


APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION OF INTENTION TO ESTABLISH THE OAKLAND TOURISM BUSINESS IMPROVEMENT DISTRICT 2024 (OTBID 2024); GRANTING PRELIMINARY APPROVAL OF THE PROPOSED OAKLAND TOURISM BUSINESS IMPROVEMENT DISTRICT 2024 MANAGEMENT PLAN; SCHEDULING A PUBLIC MEETING FOR MAY 7, 2024; AND SCHEDULING A PUBLIC HEARING FOR JUNE 4, 2024

WHEREAS, the Property and Business Improvement Law of 1994, Streets and Highways Code § 36600 et seq., authorizes the City of Oakland (City) to establish business improvement districts for the purposes of promoting tourism; and

WHEREAS, the City Council enacted the Business Improvement Management District Ordinance (BIMD Ordinance) pursuant to Ordinance No. 12190 C.M.S. (1999), as codified in Chapter 4.48 of the Oakland Municipal Code (O.M.C.), establishing the procedures for the formation of business improvement management districts; and

WHEREAS, the City Council approved a Neighborhood Business Improvement District Program pursuant to Council Resolution No. 75323 C.M.S., dated November 9, 1999, to provide technical and financial assistance to stakeholder groups of business and property owners in the City to assist in the formation of such districts; and

WHEREAS, pursuant to said authority, lodging business owners within the boundaries of the proposed district petitioned the City Council to form the Oakland Tourism Business Improvement District 2018 (OTBID 2018), which was established by City Council Resolution No. 87242 on August 1, 2018, for a seven-year term ending on July 31, 2025; and

WHEREAS, the OTBID 2018 has provided enhanced special benefit marketing, advertising, sales and special events intended to increase room occupancy for assessed lodging businesses; and

WHEREAS, Visit Oakland, lodging business owners, members of the business community and representatives from the City have met to consider the renewal of the OTBID 2018, which renewal will be accomplished by establishing the Oakland Tourism Business Improvement District 2024 (OTBID 2024); and

WHEREAS, the assessed lodging business owners that will pay more than fifty percent (50%) of the proposed assessment have signed and submitted petitions in support of the formation of the OTBID 2024 (Proposed District), as required by Streets and Highways Code § 36621; and

WHEREAS, the City Administrator has prepared the preliminary report containing all information required by the BIMD Ordinance which has been filed with the Office of the City Clerk; and

WHEREAS, a management plan for the operation of the Proposed District (District Plan), which is attached hereto and incorporated herein as **Exhibit A**, has been prepared in accordance with the provisions of Article XIII of the California Constitution and the BIMD Ordinance, and has been placed on file with the Office of the City Clerk for proceedings in formation of the Proposed District; and

WHEREAS, the Proposed District consists of 28 businesses owned by 27 business owners as specifically described in the Boundary Map found in Appendix 2 of the District Plan; and

WHEREAS, the District Plan provides for enhanced marketing, advertising, sales, special events, and related administration programs as direct specific benefits to assessed hotels; and

WHEREAS, funds remaining at the end of any year may be used in subsequent years in which OTBID 2024 assessments are levied as long as they are used consistent with the requirements of this resolution and the District Plan; and

WHEREAS, the proposed assessment to be levied is two percent (2%) of gross short-term sleeping room rental revenue for lodging businesses with 50 or more rooms located within the City; and

WHEREAS, the total amount in assessments that will be collected for the Proposed District in the first full year is Three Million Forty Thousand Two Hundred Sixty-Eight dollars and Eighty-Nine Cents (\$3,040,268.89); and

WHEREAS, the District Plan provides that the assessment rate may be increased by a maximum of one percent (1%) per year after the initial eleven (11) months, and if the increase is less than one percent (1%) the minimum increment would be one quarter of a percent (0.25%), and the assessment rate cannot exceed three percent (3%) of gross short-term sleeping room rental revenue for assessed businesses during the term of the Proposed District; and

WHEREAS, the Proposed District's assessment and related special benefit services shall be effective for a period of nine (9) years and eleven (11) months beginning August 1, 2024 and terminating June 30, 2034, as provided for in the District Plan, and within the maximum term of ten (10) years allowed by the Streets and Highways Code § 36600 et seq. ; and

WHEREAS, the assessment shall be attached to the business and collected on a monthly, semi-annual or annual basis by the City's Revenue Management Bureau, and shall continue as provided for in the District Plan for each year that the Proposed District is in existence unless modified by the City Council on the recommendation of the Advisory Board for the Proposed District; now, therefore, be it resolved

RESOLVED: That the Council hereby finds that the above recitals are true and correct; and be it

FURTHER RESOLVED: That the Council accepts the petitions signed and submitted by lodging businesses which will pay more than fifty percent (50%) of the proposed assessment, in support of the establishment of the Proposed District, as required by Streets and Highways Code § 36621; and be it

