

City of Santa Clara



Joint Meeting Agenda of the City Council and Authorities Concurrent & Santa Clara Stadium Authority Board



Tuesday, January 28, 2025

5:30 PM

Hybrid Meeting
City Hall Council Chambers/Virtual
1500 Warburton Avenue
Santa Clara, CA 95050

The City of Santa Clara is conducting City Council meetings in a hybrid manner (in-person and continues to have methods for the public to participate remotely).

- Via Zoom:
 - o <https://santaclaraca.zoom.us/j/99706759306>
 - o Meeting ID: 997-0675-9306
 - o Phone 1(669) 900-6833

How to Submit Written Public Comment Before City Council Meeting:

1. Use the eComment tab located on the City Council Agenda page (<https://santaclarala.legistar.com/Calendar.aspx>). eComments are directly sent to the iLegislate application used by City Council and staff, and become part of the public record. eComment closes 15 minutes before the start of a meeting.
2. By email to clerk@santaclaraca.gov by 12 p.m. the day of the meeting. Those emails will be forwarded to the Council and will be uploaded to the City Council Agenda as supplemental meeting material. Emails received after the 12 p.m. cutoff time up through the end of the meeting will form part of the meeting record. Please identify the Agenda Item Number in the subject line of your email.
NOTE: Please note eComments and Emails received as public comment **will not** be read aloud during the meeting.

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Closed Session - 5:30 PM | Regular Meeting - 7:00 PM

5:30 PM CLOSED SESSION

Call to Order in the Council Chambers

Confirmation of Quorum

1. **25-127** [Conference with Labor Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54957.6](#)

[City representatives: Jovan D. Grogan, Nadine Nader, Aracely Azevedo, Marco Mercado, Charles Sakai, Glen R. Googins](#)

[Employee Organization\(s\):](#)

[Unit # 1 - Santa Clara Firefighters, International Association of Firefighters, Local 1171](#)

[Unit # 2 - Police Officers Association](#)

[Unit # 3 - Internation Brotherhood of Electrical Workers, Local Union 1245](#)

[Unit # 4 - Engineers of the City of Santa Clara](#)

[Unit # 9A - Unclassified Police Management](#)

[Unit # 9B - Unclassified Fire Management](#)

[Unit #10 - Public Safety Non-Sworn Employees Association](#)

Public Comment

The public may provide comments regarding the Closed Session item(s) just prior to the Council beginning the Closed Session. Closed Sessions are not open to the public.

Convene to Closed Session (Council Conference Room)

7:00 PM JOINT CITY COUNCIL/STADIUM AUTHORITY BOARD MEETING

Call to Order in the Council Chambers

Pledge of Allegiance and Statement of Values

Roll Call

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

SPECIAL ORDER OF BUSINESS

2. 25-1152 [Recognition of 2024 STEM Winners for the Synopsys Science & Technology Championship](#)

CONSENT CALENDAR

[Items listed on the CONSENT CALENDAR are considered routine and will be adopted by one motion. There will be no separate discussion of the items on the CONSENT CALENDAR unless discussion is requested by a member of the Council, staff, or public. If so requested, that item will be removed from the CONSENT CALENDAR and considered under CONSENT ITEMS PULLED FOR DISCUSSION.]

- 3.A 25-124 [Action on the January 14, 2025 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes.](#)

Recommendation: Approve the meeting minutes of the January 14, 2025 Joint Council and Authorities Concurrent & Stadium Authority Meeting.

- 3.B 25-02 [Board, Commissions and Committee Minutes](#)

Recommendation: Note and file the Minutes of:

Board of Library Trustees - November 4, 2024
Parks & Recreation Commission - November 25, 2024
Senior Advisory Commission - November 18, 2024
Youth Commission - December 10, 2024
Planning Commission - November 6, 2024
Planning Commission - December 4, 2024

- 3.C 25-1081 [Approval of the Annual Investment Policy for the City of Santa Clara, its Agencies and Corporations](#)

Recommendation: Approve in the form presented the updated Annual Investment Policy for the City of Santa Clara, its Agencies and Corporations.

- 3.D 25-1251 [Action on a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2024](#)

Recommendation: Adopt a Resolution accepting the AB1600 Report on Development Impact Fees for fiscal year ending June 30, 2024, and making findings regarding the continuing need for the unexpended balances of certain impact fees as of June 30, 2024.

3.E 25-920 [Action on Award of Task Orders Not to Exceed \\$2,231,704 to Kastech Software Solutions Group for PeopleSoft Upgrade and Functional Improvements in Purchasing and Central Warehouse Operations and Approval of Related Budget Amendments](#)

- Recommendation:**
1. Authorize the City Manager or designee to negotiate and execute task orders with Kastech Software Solutions Group under the agreement for services dated September 1, 2020 (Agreement) for PeopleSoft upgrades and functional improvements in Purchasing and warehouse operations, with a total aggregate amount not to exceed \$2,231,704, subject to the appropriation of funds and the review and approval as to form by the City Attorney;
 2. Authorize the City Manager or designee to (a) take any necessary actions to implement and administer the Agreement or any task orders; and (b) amend the Agreement to extend the term as needed to complete the task orders or amend any task orders authorized herein, subject to the review and approval as to form by the City Attorney; and
 3. Approve the following FY 2024/25 budget amendments:
 - A. In the General Government Capital Fund, recognize transfers of \$902,586 from the Electric Utility Fund, \$89,048 from the Water Utility Fund, \$57,597 from the Sewer Utility Fund, \$29,514 from the Solid Waste Fund, \$6,311 from the Recycled Water Fund, \$16,425 from the Building Development Services Fund, and \$3,229 from the Fire Development Services Fee Fund, and increase the Human Resources Management System Update project by \$1,104,710 (**five affirmative Council votes required to appropriate additional revenue**);
 - B. In the Electric Utility Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$902,586 (**five affirmative Council votes required for the use of unused balances**);
 - C. In the Water Utility Fund, increase the transfer to the General Government Capital Fund and

- reduce the unrestricted ending fund balance by \$89,048 **(five affirmative Council votes required for the use of unused balances)**;
- D. In the Sewer Utility Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$57,597 **(five affirmative Council votes required for the use of unused balances)**;
- E. In the Solid Waste Fund, increase the transfer to the General Government Capital Fund and reduce the Operations and Maintenance Reserve by \$29,514 **(five affirmative Council votes required for the use of unused balances)**;
- F. In the Recycled Water Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$6,311 **(five affirmative Council votes required for the use of unused balances)**;
- G. In the Building Development Services Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$16,425 **(five affirmative Council votes required for the use of unused balances)**; and
- H. In the Fire Development Services Fee Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$3,229 **(five affirmative Council votes required for the use of unused balances)**.

3.F 25-1258 [Action on Award of Purchase Order to STOMMEL, INC., dba LEHR for Panasonic Mobile Data Computers for Police and Fire Vehicles](#)

- Recommendation:**
1. Authorize the City Manager, or designee, to execute a purchase order with LEHR for Panasonic Toughbooks and Components with a total amount not-to-exceed \$754,674, under NASPO ValuePoint Master Agreement 23019, in a final form approved by the City Attorney; and
 2. Authorize the City Manager, or designee, to execute purchase orders with LEHR through June 30, 2028, under NASPO ValuePoint Master Agreement 23019, for additional purchases or replacement of MDCs or components as-needed, subject to the appropriation of funds and in a final form approved by the City Attorney.

