price and/or lump sum price as follows:

BASE PRICE: \$ 34750⁶²
 SALES TAX: (8.75%) 3040. - (ADD TO BASE PRICE ONLY)
 SUB-TOTAL: 37790. ⁶²
 DISCOUNTS: —
 DOC FEES: —
 TIRE FEES: 8.75
 DELIVERY: N/C
 PRICE: \$ 37799.32 EA

* NOTE
 MUST BE ORDERED
 BY 3/31/19 TO BE
 VALID.
 SEE ATTACHED "UPFIT"
 QUOTE ALREADY
 INCLUDED IN BID

TOTAL COST: (1)

THIRTY SEVEN THOUSAND SEVEN HUNDRED NINETY-NINE 32

(Written out in numeral amount)

\$ 37799.32

(Numeral Amount)

OF DAYS FOR DELIVERY, AFTER RECEIPT OF P.O. EST 12-14 weeks

Vendor Name: ALL STAR FORD
 Address: 3809 CENTURY City/State: PITTSBURGH Zip: 15106
 Signed: [Signature] Printed: MARSHALL HAUSRAH
 Telephone: 925-752-7830 Fax: 925-752-7812

NOTE: This Bid Worksheet must be completed and returned with all applicable attachments to the City. Any bid submitted, absent this worksheet will not be considered.

INDEX TO LEGAL DOCUMENTS
BANK-QUALIFIED, APPROPRIATION-BASED, ESCROW FUNDED
TAX-EXEMPT EQUIPMENT LEASE-PURCHASE AGREEMENT

DATED NOVEMBER 15, 2018 BY AND BETWEEN

HOLMAN CAPITAL CORPORATION
AND
CITY OF PITTSBURG

Lease Documents:

Tab 1:	Equipment Lease-Purchase Agreement;
Tab 2:	Exhibit A – Equipment Schedule;
Tab 3:	Exhibit B – Notice and Acknowledgment of Assignment;
Tab 4:	Exhibit C-1 – Insurance Coverage Request;
Tab 5:	Exhibit C-2–Self-Insurance Rider (if applicable);
Tab 6:	Exhibit D – Essential Use Certificate;
Tab 7:	Exhibit E–Incumbency Certificate;
Tab 8:	Exhibit F–Opinion of Lessee’s Counsel;
Tab 9:	Exhibit G – Bank Qualified Certificate;
Tab 10:	Exhibit H– Post Issuance Tax Compliance Procedures
Tab 11:	Exhibit I – Escrow Agreement;
Tab 12:	Resolution of Lessee;
Tab 13:	UCC-1 Financing Statement with attached Schedule A (prepared and filed by Investor);
Tab 14:	Form 8038-G;
Tab 15:	Closing Memorandum/Payment Proceeds Direction; and
Tab 16:	Vendor Contract & Payment Bond, if and as applicable

Assignment Documents (Lessor and Investor Only):

Tab 17:	Assignment Agreement with Schedule A thereto.
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HOLMAN CAPITAL CORPORATION
EQUIPMENT LEASE-PURCHASE AGREEMENT

EQUIPMENT LEASE-PURCHASE AGREEMENT

1. **Agreement.** Subject to the terms and conditions contained in this Equipment Lease-Purchase Agreement dated November 15, 2018 (this "Lease Agreement"), HOLMAN CAPITAL CORPORATION, as lessor ("Lessor"), whose mailing address is 25201 Paseo de Alicia, Suite 290, Laguna Hills, CA 92653, hereby purchases from and agrees to sell, transfer and lease back to the CITY OF PITTSBURG, as lessee ("Lessee"), whose mailing address is 65 Civic Avenue, Pittsburg, CA 94565, and Lessee hereby sells to and agrees to acquire, purchase and lease back from Lessor, the items of personal property (together with any replacement parts, additions, substitutions, repairs or accessories now or hereafter incorporated in or affixed to it, hereinafter referred to collectively as the "Equipment") described in Exhibit A attached hereto.

2. **Term.** The term of this Lease Agreement (the "Lease Term") begins as of the Commencement Date stated in Exhibit A and shall continue so long as any amounts remain unpaid hereunder. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment pursuant to Paragraph 10, (b) Lessor's election to terminate this Lease Agreement pursuant to Paragraph 16, (c) Lessee's option to terminate this Lease Agreement pursuant to the second paragraph of Section 3, and (d) the payment by Lessee of all sums required to be paid by Lessee hereunder.

2.5. **Escrow Agreement.** On the Commencement Date, Lessor and Lessee shall enter into an escrow agreement (an "Escrow Agreement") dated the Commencement Date, between Lessor, Lessee, and Santa Cruz County Bank, as escrow agent, relating to the escrow fund (an "Escrow Fund") created thereunder. On the Commencement Date, Lessor shall deposit: \$549,017.42 into the Escrow Fund to be held in escrow and applied upon the express terms and conditions of the Escrow Agreement; for the acquisition of the equipment which shall be disbursed as provided for in the Closing Memorandum and/or Escrow Agreement, each of even date herewith.

3. **Rental Payments.** Lessee agrees to pay the rental payments hereunder for the Lease Term in the amounts and on the dates identified in Exhibit A. Payment of all rental payments and other amounts payable hereunder shall be made to Lessor at its above-stated address or as it shall otherwise designate in writing. As set forth in Exhibit A, a portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal.

Notwithstanding any provision to the contrary in this Lease Agreement, Lessee may terminate this Lease Agreement at the end of any fiscal year of Lessee as identified in Exhibit A (a "Fiscal Year") if sufficient funds are not appropriated by Lessee's governing body to pay rental payments and other amounts due hereunder during the next succeeding Fiscal Year (an "Event of Nonappropriation"). Lessee hereby agrees to notify Lessor at least 30 days prior to the last day of its then current Fiscal Year of the occurrence of an Event of Nonappropriation or, if nonappropriation has not occurred by that date, promptly upon the occurrence of an Event of Nonappropriation.

Lessee represents and warrants that: (a) it has made sufficient appropriations or has other legally available funds to pay all rental payments hereunder due during the first Fiscal Year hereunder; (b) the officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to obtain appropriated funds for the payment of rental payments and other amounts required to be paid hereunder in each next succeeding Fiscal Year for the Lease Term; and (c) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Lease Agreement. If an Event of Nonappropriation hereunder shall occur, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the corresponding Equipment to Lessor at such location in the continental United States as is specified by Lessor, in the condition required by Paragraph 7 of this Lease Agreement, on or before the effective date of termination.

Lessee's obligation to pay rental payments and any additional amounts payable hereunder constitutes a current obligation payable exclusively from legally available funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement.

4. **Essentiality.** Subject to Paragraph 3 of this Lease Agreement, Lessee's present intention is to make rental payments for the Lease Term as long as it has sufficient appropriations or other legally available funds. Lessee represents that, with respect hereto, (a) the use and operation of the Equipment is essential to its proper, efficient, and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last rental payment scheduled to be paid hereunder. On the Commencement Date, Lessee shall complete and provide Lessor a certificate in the form of Exhibit D.

5. **Disclaimer of Warranties.** LESSEE REPRESENTS THAT IT HAS SELECTED THE EQUIPMENT PRIOR TO HAVING REQUESTED LESSOR TO FINANCE THE SAME. LESSEE AGREES THAT LESSOR HAS NOT MADE ANY, AND MAKES NO, REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING (WITHOUT LIMITATION) THE SUITABILITY OF THE EQUIPMENT, ITS DURABILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, ITS MERCHANTABILITY, ITS CONDITION, ITS CAPACITY, ITS OPERATION, ITS PERFORMANCE, ITS DESIGN, ITS MATERIALS, ITS WORKMANSHIP AND/OR ITS QUALITY. AS BETWEEN LESSEE AND LESSOR, LESSEE LEASES, PURCHASES AND ACQUIRES THE EQUIPMENT "AS IS" "WHERE IS" AND "WITH ALL FAULTS." Lessor hereby assigns to Lessee, to the extent that it may lawfully do so, so long as no Event of Default and no Event of Nonappropriation shall have occurred and be continuing hereunder, all rights and benefits that Lessor may have under any warranty, guaranty or the like that may be made with respect to the Equipment by the manufacturer, seller and/or supplier (collectively, the "Vendor") thereof. Lessor shall not be liable to Lessee or any third party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any of the Equipment or the use or maintenance thereof or any defect therein, the failure of operation thereof or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. Lessor makes no warranty as to the treatment of this Lease Agreement for tax or accounting purposes or as to the compliance of the Equipment with applicable government regulations or requirements. Lessee agrees to look solely to the Vendor for any claim arising from any defect, breach of warranty, failure or delay in delivery, mis-delivery or inability to use the Equipment for any reason whatsoever and Lessee's obligations to Lessor hereunder shall not in any manner be affected thereby, including (without limitation) Lessee's obligations to pay Lessor all rental payments and other amounts payable hereunder. Lessee has selected both the Equipment and the Vendor and acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or the Vendor. Lessor has no obligation to install, erect, test, adjust, service or maintain the Equipment.