FURTHER RESOLVED: That the Council declares its intention to establish the Proposed District pursuant to Streets and Highways Code § 36600 et seq. and to levy an assessment on certain lodging businesses within the boundaries of the Proposed District in accordance with the Property and Business Improvement District Law of 1994; and be it

FURTHER RESOLVED: That the name of the Proposed District will be the Oakland Tourism Business Improvement District 2024; and be it

FURTHER RESOLVED: That the District Plan satisfies all requirements of Streets and Highways Code § 36622; and be it

FURTHER RESOLVED: That the Proposed District shall include all lodging businesses with fifty (50) rooms or more, existing and that come into existence in the future, available for public occupancy within the boundaries of the City; and be it

FURTHER RESOLVED: That the assessment rate to be levied is two percent (2%) of gross short-term sleeping room rental revenue for lodging businesses with 50 or more rooms located within the City. The term “gross short-term sleeping room rental revenue” as used herein means: the total charge made by a lodging business for sleeping or overnight accommodations space furnished to a transient, not including comped rooms or other charges such as destination fees, reservation fees, forfeited deposits, cancellation fees, attrition fees, no-show fees, parking fees, internet fees, roll-a-way bed fees, early and/or late checkout fees, or any other charges or fees. Gross short-term sleeping room rental revenue shall not include, and therefore the assessment shall not be charged upon, any federal, state or local taxes collected, including but not limited to transient occupancy taxes, nor on revenue resulting from stays pursuant to contracts executed prior to August 1, 2024, nor on the portion of stays exceeding thirty (30) consecutive days, nor on stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption; and be it

FURTHER RESOLVED: That the assessments levied for the Proposed District shall be applied toward marketing & advertising, sales, and special events programs to market assessed lodging businesses in Oakland as tourist, meeting, and event destinations, as described in the District Plan. Funds remaining at the end of any year may be used in subsequent years in which district assessments are levied as long as they are used consistent with the requirements of this resolution and the District Plan.

FURTHER RESOLVED: That the Proposed District will have a term of nine (9) years and eleven (11) months, beginning August 1, 2024 through June 30, 2034, unless renewed

pursuant to Streets and Highways Code § 36660 et seq; and be it

FURTHER RESOLVED: That a public meeting to receive testimony on establishing the Proposed District and levying assessments will be held on May 7, 2024, at 5:00 PM, or as soon thereafter as the matter may be heard, in the City Council Chambers in City Hall, located at 1 Frank H. Ogawa Plaza, 3rd Floor, Oakland, California 94612. Notice will be provided pursuant to Government Code § 54954.6 and Streets and Highways Code § 36623. Following the public meeting, the City Council shall move to introduce and conduct the first reading of the Ordinance to establish the OTBID 2024 and levy assessments; and be it

FURTHER RESOLVED: That a public hearing to establish the Proposed District and levy assessments will be held on June 4, 2024, at 5:00 PM, or as soon thereafter as the matter may be heard, in the City Council Chambers in City Hall, located at 1 Frank H. Ogawa Plaza, 3rd Floor, Oakland California 94612; and be it

FURTHER RESOLVED: That the City Clerk is directed to provide written notice to the lodging businesses subject to assessment of the date and time of the public meeting and hearing, and to provide that notice as required by Government Code § 54954.6 and Streets and Highways Code § 36623; and be it

FURTHER RESOLVED: That at the public hearing, the written and oral protests by any interested person may be made in the form and manner provided by Sections 36524 and 36525 of the Streets and Highways Code, and the testimony of all interested persons for or against the establishment of the Proposed District, the proposed assessment, the boundaries of the Proposed District, or the furnishing of the specified types of improvements or activities will be heard; and be it

FURTHER RESOLVED: That any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made; and be it

FURTHER RESOLVED: That, at any time prior to the date of the public hearing, any person affected by the proposed assessment, may submit a written protest in the form and manner provided by Sections 36524 and 36525 of the Streets and Highways Code as follows:

1. Every written protest shall be mailed or delivered to the Oakland City Clerk at 1 Frank H Ogawa Plaza, 1st Floor, Oakland, CA 94612, Attn: Oakland Tourism BID 2024 at or before the time fixed for the public hearing. A written protest thus filed with the City Clerk may be withdrawn in writing at any time before the conclusion of the public hearing.
2. A written protest may, but is not required to, clearly set forth the reason for which the objection is made, including objections to formation of the Proposed District, the criteria for assessed businesses, the proposed assessment, or the types of improvements and activities proposed to be funded by the assessments, or describing any other alleged irregularity or insufficiency in these proceedings.
3. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person

subscribing is not shown on the official records of the City as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative; and be it

FURTHER RESOLVED: That written protests that do not comply with the requirements stated above will not be considered nor counted in determining a majority protest; and be it