3.G 25-1019 [Authorize the City Manager to \(1\) Issue Purchase Orders to Atlas Copco Rental for the Rental of an Air Compressor at the Donald Von Raesfeld Power Plant and \(2\) Execute Amendment No. 1 to the Agreement for Services with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co., to Provide Gas and Air Compressor Preventative Maintenance Services, Both to be Funded by Silicon Valley Power](#)

- Recommendation:**
1. Determine that the proposed actions are exempt from CEQA pursuant to Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) of Title 14 of the California Code of Regulations;
 2. Authorize the City Manager or designee to issue Purchase Orders to Atlas Copco Rental for the rental of an air compressor at the Donald Von Raesfeld Power Plant in an amount not to exceed \$600,000, until approximately September 30, 2026, to be funded by Silicon Valley Power;
 3. Authorize the City Manager or designee to execute Amendment No. 1 to the Agreement for Services with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co., for gas and air compressor preventative maintenance for a five-year term ending on June 30, 2028, to increase the maximum compensation of \$150,000 by \$850,000 for a revised maximum compensation amount of \$1,000,000; to be funded by the SVP Operating or Capital Fund as applicable, subject to the review and approval as to form by the City Attorney; and
 4. Authorize the City Manager or designee to negotiate and execute further amendments to the agreement with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co to (a) add or delete services consistent with the scope of services, (b) adjust future rates to account for reasonable changes in labor and material rates, (c) exercise a one-year option to extend the term through June 30, 2029, and (d) increase the compensation by up to \$500,000 for a total maximum compensation of \$1,500,000 over a six-year period, subject to the appropriation of funds and the review and approval as to form by the City Attorney, to be funded by the SVP

Operating or Capital Fund as applicable.

3.H 25-1219 [Action to Authorize the City Manager to Execute an Agreement with EQR-Lincoln Laguna Clara L.P. \(“Developer”\) for the Installation and Operation of Private Recreational Amenity Improvements to Satisfy a Portion of Developer’s Parkland Obligations for the 447 Unit Apartment Project Located at 3131 Homestead Road, such Improvements to be Funded at Developer’s Sole Cost](#)

Recommendation: Authorize the City Manager to negotiate and execute the agreement with EQR-Lincoln Laguna Clara L.P. for the installation of private recreational amenity improvements at 3131 Homestead Road at the developer’s sole cost on substantially the terms and in the forms presented, with such minor, non-substantive changes and amendments that may be necessary to implement the parkland dedication requirements for this project, in final forms approved by the City Attorney.

3.1 25-1116 [Action to Authorize the City Manager to Amend the City Loan Terms for the Belovida Apartments to Enable the County to Structure a Hard Loan to Replace the Current Bank Loan to Stabilize the Project and to Increase the City loan by up to \\$90,000 to Cover the Gap in Repair Costs and Approve the Related Budget Amendment](#)

- Recommendation:**
1. Approve and authorize the City Manager or designee, to negotiate, execute and amend the loan documents to permit the repayment of the County AHF loan in a junior lien position prior to the repayment of the City loan in a senior lien position, before the distribution of residual receipts, in a final form approved by the City Attorney;
 2. Approve and authorize the City Manager or designee, to negotiate, execute and amend the loan agreement to increase the City Loan by up to \$90,000, from \$4,955,000 to \$5,045,000 to address the gap created when the PLHA funds were swapped and replaced with Destination Home funds to pay for repairs, to make modifications to the loan documents consistent with the Term Sheet and as reviewed by the City Attorney for form and consistency; and
 3. Approve the FY 2024/25 budget amendment in the City Affordable Housing Fund, increasing the Capital Outlay appropriation in the amount of \$90,000 and decreasing the unrestricted ending fund balance in the amount of \$90,000 (five affirmative Council votes required for the use of unused balances).

3.J 25-1257 [Action on Authorizing the Use of City Electric Forces for Public Works at Various Locations](#)

- Recommendation:**
1. Determine that the proposed action is exempt from CEQA pursuant to Section 15302 (Class 2 - Replacement or Reconstruction) of Title 14 of the California Code of Regulations; and
 2. Declare and determine in accordance with Section 1310 of the City Charter that the public works located at 3390 Forest Avenue, 5201 Patrick Henry Drive, and 2441 Mission College Boulevard are better performed by the City with its own employees based on the information set forth in this Report to Council and authorize the performance of the public works consistent with this authorization.

SANTA CLARA STADIUM AUTHORITY BOARD CONSENT CALENDAR

4. 25-63 [Action on Stadium Authority Bills and Claims for the Month of November 2024](#)

- Recommendation:** Approve the list of Stadium Authority Bills and Claims for November 2024.

PUBLIC PRESENTATIONS

[This item is reserved for persons to address the Council or authorities on any matter not on the agenda that is within the subject matter jurisdiction of the City or Authorities. The law does not permit action on, or extended discussion of, any item not on the agenda except under special circumstances. The governing body, or staff, may briefly respond to statements made or questions posed, and appropriate body may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on the speaker card available in the Council Chambers.]

CONSENT ITEMS PULLED FOR DISCUSSION

PUBLIC HEARING/GENERAL BUSINESS

5. 25-125 [Action on an Agreement with Care Solace, Inc. to Provide Coordination for Mental Health Care and Social Services to Residents and Employees of the City of Santa Clara and Related Budget Amendment](#)

- Recommendation:**
1. Authorize the City Manager or designee to negotiate and execute an agreement with Care Solace, Inc. to provide coordination for mental health care and social services to residents and employees of the City of Santa Clara, for a three-year term in an amount not to exceed \$390,000, with the option to extend for two additional one-year periods, subject to budget appropriations, in a final form approved by the City Attorney;
 2. Authorize the City Manager or designee to take any actions as necessary to implement and administer the agreement; and
 3. Approve the FY 2024/25 budget amendment in the Expendable Trust Fund to recognize other agencies revenue in the amount of \$335,000 and increase the opioid settlement funds appropriation in the amount of \$335,000 (**five affirmative Council votes required to appropriate additional revenue**).

6. 25-1087 [Approve Introduction of an Ordinance Amending Article IV \(“Stadium Pilot Program”\) of Chapter 5.05 \(“Solicitors and Peddlers”\) of the City Code to Make the Stadium Pilot Program Permanent](#)

- Recommendation:** Waive first reading and approve introduction of an Ordinance amending Article IV (“Stadium Pilot Program”) of Chapter 5.05 (“Solicitors and Peddlers”) of the Santa Clara City Code to make the Pilot Program permanent as the “Stadium Area Sidewalk Vending” Ordinance

7. 25-1237 [Action on Award of Purchase Order to Braun Northwest for a Mobile Incident Command Vehicle and Approval of Related Budget Amendments](#)

- Recommendation:**
1. Authorize the City Manager or designee to execute a purchase order with Braun Northwest, through the H-GAC cooperative purchase agreement, for the purchase of a Mobile Incident Command vehicle based on project scope and resource needs of totaling an estimated \$586,213 inclusive of taxes and applicable fees, in a final form approved by the City Attorney;
 2. Authorize the City Manager or designee to execute change orders for a not-to-exceed contingency amount of \$58,621 (10% of total) for a not-to-exceed amount of \$644,834 to cover unanticipated costs such as minor configuration changes, subject to the appropriation of funds and in a final form approved by the City Attorney; and
 3. Approve the following FY 2024/25 budget amendments:
 - a. In the General Fund, decrease the Police Department operating budget in the amount of \$196,917 and establish a transfer to the Vehicle Replacement Fund in the amount of \$196,917 (**majority affirmative Council votes required**); and
 - b. In the Vehicle Replacement Fund, recognize the transfer from the General Fund in the amount of \$196,917, increase the Capital Outlay appropriation in the amount of \$489,834, and decrease the unrestricted ending fund balance in the amount of \$292,917 (**five affirmative Council votes required to recognize additional revenue and for the use of unused balances**).

