

ORIGINAL

FACILITY USE AGREEMENT Veteran's Memorial Building

#255-O1611

THIS FACILITY USE AGREEMENT (FUA), entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and the Veteran's Memorial Building of El Dorado County Veterans Building Council, Inc., a California Non-Profit Corporation, whose principal place of business is 130 Placerville Drive, Suite A, Placerville, California 95667 (hereinafter referred to as "Building Council").

RECITALS

WHEREAS, the County owns that certain real property, commonly known as the Veteran's Memorial Building, located at 130 Placerville Drive, Placerville, California 95667 ("Premises"); and

WHEREAS, Building Council is a voluntary association of representatives of veteran organizations presently in existence, which organizations, together with their respective auxiliaries, provides multiple services in portions of the Premises for the benefit of veterans; and

WHEREAS, pursuant to California Military and Veterans Code Sections 1262 and 1264, the County may authorize use of County-owned property by the Building Council; and

WHEREAS, County may provide and maintain Premises for use and benefit of all congressionally chartered veteran organizations directly approved by the Building Council, which have posts or local branches in El Dorado County, any veteran's associations, veterans service organizations, and nonprofit veteran service agency as described in California Military and Veterans Code Section 1260 (hereinafter collectively referred to as "Veteran Organizations") for veterans-related events, which will be coordinated by Building Council in accordance with California Military and Veterans Code Section 1262.

NOW, THEREFORE, in consideration of the performance by the parties of the covenants contained herein, County and Building Council mutually agree as follows:

ARTICLE I

Property Use: County and Building Council agree to the use of the Premises in accordance with Exhibit "A-1" marked "Floor Plan-Upper Floor" and Exhibit "A-2" marked "Floor Plan-Lower Floor", both incorporated herein and made by reference a part hereof.

- A. Upper Floor: The East Room (Meeting Room with Stage) shall be available for use by both Building Council and the County's Department of Veteran Affairs with use to be coordinated cooperatively by El Dorado County Department of Veteran Affairs and Building Council. The West End of the Upper Floor and the Conference Room shall be maintained and used by El Dorado County Department of Veteran Affairs. The East Room Annex and Building Manager's Office shall be maintained and reserved for use by Building Council. All other space on the Upper Floor as well as all parking areas shall be shared space between El Dorado County Department of Veteran Affairs and Building Council.
- B. Lower Floor: The Lower Floor of the Premises, including but not limited to, Dining Room, Kitchen, Restrooms, Storage Rooms, Refrigeration Room, and Lounge shall be available primarily for Building Council's use. Building Council shall be responsible for coordinating and scheduling the use of these areas. County may, on occasion, wish to utilize the Lower Floor Dining Room including Restrooms. Building Council shall make every effort to allow use to County if there are no prescheduled Building Council events.

ARTICLE II

Permitted Uses:

- A. Uses for the Benefit of Veteran Organizations. Continued use of the Premises by Veteran Organizations shall be allowed as required pursuant to the California Military and Veterans Code, as may be amended from time to time. Veteran memorial services will take precedence over scheduled events. The Premises may be used for any fundraising events sponsored by Veteran Organizations for the benefit or for the purposes of Veteran Organizations, subject to approval by the Building Council.

Those portions of Premises as depicted in Exhibit A-1 and Exhibit A-2 are available for use by Building Council as a memorial hall, meeting place, events, activities, and recreation center for the benefit of and for the purposes of Veteran Organizations.

Subject to Building Council's approval, use of the Premises by persons or organizations other than veterans ("Nonveteran Groups") is permissible when such use is for the benefit of veterans or to provide a veteran-related activity and will not unduly interfere with the reasonable use of the Premises by Veteran Organizations. In addition, County of El Dorado agencies and or departments that are conducting official County business shall be permitted to use the Premises. Building Council shall be responsible for coordinating and scheduling the use of Premises for such purposes; ensuring the Premises are satisfactorily clean after event use; and that use of the Premises is in accordance with County insurance requirements as specified in Exhibit "C" marked "Insurance Requirements for Use of El Dorado County's Veteran's Memorial Building", incorporated herein and made by reference a part hereof and comply with any and all applicable federal, state, and local laws.

Use of the Premises by Nonveteran Groups for nonveteran-related events shall not be permitted.

- B. American Red Cross Use: In the event of an emergency and if directed by the County Office of Emergency Services, the Building Council and the County of El Dorado may permit use of the Premises on a temporary basis for short term use only.