FURTHER RESOLVED: That at the conclusion of the public hearing, if written protests are received from the owners of businesses in the Proposed District who will pay fifty percent (50%) or more of the assessments proposed to be levied, and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), a majority protest will exist and the proposed assessment shall not be levied; and be it

FURTHER RESOLVED: That if a majority protest does not exist, a resolution establishing the Proposed District and levying the assessment will be adopted by the City Council, at the conclusion of the public hearing; and be it

FURTHER RESOLVED: That the City Clerk is directed to mail by first-class mail written notice of the date and time of the meeting and hearing to the lodging businesses subject to assessment, not less than forty-five (45) days before the scheduled public hearing, as required by Government Code § 54954.6; and be it

FURTHER RESOLVED: That the City Clerk is directed to publish this Resolution of Intention to form the Proposed District in a newspaper of general circulation in the City at least (7) seven days before the public hearing; and be it

FURTHER RESOLVED: That the complete District Plan is on file with the City Clerk and may be reviewed upon request; and be it

FURTHER RESOLVED: That this resolution shall take effect immediately upon its adoption by the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California



**OAKLAND TOURISM BUSINESS
IMPROVEMENT DISTRICT
MANAGEMENT DISTRICT PLAN**

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Prepared by
Civitas



I. OVERVIEW

Developed by Visit Oakland (VO), and Oakland lodging businesses, the Oakland Tourism Business Improvement District (OTBID) is an assessment district proposed to continue to provide specific benefits to payors, by funding marketing and sales promotion efforts for assessed lodging businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of additional demand for room night sales directly to payors. The Oakland Tourism Business Improvement District was created in 2015 for a three (3) year term and was subsequently renewed in 2018 for an additional seven (7) years. Visit Oakland and Oakland lodging businesses now wish to renew the OTBID for an additional term of nine (9) years and eleven (11) months.

Location: The OTBID includes all lodging businesses with fifty (50) rooms or more, existing and in the future, available for public occupancy located within the boundaries of the City of Oakland (City) as shown on the map in Section III.

Services: The OTBID is designed to provide specific benefits directly to payors by increasing awareness and demand for room night sales. Marketing & advertising, sales, special events, and related administration programs will increase demand for overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing demand for room night sales. OTBID 2024 services will not duplicate services of other Business Improvement Districts (BIDs) or Community Benefit Districts (CBDs) in Oakland. However, the OTBID 2024 may partner with other BIDs or CBDs for promotional efforts.

Budget: The total OTBID annual assessment budget for the first full fiscal year of operations is anticipated to be approximately \$3,040,268.89. The initial “year” of operations will be a partial year consisting of eleven (11) months, with an anticipated budget of \$2,786,913.15. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do and as businesses open and close, and if the assessment rate is increased.

Cost: The annual assessment rate is two percent (2%) of gross short-term sleeping room rental revenue. During the OTBID term, VO may increase the assessment rate by a maximum of one percent (1%) per year after the initial eleven (11) months. If the increase is less than one percent (1%) the minimum increment would be one quarter of a percent (0.25%). There will be some years where no increase is implemented. The assessment cannot exceed three percent (3%) during the term of the district. Based on the benefit received, assessments will not be collected on: stays that exceed thirty (30) consecutive days; stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption, and stays pursuant to contracts executed prior to August 1, 2024.

Collection: The City will be responsible for collecting the assessment on a monthly, quarterly, or annual basis (including any delinquencies, interest, and overdue charges) from each lodging business located in the boundaries of the OTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business. VO, the

designated OTBID Owners' Association shall be responsible for pursuing any delinquent payments, including related interest and overdue charges as described in Section IV.

Duration: The OTBID will have a nine (9) year and eleven (11) month life, beginning August 1, 2024 or as soon as possible thereafter, and ending nine (9) years and eleven (11) months from its start date. After nine (9) years and eleven (11) months, the OTBID may be renewed pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq. (94 Law) if business owners support continuing the OTBID's programs.

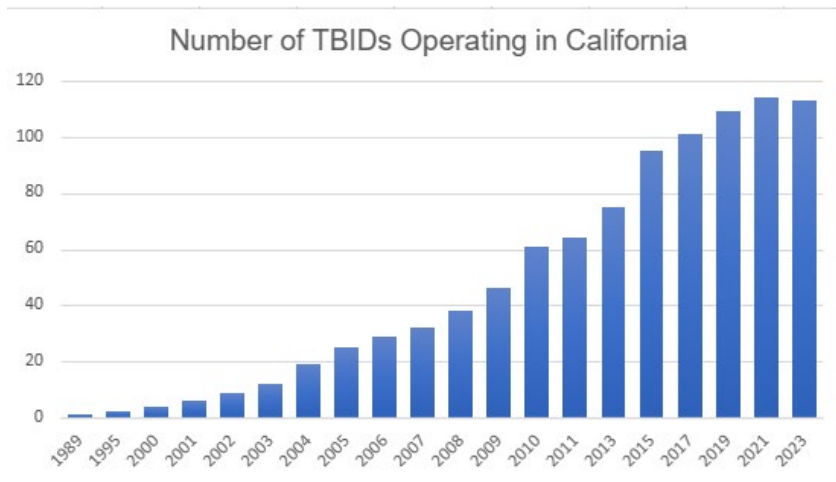
Management: Visit Oakland (VO) shall continue to serve as the OTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan, and must provide annual reports to the City Council. Once per year, beginning on the anniversary of the OTBID renewal, there is a thirty (30) day period in which owners paying fifty percent (50%) or more of the assessment may protest and initiate a City Council hearing on the OTBID termination.