8. 25-1250 [Note and File the Silicon Valley Power Bi-Annual Update](#)

- Recommendation:** Note and file the Silicon Valley Power Bi-Annual Update.

9. 25-1222 [Action on Recommendation from Governance & Ethics Committee on City Council District Communication Options to be Memorialized in New Council Policy 054 - City Council District Communications](#)

Recommendation: Adopt a resolution approving Council Policy 054 (“City Councilmember District Communications”) based on the recommendation from the Governance and Ethics Committee, with amendments if any, provided by the City Council.

REPORTS OF MEMBERS, SPECIAL COMMITTEES AND COUNCILMEMBER 030 REQUESTS

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

ADJOURNMENT

The next regular scheduled meeting is on Tuesday, February 11, 2025 in the City Hall Council Chambers.

MEETING DISCLOSURES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

STREAMING SERVICES: As always, the public may view the meetings on SantaClaraCA.gov, Santa Clara City Television (Comcast cable channel 15 or AT&T U-verse channel 99), or the livestream on the City's YouTube channel or Facebook page.

Note: The public cannot participate in the meeting through these livestreaming methods; livestreaming capabilities may be disrupted at times, viewers may always view and participate in meetings in-person and via Zoom as noted on the agenda.

AB23 ANNOUNCEMENT: Members of the Santa Clara Stadium Authority, Sports and Open Space Authority and Housing Authority are entitled to receive \$30 for each attended meeting.

Note: The City Council and its associated Authorities meet as separate agencies but in a concurrent manner. Actions taken should be considered actions of only the identified policy body.

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA); Bayshore North Project Enhancement Authority (BNPEA); Public Facilities Financing Corporation (PFFC)

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

If a member of the public submits a speaker card for any agenda items, their name will appear in the Minutes. If no speaker card is submitted, the Minutes will reflect "Public Speaker."

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the City of Santa Clara will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities, and will ensure that all existing facilities will be made accessible to the maximum extent feasible. The City of Santa Clara will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities including those with speech, hearing, or vision impairments so they can participate equally in the City's programs, services, and activities. The City of Santa Clara will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities.

Agendas and other written materials distributed during a public meeting that are public record will be made available by the City in an appropriate alternative format. Contact the City Clerk's Office at 1 408-615-2220 with your request for an alternative format copy of the agenda or other written materials.

Individuals who require an auxiliary aid or service for effective communication, or any other disability-related modification of policies or procedures, or other accommodation, in order to participate in a program, service, or activity of the City of Santa Clara, should contact the City's ADA Coordinator at 408-615-3000 as soon as possible but no later than 48 hours before the scheduled event.



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

25-127

Agenda Date: 1/28/2025

SUBJECT

Conference with Labor Negotiators (CC)
Pursuant to Gov. Code § 54957.6

City representatives: Jovan D. Grogan, Nadine Nader, Aracely Azevedo, Marco Mercado, Charles Sakai, Glen R. Googins

Employee Organization(s):

Unit # 1 - Santa Clara Firefighters, International Association of Firefighters, Local 1171
Unit # 2 - Police Officers Association
Unit # 3 - International Brotherhood of Electrical Workers, Local Union 1245
Unit # 4 - Engineers of the City of Santa Clara
Unit # 9A - Unclassified Police Management
Unit # 9B - Unclassified Fire Management
Unit #10 - Public Safety Non-Sworn Employees Association



Agenda Report

25-1152

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Recognition of 2024 STEM Winners for the Synopsys Science & Technology Championship

BACKGROUND

The Santa Clara Valley Science and Engineering Fair Association (SCVSEFA) promotes science education by sponsoring an annual fair for Santa Clara County students in grades 6 - 12. The Santa Clara Valley Science and Engineering Fair Association hosts the Synopsys Championship to showcase students in the Santa Clara County who will become our future scientists, technology experts, engineers, and mathematicians. This regional competition celebrates achievement by middle and high school students in the fields of computer science, environmental science, medicine and health, chemistry, biology, and other categories.

The 2024 Synopsys Science & Technology Championship was presented by Santa Clara Valley Science and Engineering Fair Association and held on March 13 - 14, 2024. From this group, 12 outstanding students were sent to the Regeneron International Science and Engineering Fair to participate in an international competition. In addition, students were also sent to the California Science and Engineering Fair.

DISCUSSION

On January 28, 2024, the City Council will recognize the 60 student winners from Santa Clara for their achievements in the 2024 SCVSEFA Synopsys Championship competition for their independent project-based research projects. The following students listed below will be recognized from the City of Santa Clara.

- Ricky Rex Alexias
- Sahana Anamika
- Isabel Antony
- Vikram Atmuri
- Dyuti Batchu
- Saanvi Bhartiya
- Aria Chadha
- Ishan Chaugule
- Abhinab Chatterjee
- Lavernie Chen
- Sahithi Cherukuri
- Spandana Chimmalagi
- Emily Chu
- Varun Dangeti
- Anagha Dhurjati
- Vanessa Dinh
- Alexander Garcia
- Amey Garg

Vanya	Goenka
Neel	Gowda
Aditi	Gupta
Anushree	Gupta
Amaya	Hermosillo
Aashi	Jain
Daniel	Jeznach
Ruhi	Kelkar
Nandana	Maheskumar
Arushi	Mani
Ananya	Manoj
Hanav	Modasiya
Akhil	Munipalle
Djoni	Muresan
Akhil	Nagori
Nikhil	Nagori
Vani	Nair
Laasya	Pandravada
Maytut	Pasakdee
Advika	Pathak
Max	Polosky
Niral	Poongovan
Siddharth	Pothula
Aman	Puri
Kiyan	Raisinghani
Adwita	Ram
Anvee	Sharma
Eshaan	Sharma
Shaurya	Sharma
Aaron	Sun
Mihir	Suria
Emmanuel	Swenson
Connor	Taffe
Jiya	Tejura
Gauri	Todur
Saachi	Todur
Phiet	Tran
Satvik	Vale
Thiyagesh	Venkatesan
Saarang	Venkatesh
Charlotte	Yang
Truman	You

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council and no

environmental review under the California Environmental Quality Act (“CEQA”) is required.

FISCAL IMPACT

There is no fiscal impact to the City other than staff time.