6. **Delivery and Acceptance; Quiet Enjoyment.** Lessee shall accept the Equipment for which disbursement is requested from the Escrow Fund upon its delivery and authorizes Lessor to insert on Exhibit A the serial numbers and any additional description of the items of Equipment so delivered. As evidence of that acceptance, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the form attached as Exhibit A to the Escrow Agreement. Regardless of whether Lessee has furnished a Certificate of Acceptance pursuant to this Paragraph 6, by making a rental payment after its receipt of the Equipment, Lessee shall be deemed to have accepted the Equipment on the date of such rental payment for purposes hereof. During the Lease Term, Lessee shall be entitled to quiet enjoyment of the Equipment, subject to the terms of this Lease Agreement.

7. **Use of Equipment; Maintenance and Repairs.** Lessee shall keep the Equipment within the State at the "Equipment Location" stated in Exhibit A and Lessee shall not remove any of the Equipment

therefrom without Lessor's prior written consent. Lessee shall use the Equipment in a careful manner and shall at all times, at its sole expense, keep the Equipment in good operating condition, repair and appearance and comply with all laws, ordinances, regulations or requirements of any governmental authority, official, board or department relating to its installation, possession, use or maintenance. Lessee shall not make any alterations, additions, or improvements to the Equipment that are not readily removable without causing damage to or reducing the value of the Equipment. All alterations, additions, or improvements not readily removable shall become property of Lessor.

8. Security Interest; Title to Equipment. (a) The provisions of this Section 8(a) apply generally to all Equipment, regardless of the type, and the Escrow Fund (if any/applicable): To secure the performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first priority and perfected lien and security interest on the Equipment delivered hereunder and on any attachments, proceeds therefrom. Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, financing statements, landlord-tenant or mortgagee waivers, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time in the Escrow Fund and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(b) Solely with respect to Equipment that is *not* comprised of vehicles and during the Lease Term, ownership and legal title of all of the Equipment and all substitutions, repairs, modifications, and replacements shall be in Lessee, and Lessee shall take all necessary action to vest such ownership and title in Lessee. Lessor does not own the Equipment, and, by this Lease Agreement, Lessor is merely financing the acquisition of the Equipment for the Lessee. Lessor has not been in the chain of title, does not operate, control or have possession or control over the Equipment, or Lessee's use, maintenance, operation, storage, or maintenance of the Equipment. Lessee is entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder (including its interest in the Equipment as the lessor hereunder). If Lessor terminates this Lease Agreement pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect the Equipment.

(c) Solely with respect to Equipment consisting of vehicles, the provisions of this Section 8(c) shall apply: Lessee agrees to either: (i) cause the original registration of such titled equipment or vehicles to list Lessee as owner and Lessor or its assignee as first priority lienholder with respect to the Equipment, or (ii), if the Equipment is titled in California, endorse the certificate of ownership showing Lessor or its assignee as "legal owner" (as defined by Section 6301 of the California Vehicle Code). Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, MSOs/Certificates of Origin, Title Applications, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. During the Lease Term, Lessee shall either: (i) hold legal title to the Equipment as the owner, or (ii), for Equipment titled in California, be the "owner" (as defined in Section 460 of the California Vehicle Code) of the Equipment entitled to use and possession of

the Equipment, subject to the rights of Lessor hereunder, which is the first position lienholder and, with respect to Equipment titled in California, the "legal owner"(as defined in Section 370 of the California Vehicle Code) of the Equipment. If Lessor terminates this Lease Agreement pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee.

As further security therefor, Lessee hereby agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code with respect to any and all Equipment hereunder.

9. Personal Property. The Equipment shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to realty. Lessee covenants that, unless Lessee owns the premises in which the Equipment is to be located and such premises are not subject to any mortgage or lease. At Lessor's request, Lessee shall provide Lessor with a waiver from each landlord and/or mortgagee of the premises in which the Equipment is to be located of any rights that such landlord and/or mortgagee may have in respect of any of the Equipment.

10. Purchase of Equipment by Lessee; Prepayment. At the option of Lessee, and provided that no Event of Default has occurred and is continuing hereunder, Lessor's interest in all, but not less than all, of the Equipment will be transferred, conveyed and assigned to Lessee, and this Lease Agreement shall terminate: (a) upon payment in full of the rental payments and all other payments then due hereunder or (b) on any rental payment date hereunder, provided Lessee shall have delivered written notice at least 30 days prior to such date of Lessee's intention to purchase the Equipment pursuant to this provision, by paying to Lessor, in addition to the rental payment due on such date, an amount equal to the concluding payment (the "Concluding Payment") shown for such rental payment date in the rental payment schedule in Exhibit A. Lessee shall not have the option to purchase the Equipment hereunder as provided in the foregoing clause (b) on any rental payment date hereunder for which a Concluding Payment is not stated in the rental payment schedule.

11. Risk of Loss. Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation hereunder because of any such occurrence. If (a) the Equipment or any portion thereof hereunder is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof hereunder is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim (including self-insurance) or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Concluding Payment in full and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds.

12. Insurance. (a) Insurance Policies. If Lessee is not self-insured (as hereafter provided), Lessee shall, at its expense, keep the Equipment fully insured against loss, fire, theft, damage or destruction from any cause whatsoever in an amount not less than the greater of (a) the total rental payments for the Lease Term, and (b) the full replacement cost of the Equipment without consideration for depreciation. Lessee shall also provide such additional insurance against injury, loss or damage to persons or property arising out of the use or operation of the Equipment as is customarily maintained by the owners of like property, with companies satisfactory to Lessor. Each policy shall provide that, as to the interest or coverage of Lessor or Lessor's assignee, the insurance afforded thereby shall not be suspended, forfeited or

in any manner prejudiced by any default or by any breach of warranty, condition or covenant on the part of Lessee. If Lessee shall fail to provide any such insurance required hereunder or, within ten (10) days after Lessor's request therefor, shall fail to deliver the policies or certificates thereof to Lessor, then Lessor, at its option, shall have the right to procure such insurance and to add the full cost thereof to the rental payment next becoming due, which Lessee agrees to pay as additional rent. All such insurance shall be in form, issued by such insurance companies and be in such amounts as shall be satisfactory to Lessor, and shall provide that losses, if any, shall be payable to Lessor as "loss payee," and all such liability insurance shall include Lessor as an "additional insured." Lessee shall pay the premiums for such insurance and deliver to Lessor a certification in the form of Exhibit C-1 and satisfactory evidence of the insurance coverage required hereunder. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

(b) Self-Insurance. If Lessee is self-insured with respect to equipment such as the Equipment under an actuarially sound self-insurance program that is acceptable to and approved by Lessor, Lessee shall maintain during the Lease Term such actuarially sound self-insurance program and shall provide Lessor a certification in the form of Exhibit C-2 together with evidence of the self-insurance program in form and substance satisfactory to Lessor.

13. Fees; Taxes and Other Governmental Charges; Liens. Lessee covenants and agrees at all times to keep the Equipment free and clear of all levies, liens (other than those created hereunder) and encumbrances, and to pay all charges, taxes and fees (including any recording or stamp fees or taxes) that may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment and shall give Lessor immediate written notice of any of the foregoing. If any of same shall remain unpaid when due, Lessor may pay same and add such payment to the rental payment next becoming due, as additional rent. Lessee shall execute and deliver to Lessor upon Lessor's request such further instruments and documents containing such other assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights hereunder or to otherwise effectuate the intent of this Lease Agreement.