II. BACKGROUND

VO and their lodging community created the OTBID 2015 to secure stable funding for tourism promotion. The OTBID 2018 was renewed August 1, 2018, for a seven (7) year term. Due to the success of the District, VO is now renewing the OTBID 2024 for a term of nine (9) years and eleven (11) months. The annual assessment rate for the OTBID 2024 is two percent (2%) of gross short-term sleeping room rental revenue for all lodging businesses with fifty (50) or more rooms, existing and in the future, that are available for public occupancy within the boundaries of the City of Oakland.

Hotels and VO now desire to renew the OTBID, via creation of the OTBID 2024, to continue building upon these successes. The OTBID 2024 will continue to deliver services that provide a specific benefit to assessed lodging businesses throughout the district. The OTBID 2024 assessments are leveraged with Measure C tax revenues, administered by VO, to promote tourism and hotel occupancy in Oakland.

Tourism Business Improvement Districts (TBID)s are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have followed suit. In recent years, other states have begun adopting the California model –Illinois, Minnesota, Massachusetts, Montana, South Dakota, Washington, Colorado, Texas, and Louisiana have adopted TBID laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TBID. Additionally, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TBIDs without a state law.



California’s TBIDs collectively raise over \$300 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Oakland lodging businesses continue to invest in stable, commerce-specific marketing programs.

TBIDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow lodging business owners to organize their efforts to increase commerce. Lodging business owners within the TBID pay an assessment and those funds are used to provide services that increase commerce.

In California, most TBIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between Business Improvement Districts (including TBIDs) and some other special assessment districts is that funds raised are returned to the private non-profit corporation governing the district to provide services and improvements as a specific benefit only to those who pay.*

There are many benefits to TBIDs:

- *Funds must be spent* on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

Comparison of OTBID 2024 and OTBID 2018

- OTBID 2024 has a term of (9) years and eleven (11) months, compared to seven (7) years for the OTBID 2018.
- The boundaries of the OTBID 2024 and criteria for assessed businesses will remain the same as before, and include only those lodging businesses, existing and in the future, with fifty (50) rooms or more, located within the boundaries of the City of Oakland.
- The annual assessment rate shall be two percent (2%) of gross short-term sleeping room rental revenue, with an option to increase to 3% over the term of OTBID 2024 after the initial 11 months, compared to an assessment rate of \$1.50 per paid occupancy per night for the OTBID 2018. Converting to a fixed 2% assessment will be a more progressive and equitable model. This would also mirror the structure and rate used in the vast majority of TBIDs in California, improving VO's competitive position.
- The OTBID 2024 annual budget for the first full year of its operation is anticipated to be approximately \$3,040,268.89, compared to the OTBID 2018 annual budget of \$1,251,091.93. Consistent with OTBID 2018, the annual assessment income for OTBID 2024 will fluctuate as room sales do, while budget allocations will remain the same.
- The OTBID 2018 contingency fund budget allocation was three percent (3%) and will remain the same for OTBID 2024.
- Visit Oakland will continue to receive revenue from Measure C; there are no other significant revenue sources.

III. BOUNDARY

The OTBID will continue to include all lodging businesses with fifty (50) rooms or more, existing and in the future, available for public occupancy within the boundaries of the City of Oakland, as shown in the map below.

Lodging business means any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place, offering the right to use such space for sleeping or overnight accommodations wherein the owner or operator thereof, for compensation, furnishes such right of occupancy to any transient.

A complete listing of assessed lodging businesses and map key within the OTBID can be found in Appendix 2.