PUBLIC CONTACT

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Reviewed by: Maria Le, Assistant to the City Manager, City Manager’s Office

Approved by: Jovan D. Grogan, City Manager



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

25-124

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action on the January 14, 2025 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes.

RECOMMENDATION

Approve the meeting minutes of the January 14, 2025 Joint Council and Authorities Concurrent & Stadium Authority Meeting.



City of Santa Clara

Meeting Minutes of the

Joint City Council and Authorities Concurrent &

Santa Clara Stadium Authority Board



01/14/2025

6:00 PM

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6:00 PM CLOSED SESSION

Call to Order in the Council Chambers

Mayor/Chair Gillmor called the Closed Session to order at 6:03 PM.

Confirmation of Quorum

Assistant City Clerk Pimentel confirmed a quorum.

1. [25-1266](#) Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9

Number of cases: 1

Public Comment

None.

Convene to Closed Session (Council Conference Room)

Mayor/Chair Gillmor adjourned into Closed Session at 6:04 PM.

7:00 PM JOINT CITY COUNCIL/STADIUM AUTHORITY BOARD MEETING

Call to Order in the Council Chambers

Mayor/Chair Gillmor called the regular meeting to order at 7:01 PM.

Pledge of Allegiance and Statement of Values

Council/Board recited the Pledge of Allegiance.

Council/Boardmember Park recited the Statement of Values.

Roll Call

Assistant City Clerk/Secretary Pimentel recited the AB23 announcement and Statement of Behavioral Standards.

Assistant City Clerk/Secretary Pimentel also noted that any registered Lobbyist speaking during the Public Meeting will need to identify themselves and whom they represent.

Mayor/Chair Gillmor called for a moment of silence in memory of **President Jimmy Carter** and victims of the Los Angeles fires.

Present: 7 - Council/Boardmember Albert Gonzalez, Council/Boardmember Raj Chahal, Council/Boardmember Karen Hardy, Council/Boardmember Kevin Park, Council/Boardmember Suds Jain, Council/Boardmember Kelly Cox, and Mayor/Chair Lisa M. Gillmor

[25-118](#)

Moment of Silence

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

City Attorney Googins reported there was no reportable action from Closed Session.

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

None.

CONSENT CALENDAR

Council/Boardmember Cox noted that she will recuse herself from Item 2.J regarding a purchase order to Trayer Engineering Corporation due to her employment at Santa Clara University.

Council/Boardmember Jain pulled Item 3.B regarding the Santa Clara Stadium Authority Financial Status Report.

A motion was made by Council/Boardmember Hardy, seconded by Jain, to approve the Consent Calendar (except Item 3.B).

Aye: 7 - Council/Boardmember Albert Gonzalez, Council/Boardmember Raj Chahal, Council/Boardmember Karen Hardy, Council/Boardmember Kevin Park, Council/Boardmember Suds Jain, Council/Boardmember Kelly Cox, and Mayor/Chair Lisa M. Gillmor

2.A [25-54](#) Action on the December 3, 2024 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes, December 10, 2024 Special Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes, December 16, 2024 Special City Council Meeting Minutes, and December 17, 2024 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes.

Recommendation: Approve the meeting minutes of:
December 3, 2024 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes,
December 10, 2024 Special Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes,
December 16, 2024 Special City Council Meeting Minutes, and
December 17, 2024 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to approve the meeting minutes of December 3, 2024 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes, December 10, 2024 Special Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes, December 16, 2024 Special City Council Meeting Minutes, and December 17, 2024 Joint Council and Authorities Concurrent & Stadium Authority Meeting Minutes.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.B [25-01](#) Board, Commissions and Committee Minutes

Recommendation: Note and file the Minutes of:

Americans with Disabilities Act Committee - May 18, 2023
Cultural Commission - November 4, 2024
Youth Commission - November 12, 2024
Senior Advisory Commission - October 21, 2024
Parks & Recreation Commission - October 21, 2024

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to note and file the minutes of Americans with Disabilities Act Committee - May 18, 2023, Cultural Commission - November 4, 2024, Youth Commission - November 12, 2024, Senior Advisory Commission - October 21, 2024, and Parks & Recreation Commission - October 21, 2024.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.C [25-1159](#) Action on City Bills and Claims Report for the period October 19, 2024 - November 15, 2024

Recommendation: Approve the list of Bills and Claims for October 19, 2024 - November 15, 2024.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to approve the list of Bills and Claims for October 19, 2024 - November 15, 2024.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.D [25-1160](#) Action on City Bills and Claims Report for the period November 16, 2024 - December 6, 2024

Recommendation: Approve the list of Bills and Claims for November 16, 2024 - December 6, 2024.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to approve the list of Bills and Claims for November 16, 2024 - December 6, 2024.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.E [25-1225](#) Action on Monthly Financial Status and Investment Reports for October 2024 and Approve the Related Budget Amendments

- Recommendation:**
1. Note and file the Monthly Financial Status Reports and Monthly Investment Reports for October 2024 as presented; and
 2. Approve the FY 2024/25 Budget Amendments in the following funds (as detailed in the Fiscal Section of the staff report and Attachment 3 to the staff report):
 - a. In the General Fund, with a net impact of \$836,332
 - b. In the Expendable Trust Fund, with a net impact of \$96,105
 - c. In the Electric Utility Capital Fund, with a net impact of -\$17,396
 - d. In the Fire Department Capital Fund, with a net impact of \$33,000

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) note and file the Monthly Financial Status Reports and Monthly Investment Reports for October 2024 and (2) approve the FY 2024/25 Budget Amendments in the following funds: (a) in the General Fund, with a net impact of \$836,332; (b) in the Expendable Trust Fund, with a net impact of \$96,105; (c) in the Electric Utility Capital Fund, with a net impact of -\$17,396; and (d) in the Fire Department Capital.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

- 2.F [25-1053](#) Action on (1) Delegation of Authority to the City Manager to Negotiate and Execute a Lease Agreement for the Commercial and Warehouse Property Located at 1180 Richard Avenue, Santa Clara, for Materials Storage and Construction Support Purposes, and (2) Approve Two New Positions in the Finance Department Funded by SVP for SVP Storage and Construction Support Activities

- Recommendation:**
1. Delegate Authority to the City Manager to Negotiate and Execute a Lease Agreement for the Commercial and Warehouse Property located at 1180 Richard Avenue, Santa Clara, for Materials Storage and Construction Support Purposes for Silicon Valley Power on the terms presented for an amount not to exceed \$4 million over a 76 -month term beginning on or around February 1, 2025, subject to the appropriation of funds and the review and approval as to form by City Attorney;
 2. Authorize the City Manager to take any actions as necessary to implement and administer the Lease Agreement; and
 3. Approve the addition of two (2) positions, including 1.0 Chief Storekeeper and 1.0 Materials Handler, in the Finance Department funded by Silicon Valley Power.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) delegate authority to the City Manager to negotiate and execute a lease agreement for the commercial and warehouse property located at 1180 Richard Avenue, Santa Clara, for materials storage and construction support purposes for Silicon Valley Power on the terms presented for an amount not to exceed \$4 million over a 76-month term beginning on or around February 1, 2025, subject to the appropriation of funds and the review and approval as to form by City Attorney; (2) authorize the City Manager to take any actions as necessary to implement and administer the Lease Agreement; and (3) approve the addition of two (2) positions, including 1.0 Chief Storekeeper and 1.0 Materials Handler, in the Finance Department funded by Silicon Valley Power.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.G [25-1051](#)