14. Indemnification. To the extent authorized by law, Lessee shall indemnify and save Lessor, its officers, employees, agents, servants, successors and assigns, harmless from any and all liabilities (including, without limitation, negligence, tort and strict liability), damages, expenses, claims, actions, proceedings, judgments, settlements, losses, liens and obligations, including (without limitation) attorneys' fees and costs ("Claims"), arising out of the ordering, purchase, delivery, rejection, non-delivery, ownership, selection, possession, operation, control, use, condition, maintenance, transportation, storage, repair, return or other disposition of the Equipment, any claims arising under federal, state or local environmental protection and hazardous substance clean up laws and regulations and any claims of patent, trademark or copyright infringement or, if Lessee shall be in default hereunder, arising out of the condition of any item of Equipment sold or disposed of after use by Lessee, including (without limitation) claims for injury to or death of persons and for damage to property. The indemnities, assumption of liabilities and obligations herein provided shall be payable solely from funds legally available for such purpose and shall continue in full force and effect notwithstanding the expiration, termination or cancellation of this Lease Agreement for any reason whatsoever. However, Lessee shall not be obligated to indemnify Lessor from Claims arising from the actual, proven, direct and proximate negligence or willful misconduct of Lessor.

15. Assignment; Subleasing. LESSEE SHALL NOT ASSIGN, PLEDGE, MORTGAGE, SUBLET OR OTHERWISE TRANSFER OR ENCUMBER ANY OF ITS RIGHTS UNDER THIS LEASE AGREEMENT, THE ESCROW AGREEMENT (INCLUDING THE ESCROW FUND CREATED THEREUNDER) OR IN THE EQUIPMENT OR ANY PART THEREOF, NOR PERMIT ITS USE BY ANYONE OTHER THAN LESSEE AND ITS REGULAR EMPLOYEES, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT. ANY SUCH PURPORTED TRANSFER, ASSIGNMENT OR OTHER ACTION WITHOUT LESSOR'S PRIOR WRITTEN CONSENT SHALL BE VOID.

Lessor may, at any time and from time to time, assign, transfer or otherwise convey all or any part of its interest in the Equipment, this Lease Agreement, and the Escrow Agreement (including the Escrow Fund created thereunder), including, but not limited to, Lessor's rights to receive the rental payments hereunder or any part thereof (in which event Lessee agrees to make all rental payments thereafter to the assignee designated by Lessor) without the necessity of obtaining Lessee's consent, *provided, however*, Lessor will deliver to Lessee prior written notice of an assignment. No such assignment, transfer or conveyance shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee. During the term of this Lease Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect hereto in form necessary to comply with Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee agrees (unless otherwise stated), if so requested, to acknowledge any such assignment in writing within 15 days after request therefor in the form attached as Exhibit B hereto. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

16. Events of Default; Remedies. Each of the following events constitutes an "Event of Default" hereunder: (a) Lessee fails to pay in full the rental payment due hereunder on any date upon which such rental payment is due; (b) Lessee fails to comply with any other agreement or covenant of Lessee hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied; (c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property; (d) any warranty, representation or statement made in writing by or on behalf of Lessee in connection herewith is found to be incorrect or misleading in any material respect on the date made; (e) actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon; or (f) Lessee defaults in its obligations under any other agreement for borrowing money, lease financing of property, or otherwise receiving credit and the obligee thereunder (or trustee on its behalf) is permitted to exercise any remedies under the agreement.

Immediately upon the occurrence of an Event of Default hereunder, Lessor may terminate this Lease Agreement or Lessee's rights hereunder and in any such event repossess the Equipment, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 16 shall constitute the sole remedies for Lessee's failure to make payments or otherwise perform its obligations when required hereunder. If Lessor is entitled to repossess the Equipment under any provision of this Lease Agreement, Lessee shall permit Lessor or its agents to enter the premises where the Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to restore title to and possession of the Equipment to Lessor, free and clear of all liens and security interests to which the Equipment may have become subject. Upon repossession, if the Equipment is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee, Lessee agrees, at its option, to (a) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) or (b) pay to Lessor the reasonable costs of such repair and restoration. If Lessor sells or otherwise liquidates the Equipment following an Event of Default or an Event of Nonappropriation as herein provided and realizes net proceeds (after payment of costs) in excess of total rental payments that would have been paid during the Lease Term plus any other amounts then due hereunder, Lessor shall immediately pay the amount of any such excess to Lessee.

If Lessor terminates this Lease Agreement under this Paragraph 16 or an Event of Nonappropriation occurs hereunder and in either case Lessee continues to use the Equipment or if Lessee otherwise refuses to pay rental payments hereunder due during a Fiscal Year for which Lessee's governing body has appropriated sufficient legally available funds to pay such rental payments due hereunder, Lessor (i) may declare the rental payments due and owing for the Fiscal Year for which such appropriations have been made to be immediately due and payable, (ii) shall be entitled to bring such action at law or in equity

to recover money and other damages attributable to such holdover period for the Equipment, and (iii) will be entitled to recover interest on all such amounts at the Default Rate.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity. All rights and remedies of Lessor shall be cumulative and not alternative. Lessor's failure to exercise or delay in exercising any right or remedy shall not be construed as a waiver thereof, nor shall a waiver on one occasion be construed to bar the exercise of any right or remedy on a future occasion. Lessee agrees to reimburse Lessor for any expenses (including attorney's fees) reasonably incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor, but only from legally available funds.

17. Late Payments. Whenever any rental payment or other amount payable to Lessor by Lessee hereunder is not paid within ten (10) days after such due date, Lessee agrees to pay Lessor a late charge on the delinquent amount at the "Default Rate," which is one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less. Such amount(s) shall be payable solely from legally available funds in addition to all amounts payable by Lessee as a result of the exercise of any of the remedies herein provided.

18. Rental Payments to Be Unconditional. Except as expressly set forth in this Lease Agreement (including Paragraph 3), Lessee agrees that as of the Commencement Date, Lessee's obligations hereunder are absolute and unconditional and shall continue without set-off, deduction, counterclaim, abatement, recoupment, or reduction and regardless of any disability of Lessee to use the Equipment or any part thereof because of any reason including, but not limited to, war, act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure of or delay in delivery or failure of the Equipment to operate properly.

19. Tax Covenants. Lessee agrees that it will not take any action that would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of rental payments hereunder for federal income tax purposes; (b) complete and file in a timely manner an information reporting return as required by the Code; and (c) rebate an amount equal to excess earnings on the Escrow Fund to the federal government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly rental payments hereunder. Lessor and Lessee certify that, so long as any rental payments hereunder remain unpaid, moneys on deposit in the Escrow Fund will not be used in a manner that will cause this Lease Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code.

If Lessee breaches the covenants contained in this Paragraph 19, the interest component of rental payments hereunder may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay promptly after any such determination of taxability and on each rental payment date thereafter to Lessor an additional amount determined by Lessor

to compensate such owner or owners for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error).

It is Lessor's and Lessee's intention that this Lease Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment hereunder for federal income tax purposes.

20. Lessee Representations and Warranties. Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a political subdivision of the State of California, within the meaning of Section 103(c) of the Code, and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Lease Agreement and the Escrow Agreement and has been duly authorized to execute and deliver this Lease Agreement and the Escrow Agreement and to carry out its obligations hereunder and thereunder. Lessee has provided to Lessor a full, true and correct copy of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Lease Agreement and the Escrow Agreement and all documents contemplated hereby and thereby. Lessee has provided to Lessor a full, true, and correct copy of an Incumbency Certificate in substantially the form attached as Exhibit E hereto relating to the authority of the officers who have executed and delivered this Lease Agreement and who will execute and deliver this Lease Agreement and the Escrow Agreement and all documents in connection herewith and therewith on behalf of Lessee.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Lease Agreement and the Escrow Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease Agreement and the Escrow Agreement.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Lease Agreement and the Escrow Agreement, or performing any of its obligations hereunder or thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Lease Agreement or the Escrow Agreement, or any other agreement or instrument to which Lessee is a party and that is used or contemplated for use in the consummation of the transactions contemplated by this Lease Agreement or the Escrow Agreement. All authorizations, consents, and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Lease Agreement and the Escrow Agreement or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained.

(f) The payment of the rental payments or any portion thereof hereunder is not (under the terms of this Lease Agreement) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local government unit. No portion of the purchase price for the Equipment will be used, directly or indirectly, to make or finance loans to any person other

than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(g) The entering into and performance of this Lease Agreement and the Escrow Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee or on the Equipment pursuant to an indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(h) Lessee's name as indicated on the first page of this Lease Agreement is its true, correct, and complete legal name.

(i) The useful life of the Equipment will not be less than the Lease Term hereof.

(j) Lessee has entered into this Lease Agreement for the purpose of purchasing, acquiring, and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The purchase price for the Equipment has been or will be paid directly by Lessor from the Escrow Fund to the Vendor, and no portion of the purchase price for the Equipment has been or will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery hereof.