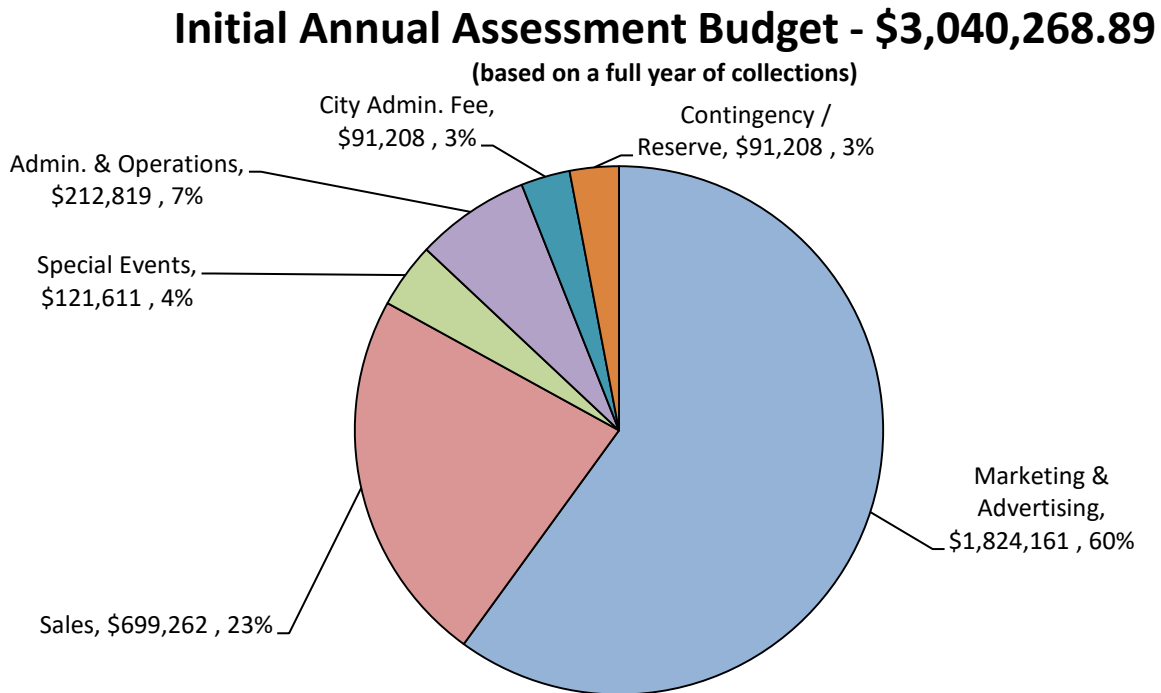


IV. ASSESSMENT BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the OTBID funds are marketing & advertising, sales, special events, and related administration programs available only to assessed businesses.

A service plan assessment budget has been developed to deliver services that benefit the assessed businesses. A detailed annual assessment budget will be developed and approved by VO. The chart below illustrates the initial annual assessment budget allocations. These activities and allocations will also apply in subsequent years. The total initial assessment budget is estimated to be \$3,040,268.89 for a full year.



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, with the exception of the three percent (3%) city administration fee, VO shall have the authority to adjust categorical allocations by up to ten percent (10%) of the total budget each year. Any adjustments in excess of ten percent (10%) of the annual budget must also be approved by the Oakland City Council and may require modification of this Management District Plan. No reallocation of service category funds may cause a category to be eliminated. The VO Board of Directors may annually recommend changes to the budget based upon service needs and such changes shall be included in the annual report submitted to the City for City Council approval (Streets and Highways Code section 36650). A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the OTBID, any and all assessment

funds may be used for the costs of defending the OTBID, the City and VO related to the OTBID upon authorization by the VO Board of Directors.

Each budget category includes all costs related to providing that service. For example, the marketing & advertising budget includes the cost of staff time dedicated to overseeing and implementing the marketing & advertising program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories. The staffing levels necessary to provide the services below will be determined by VO on an as-needed basis.

Marketing & Advertising

A marketing and advertising program will promote assessed businesses as tourist, meeting, and event destinations. The marketing and advertising program will have a central theme of promoting Oakland as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include the following activities:

- Assessed lodging businesses will have the benefit of being on the VO website with a call to action to book through the website's booking engine;
- Assessed lodging businesses will be included in all sales and marketing materials for leisure and corporate bookings—driving room night bookings;
- Hosting large-scale events in Oakland that will generate significant room nights for assessed lodging businesses;
- Internet marketing efforts, including advertising and social media, will increase awareness and optimize Internet presence to drive overnight visitation and room sales to assessed lodging businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors will drive overnight visitation and room sales to assessed lodging businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps will feature assessed lodging businesses;
- VO sponsored familiarization tours will enable decision makers to experience Oakland and in turn influence business to stay at assessed lodging businesses;
- Attendance of professional industry conferences and affiliation events to promote assessed lodging businesses;
- Sponsorship and promotion of events marketed to overnight visitors will encourage them to stay at assessed lodging businesses;
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed lodging businesses; and
- Development and maintenance of a website designed to promote assessed lodging businesses.

Sales

The sales program will be designed to secure direct bookings at assessed lodging businesses. Sales activities may include:

- Sales blitzes for assessed lodging businesses;
- Assessed lodging businesses will be included in VO hosted familiarization tours and media visits;
- Sales staff dedicated to generating room night sales via group and event business;
- Attendance of trade shows to promote assessed lodging businesses; and
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses.