Action on Authorizing the City Manager to (1) Execute Agreements With Allied Power Group, LLC and Erwin Services Corporation for a Maximum Compensation of \$1,000,000 for Each Agreement and (2) to Negotiate and Execute Amendments to Agreements with TransCanada Turbines, General Electric Packaged Power LLC, Stephens Mechanical Corporation, Axis Mechanical Group, Performance Mechanical, Inc., Allied Power Group, LLC, and Erwin Services Corporation for Millwright Services for an Aggregate Maximum Compensation of \$100 Million to be Funded by Silicon Valley Power

Recommendation:

1. Determine the proposed actions are exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations;
2. Authorize the City Manager or designee to execute an agreement with Allied Power Group, LLC for as-needed millwright services starting on or around December 1, 2024, and ending on January 31, 2028, with a maximum compensation not to exceed \$1,000,000, subject to the appropriation of funds and approval as to form by the City Attorney;
3. Authorize the City Manager to execute an agreement with Erwin Services Corporation for as-needed millwright services starting on or around December 1, 2024, and ending on January 31, 2028, with a maximum compensation not to exceed \$1,000,000 subject to the appropriation of funds and approval as to form by the City Attorney;
4. Authorize the City Manager to negotiate and execute amendments to Agreements for millwright services with an additional aggregate maximum compensation of \$40 million for a new aggregate maximum compensation of \$100 million shared among TransCanada Turbines, General Electric Packaged Power LLC, Stephens Mechanical Corporation, Axis Mechanical Group, Performance Mechanical, Inc., Allied Power Group, LLC, and Erwin Services Corporation all funded by the Electric Utility Capital Fund or Electric Utility Operating Fund and allocated as SVP may require, subject to the appropriation of funds and approval as to form by City Attorney; and
5. Authorize the City Manager to take any actions as necessary to implement and administer the above agreements and to negotiate and execute amendments to (a) add or delete services consistent with their scope of services; (b) adjust future rates to account for reasonable market changes in labor and equipment rates; and (c) exercise options to extend the terms of the agreements through January 31, 2033.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) determine the proposed actions are exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations; (2) authorize the City Manager or designee to execute an agreement with Allied Power Group, LLC for as-needed millwright services starting on or around December 1, 2024, and ending on January 31, 2028, with a maximum

compensation not to exceed \$1 million subject to the appropriation of funds and approval as to form by the City Attorney;

(3) authorize the City Manager to execute an agreement with Erwin Services Corporation for as-needed millwright services starting on or around December 1, 2024, and ending on January 31, 2028, with a maximum compensation not to exceed \$1 million subject to the appropriation of funds and approval as to form by the City Attorney;

(4) authorize the City Manager to negotiate and execute amendments to Agreements for millwright services with an additional aggregate maximum compensation of \$40 million for a new aggregate maximum compensation of \$100 million shared among TransCanada Turbines, General Electric Packaged Power LLC, Stephens Mechanical Corporation, Axis Mechanical Group, Performance Mechanical, Inc., Allied Power Group, LLC, and Erwin Services Corporation all funded by the Electric Utility Capital Fund or Electric Utility Operating Fund and allocated as SVP may require, subject to the appropriation of funds and approval as to form by City Attorney;

and (5) authorize the City Manager to take any actions as necessary to implement and administer the above agreements and to negotiate and execute amendments to (a) add or delete services consistent with the scope of services; (b) adjust future rates to account for reasonable market changes in labor and equipment rates; and (c) exercise options to extend the terms of the agreements through January 31, 2033.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

- 2.H [25-1248](#) Action on Authorizing the City Manager to Negotiate and Execute Amendments to Agreements for As-Needed Scaffolding Services with Unique Scaffold and Liberty Industrial Group, Inc. to Increase Maximum Compensations and Extensions to Contract Terms

- Recommendation:**
1. Determine that the proposed actions are exempt from CEQA pursuant to Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) of Title 14 of the California Code of Regulations;
 2. Authorize the City Manager or designee to negotiate and execute amendments to the agreements with Unique Scaffold and Liberty Industrial Group, Inc., to (a) increase the aggregate maximum compensation by \$3,750,000 for a new aggregate maximum compensation of \$5,000,000 over a ten-year period; (b) add or delete services consistent with the scope of services; (c) adjust future rates to account for reasonable adjustments to labor and materials rates; and (d) extend the term for up to five additional years in increments to be determined by staff subject to the appropriation of funds and the approval as to form by the City Attorney; and
 3. Authorize the City Manager or designee to take any actions as necessary to implement and administer the amendments.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) determine that the proposed actions are exempt from CEQA pursuant to Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) of Title 14 of the California Code of Regulations; (2) authorize the City Manager or designee to negotiate and execute amendments to the agreements with Unique Scaffold and Liberty Industrial Group, Inc., to (a) increase the aggregate maximum compensation by \$3,750,000 for a new aggregate maximum compensation of \$5,000,000 over a ten-year period; (b) add or delete services consistent with the scope of services; (c) adjust future rates to account for reasonable adjustments to labor and materials rates; and (d) extend the term for up to five additional years in increments to be determined by staff subject to the appropriation of funds and the approval as to form by the City Attorney; and (3) authorize the City Manager or designee to take any actions as necessary to implement and administer the amendments.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

- 2.I [25-1128](#) Action on Purchase Order with Dell Marketing LP for Citywide Hardware Refresh

Recommendation: Authorize the City Manager or designee to issue Purchase Orders to Dell Marketing LP for the purchase of Dell computer, laptops, and peripherals for the citywide hardware refresh under the NASPO ValuePoint Master Agreement No. 23004, which is effective through June 30, 2028, if all options are exercised, with total aggregate maximum compensation not-to-exceed \$2,500,000, subject to the appropriation of funds and in a final form approved by the City Attorney.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to authorize the City Manager or designee to issue Purchase Orders to Dell Marketing LP for the purchase of Dell computer, laptops, and peripherals for the citywide hardware refresh under the NASPO ValuePoint Master Agreement No. 23004, which is effective through June 30, 2028, if all options are exercised, with total aggregate maximum compensation not-to-exceed \$2,500,000, subject to the appropriation of funds and in a final form approved by the City Attorney.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

- 2.J [25-47](#) Action on Delegation of Authority to the City Manager to Issue a Purchase Order to Trayer Engineering Corporation (Trayer) for Supervisory Control and Data Acquisition Controlled Vacuum Disconnect Interrupter Switchgear Associated with the Santa Clara University Distributed Energy Resources Project and Authorize the City Manager to Issue Future Purchases Orders to Trayer for Switchgear for Other Projects Up to a Maximum of \$2,500,000 for Silicon Valley Power

- Recommendation:**
1. Authorize the City Manager or designee to issue a purchase order to Trayer Engineering Corporation for switchgear associated with the Santa Clara University project in the amount of \$400,000, subject to the appropriation of funds and the review and approval as to form by the City Attorney; and
 2. Authorize the City Manager or designee to issue purchase orders up to maximum additional amount of \$2,100,000 to Trayer Engineering Corporation for switchgear needed for other projects within SVP's service territory for a total aggregate authorization of \$2,500,000 through December 31, 2030, subject to the appropriation of funds and review and approval as to form by the City Attorney.