(k) The application, statements, and credit or financial information submitted by it to Lessor are true and correct and made to induce Lessor to enter into this Lease Agreement and the Escrow Agreement.

(l) During the term of this Lease Agreement, Lessee shall (i) provide Lessor, at or prior to the end of each Fiscal Year (commencing with the current Fiscal Year), with current budgets or other proof of appropriation for the ensuing Fiscal Year and such other information relating to Lessee's ability to continue the Lease Term for the next succeeding Fiscal Year as may be reasonably requested by Lessor and (ii) furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Year, the audited financial statements of Lessee at the close of and for such Fiscal Year, all in reasonable detail, audited by and with the report of Lessee's auditor.

(m) On the Commencement Date, Lessee shall cause to be executed and delivered to Lessor an Opinion of Lessee's Counsel in substantially the form attached as Exhibit G hereto.

(n) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment hereunder over the amount deposited by Lessor in the Escrow Fund and interest earnings thereon.

(o) Lessee has experienced no material change in its financial condition since June 30, 2017.

(p) Lessee acknowledges that: (a) Lessor is acting solely for its own account and not as a fiduciary for Lessee or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor; (b) Lessor has not provided, and will not provide, financial, legal, tax, accounting or other advice to or on behalf of Lessee with respect to its acquisition of the Equipment; and (c) Lessee has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to this Lease Agreement from its financial, legal and other advisors (and not Lessor) to the extent that Lessee desired to obtain such advice.

21. Execution in Counterparts; Chattel Paper. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided, however*, that only Counterpart No. 1 hereof shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

22. Applicable Law. This Lease Agreement shall be construed under the laws of the State of California.

23. Binding Effect; Severability; Survival. This Lease Agreement shall not become effective until accepted by Lessor at its herein-described office, and upon such acceptance shall inure to and bind the parties, their successors, legal representatives, and assigns. No provision of this Lease Agreement that may be construed as unenforceable shall in any way invalidate any other provision hereof, all of which shall remain in full force and effect.

24. Miscellaneous Provisions. Any notice to a party hereunder shall be deemed given when mailed to that party by certified mail, return receipt requested, at its address set forth herein or such other address as either may designate for itself in such notice to the other. This Lease Agreement and the Escrow Agreement constitute the entire mutual understanding of the parties regarding the subject matter hereof and thereof and may not be modified except in writing, signed by the party against whom such modification is asserted. Upon the request of Lessor, Lessee shall at any time and from time to time execute and deliver such further documents and do such further acts as Lessor may reasonably request in order fully to effect the purposes hereof and any assignment hereof. If a court with competent jurisdiction rules that the interest rate charged hereunder exceeds the maximum rate of interest allowed by applicable law, then the effective rate of interest hereunder shall be automatically reduced to the maximum lawful rate allowable under the applicable laws.

[Remainder of page intentionally left blank]

THE UNDERSIGNED HEREBY AGREE TO ALL OF THE TERMS AND CONDITIONS AS SET FORTH IN THIS EQUIPMENT LEASE-PURCHASE AGREEMENT.

HOLMAN CAPITAL CORPORATION, Lessor

CITY OF PITTSBURG, Lessee

By: x _____
Lance S. Holman
President & CEO

By: x _____
Name: Joe Sbranti
Title: City Manager

Counterpart No. _____ of two manually executed and serially numbered counterparts. To the extent that this Lease Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

EXHIBIT A
EQUIPMENT SCHEDULE TO EQUIPMENT LEASE-PURCHASE AGREEMENT
DATED NOVEMBER 15, 2018

1. DESCRIPTION OF THE EQUIPMENT:

Various vehicles for the Utilities Department together with all accessories, attachments, and substitutions to be purchased by the City of Pittsburg listed below and financed by this Equipment Schedule dated November 15, 2018 by and between Holman Capital Corporation and the City of Pittsburg, including, without limitation, the following:

Description	Total Cost	% of Total
Street Sweeper	\$ 249,581.25	45.46%
Gang Mower	\$ 97,893.80	17.83%
Terex Hi-Ranger Truck	\$ 156,243.00	28.46%
Ford Cargo Van	\$ 37,799.37	6.88%
HCC Documentation Fee	\$ 7,500.00	1.37%
Net Financing Amount	\$549,017.42	100.00%

together with all accessories, attachments, substitutions and accessions.

2. EQUIPMENT LOCATION: City of Pittsburg, as more fully described on the Vendor Contract, including the Lessee's principal location at 65 Civic Avenue, Pittsburg, CA 94565.

3. RENTAL PAYMENT SCHEDULE: The rental payments shall be made for the Equipment as follows:

PAYMENT NUMBER	DATE DUE	TOTAL RENTAL PAYMENT DUE	INTEREST COMPONENT	PRINCIPAL COMPONENT	CONCLUDING PAYMENT ^o
0	11/15/2018				
1	05/15/2019	\$ 60,800.85	\$ 10,431.33	\$ 50,369.52	\$ 513,607.34
2	11/15/2019	\$ 60,800.85	\$ 9,474.31	\$ 51,326.54	\$ 460,741.00
3	05/15/2020	\$ 60,800.85	\$ 8,499.11	\$ 52,301.74	\$ 406,870.21
4	11/15/2020	\$ 60,800.85	\$ 7,505.37	\$ 53,295.48	\$ 351,975.86
5	05/15/2021	\$ 60,800.85	\$ 6,492.76	\$ 54,308.09	\$ 296,038.53
6	11/15/2021	\$ 60,800.85	\$ 5,460.90	\$ 55,339.95	\$ 239,038.38
7	05/15/2022	\$ 60,800.85	\$ 4,409.45	\$ 56,391.40	\$ 180,955.24
8	11/15/2022	\$ 60,800.85	\$ 3,338.01	\$ 57,462.84	\$ 121,768.52
9	05/15/2023	\$ 60,800.85	\$ 2,246.22	\$ 58,554.63	\$ 61,457.25
10	11/15/2023	\$ 60,800.85	\$ 1,133.62	\$ 59,667.23	\$ -
		\$ 608,008.50	\$ 58,991.08	\$ 549,017.42	

^o Assumes that all rental payments and additional rentals due on and prior to that date have been paid.

4. INTEREST RATE: 3.80 %

5. COMMENCEMENT DATE: November 15, 2018

6. SCHEDULED LEASE TERM: 5 years

7. Lessee's current Fiscal Year extends from July 1, 2018.

8. The terms and provisions of the Equipment Lease-Purchase Agreement described above (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Equipment Lease-Purchase Agreement (particularly Paragraph 20 thereof) are true and correct as though made on the date of execution of this Schedule, and (ii) sufficient funds have

been appropriated by Lessee for the payment of all rental payments due under this Schedule during Lessee's current Fiscal Year.

[Remainder of page intentionally left blank]

CITY OF PITTSBURG,
as Lessee

HOLMAN CAPITAL CORPORATION,
as Lessor

By: _____
Name: Joe Sbranti
Title: City Manager

By: _____
Name: Lance S. Holman
Title: President & CEO

Counterpart No. _____ of two manually executed and serially numbered counterparts. To the extent that this Schedule constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

[Signature Page to Exhibit A- Equipment Schedule]

EXHIBIT B

NOTICE AND ACKNOWLEDGEMENT OF SALE OF RENTAL PAYMENTS AND ASSIGNMENT OF LEASE AGREEMENT AND ESCROW AGREEMENT

Holman Capital Corporation ("*Lessor*") and the City of Pittsburgh ("*Lessee*") have entered into an Equipment Lease-Purchase Agreement and Equipment Schedule thereto both dated November 15, 2018 (the "*Lease Agreement*"), under which Lessee has, or will have prior to its execution hereof, leased equipment (the "*Equipment*") described therein.

Lessee is hereby notified that Lessor has assigned its right, title, and interest in and to the Lease Agreement, the leased Equipment, and the rental payments as permitted by the Lease Agreement.

Lessee is hereby directed to pay any and all rental payments and other amounts due under the Lease Agreement to Santa Cruz County Bank, and/or its affiliates (the "*Assignee*"), as directed by the Assignee or a paying agent acting on behalf of Assignee, pursuant to the instructions contained in any invoice or notice.