Special Events

The special events portion of the budget will be used to attract and promote special events that draw overnight visitors to assessed lodging businesses. Assessed lodging businesses shall be the only lodging businesses given the opportunity to sponsor these events and to receive direct booking opportunities.

Administration & Operations

In order to provide the marketing and advertising, sales, and special events services, VO will incur various administrative costs, such as staffing, rent, advocacy, insurance, legal, and accounting fees.

City Administration Fee

The City of Oakland shall retain a fee equal to three percent (3%) of received assessments to cover its ordinary administrative costs.

Contingency/Reserve

In order to ensure effective provision of services, a contingency fund will be maintained to account for uncollected assessments or unanticipated program costs. Contingency funds collected, may be held in a reserve fund or utilized for other OTBID program, administration or renewal costs at the discretion of VO. Policies relating to contributions to the reserve fund, and expenditure of the reserve fund shall be set by VO. The amount of the reserve shall be in accordance with the OTBID budget described in Section IV above. If the reserve fund is used to form a renewed replacement district when the OTBID expires, and the replacement district includes businesses that are not in the current OTBID, the portion of the costs of the replacement district renewal attributable to those new businesses may not be paid for from the above contingency/reserve fund.

B. Annual Budget

The total assessment budget is projected at approximately \$3,040,268.89 annually based on a full year, or a cumulative total of \$43,830,543.17 through June 30, 2034 if the maximum assessment rate increases are adopted. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as businesses open and close, and if the assessment rate is increased pursuant to this Plan.

The annual assessment rate is two percent (2%) of gross short-term sleeping room rental revenue. During the OTBID term, the assessment rate may be increased by VO to a maximum rate of three percent (3%) of gross short-term sleeping room rental revenue for assessed businesses. The annual assessment rate is two percent (2%) of gross short-term sleeping room rental revenue. During the OTBID term, VO may increase the assessment rate by a maximum of one percent (1%) per year after the initial eleven (11) months. If the increase is less than one percent (1%) the minimum increment

would be one quarter of a percent (0.25%). There will be some years where no increase is implemented. The assessment cannot exceed three percent (3%) during the term of the district. Based on the benefit received, assessments will not be collected on: stays that exceed thirty (30) consecutive days; stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption; and stays pursuant to contracts executed prior to August 1, 2024.

The table below demonstrates the estimated maximum budget with the assumption that the assessment rate will be increased at the earliest opportunity as it is a required disclosure, it is not the anticipated course of action. Alternate courses of action may be taken in regard to implementing the assessment rate increase other than what is demonstrated in the chart below, within the parameters of this Management District Plan.

Estimated Annual Budget if Maximum Assessment Rates Are Adopted*

Fiscal Year	Contingency & Reserve	City Fee	Marketing & Advertising	Sales	Special Events	Admin & Operations	Total
Aug2024-Jun2025	\$83,607.39	\$83,607.39	\$1,672,148.89	\$640,990.02	\$111,477.53	\$195,084.92	\$2,786,913.15
2025-26	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2026-27	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2027-28	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2028-29	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2029-30	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2030-31	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2031-32	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2032-33	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
2033-34	\$136,812.10	\$136,812.10	\$2,736,242.00	\$1,048,893.77	\$182,416.13	\$319,228.23	\$4,560,403.34
Total	\$1,314,916.29	\$1,314,916.29	\$26,298,325.90	\$10,081,024.93	\$1,753,221.73	\$3,068,138.02	\$43,830,543.17

*This chart assumes that a one percent (1%) assessment increase is implemented in 2025-26 after the initial eleven (11) months. This is just an example and does not reflect the intentions of VO.

The table below demonstrates the annual improvement and service plan budget with the assumption that the rates will not be increased during the OTBID's term.

Estimated Annual Budget if Maximum Assessment Rates Are Not Adopted

Fiscal Year	Contingency & Reserve	City Fee	Marketing & Advertising	Sales	Special Events	Admin & Operations	Total
Aug2024-Jun2025	\$83,607.39	\$83,607.39	\$1,672,147.89	\$640,990.02	\$111,476.53	\$195,083.92	\$2,786,913.15
2025-26	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2026-27	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2027-28	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2028-29	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2029-30	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2030-31	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2031-32	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2032-33	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
2033-34	\$91,208.07	\$91,208.07	\$1,824,161.33	\$699,262.84	\$121,610.76	\$212,818.82	\$3,040,268.89
Total	\$904,479.99	\$904,479.99	\$18,089,599.90	\$6,934,346.63	1,205,973.33	\$2,110,453.32	\$30,149,333.16

C. California Constitutional Compliance

The OTBID assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term ‘assessments’ to levies on real property.¹ Rather, the OTBID assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the OTBID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the OTBID. The activities described in this Plan are specifically targeted to increase demand for room night sales for assessed lodging businesses within the boundaries of the OTBID, and are narrowly tailored. OTBID funds will be used exclusively to provide the specific benefit of increased demand for room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in OTBID programs, or to directly generate sales for non-assessed lodging businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses. Nothing in this Plan limits the ability of the Owners’ Association to enter into private contracts with non-assessed lodging businesses for the provision of services to those businesses. This is common for destinations to enter into voluntary agreements for additional services.