Council/Boardmember Cox recused herself from this item due to her employment at Santa Clara University.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) authorize the City Manager or designee to issue a purchase order to Trayer Engineering Corporation for switchgear associated with the Santa Clara University project in the amount of \$400,000, subject to the appropriation of funds and the review and approval as to form by the City Attorney; and (2) authorize the City Manager or designee to issue purchase orders up to maximum additional amount of \$2,100,000 to Trayer Engineering Corporation for switchgear needed for other projects within SVP's service territory for a total aggregate authorization of \$2,500,000 through December 31, 2030, subject to the appropriation of funds and review and approval as to form by the City Attorney.

Aye: 6 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, and Mayor Gillmor

Recused: 1 - Councilmember Cox

2.K [25-1054](#) Action on Authorizing the City Manager to Issue Purchase Orders to Tucker Construction, Inc. for Citywide As-Needed Repair Services for Silicon Valley Power

- Recommendation:**
1. Determine the proposed actions are exempt from CEQA pursuant to Sections 15301 (Class 1 -Existing Facilities), of Title 14 of the California Code of Regulations; and
 2. Authorize the City Manager or designee to issue purchase orders to Tucker Construction, Inc. for as-needed repair services for only Silicon Valley Power facilities with an aggregate maximum compensation of \$600,000 through June 30, 2028, subject to the appropriation of funds and approval as to form by the City Attorney.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) determine the proposed actions are exempt from CEQA pursuant to Sections 15301 (Class 1-Existing Facilities), of Title 14 of the California Code of Regulations; and (2) authorize the City Manager or designee to issue purchase orders to Tucker Construction, Inc. for as-needed repair services for only Silicon Valley Power facilities with an aggregate maximum compensation of \$600,000 through June 30, 2028, subject to the appropriation of funds and approval as to form by the City Attorney.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.L [25-974](#) Action on Approval of the Spending Plan for the Supplemental Law Enforcement Services Fund and the Related Budget Amendment

- Recommendation:**
1. Approve the spending plan for funds received from the Citizen's Option for Public Safety Programs Supplemental Law Enforcement Services Fund; and
 2. Approve the following related FY 2024/25 budget amendments in the Police Operating Grant Trust Fund:
 - a. Recognize grant revenue in the amount of \$203,918 and establish a COP25 grant appropriation in the amount of \$203,918 (**five affirmative Council votes required to appropriate additional revenue**); and
 - b. Recognize grant revenue in the amount of \$194,984 and increase the COP24 grant appropriation in the amount of \$194,984 (**five affirmative Council votes required to appropriate additional revenue**).

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) approve the spending plan for funds received from the Citizen's Option for Public Safety Programs Supplemental Law Enforcement Services Fund; and (2) approve the following related FY 2024/25 budget amendments in the Police Operating Grant Trust Fund: (a) recognize grant revenue in the amount of \$203,918 and establish a COP25 grant appropriation in the amount of \$203,918; and (b) recognize grant revenue in the amount of \$194,984 and increase the COP24 grant appropriation in the amount of \$194,984.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.M [25-1036](#) Action to Accept the FY 2024/25 California Library Literacy Services (CLLS) Adult and Family Literacy Grant Award for the Read Santa Clara Program and Approve the Related Budget Amendment

- Recommendation:**
1. Accept the FY 2024-2025 California Library Literacy Services (CLLS) Grant Award in the Amount of \$111,897 for Read Santa Clara, the Library’s Adult and Family Literacy Program; and
 2. Approve the FY 2024/25 budget amendment in the Library Operating Grant Trust Fund to recognize grant revenue in the amount of \$111,897 and establish an Adult & Family Literacy Program 24-25 grant appropriation in the amount of \$111,897 (**five affirmative Council votes required to appropriate additional revenue**).

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) accept the Fiscal Year 2024-2025 California Library Literacy Services (CLLS) Grant Award in the Amount of \$111,897 for Read Santa Clara, the Library’s Adult and Family Literacy Program; and (2) approve the Fiscal Year 2024-2025 budget amendment in the Library Operating Grant Trust Fund to recognize grant revenue in the amount of \$111,897 and establish an Adult & Family Literacy Program Fiscal Year 2024-2025 grant appropriation in the amount of \$111,897.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.N [25-1130](#) Action on Final Map for Tract No. 10639 to Subdivide the 2.47 Acre Parcel at 1957 Pruneridge Avenue into 22 Single-Family Lots and 4 Common Area Lots

- Recommendation:**
1. Approve the Final Map for Tract No. 10639;
 2. Authorize the City Manager to make minor modifications, if necessary, prior to recordation; and
 3. Authorize the recordation of the Final Map for Tract No. 10639, which subdivides one parcel into 26 parcels (22 single family detached homes and 4 common parcels) located at 1957 Pruneridge Avenue [APN 303-03-025 (2024-25)].

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) approve the Final Map for Tract No. 10639; (2) authorize the City Manager to make minor modifications, if necessary, prior to recordation; and (3) authorize the recordation of the Final Map for Tract No. 10639, which subdivides one parcel into 26 parcels (22 single family detached homes and 4 common parcels) located at 1957 Pruneridge Avenue [APN 303-03-025 (2024-25)].

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

2.O [25-58](#)

Adopt a Resolution to Authorize the City Manager to Execute the 2025-2028 Memorandum of Understanding Between the City of Santa Clara and the American Federation of State County and Municipal Employees (AFSCME), Local 101 ("Unit 6"), Which Incorporates the Terms of the Tentative Agreement, and Adopt a Resolution Updating the Classified Salary Plan

- Recommendation:**
1. Authorize the City Manager to Execute the 2025-2028 Memorandum of Understanding Between the City of Santa Clara and the American Federation of State County and Municipal Employees (AFSCME), Local 101 ("Unit 6", Which Incorporates the Terms of the Tentative Agreement; and
 2. Adopt a Resolution to approve the revised salary plan for classified positions to satisfy the requirements of California Code of Regulations Section 570.5, effective December 22, 2024.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to (1) authorize the City Manager to execute the 2025-2028 Memorandum of Understanding Between the City of Santa Clara and the American Federation of State County and Municipal Employees (AFSCME), Local 101; and (2) adopt Resolution No. 25-9413 to approve the revised salary plan for classified positions to satisfy the requirements of California Code of Regulations Section 570.5, effective December 22, 2024.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

SANTA CLARA STADIUM AUTHORITY BOARD CONSENT CALENDAR

3.A [25-1192](#)

Action on Stadium Authority Bills and Claims for the Month of October 2024

- Recommendation:** Approve the list of Stadium Authority Bills and Claims for October 2024.

A motion was made by Boardmember Hardy, seconded by Boardmember Jain, to approve the list of Stadium Authority Bills and Claims for October 2024.