By signing this Notice and Acknowledgment, Lessee agrees that it will pay all amounts due under the Lease Agreement as directed in the invoice without any set-off or deduction whatsoever notwithstanding any defect in, damage to or requisition of any of the Equipment leased under the Lease Agreement, any other similar or dissimilar event, any defense, set-off, counterclaim or recoupment arising out of any claim against Lessor or Assignee.

Lessee further acknowledges and agrees that Assignee has not assumed any of Lessor's obligations or duties under the Lease Agreement or made any warranties whatsoever as to the Lease Agreement or the Equipment. Lessee agrees that no change may be made to the Lease Agreement without the prior written consent of Assignee.

By signing this Notice and Acknowledgment, Lessee warrants that its representations and warranties under the Lease Agreement are true and correct on the date hereof.

Date: November 15, 2018

City of Pittsburgh, as Lessee

By: _____
Name: Joe Sbranti
Title: City Manager

EXHIBIT C-1

INSURANCE CERTIFICATION

Holman Capital Corporation
25201 Paseo de Alicia, Suite 290
Laguna Hills, CA 92653

November 15, 2018

Re: Equipment Lease-Purchase Agreement dated November 15, 2018

In connection with the above-referenced Lease Agreement, City of Pittsburg, as lessee (the "Lessee") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: Municipal Pooling Authority
Address: P.O. Box 67, Walnut Creek, CA 94596
Phone: 925-943-1100
to issue:

X *Liability Insurance.* Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$5,000,000. The policy should be endorsed to name Santa Cruz County Bank (the assignee of Holman Capital Corporation) as an additional insured.

X *Casualty Insurance.* Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the above-referenced Equipment Schedule in an amount not less than the greater of \$549,017.42 or the full replacement cost of the Equipment. Such insurance shall be endorsed to name Santa Cruz County Bank as a lender loss payee with respect to such Equipment.

The required insurance should also be endorsed to give Santa Cruz County Bank at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of Santa Cruz County Bank shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to Santa Cruz County Bank prior to and/or commensurate with the Commencement Date of the Lease.

Very truly yours,

City of Pittsburg, as Lessee

By: _____
Name: Joe Sbranti
Title: City Manager

EXHIBIT C-2

Holman Capital Corporation
25201 Paseo de Alicia, Suite 290
Laguna Hills, CA 92653

November 15, 2018

Re: Equipment Lease-Purchase Agreement dated November 15, 2018

In connection with the above-referenced Equipment Lease-Purchase Agreement, City of Pittsburg, as lessee (the "*Lessee*") certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks.

The following is attached (check all that apply):

- ☐ Letter from risk manager describing self-insurance program
- ☐ Other evidence of Lessee's participation in self-insurance program

Very truly yours,

CITY OF PITTSBURG, as Lessee

By: _____
Name: Joe Sbranti
Title: City Manager

EXHIBIT D

ESSENTIAL USE CERTIFICATE

Holman Capital Corporation
25201 Paseo de Alicia, Suite 290
Laguna Hills, CA 92653

November 15, 2018

Re: Equipment Lease-Purchase Agreement dated November 15, 2018

I, Joe Sbranti, the City Manager of the City of Pittsburg, as lessee (the "*Lessee*"), am qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Lease Agreement:

1. *What is the specific use of the Equipment?*
2. *What increased capabilities will the Equipment provide?*
3. *Why is the Equipment essential to your ability to deliver governmental services?*
4. *Does the Equipment replace existing equipment? (If so, please explain why you are replacing the existing equipment).*
5. *Why did you choose this specific Equipment?*
6. *For how many years do you expect to utilize the Equipment?*

Very truly yours,

CITY OF PITTSBURG, as Lessee

By: _____
Name: Joe Sbranti
Title: City Manager

[Signature Page to Essential Use Certificate]

EXHIBIT E

INCUMBENCY CERTIFICATE

I, Alice Evenson, do hereby certify that I am the City Clerk of the City of Pittsburg, a municipal corporation, which is a duly established and validly existing as a political subdivision of the State of California under the Constitution and laws of the State of California, and that I have custody of the records of such entity.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the City of Pittsburg holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
 - a. Enter into that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated November 15, 2018 (the "*Lease Agreement*"), between the City of Pittsburg and Holman Capital Corporation, as lessor, and
 - b. Enter into that certain Escrow dated November 15, 2018 (the "*Escrow Agreement*"), between the City of Pittsburg, Santa Cruz County Bank, as escrow agent, and Holman Capital Corporation, as lessor, and to execute various payment and disbursement request forms,
 - c. Execute Certificates of Acceptance and other certificate, documents, and agreements relating to the Lease Agreement and/or Escrow Agreement.

NAME	TITLE	SIGNATURE
Joe Sbranti	City Manager	_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the City of Pittsburg, California.

November 15, 2018

Alice Evenson, City Clerk

EXHIBIT F

OPINION OF LESSEE'S COUNSEL

November 15, 2018

Holman Capital Corporation
25201 Paseo de Alicia, Suite 290
Laguna Hills, CA 92653

Re: Equipment Lease-Purchase Agreement and Equipment Schedule both dated November 15, 2018

Ladies and Gentlemen:

As counsel to the City of Pittsburg (the "*Lessee*"), I have examined the Equipment Lease-Purchase Agreement and Equipment Schedule both dated November 15, 2018 (collectively, the "*Lease Agreement*"), between the Lessee and Holman Capital Corporation, as lessor ("*Lessor*"), the form of the Escrow Agreement, together with the Disbursement Request Form and Certificate of Acceptance (collectively, the "*Escrow Agreement*"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and the Escrow Agreement and the investment of the lease proceeds into the Permitted Investment (as such term is defined in the Escrow Agreement). The Lease Agreement and the Escrow Agreement are herein collectively referred to as the "*Transaction Documents*." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a municipal corporation, which is a duly established and validly existing municipal corporation under the Constitution and laws of the State of California and a political subdivision thereof under Section 103(c) of the Internal Revenue Code with full power and authority to enter into the Transaction Documents.

2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee. The Permitted Investment has been duly authorized by the Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.

3. The Equipment (as such term is defined in the Lease Agreement) to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.

4. The Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents, the investment of lease proceeds into the Escrow Fund (as such term is defined in the Lease Agreement) and Permitted Investments, and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.

5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the Governing Body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

This opinion may be relied upon by purchasers and assignees of Lessor's interests in the Lease Agreement.

Respectfully submitted,

Firm Name

EXHIBIT G

BANK-QUALIFIED DESIGNATION

TheCITY OF PITTSBURG, as issuer, (the “*Lessee*”) under that certain Equipment-Lease Purchase Agreement (the “*Lease Agreement*”) dated as of November 15, 2018 to which this Designation is attached, hereby designates the Lease Agreement as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease Agreement) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease Agreement is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of the Lease Agreement and inures to the benefit of the Purchaser and its successors and/or assigns.

EXECUTED as of this November 15, 2018.

CITY OF PITTSBURG, as Lessee

By: _____
Name: Joe Sbranti
Title: City Manager

.

EXHIBIT H

POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Dated: November 15, 2018

The following certificate is delivered in connection with the execution and delivery of the Equipment Lease-Purchase Agreement dated November 15, 2018 (the "Lease Agreement"), entered into between the City of Pittsburg (the "Lessee") and Holman Capital Corporation (the "Corporation"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

Section 1. In General.

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply **\$549,017.42** (the "Principal Amount") toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by **Santa Cruz County Bank**, as escrow agent (the "Escrow Agent") pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of November 15, 2018 (the "Escrow Agreement"), by and between Lessor and Escrow Agent.

1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

1.5. The Lease is a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 2. Non-Arbitrage Certifications.

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

Section 3. Disbursement of Funds; Reimbursement to Lessee.

3.1. It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

Section 4. Use and Investment of Funds; Temporary Period.

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by November 15, 2018, but not later than May 15, 2019.

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is

expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$5,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

Section 5. Escrow Account.

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment. Lessee acknowledges that the provisions of Sections 2 and 4 herein are particularly applicable when the Principal Amount is funded into an Escrow Fund subject to the Escrow Agreement.

Section 6. No Private Use; No Consumer Loan.

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2. In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.2, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.3. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

Section 7. No Federal Guarantee.

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 8. Miscellaneous.

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee's Tax Identification Number is: 94-6000395.