ARTICLE III

Term: This Agreement shall become effective when fully executed by both parties and shall expire five (5) years from the date thereof. The parties shall have the option to extend the term for two (2) additional three (3) year terms after the initial expiration date. Each option shall be on the same terms and conditions as provided for herein for the initial term. The option to renew shall be exercised by the Building Council upon written notice to the County at least (6) six months prior to the expiration of the then term.

ARTICLE IV

Janitorial: Janitorial services for Premises will be provided by both County staff and contracted janitorial service providers in accordance with Exhibit “B-1” marked “Areas Cleaned by Contracted Janitorial Service – Upper Level”, Exhibit “B-2” marked “Areas Cleaned by County – Upper Level” and Exhibit “B-3” marked “Areas Cleaned by Contracted Janitorial Service – Lower Level” all incorporated herein and made by reference a part hereof. Contracted janitorial services are provided by the Building Council at its sole cost and expense.

- A. Upper Level: In accordance with Exhibit B-1, contracted janitorial service is responsible for cleaning the East Room. In accordance with Exhibit B-2, County is responsible for cleaning the space occupied by the County’s Department of Veteran Affairs, Breakroom, Upstairs Restrooms, Foyer, and Conference Room.
- B. Lower Level: In accordance with Exhibit B-3, contracted janitorial service is responsible for cleaning Lower Level Lounge, Hallway, Restrooms, and Dining Room. Building Council will also provide contracted services to clean the Kitchen, Utility Room, Storage Room, and Refrigeration Room located on the Lower Level. Building Council will ensure no less than semi-annual per year, kitchen grease trap is pumped and cleaned, and commercial kitchen hood is cleaned and inspected. All janitorial supplies needed for the Lower Level of the premises will be provided by Building Council.

ARTICLE V

Liquor License: A California Alcoholic Beverage Control (“ABC”) Liquor License (“License”) is currently listed with two Veteran Organizations: Veterans of Foreign Wars Post 2680 and Fleet Reserve Association Branch 275. This license allows both organizations to serve and/or sell alcoholic beverages only to veterans. If either organization serves and/or sells alcoholic beverages to nonveterans during an event, the organization must request and purchase a one (1) day liquor license from the ABC.

Any group (other than those listed above) who are hosting events where alcoholic beverages will be served or sold must request and purchase a one (1) day license from the ABC.

All one (1) day liquor license request applications will require the signature of the County's Chief Administrative Officer, or designee.

Notwithstanding any other provisions herein, the service of alcoholic beverages at events held on the Premises shall comply with all alcoholic beverage service requirements mandated by the California Department of Alcoholic Beverage Control and local laws.

ARTICLE VI

Permits: Any permits required for the Premises, will be the responsibility of the Building Council to renew and pay for. A copy of each active permit will be provided to the County at the following address:

County of El Dorado
Chief Administrative Office
Facilities Division
3000 Fair Lane Court, Suite One
Placerville, CA 95667

ARTICLE VII

Alterations and Improvements: Building Council and its Veteran Organizations will not alter Premises in any way without prior written approval by County. No repairs, maintenance and construction shall be performed by Building Council or any staff, volunteers and or contractors directed by the Building Council and its Veteran Organizations without prior approval by the County. All repairs shall be made by the County and or its contractors and to the County's standards. Building Council and Veteran Organizations shall be solely responsible for loss or damage to the equipment and the Premises arising from or in connection with their use of the Premises.

Building Council may request special projects through County's Facilities Division (i.e. installation of a flat screen television). Building Council will be invoiced at 100% of the cost of these special projects.

County shall have the right to install, lay, construct, maintain, repair and operate any utilities and any other appurtenances as necessary in the Premises or any part, thereof, as will not substantially interfere with Building Council's use of the Premises. County also reserves the right to grant easements, rights-of-way and permits in, over, and upon, along or across any and all portions of said Premises as County may elect. Building Council will be provided with ten-day written notice, unless it is an emergency in which case Building Council will be provided verbal notice.

All repair, maintenance, and construction work shall be performed at prevailing wage pursuant to California Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and contractor and any subcontractor performing work shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

ARTICLE VIII

Repairs and Maintenance: County, or other duly authorized representative, shall have the right, at all times during the term of this Agreement, to enter the Premises for the purpose of inspecting the Premises, performing any repairs or alterations to the Premises as the County shall deem necessary. County shall inspect, as needed, and at its sole cost and expense, maintain and repair, throughout the terms of the Agreement or cause to be maintained and repaired, in good working order, repair and condition:

- Systems and equipment of the Premises and property, heating, ventilation and air conditioning (HVAC), mechanical and electrical systems, fire systems, plumbing.
- Foundation, exterior lighting, windows, exterior walls, structural components, and roof of Premises.
- Building and common areas, including parking lot and landscape.
- All kitchen equipment and appliances, including but not limited to stoves, ovens, dishwashers, garbage disposal, steam tables, microwaves, refrigerators, freezers, and ice machine.
- Building Council will contract directly with its janitorial vendor for replacing light globes/fluorescent tubes inside the Premises in all areas under their control.
- County's janitor will replace light globes/fluorescent tubes inside the Premises in the areas under the County's control.
- County is responsible for the disposal of all light globes/fluorescent tubes for the Premises.
- County will notify Building Council at least thirty (30) days prior to any repairs, maintenance, improvements, remodeling, renovations, or upgrading which County deems necessary for the Premises.
- County will be responsible for the replacement of any kitchen appliance deemed not repairable by County's Facilities Division. Prior to the purchase of all replacement kitchen equipment, Building Council will receive approval from County's Facilities Division regarding replacement specifications.

ARTICLE IX

Building Services, Utilities, Taxes, and Assessments: County shall furnish Premises with the following utilities and services:

- Heating, ventilation and air conditioning ("HVAC") for the comfortable use of Premises for general office, meeting room and kitchen purposes. County will inspect systems and change filters quarterly.
- Propane/Gas and electric.
- Water and sewer.
- Telephone and internet services.
- Building and liability insurance.

- Snow and ice removal when snow level is expected to reach at least four (4) inches or more.
- Landscaping.
- Exterior trash/disposal services.
- Pest control/extermination.
- Payment of real or property taxes (including possessory interest) and assessments, if any.

County's obligation under this section is to assume financial responsibility for utilities and services used by Building Council and any Veteran Organizations. This obligation is based on the understanding that the nature, frequency and intensity of use of the Premises by Building Council and Veteran Organizations will remain consistent with their historical use of Premises. In the event that the nature, frequency or intensity of use of Premises by Building Council and Veteran Organizations is such that it results in significantly higher (15% or more increase) utility/services cost than has historically been the case (adjusting for changes in utilities/services cost), then County reserves the right to place limits on usage and/or receive compensation from the Building Council for these excess charges.

ARTICLE X

Assignment and Delegation: Building Council shall not assign or delegate its rights and responsibilities under this Agreement without the express written consent of the County.

ARTICLE XI

Prohibited Uses: Building Council shall not commit or permit the commission of any acts on the Premises nor permit the use of the Premises in any way that will:

- A. Increase the existing fire rates or cancel any fire, casualty, liability or other insurance policy insuring the building or its contents; and
- B. Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Premises; and
- C. Constitute waste or nuisance on the Premises.

ARTICLE XII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE XIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County

business, County shall adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for operations under this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XIV

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within thirty (30) days of the date of notice (time to cure), then such party shall be in default. If, however, by its nature, the default cannot be cured within thirty (30) days, the party in default may have a longer period as is necessary to cure the default, but this is conditioned upon the defaulting party promptly commencing to cure the default within the thirty (30) day period, and thereafter, diligently completing the cure. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, the County reserves the right to take over and provide the services by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Building Council.
- C. Ceasing Performance: County may terminate this Agreement in the event Building Council ceases to operate or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation Without Cause: Either party may terminate this Agreement in whole or in part upon ninety (90) calendar days written notice for any reason.

ARTICLE XV

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
Chief Administrative Office
Facilities Division
3000 Fairlane Court, Suite One
Placerville, CA 95667
ATTN: Russell Fackrell, Facilities Manager

or to such other location as the County directs with a copy to:

COUNTY OF EL DORADO
Veteran Affairs
130 Placerville Drive, Suite B
Placerville, CA 95667
ATTN: William Schultz, Interim Director

Notices to Building Council shall be addressed as follows:

VETERAN'S MEMORIAL BUILDING OF EL DORADO COUNTY
VETERANS BUILDING COUNCIL, INC.
130 Placerville Drive, Suite A
Placerville, CA 95667
ATTN: Chairman, Building Counsel

or to such other location as Building Council directs.

ARTICLE XVI

Indemnity: Building Council shall defend, indemnify and hold County, its officers, employees and agents, harmless from and against any and all liability, loss, expense or claims arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Building Council, its officers, agents or employees; provided that a party's duty to indemnify the other party shall not exceed the amount paid by the indemnifying party's insurer.

County shall defend, indemnify and hold Building Council, its officers, employees and agents, harmless from and against any and all liability, loss, expense or claims arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the County, its officers, agents or employees; provided that a party's duty to indemnify the other party shall not exceed the amount paid by the indemnifying party's insurer.