Aye: 7 - Boardmember Gonzalez, Boardmember Chahal, Boardmember Hardy, Boardmember Park, Boardmember Jain, Boardmember Cox, and Chair Gillmor

PUBLIC PRESENTATIONS

Tanay Gupta spoke in support of rebuilding the International Swim Center.

Erika Correa spoke in support of rebuilding the International Swim Center.

Sean Musil spoke in support of rebuilding the International Swim Center.

Jayden Teoh spoke in support of rebuilding the International Swim Center.

Brandan Du spoke in support of rebuilding the International Swim Center.

Hanson Huynh spoke in support of rebuilding the International Swim Center.

Raine and **Madison** spoke of the limited options for swimming in Santa Clara.

Max and **Tony** spoke in support of the International Swim Center.

Vikas Gupta (additional time given by **Shilpa Khandelwal**) spoke in support of rebuilding the International Swim Center.

Rick Rutter (additional time given by **Kevin Zacker, Amanda Pease, Julie Corrigan, Victory Huynh**) spoke in support of rebuilding the International Swim Center.

Brian Doyle spoke in support of rebuilding the International Swim Center.

Howard Gibbins thanked the Police Department for enforcing health and safety codes at public events.

Keshav Garg spoke in support of rebuilding the International Swim Center.

Elaine Lee requested additional information on the City Sustainability and Climate Action Team from the Climate Action Plan.

Nick Sifferman spoke in support of rebuilding the International Swim Center.

Brian spoke in support of rebuilding the International Swim Center.

Linda thanked the City of Santa Clara for cleaning up and disposing of nitrous oxide bottles near Wilcox High School.

City Manager Grogan made some closing remarks regarding the International Swim Center.

Mayor Gillmor called for a recess at 8:02 PM and reconvened the meeting at 8:08 PM.

[25-115](#)

Public Presentations Post Meeting Material

CONSENT ITEMS PULLED FOR DISCUSSION

3.B [25-1076](#) Action on the Santa Clara Stadium Authority Financial Status Report for Quarter Ending September 30, 2024

- Recommendation:**
1. Note and file the Santa Clara Stadium Authority Financial Status Report for the Quarter Ending September 30, 2024; and
 2. Approve a budget amendment in the Capital Budget to increase Construction Expense for Stadium Event Signage and Updated Stadium Wayfinding Signage in the amount of \$103,771, offset by a decrease to Ending Fund Balance.

Boardmember Jain pulled this item for discussion and provided a Powerpoint presentation on the Santa Clara Stadium Authority Financial Status Report.

Public Comment: Brian Doyle

Board questions followed.

Stadium Authority Treasurer Lee addressed **Board** questions.

A motion was made by Boardmember Jain, seconded by Boardmember Hardy, to (1) note and file the Santa Clara Stadium Authority Financial Status Report for the Quarter Ending September 30, 2024; and (2) approve a budget amendment in the capital budget to increase construction expense for stadium event signage and updated stadium wayfinding signage in the amount of \$103,771, offset by a decrease to Ending Fund Balance.

Aye: 6 - Boardmember Gonzalez, Boardmember Chahal, Boardmember Hardy, Boardmember Park, Boardmember Jain, Boardmember Cox, and Chair Gillmor

Abstained: 1 - Councilmember Cox

PUBLIC HEARING/GENERAL BUSINESS

4. [25-907](#) Action on a Resolution Suspending Existing All-Electric Construction Requirements of the Reach Code and Request for Direction on Needed Amendments to the Reach Code and Climate Action Plan in Light of Recent Changes in Applicable Law

- Recommendation:**
1. Adopt a Resolution Suspending Enforcement of the Existing “All-Electric” Requirements of the City’s Reach Code
 2. Direct Staff to Prepare Amendments to the Reach Code Consistent with a Single Margin Energy Performance Approach, Combined with a Prescriptive Requirement to Pre-Wire Developments for Future All-Electric Use
 3. Direct Staff to Obtain a Cost Effectiveness Study for the Proposed Amendments to the Reach Code
 4. Direct Staff to Prepare Corresponding Amendments to the Climate Action Plan, Combined with Necessary GHG Reduction Modeling

Director of Economic Development and Sustainability Brilliot provided a Powerpoint presentation on the reach code.

Council comments and questions followed.

Director of Economic Development and Sustainability Brilliot, Chief Electric Utility Officer Pineda and City Attorney Googins addressed **Council** questions.

Public Comment: **Elaine Lee**

A motion was made by Councilmember Gonzalez, seconded by Councilmember Hardy, to (1) adopt Resolution No. 25-9414 suspending enforcement of the existing “all-electric” requirements of the City’s Reach Code (2) direct staff to prepare amendments to the Reach Code consistent with a Single Margin Energy Performance approach, combined with a prescriptive requirement to pre-wire developments for future all-electric use; (3) direct staff to obtain a cost effectiveness study for the proposed amendments to the Reach Code; (4) direct staff to prepare corresponding amendments to the Climate Action Plan, combined with necessary GHG reduction modeling; and (5) direct staff to explore EV capable versus EV ready.

Aye: 5 - Councilmember Cahal, Councilmember Hardy, Mayor Gillmor, Councilmember Cox, and Councilmember Gonzalez

Nay: 2 - Councilmember Park, and Councilmember Jain

A motion was made by Councilmember Jain, seconded by Councilmember Chahal, to direct staff to investigate (1) the idea of a burn out ordinance including replacement of fixed air conditioners with a heat pump and (2) additional measures to reduce indoor NOx.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

5. [25-1166](#) Action on Annual Appointment of Vice Mayor and Chaplain

- Recommendation:**
1. Appoint Councilmember Kelly G. Cox as Vice Mayor for approximately one year until the appointment of a successor Vice Mayor in January 2026; and
 2. Appoint the Councilmember Council deems appropriate to serve as Chaplain for approximately one year until the appointment of a successor Chaplain in January 2026.

Public Comment: **None.**

A motion was made by Councilmember Chahal, seconded by Councilmember Gonzalez, to appoint Councilmember Kelly Cox to serve as Vice Mayor for approximately one year until the appointment of a successor Vice Mayor in January 2026 and (2) appoint Councilmember Hardy to serve as Chaplain for approximately one year until the appointment of a successor Chaplain in January 2026.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

6. [25-1168](#) Action on Appointments to City Committees and Outside Agency Committees for the 2025 Calendar Year and Approve Clarification of the Role of the Audit Committee and Approve the Revision of the former Economic Development, Marketing and Communications Committee to the Economic Development and Marketing Committee (Ad Hoc)

- Recommendation:**
1. Approve the Recommendations for Appointments to the 2025 City Committees and Outside Agency Committees as presented, subject to any amendments Council may propose and approve;
 2. Approve the clarification of the role of the Audit Committee to include a variety of City and Stadium Authority audits and reports as described in the City Auditor’s Workplan, as well as the Workplan itself; and
 3. Approve the revision of the former Economic Development, Marketing and Communications Committee to the Economic Development and Marketing Committee (Ad Hoc).

Mayor Gillmor provided a Powerpoint presentation on the appointments to the 2025 City committees and Outside Agency Committees.

City Manager Grogan spoke about the revisions to the Economic Development, Communications & Marketing Committee.

Council discussion ensued.