8.5. The Lessee has adopted, or will adopt in a reasonable period post-closing, by resolution, separate written procedures regarding ongoing compliance with federal tax requirements necessary to keep, ensure and maintain the interest portions of the Rental Payments under the Lease Agreement as excluded from Lessor's gross income for federal income tax purposes, and will, on an annual basis, conduct an audit of the Lease Agreement to ensure compliance with such procedures

IN WITNESS WHEREOF, this Post-Issuance Tax Compliance Procedures Certificate has been executed on behalf of Lessee as of November 15, 2018.

CITY OF PITTSBURG, CALIFORNIA

By: _____
Name: Joe Sbranti
Title: City Manager

EXHIBIT I:

ESCROW AGREEMENT

LESSOR:
Holman Capital Corporation
25201 Paseo de Alicia, Suite 290
Laguna Hills, CA 92653

ESCROW AGENT:
Santa Cruz County Bank
720 Front Street, Suite 220
Santa Cruz, CA 95060

LESSEE:
City of Pittsburg
67 Civic Avenue
Pittsburg, CA 94565

THIS ESCROW AGREEMENT (this "*Escrow Agreement*") is made as of November 15, 2018, between Holman Capital Corporation ("*Lessor*"), the City of Pittsburg ("*Lessee*"), and Santa Cruz County Bank (the "*Escrow Agent*").

Lessor and Lessee have heretofore entered into that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated November 15, 2018 (the "*Lease Agreement*"). The Lease Agreement contemplates that certain Equipment described therein (the "*Equipment*") is to be acquired from the vendor(s) or manufacturer(s) thereof.

After acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Lease Agreement.

The Lease Agreement contemplates that Lessor will deposit with the Escrow Agent cash in the amount of \$549,017.42 (the "*Deposit Amount*"), for deposit into the escrow fund (the "*Escrow Fund*"), to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such deposit into the Escrow Fund, together with all interest and additions received with respect thereto, is to be applied from time to time to pay the vendor(s) or manufacturer(s) of the Equipment its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee). The Escrow Fund is to be held in Lessee's name for the benefit of Lessee and Lessor, and Lessee has granted to Lessor a first priority and perfected security interest in the Escrow Fund and any all proceeds, interest and other earnings thereon and investments therein to the Lessor by virtue of the execution of this Escrow Agreement without the need for any additional filings or financing statements.

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and all interest earned with respect to the Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

To the limited extent required to perfect the first, priority security interest hereby granted by Lessee to Lessor in the cash and negotiable instruments from time to time held in the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent

hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

2. On such day as determined to the mutual satisfaction of the parties (the "Commencement Date"), Lessor shall deposit with the Escrow Agent cash in the amount of the Deposit Amount to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Deposit Amount by Lessor with the Escrow Agent, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.
3. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Cash, securities and other negotiable instruments held in the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).
4. Lessee hereby directs the Escrow Agent to invest the cash held in the Escrow Fund in the fund described in Schedule B hereto, the "Permitted Investment", or such other investments as Escrow Agent may from time to time offer and Lessee may from time to time specify in writing, to the extent the same are at the time legal for investment of the funds being invested. Interest (if any) or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and become a part of the Escrow Fund. No investment shall be made that would cause the Lease Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended.
5. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:
 - a. From time to time, the Escrow Agent shall pay the vendor or manufacturer of the Equipment payments then due and payable, or reimburse Lessee for amounts that it has paid to the vendor or manufacturer of the Equipment, upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as Exhibit A hereto, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the requisition request, and (c) any additional documentation required by Lessor.
 - b. On the Commencement Date, the Escrow Agent shall pay to Holman Capital Corporation a documentation fee in the amount of \$7,500.00. The Escrow Agent will not charge fees for the ordinary services it renders in connection herewith.
 - c. If Lessor provides to the Escrow Agent written notice of the occurrence of an Event of Default or an Event of Nonappropriation by Lessee under the Lease Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund.
 - d. Upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the Escrow Agent shall transfer the then remaining balance of the Escrow Fund to Lessee, upon the express condition that Lessee hereby agrees to use such excess amount solely for capital expenditures as shall

be approved by Lessee or, at the written direction of Lessee, for application against the interest component of the Lessee's payment obligation under the Lease Agreement, as provided therein, unless otherwise agreed by Lessor.

6. The Escrow Agent shall have no liability for acting upon any written instruction presented by Lessee and Lessor in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made pursuant to Section 4.
7. To the extent authorized by law, Lessee hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to the Escrow Agent's negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence, willful misconduct, or bad faith by the Escrow Agent, its officers, agents, employees, successors or assigns.
8. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.
9. This Escrow Agreement shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 5(c) or Section 5(d) hereof.
10. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt.
11. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.
12. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.
13. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder and shall not be liable for any action taken or omitted in good faith in accordance with the advice of counsel, accountants, or other skilled persons.

14. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LESSOR: HOLMAN CAPITAL
CORPORATION

LESSEE: CITY OF PITTSBURG

By: _____
Lance S. Holman
President &CEO

By: _____
Joe Sbranti
City Manager

ESCROW AGENT: SANTA CRUZ COUNTY BANK

By: _____
Name: Shawn Lipman
Title: Vice President, Senior Relationship Manager

EXHIBIT A TO ESCROW AGREEMENT

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

The following payment request is directed to Santa Cruz County Bank (the "*Escrow Agent*"), as escrow agent under that certain Escrow Agreement dated November 15, 2018 (the "*Escrow Agreement*"), between the City of Pittsburg ("*Lessee*"), Holman Capital Corporation ("*Lessor*"), and the Escrow Agent. Because Holman Capital Corporation has assigned all of its right, title, and interest in and to the Escrow Agreement to Santa Cruz County Bank, all references herein to "*Lessor*" shall mean Santa Cruz County Bank.

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under the Escrow Agreement the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment leased pursuant to that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated November 15, 2018 (the "*Lease Agreement*"), between Lessor and Lessee:

	DESCRIPTION OF		
LOCATION	UNITS OF EQUIPMENT	AMOUNT	PAYEE

Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above: (i) the Equipment has been delivered to the location(s) set forth in the Lease Agreement; (ii) a present need exists for the Equipment, which need is not temporary or expected to diminish in the near future; (iii) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority; (iv) the estimated useful life of the Equipment based upon the manufacturer's representations and Lessee's projected needs is not less than the term of the Lease Agreement; (v) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate; (vi) the Equipment is covered by insurance in the types and amounts required by the Lease Agreement; (vii) no Event of Default or Event of Nonappropriation, as those terms are defined in the Lease Agreement, and no event that with the giving of notice or lapse of time or both, would become an Event of Default or an Event of Nonappropriation, has occurred and is continuing on the date hereof; and (viii) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Lease Agreement during Lessee's current Fiscal Year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment set forth above by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, designating Lessee as legal owner and Lessor as secured party/lienholder, and evidence of filing.

IF REQUEST IS FINAL REQUEST, CHECK HERE ☐. The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Payment Requests previously filed by Lessee with Lessor constitute all

of the Equipment subject to the Lease Agreement. By checking the foregoing box, Lessee certifies and confirms that Lessor has performed all of its obligations under the Lease Agreement.

Acceptance Date: _____

Approved:

SANTA CRUZ COUNTY BANK, as Lessor

CITY OF PITTSBURG, as Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEDULE A TO ESCROW AGREEMENT:

NOTICE AND ACKNOWLEDGEMENT OF
ASSIGNMENT OF ESCROW AGREEMENT

Holman Capital Corporation ("Lessor"), City of Pittsburgh ("Lessee"), and Santa Cruz County Bank ("Escrow Agent") have entered into an Escrow Agreement dated November 15, 2018 (the "Escrow Agreement"), pursuant to which Lessor, or its Assignee (as defined below), has deposited cash into the Escrow Fund established thereunder, which funds are to be used by Lessee to acquire certain Equipment.

Escrow Agent is hereby notified that Lessor has assigned all of its right, title, and interest in and to, but not its obligations under, the Escrow Agreement to Santa Cruz County Bank ("Assignee"), including, in particular, but without limitation, Lessor's security interest in the Escrow Fund and Lessor's right to approve all payment requests submitted by Lessee.