ARTICLE XVII

Insurance: Building Council shall be responsible for acquiring a comprehensive, general liability insurance policy covering damages for personal injury and property damage which may occur as a result of the use of the premises by Building Council. The cost of insurance shall be paid by County's Veteran Affairs department.

- A. Building Council shall not do, bring, or keep anything, in or about the Premises that will cause a cancellation of any liability insurance covering the Premises or Building Council activities.
- B. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Building Council as required by law in the State of California.
- C. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- D. Liquor Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- E. Building Council agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Building Council agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Building Council agrees that no work or services shall be performed prior to the giving of such approval. In the event the Building Council fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- F. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- G. The Building Council's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Building Council's insurance and shall not contribute with it.

- H. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Building Council shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- I. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- J. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- K. Building Council's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- L. In the event Building Council cannot provide an occurrence policy, Building Council shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- M. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XVIII

Inspection by County: County or its agent, representative, or employees shall be authorized to enter Premises, including those areas used by Building Council at any time for the purpose of inspecting the Premises to determine whether Building Council is complying with the terms of this Agreement and for the purpose of doing other lawful acts that maybe necessary to protect County's interest in the Premises.

The County reserves the right to inspect, examine and audit the records of the Building Council insofar as the records are related to the use of the Premises for events.

ARTICLE XIX

Records Examination and Audit Requirements: Building Council shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the FUA, including but not limited to, the costs of administering the various aspects of the FUA. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers and records that are pertinent to the Contract for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

ARTICLE XX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Manager, Chief Administrative Office, Facilities Division, or successor.

ARTICLE XXI

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXII

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.


ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

ARTICLE XXIV

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

Requesting Contract Administrator Concurrence:

By:  Dated: 3/17/17
Russell Fackrell, Facilities Manager
Chief Administrative Office


Requesting Department Head Concurrence:

By:  Dated: 3/17/2017
William E. Schultz, Interim Director
Veteran Affairs


IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding #255-O1611 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 3/28/17

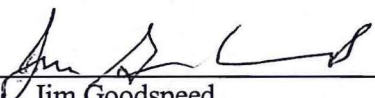
By:  Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors


By: 
Deputy Clerk

Dated: 3/28/17

-- VETERAN'S MEMORIAL BUILDING OF EL DORADO COUNTY
VETERANS BUILDING COUNCIL, INC. --

By: 
Jim Goodspeed
Chairman, Building Council

Dated: 3/17/2017

By: 
David A. Sauve
Secretary, Building Council

Dated: - 3/16/17

EXHIBIT C
INSURANCE REQUIREMENTS FOR USE OF
EL DORADO COUNTY'S VETERAN'S MEMORIAL BUILDING

El Dorado County shall require all users of the Veteran's Memorial Building to obtain insurance, at their expense, except for qualified Veteran organizations as described in Military and Veterans Code. User must provide evidence of insurance to the Veteran's Memorial Building Manager at least four (4) weeks prior to event date.

1. Indemnification: Renter agrees to indemnify, defend, and hold harmless, the County of El Dorado, its supervisors, officers, agents and employees from any and all liabilities, claims, demands, damages, and costs, including attorneys' fees and litigation costs, that arise in any way from the event. Renter's obligations under this section include, but are not limited to, liabilities, claims, demands, damages and costs arising from injury to or death of any persons (including County's officers, employees and agents) and from damage to or destruction of any property (including the County's real or personal property). This provision shall survive termination of the agreement.
2. Limits of Insurance:
 - a. General liability insurance with a minimum of \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$2,000,000 aggregate limit.
 - b. If alcohol is to be served or sold at the event, the general liability policy must be endorsed to include liquor legal liability.
 - c. Fire damage legal liability with a minimum of \$1,000,000.
 - d. Said policies must be endorsed for additional insureds as referenced in Section 4 of this Exhibit.
3. Certificate Holder

County of El Dorado
c/o Ebix
P.O. Box 100085 – A7
Duluth, GA 30096
4. Additional Insureds: All policies on the certificate of insurance must be endorsed to include the following additional insureds and information regarding the event: RE: (Name of User)'s rental of the Veteran's Memorial Building on (Date of Event) ***The County of El Dorado, its officers, officials, employees are included as additional insureds but only insofar as the operations under this agreement are concerned.*** Legal liquor liability included (if applicable).
5. Cancellation Clause: Should any of the described policies listed on the certificate of insurance be cancelled before the expiration date thereof, the issuing company will endeavor to mail a ten (10) day written notice of cancellation to the certificate holder listed in Section 3 of this Exhibit. Failure to mail such written notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.