RESPONSE TO COMMENTS

1. **Project construction will not result in any significant vibration impacts to the Central Fire Station.**

The Project would not result in vibration levels that would result in a substantial adverse change in the significance of the Central Fire Station. (State CEQA Guidelines, § 15064.5, subd., (b).) Under the State CEQA Guidelines, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Restructuring Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995) shall be considered to have a less than significant impact on the historic resource. (State CEQA Guidelines, § 15064.5, subd. (b)(3).) Accordingly, if the Secretary's Standards are adhered to, any impact to historical structures that might otherwise be regarded as adverse will be considered less than significant. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1066.)

The Project here follows the Secretary of the Interior's Standards for Rehabilitation as set forth in various reports included in the record of proceedings, including the *Historic Resource Evaluation Assessment Report* dated January 13, 2021 by George Taylor Louden, the *Historic Resource Evaluation: Riverside Downtown Specific Plan Review Supplement* dated July 15, 2021 by George Taylor Louden, the *Historical Architectural Assessment Report Addendum* dated September 5, 2021 by George Taylor Louden, and the *Impacts Assessment for the Development of AC/Marriott Residence Inn Dual Branded Hotel, Riverside, California* dated August 2021 by ICF. Notably, the Project has been designed to follow the Secretary of the Interior's Standards and thus does not rely on formal mitigation measures to ensure these standards are followed.

Moreover, no substantial evidence suggests that the Project would result in vibration impacts that could result in a substantial adverse change to the significance of the Central Fire Station. The Project construction plans calls for direction drilling. This construction technique was specifically chosen to avoid potential vibration impacts that might result from more aggressive construction techniques, such as pile-driving.

Because the Project follows the Secretary of the Interior's Standards, the Project's potential impacts to the Central Fire Station are less than significant. (State CEQA Guidelines, § 15064.5, subd. (b)(3); see also *Citizens for a Sustainable Treasure Island*, *supra*, 227 Cal.App.4th at p. 1066.)

2. **The Project does not conflict with Public Bidding Law or the Approved Purchase and Sale Agreement.**

In the August 16, 2021 comment letter submitted by Rutan & Tucker on behalf of Mission District Associates, LLC and the Mission Inn Hotel & Spa (collectively, "Rutan"), Rutan alleges that the Project conflicts with public bidding law and the approved purchase and sale agreement ("PSA"). These comments are inaccurate and misleading and do not present any reason to deny Greens' applications. As an initial matter, the item before the City Council is solely related to the development approvals for the Project, and the City Council should consider these approvals on

their own merits. As noted in staff's report, the City Council issued a request for qualifications ("RFQ") for development of the parcel in 2017. It selected Greens as part of that process, and entered into a contract to sell the property to Greens in 2018. Consideration of the development applications should only be based on the merits of the applications themselves, not on the terms of the previously-approved RFQ or PSA. Regardless, as discussed below, the comments regarding the RFQ and PSA are without legal merit.

The Project does not conflict with Public Bidding Law. The comment vaguely references "public bidding law," but does not reference any specific statute or ordinance with which the Project is purportedly in conflict. This is because the Project does not conflict with any statute or ordinance. Indeed, the "public bidding law" to which the comment refers does not even apply in this context. The term "public bidding law" generally refers to the provisions of the Public Contract Code, or similar provisions in a city charter, that require public works contracts be awarded to the lowest bidder. (See, e.g., Charter of the City of Riverside, sec. 1109, which only applies public bidding restrictions to public works contracts.) Courts have held, however, that absent a specific statutory restriction, there are not any general public bidding requirements. (See *Associated Builders & Contractors v. Contra Costa Water Dist.* (1995) 37 Cal.App.4th 466, 470-471.) Additionally, where a city council has discretion, the courts cannot issue an order to "control the exercise of discretion unless under the facts, discretion can only be exercised in one way." (See *Cypress Security, LLC v. City and Cnty. of San Francisco* (2010) 184 Cal.App.4th 1003, 1010-1011.) This means that where, as here, the City Council has discretion to award or administer a contract, there cannot be a violation of any public bidding law.

Separate and apart from the comment's lack of legal merit, the comment's assumption that the Project must strictly comply with the RFQ is further without merit. The RFQ specifically provides that "[o]ther development projects may be proposed that differ from the noted preferred uses." The selection of the successful development project was therefore fully within the discretion of the City Council and did not have to fully conform to the recommendations in the RFQ. Furthermore, nothing in the RFQ itself prevents the selected developer and the City from continuing to refine the Project to meet the best needs of the City and to maximize the development potential of the Project site, nor does anything in the RFQ prevent the City from entering a purchase and sale agreement that enables revisions to the Project concept. Greens and the City have, over time, continued to refine the Project in accordance with the Purchase and Sale Agreement. The comment only vaguely references the "public bidding law" and does not cite any law constraining the City Council's discretion to approve the applications at issue here For these reasons, there is no merit to the comment's assertion regarding the "public bidding law."

The Project is not inconsistent with the PSA. As noted above, the PSA, executed in 2018, is not at issue here. The comment does not cite any authority that supports the comment's assertion that the "City Council cannot lawfully approve the Project as proposed without amending the PSA." There is no basis for this conclusion. Moreover, as discussed above, consistency or inconsistency with the PSA is not a basis to approve or deny the Project approvals now before the City Council. Moreover, even if the City Council were to agree with the comment's errant position that Greens has not complied with the PSA, the remedy would be found within the PSA; it would not be a proper basis to deny the applications now before the City Council.

All of this aside, the comment's contention that the proposed Project is inconsistent with the PSA is not accurate. The City and Greens previously amended the conceptual plan set forth in the PSA in a manner that is consistent with the development applications. The comment ignores the fact that the PSA has been amended, twice—first in December 2018, and then a second time in March 2020. The proposed Project is wholly consistent with the PSA as amended.