Date: November 15, 2018

LESSOR: HOLMAN CAPITAL
CORPORATION

LESSEE: CITY OF PITTSBURG

By: _____
Lance S. Holman
President & CEO

By: _____
Joe Sbranti
City Manager

ESCROW AGENT: SANTA CRUZ COUNTY BANK

By: _____
Name: Shawn Lipman
Title: Vice President, Senior Relationship Manager

SCHEDULE B TO ESCROW AGREEMENT:

DISCLOSURE AND AUTHORIZATION FOR PERMITTED INVESTMENT
SANTA CRUZ COUNTY BANK NON-INTEREST BEARING DEMAND DEPOSIT ACCOUNT

Client: City of Pittsburg

Lease Issuance: November 15, 2018

DISCLOSURE

The Santa Cruz County Bank Non-Interest Bearing Demand Deposit Account (the "Permitted Investment") is a non-interest bearing checking account exclusively for mutual customers of Holman Capital Corporation and Santa Cruz County Bank. The Permitted Investment is not endorsed, collateralized or guaranteed by, and does not constitute obligations of Santa Cruz County Bank or its affiliates; however, the funds held in this account are considered insured deposits by the FDIC. A copy of all accounts disclosures and/or a prospectus have been provided to the undersigned Lessee. We hereby acknowledge receipt of the foregoing.

AUTHORIZATION

With respect to the above referenced Lease Issuance of the Lessee, Santa Cruz County Bank is hereby authorized and directed to invest the Lease Proceeds in the Permitted Investment pending additional investment directions and/or distribution instructions from the Lessee and/or Lessor, subject to the express terms contained in the Escrow Agreement.

LESSEE
CITY OF PITTSBURG

By: _____ Date: _____
Name: Joe Sbranti
Title: City Manager

CLOSING MEMORANDUM

\$549,017.42 LEASE OF VEHICLES

PURSUANT TO THAT EQUIPMENT LEASE-PURCHASE AGREEMENT AND EQUIPMENT SCHEDULE

THERETO DATED NOVEMBER 15, 2018

BETWEEN CITY OF PITTSBURG, AS LESSEE, AND

HOLMAN CAPITAL CORPORATION, AS LESSOR

Pre-Closing: Pre-Closing will be held at the Lessee's convenience, on or before **November 13, 2018**. All documents will be executed and two (2) blue ink originals will be overnighted to Holman Capital Corporation, 25201 Paseo de Alicia, Suite 290, Laguna Hills, CA 92653 for delivery no later than 9:00 am on the morning of **November 13, 2018** and held in trust until such time as the wires and original documents are released by the Parties.

Closing: (1) By internal funds transfer and pending receipt of original, executed Lease Documents, on the morning of November 15, 2018, the Investor is authorized by Lessee to transfer via internal credit the Principal Amount of Lease to Escrow Agent, an amount equal to the Total Lease Proceeds, as defined below, pursuant to a general ledger credit to the Escrow Account as follows:

Bank Name:	Santa Cruz County Bank
Routing No:	
Account No:	
Account Name:	City of Pittsburg

(2) By wire transfer and pending receipt of original, executed Lease Documents, on the morning of November 15, 2018, the Escrow Agent is authorized by Lessee to transfer via wire transfer the Issuance Costs (as defined below) to Lessor, pursuant to a general ledger credit to the Lessor as follows:

Bank Name:	Community Business Bank
ABA Number:	121144191
Account Number:	201008281
Account Name:	Holman Capital Corporation

Holman Capital Corporation will confirm disbursement of the funds to the Lessee's escrow account and then release all of the original documents held in trust to the investor and forward a copy to the Lessee. Upon confirmation by Escrow Agent of the Lease Proceeds, Lessee will wire closing costs, legal fees and other amounts to the parties in accordance with the invoices attached hereto.

Sources and Uses of Funds:

Principal Amount of Lease	\$ 549,017.42	
TOTAL SOURCES		\$ 549,017.42
 Total Equipment Cost:		 \$ 541,517.42
Issuance Cost:		\$ 7,500.00
TOTAL LEASE PROCEEDS		\$ 549,017.42

Attest:

CITY OF PITTSBURG

By: _____
Name: Joe Sbranti
Title: City Manager



Wednesday, October 24, 2018

Brad Farmer
Finance Director
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

VIA E-MAIL

RE: Proposal for Lease Purchase Financing

Brad:

Holman Capital Corporation ("HCC") is pleased to present to the City of Pittsburg its proposal for vehicles financing. The terms and conditions of our proposal are outlined as below:

FINANCING AMOUNT	INTEREST RATE	TERM	FIRST PAYMENT DUE	PERIODIC PAYMENTS	PAYMENTS	TOTAL PAYMENTS
\$ 549,017.42	3.80%	5 Years	180 Days	10	\$ 60,800.85	\$ 608,008.50

LESSEE:

City of Pittsburg. Lessee is a state or political subdivision within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code").

LESSOR:

Holman Capital Corporation, or its Assignee

TYPE OF FINANCING:

Master Lease Agreement. Said Agreement shall be a net lease arrangement whereby Lessee is responsible for all costs of operation, maintenance, insurance, and taxes. The Agreement shall be based on the annual appropriation of funds.

BANK QUALIFICATION:

Lessee reasonably anticipates the total amount of tax-exempt obligations (other than private activity bonds) to be issued by Lessee during calendar year **2018 will not** exceed ten million (\$10,000,000.00) dollars.

PURCHASE OPTION:

The purchase option can be exercised on any scheduled payment date. The current payment and purchase option are due should the Lessee decide to exercise the option.

**HOLMAN CAPITAL CORPORATION
LEASE PURCHASE FINANCING PROPOSAL**

PAGE 2 OF 4

USE OF PROCEEDS:

Various vehicles. See table below:

Description	Total Cost	% of Total
Street Sweeper	\$ 249,581.25	45.46%
Gang Mower	\$ 97,893.80	17.83%
Terex Hi-Ranger Truck	\$ 156,243.00	28.46%
Ford Cargo Van	\$ 37,799.37	6.88%
HCC Documentation Fee	\$ 7,500.00	1.37%
Net Financing Amount	\$549,017.42	100.00%

ESCROW FUNDING:

HCC has assumed funding of an escrow account for this transaction on or about **November 15, 2018**. The Equipment Acquisition Fund will be used to pay equipment vendors/contractors and any escrow expenses.

Escrow Agent will be selected by Lessee subject to HCC's credit approval. HCC to review and approve escrow disbursements prior to Escrow Agent disbursing of funds. It is assumed that all interest earnings will accrue for benefit of Lessee. This proposal also does not take into consideration the application of any interest earnings from the escrow fund of the account.

ESCROW DISBURSEMENTS:

HCC will request the following information from the Lessee to authorize disbursement of funds to vendors and or the Lessee from the escrow account:

- Executed Disbursement Request Form
- Executed Acceptance Certificate
- Copies of Vendor Invoices;
- Proof of Payment (required if Lessee is requesting a reimbursement)
- Proof of Insurance (both Liability and Property and Casualty Coverage)
- For vehicles, a copy of the Title Application listing Holman Capital Corporation, or its assignee as a lien holder; and
- For vehicles, a copy of the MSO or Manufacturer's Statement of Origin.

REIMBURSEMENT:

If Lessee intends to be reimbursed for any equipment cost associated with this Agreement, intent for reimbursement from the proceeds of this Agreement must be evidenced, and must qualify under the Treasury Regulation Section 1.150.2.

INSURANCE:

The Lessee shall furnish confirmation of all risk physical damage insurance coverage for the full

**HOLMAN CAPITAL CORPORATION
LEASE PURCHASE FINANCING PROPOSAL**

PAGE 3 OF 4

cost of the property plus one million (\$1,000,000.00) dollars combined single limit property damage and bodily injury insurance covering the property. HCC shall be named as loss payee and additional insured on such coverage.

AUTHORIZED SIGNORS:

The Lessee's governing board shall provide HCC with its resolution or ordinance authorizing this Agreement and shall designate the individual(s) to execute all necessary documents used therein.

LEGAL OPINION:

The Lessee's counsel shall furnish HCC with an opinion covering this transaction and the documents used herein. This opinion shall be in a form and substance satisfactory to HCC.

LEGAL TITLE:

Title to the equipment will be in the name of Lessee. Lessor will be granted a security interest or lien on all collateral being financed.

DOCUMENTATION:

Utilize standard HCC lease agreement that will cover all facets of the transaction. A copy of the sample master lease agreement will be forwarded to the Lessee upon acceptance of the proposal. The Lessee will be responsible for a \$7,500.00 documentation fee that has been included in the financing amount.

RATE LOCK EXPIRATION:

If funding does not take place by **November 15, 2018**, the Lease Rate and Lease Payment Amounts will be adjusted to market conditions three (3) days prior to funding. Once set, the Lease Rate will remain fixed for the Lease Term.

FINANCIAL STATEMENTS:

Lessee shall provide to Lessor three (3) years of current financial statements, budgets, demographics, and proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.