The assessment imposed by this OTBID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in demand for room night sales. The specific benefit of an increase in demand for room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing and sales programs promoting lodging businesses paying the OTBID assessment. The marketing and sales programs will be designed to increase room night sales at each assessed lodging businesses. Because they are necessary to provide the marketing and sales programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased demand for room night sales to the assessed lodging businesses.

Although the OTBID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”³

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

³ Government Code § 53758(a)

2. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing and promotions services like those to be provided by the OTBID are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”⁶

3. Reasonable Cost

OTBID services will be implemented carefully to ensure their costs do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by VO, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from OTBID-funded activities, be featured in advertising campaigns, and benefit from other OTBID-funded services. Non-assessed lodging businesses will not receive these, nor any other, OTBID-funded services and benefits.

The OTBID-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-OTBID funds. VO will use Measure C funds for this purpose. OTBID funds shall only be spent to benefit the assessed businesses and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

D. Assessment

The annual assessment rate is two percent (2%) of gross short-term sleeping room rental revenue. During the OTBID term, the assessment rate may be increased by VO to a maximum rate of three percent (3%) of gross short-term sleeping room rental revenue for assessed businesses. The increase in any year shall be between one-quarter of one percent (0.25%) and one percent (1%). Based on the benefit received, assessments will not be collected on: stays that exceed thirty (30) consecutive days; stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption; and stays pursuant to contracts executed prior to July 1, 2024.

The assessment was calculated based on the total cost of the activities to be provided for the benefit of the businesses within the OTBID, with costs allocated based on the proportional benefit conferred to each business. Activities funded by the OTBID are specifically targeted to increase room nights at assessed businesses. All room night sales do not represent the same benefit to the payors. For example, a higher priced room night is of greater benefit than a lower priced room night because the assessment derives greater revenue. To account for this benefit differential and to make sure the benefits are proportional, an assessment formula based on a percentage of revenue has been selected. The

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

proposed formula accurately reflects greater benefit to assessed businesses with higher priced room nights.

The term “gross short-term sleeping room rental revenue” as used herein means: the total charge made by a lodging business for sleeping or overnight accommodations space furnished to a transient, not including comped rooms or other charges such as destination fees, reservation fees, forfeited deposits, cancelation fees, attrition fees, no-show fees, parking fees, internet fees, roll-a-way bed fees, early and/or late checkout fees, or any other charges or fees. Gross short-term sleeping room rental revenue shall not include, and therefore the assessment shall not be charged upon, any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon, and is a direct obligation of, the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the OTBID assessment is identified separately it shall be disclosed as the “OTBID Assessment.” As an alternative, the disclosure may include the amount of the OTBID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the “OTBID Assessment.” The assessment is imposed solely upon and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for calculation of transient occupancy taxes.

Bonds shall not be issued.

E. Interest and Overdue Charges

VO shall be responsible for collection of delinquent assessments and for costs associated with collecting unpaid assessments. If sums in excess of the delinquent OTBID assessment are sought to be recovered in the same collection action by the City, the OTBID shall bear its pro rata share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any lodging business which fails to remit any assessment imposed within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* In addition to the penalties imposed, any lodging business which fails to remit any assessment imposed shall pay interest at the rate of one half of one percent (0.50%) per month or fraction thereof on the amount of the assessment, inclusive of penalties, from the date on which the assessment first became delinquent until paid.
3. *Fraud:* If the City determines that the nonpayment of any assessment due is the result of fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in subsection 1 of this section.
4. *Interest:* Every penalty imposed and such interest as accrues under the provision of this section shall become a part of the assessment herein required to be paid.
5. The City has the power to impose the penalties described above, and the power to take legal action to collect all delinquent assessments and penalties. However, the City does not have the obligation to take such legal action. VO will have the primary responsibility for pursuing

delinquent assessments and for taking legal action for such amounts, as the City may authorize. If the City takes collection or legal action on delinquent assessments and penalties, it will be entitled to compensation for its costs and expenses.