3. The Project qualifies for the Class 32 exemption because it is consistent with applicable zoning.

The Planning Commission properly determined that the Project is categorically exempt from CEQA under the Class 32 exemption, and as part of that determination, properly determined that the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designations and regulations. (State CEQA Guidelines, § 15332.)

In its August 16, 2021 comment letter, Rutan cites *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 for the proposition that the Class 32 exemption does not apply where, as here, a project seeks the approval of variances. *Wollmer*, however, does not support this proposition. To the contrary, *Wollmer* held that the lead agency properly determined that the project at issue fell within the Class 32 exemption *even though* the project approvals included variances. Indeed, the City in *Wollmer* "waived the standards for height, number of stories and setbacks, granting variances to allow an additional story and a higher building height, and to forego setbacks on two corners." (*Id.* at p. 1347.) As in *Wollmer*, the variances sought for the Project are consistent with the applicable general plan and zoning designation and regulations as the City's zoning code expressly permits variances. (See City of Riverside Municipal Code, § 19.720.010, et seq.) The Project thus meets this criteria of the Class 32 exemption. (State CEQA Guidelines, § 15332.)

4. The Project will not result in a substantial adverse change in the significance of a historical resource.

The record is replete with substantial evidence establishing that the Project will not have an adverse impact on a historical resource under CEQA, as evidenced by the *Historic Resource Evaluation Assessment Report* dated January 13, 2021 by George Taylor Louden, the *Historic Resource Evaluation: Riverside Downtown Specific Plan Review Supplement* dated July 15, 2021 by George Taylor Louden, the *Historical Architectural Assessment Report Addendum* dated September 5, 2021 by George Taylor Louden, and the *Impacts Assessment for the Development of AC/Marriott Residence Inn Dual Branded Hotel, Riverside, California* dated August 2021 by ICF.

"A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource," but there is no substantial evidence in the record here to support a fair argument that the Proposed Project could potentially have a "substantial adverse change in the significance of a historical resource." (State CEQA Guidelines, § 15300.2, subd. (f).) The State CEQA Guidelines provide that "argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence." (State CEQA Guidelines, §§ 15064, subd. (f)(5), 15384, subd. (a).) Here, while the record does include reports that conclude a potential impact to historical resources, these reports do not qualify as substantial evidence

because the purported expert opinion is not supported by relevant facts. For example, the GPA Consulting Report dated July 8, 2021 and submitted on behalf of the First Congregational Church of Riverside does not constitute substantial evidence of a substantial adverse change in the significance of a historical resource because the purported expert opinion is not supported by facts. The State CEQA Guidelines define a "substantial adverse change in the significance of an historical resource" to mean the "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." (State CEQA Guidelines, § 15064.5, subd. (b)(1).) The significance of an historical resource is materially impaired when a project "demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in the California Register of Historical Resources or a local register of historical resources. (State CEQA Guidelines, § 15064.5, subd. (b)(2).) Here, the Proposed Project will not physically alter the physical characteristics of the First Congregational Church, much less physically alter the Church or any other historical resource in a manner that would deprive the resource of its historical significance. Accordingly, because there is no substantial evidence to support a fair argument that the Proposed Project may have an adverse impact on a historical resource, no exception to the Class 31 and Class 32 exemptions apply, and the Proposed Project is categorically exempt from CEQA.

In its August 16, 2021 letter, Rutan argues that the Project will have potential significant impacts to the interior of the Central Fire Station and claims to support this assertion with a memorandum from Jenna Snow dated August 16, 2021. This does not qualify, however, as substantial evidence of a potential impact to a historical resource because potential impacts to the interior of the Central Fire Station do not qualify as a substantial adverse change in the significance of an historical resource under CEQA. The Central Fire Station no longer operates as a fire station; it is privately owned, it is not open to the public, and it will be used for private uses as part of the Project. Impacts to the interior of a privately owned structure does not qualify as an impact to the environment under CEQA. (*Martin v. City and County of San Francisco* (2005) 135 Cal.App.4th 392, 404-405.) Regardless, as set forth in George Taylor Louden's *Historical Architectural Assessment Report Addendum: Character Defining Features* dated September 2021, the Project will retain character defining features of the Central Fire Station's interior.

In a July 9, 2021 letter submitted on behalf of the First Congregational Church of Riverside, it is asserted that "if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR." This argument regarding the "battle of the experts," however, is erroneous here because no expert in the record has offered any opinion supported by facts suggesting a "substantial adverse change in the significance of an historical resource," for the reasons discussed above. The record does, however, include substantial evidence of multiple experts who have concluded that the Proposed Project will <u>not</u> result in a substantial adverse change in the significance of an historical resource based on the fact (among many other facts) that the Proposed Project will not demolish, destroy, relocate, or alter any historical resource such that the resource's significance would be materially impaired. (State CEQA Guidelines, § 15064.5, subd. (b).) For all of these reasons, the Planning Commission properly determined that the proposed Project is categorically exempt from CEQA.

5. The Project will have less than significant construction traffic impacts.

In its August 16, 2021 letter, Rutan asserts that the Class 32 exemption is improper because the City purportedly has not established that the Project will have less than significant impacts related to construction traffic. As set forth in the memorandum of Trames Solution Inc. dated September 13, 2021, the Project will not result in a potentially significant construction traffic impact. Moreover, pursuant to State CEQA Guidelines section 15064.3, a "project's effect on automobile delay shall not constitute a significant environmental impact." (State CEQA Guidelines, § 15064.3, subd. (a).) Accordingly, the Class 32 exemption is proper.