This proposal is subject to final credit approval by the Credit/Investment Committee of Holman Capital Corporation and approval of the lease documents in Holman Capital Corporation's sole discretion. To render a credit decision, Lessee shall provide HCC with the information requested above. Upon receipt of the signed proposal, we will endeavor to provide you with a timely commitment.

It is a pleasure to offer this proposal to you and we look forward to your favorable acknowledgment.

Sincerely,

A handwritten signature in cursive script, reading "Frank J. Gill IV". The signature is written in dark ink and is positioned above the printed name and title.

Frank J. Gill IV
Vice President

AGREED TO AND ACCEPTED BY:

Name: _____

Title: _____

Date: _____



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

DATE: 10/26/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a City Council Resolution to Authorize a Reduction in Local Transportation Mitigation Fee Obligation In Exchange For Grading of West Leland Road from Villa Drive to Avila Road

MEETING DATE: 11/5/2018

EXECUTIVE SUMMARY

The City entered into agreements with developer SEECON Financial and Construction Co., Inc. that provided for reimbursement of construction related costs for the extension of West Leland Road to Avila Road. If approved, this resolution will reduce the amount of Local Transportation Mitigation Fees owed by the developer in an amount equal to the cost for grading work related to the extension of West Leland Road.

FISCAL IMPACT

If approved, the resolution will approve a reduction in the total Local Transportation Mitigation Fee resulting from the San Marco subdivision by \$2,327,984, as a reimbursement or "credit" for grading work that otherwise would have been performed at the City's expense. No funds are requested.

RECOMMENDATION

City Council approve a resolution authorizing a reduction in the Local Transportation Mitigation Fee (LTMF) obligation of developer SEECON by \$2,327,984, the agreed upon expense for grading work for extension of West Leland Road from Villa Drive to Avila Road.

BACKGROUND

On April 2, 1990, the City Council approved Ordinance 90-990 authorizing execution of the Southwest Development Agreement for residential development in that portion of the City. The agreement as amended includes a provision for the Developer to apply to the City for a

fee waiver as a form of reimbursement or “credit” for constructing an extension of West Leland Road west of San Marco (Boulevard).

On January 19, 1993, the City Council approved Resolution 93-7890 approving a Memorandum of Understanding between SEECON Financial and Construction Co., Inc., North State Development Co. and A.D. Seeno Construction Co. (SEECON) and the City of Pittsburg related to payment of the citywide traffic mitigation fee on new development.

On December 4, 2000, the City Council approved Resolution 00-9296 approving Amendment No. 1 to the Memorandum of Understanding for Traffic Mitigation Fee for San Marco Subdivision 7362.

On February 4, 2002, the City Council approved Resolution 02-9561 approving Amendment No. 2 to the Memorandum of Understanding for Traffic Mitigation Fees for San Marco Subdivision 7362. On June 4, 2003, both parties executed Amendment No. 3 to the Memorandum of Understanding, which, as amended, authorized reimbursement to SEECON for design costs for the portion of West Leland Road Extension Project east of San Marco Boulevard.

On October 16, 2006, the City Council approved Resolution 06-10651 approving and adopting the Pittsburg Local Transportation Mitigation Fee (LTMF) Program Update, a revised schedule of LTMF fees and a revised list of transportation projects to be constructed. The list of projects includes the extension of West Leland Road from Villa Drive to Avila Road.

SUBCOMMITTEE FINDINGS

N/A

STAFF ANALYSIS

The Local Transportation Mitigation Fee (LTMF) is paid by developers of new residential, commercial and industrial development as a share of the cost of certain transportation projects that reduce the impact of the traffic that comes with new development. Projects include traffic signals, intersection improvements and road extensions, including the extension of West Leland Road west of San Marco.

The current LTMF fee rate for residential development is \$8,490 or \$5,176 per dwelling unit, depending on density. Commercial and industrial development LTMF fees is calculated based on square footage.

The Memorandum of Understanding between the City and the developer provides a process to reduce the developer’s LTMF fee amount if design and construction of the West Leland Road extension was completed.

All work was to be done according to plans and specifications approved by the City Engineer, and expenses would be documented and subject to review and approval by City staff. The value of the work is assigned an agreed-upon value that could be applied to reduce the amount of the Local Transportation Mitigation Fees the Developer is required to pay for the San Marco development.

The developer submitted plans and other documentation of construction grading for the extension of West Leland Road west of San Marco Boulevard, from Villa Drive to Avila Road, and this documentation has been reviewed by the City Engineer. Staff reviewed the material quantities, invoices and other documentation and recommends the value of the grading work be credited dollar-for-dollar against the developer's obligation for Local Transportation Mitigation Fee for the San Marco development.

Staff has confirmed the work performed has a value of \$2,327,984, which the developer has agreed to. Staff recommends the City Council approve the attached resolution authorizing a reduction in the Local Transportation Mitigation Fee (LTMF) obligation of developer SEECOM by \$2,327,984.

ATTACHMENTS: Resolution

Report Prepared By: Jill Hecht, Director of Community Development

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Resolution to Authorize Reduction of)
Local Transportation Mitigation Fee)
Payment for Grading of West Leland)
Road From Villa Drive to Avila Road)

RESOLUTION NO. 18-

The Pittsburgh City Council DOES RESOLVE as follows:

WHEREAS, on April 2, 1990, the City Council approved Ordinance 90-990 authorizing execution of the Southwest Development Agreement (Development Agreement) for residential development in that portion of the City; and,

WHEREAS, on January 19, 1993, the City Council approved Resolution 93-7890 approving a Memorandum of Understanding between SEECON Financial and Construction Co., Inc., North State Development Co. and A.D. Seenno Construction Co. (Developer) and the City of Pittsburgh related to payment of the citywide traffic mitigation fee on new development; and,

WHEREAS, on December 4, 2000, the City Council approved Resolution 00-9296 approving Amendment No. 1 to the Memorandum of Understanding for Traffic Mitigation Fee for San Marco Subdivision 7362; and,

WHEREAS, on February 4, 2002, the City Council approved Resolution 02-9561 approving Amendment No. 2 to the Memorandum of Understanding for Traffic Mitigation Fees for San Marco Subdivision 7362; and,

WHEREAS, on June 4, 2003, both parties executed Amendment No. 3 to the Memorandum of Understanding, which, as amended, authorized reimbursement to the Developer for design costs for the portion of West Leland Road Extension Project west of San Marco Boulevard; and,

WHEREAS, on October 16, 2006, the City Council approved Resolution 06-10651 approving and adopting the Pittsburgh Local Transportation Mitigation Fee (LTMF) Program Update, a revised schedule of LTMF fees and a revised list of transportation projects to be constructed that includes the extension of West Leland Road from San Marco Boulevard to Avila Road; and

WHEREAS, on December 18, 2016, the City Council approved Resolution 16-10687 approving the Pittsburgh Local Traffic Mitigation Fee Program Updated Report and Revised Schedule of Fees and List of Transportation Improvement Projects; and

WHEREAS, the Development Agreement, as amended, includes a provision whereby the Developer may apply to the City for a fee waiver for construction of West Leland Road West of San Marco (Boulevard); and,

WHEREAS, such a waiver was intended to be related to design and construction of

West Leland Road, a portion of which is the City's responsibility but may be performed by the developer, to be done according to plans and specifications approved by the City Engineer, and assigned an agreed-upon value that could be applied to reduce the amount of the Local Transportation Mitigation Fees the Developer is required to pay for the San Marco development; and,

WHEREAS, the Developer submitted plans, invoices and other documentation of construction grading for the extension of West Leland Road west of San Marco Boulevard, from Villa Drive to Avila Road, and this documentation has been reviewed by the City Engineer and the work performed is confirmed to have a value of \$2,327,984, previously referred to as a "fee credit," and,

WHEREAS, staff has reviewed the material quantities, invoices and other documentation and recommends the value of the grading work be credited dollar-for-dollar against the developer's obligation for Local Transportation Mitigation Fee for the San Marco development.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. The recitals set forth above are true and correct statements and are hereby incorporated.

Section 2. The City Council authorizes a reduction in the Local Transportation Mitigation Fee (LTMF) obligation of the Developer by \$2,327,984, which is the agreed upon value of grading work completed for West Leland Road from Villa Drive to Avila Road.

Section 3. This Resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 5th day of November, 2018, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Dwaine "Pete" Longmire, Mayor

ATTEST:

Alice E. Evenson, City Clerk