F. Time and Manner for Collecting Assessments

The OTBID assessment will be implemented beginning August 1, 2024 or as soon as possible thereafter, and ending nine (9) years and eleven (11) months from its start date. The City will be responsible for receiving and redistributing on-time and late payments of the assessment from effected lodging businesses located in the boundaries of the OTBID (including any penalties and interest). The City has the power to impose the penalties described in section IV E above, and the power to take legal action to collect all delinquent assessments and penalties. However, the City does not have the obligation to take such legal action here. The OTBID Owner's Association will have the primary responsibility for pursuing delinquent assessments and for taking legal action for such amounts. If the City takes collection or legal action on delinquent assessments and penalties, it will be entitled to compensation from the OTBID for its costs and expenses. The City will be responsible for receiving and redistributing on-time and late payments of the assessment from effected lodging businesses located in the boundaries of the OTBID (including any penalties and interest). The assessment shall be due on a quarterly, monthly, or annual basis depending on business revenue. Each business which received one hundred thousand dollars (\$100,000) in gross receipts during the previous calendar year shall on or before the tenth (10th) day following each month submit the amount of the assessment due. Each business which received between five thousand dollars (\$5,000) and ninety-nine thousand nine hundred ninety-nine dollars and ninety-nine cents (\$99,999.99) in gross receipts during the previous calendar year shall on or before the last day of the month following the close of each calendar quarter submit the amount of the assessment due. Each business which received under five thousand dollars (\$5,000) in gross receipts during the previous calendar year shall, on or before January 31st of each year, submit the amount of the assessment due. The City shall forward the assessments collected, less the City's administration fee, to the Owners' Association pursuant to the terms and conditions outlined in a written agreement to be executed between the City and the Owners' Association.

V. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the OTBID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Oakland will continue to serve as the Owners' Association for the OTBID.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action

of each member present for the action. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

C. Annual Report

The VO shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

D. Proposed Rules and Regulations

The following rules and regulations will be employed in the administration of the OTBID.

Conflict of Interest

Any member of the Board of Directors of VO shall recuse him or herself from any vote in which a potential conflict of interest is apparent. Such potential conflicts include, but are not limited to, prioritizing projects which result in special benefit to specific business owners, prioritization of series to benefit a particular business owner or group of business owners, and hiring or selecting contractors.

Open Meetings

Meeting of the Board of Directors of VO shall be open to all business owners that are paying into the district as well as the general public according to the Ralph M. Brown Act and any other applicable legislation. All OTBID-related reports shall be available for review by any business owner in the district.

APPENDIX 1 – LAW

**STREETS AND HIGHWAYS CODE
DIVISION 18. PARKING
PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994**

https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=SHC&division=18.&title=&part=7.&chapter=&article=

APPENDIX 2 – ASSESSED BUSINESSES

**OTBID Management District Plan
January 29, 2024**

Map Key	BUSINESS NAME	BUSINESS ADDRESS	ZIP
1	HILTON OAKLAND AIRPORT	1 HEGENBERGER RD	94621-1450
2	ECONO LODGE INN & SUITES/GATEWAY HOTEL	10 HEGENBERGER RD	94621-1406
3	WATERFRONT PLAZA HOTEL	10 WASHINGTON ST	94607-3751
4	OAKLAND MARRIOTT CITY CENTER	1001 BROADWAY	94607-4019
5	HOMEWOOD SUITES OAKLAND	1103 EMBARCADERO	94606-5122
6	AMERICAS BEST VALUE INN	122 E 12TH ST	94606-2230
7	JEFFERSON STREET HOTEL, LLC	1431 JEFFERSON ST	94612-1442
8	150 HEGENBERGER CAPITAL LLC	150 HEGENBERGER RD	94621-1422
9	BEST WESTERN AIRPORT INN & SUITE	170 HEGENBERGER LOOP	94621-1326
10	BEST WESTERN PLUS BAYSIDE HOTEL	1755 EMBARCADERO	94606-5223
11	EXECUTIVE INN	1755 EMBARCADERO	94606-5223
12	MOTEL 6 OAKLAND	1801 EMBARCADERO	94606-5224
13	SPRINGHILL SUITES BY MARRIOTT	195 HEGENBERGER RD	94621-1407
14	MOXY OAKLAND DOWNTOWN	2225 TELEGRAPH AVE	94612-2315
15	HOTEL KISSEL	2455 BROADWAY	94612-2416
16	COURTYARD OAKLAND AIRPORT	350 HEGENBERGER RD	94621-1445
17	EXTENDED STAY AMERICA HOTEL	3650 MANDELA PKWY	94608-3565
18	RAMADA BY WYNDHAM	375 13TH ST	94612-2636
19	HAMPTON	378 11TH ST	94607-4247
20	CLAREMONT CLUB & SPA	41 TUNNEL RD	94706-2429
21	THE JACK LONDON INN	444 EMBARCADERO W	94607-3706
22	BAY BREEZE INN	4919 COLISEUM WAY	94601-5011
23	RADISSON HOTEL	500 EDES AVE	94621-1306
24	584 14TH STREET, LLC.	584 14TH ST	94612-1487
25	HOLIDAY INN EXPRESS HOTEL & SUITES	66 AIRPORT ACCESS RD	94603-1078
26	HOLIDAY INN HOTEL & SUITES	77 HEGENBERGER RD	94621-1405
27	LA QUINTA INN	8465 ENTERPRISE WAY	94621-1317
28	COURTYARD OAKLAND DOWNTOWN	988 BROADWAY	94607-4064