Public Comment: **None.**

A motion was made by Councilmember Hardy, seconded by Councilmember Gonzalez, to (1) approve the recommendations for appointments to the 2025 City Committees and Outside Agency Committees with the following changes: (a) Councilmember Chahal to be the Member and Councilmember Park to be the Alternate on the Audit Committee, (b) Councilmember Jain to be the Chair and Councilmember Park to be the Member on the Governance and Ethics Committee; (c) Councilmember Park to be removed from the Neighborhood University Relations Committee; (d) Councilmember Chahal to be the Alternate on the Northern California Power Agency, (e) Councilmember Park to be the Alternate on the Police Activities League; (f) Councilmember Gonzalez to be the Member and Mayor Gillmor to be the Alternate on the Treatment Plant Advisory Committee; (2) approve the clarification of the role of the Audit Committee to include a variety of City and Stadium Authority audits and reports as described in the City Auditor’s Workplan, as well as the Workplan itself; and (3) approve the revision of the former Economic Development, Marketing and Communications Committee to the Economic Development and Marketing Committee.

Aye: 7 - Councilmember Gonzalez, Councilmember Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Cox, and Mayor Gillmor

REPORTS OF MEMBERS, SPECIAL COMMITTEES, AND COUNCILMEMBER 030 REQUESTS

Councilmember Hardy reported that there will be a water treatment plant tour on January 24, 2025.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

None.

ADJOURNMENT

The meeting was adjourned at 10:59 PM.

A motion was made by Council/Boardmember Chahal, seconded by Council/Boardmember Gonzalez, to adjourn the meeting.

Aye: 7 - Council/Boardmember Albert Gonzalez, Council/Boardmember Raj Chahal, Council/Boardmember Karen Hardy, Council/Boardmember Kevin Park, Council/Boardmember Suds Jain, Council/Boardmember Kelly Cox, and Mayor/Chair Lisa M. Gillmor

The next regular scheduled meeting is on Tuesday, January 28, 2025 in the City Hall Council Chambers.

MEETING DISCLOSURES

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STREAMING SERVICES: As always, the public may view the meetings on SantaClaraCA.gov, Santa Clara City Television (Comcast cable channel 15 or AT&T U-verse channel 99), or the livestream on the City's YouTube channel or Facebook page.

Note: The public cannot participate in the meeting through these livestreaming methods; livestreaming capabilities may be disrupted at times, viewers may always view and participate in meetings in-person and via Zoom as noted on the agenda.

AB23 ANNOUNCEMENT: Members of the Santa Clara Stadium Authority, Sports and Open Space Authority and Housing Authority are entitled to receive \$30 for each attended meeting.

Note: The City Council and its associated Authorities meet as separate agencies but in a concurrent manner. Actions taken should be considered actions of only the identified policy body.

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA); Bayshore North Project Enhancement Authority (BNPEA); Public Facilities Financing Corporation (PFFC)

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

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City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

25-02

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Board, Commissions and Committee Minutes

COUNCIL PILLAR

Enhance Community Engagement and Transparency

RECOMMENDATION

Note and file the Minutes of:

Board of Library Trustees - November 4, 2024
Parks & Recreation Commission - November 25, 2024
Senior Advisory Commission - November 18, 2024
Youth Commission - December 10, 2024
Planning Commission - November 6, 2024
Planning Commission - December 4, 2024



City of Santa Clara

Meeting Minutes

Board of Library Trustees

11/04/2024

6:00 PM

Hybrid Meeting, Board Room
Central Park Library
2635 Homestead Rd
Santa Clara, CA 95051

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 (“The Brown Act”) and Section 708 of the Santa Clara City Charter, the Chair calls for a Special Meeting of the Board of Library Trustees to commence and convene on November 4, 2024 at 6:00 PM for a Special Meeting held in a hybrid manner to consider the following matter(s) and to potentially take action with respect to them.

The City of Santa Clara is conducting the Board of Library Trustees meeting in a hybrid manner (in-person and continues to have methods for the public to participate remotely).

- Via Zoom:
 - o <https://santaclaraca.gov.zoom.us/j/85864257230>

Meeting ID: 858 6425 7230 or

- o Phone: 1(669) 900-6833

PUBLIC PARTICIPATION IN ZOOM WEBINAR: Please follow the guidelines below when participating in a Zoom Webinar:

- The meeting will be recorded so you must choose 'continue' to accept and stay in the meeting.
- If there is an option to change the phone number to your name when you enter the meeting, please do so as your name will be visible online and will be used to notify you that it is your turn to speak.
- Mute all other audio before speaking. Using multiple devices can cause an audio feedback.
- Use the raise your hand feature in Zoom when you would like to speak on an item and lower when finished speaking. Press *9 to raise your hand if you are calling in by phone only.
- Identify yourself by name before speaking on an item.
- Unmute when called on to speak and mute when done speaking. If there is background noise coming from a participant, they will be muted by the host. Press *6 if you are participating by phone to unmute.
- If you no longer wish to stay in the meeting once your item has been heard, please exit the meeting.

CALL TO ORDER AND ROLL CALL

Chair Evans called the meeting to order at 6:02 PM.

CONSENT CALENDAR

- 1.A [24-1037](#) Action to Recommend that the City Council Accept the FY 2024/25 California Library Literacy Services (CLLS) Adult and Family Literacy Grant Award for the Read Santa Clara Program and Approve the Related Budget Amendment

Recommendation: That the Board of Library Trustees recommend that the City Council Accept the FY 2024/2025 California Library Literacy Services (CLLS) Grant Award in the Amount of \$111,897 for Read Santa Clara, the Library’s Adult and Family Literacy Program and the Related Budget Amendment as described in this Report.

- 1.B [24-1097](#) Action on the Board of Library Trustees Meeting Minutes of October 7, 2024

Recommendation: Approve the Board of Library Trustees Meeting Minutes of October 7, 2024

A motion was made by Trustee Tryforos, seconded by Trustee Mohammed to approve the Consent Calendar.

Aye: 5 - Chair Evans, Trustee Huynh, Trustee Mohammed, Vice-Chair Ricossa, and Trustee Tryforos

PUBLIC PRESENTATIONS

Patty Wong, City Librarian informed the **Board** that the next Librarypalooza fundraising event held by the **Santa Clara City Library Foundation and Friends** will take place on April 5, 2025, at the **Triton Museum**.

GENERAL BUSINESS

[24-1060](#) Discussion on the Library Facilities Master Plan

Recommendation: Discuss progress on the Library Facilities Master Plan and provide input to support plan development.

Kristilyn Vercruysse and **Jeff Davis**, consultants with **MSR Design**, shared a presentation with the **Board** to provide status updates on the Library Facilities Master Plan project. The **Board** received updates on the project schedule, community engagement efforts and national trends in Library facilities planning and design. Discussion elicited **Board** feedback on community needs and how Library might help to meet them in the future. Feedback was also provided by **Betsy Megas**, who attended the meeting as a member of the public. **City Librarian Wong** informed the **Board** that Library will coordinate with the City Manager's Office on the Library Facilities Master Plan, as well as the Library Strategic Plan, and will bring these back to the **Board**, likely in March 2025.

2 [24-849](#) Action on Revised Collection Development Policy, Community Room Use Agreements, Audiovisual and Camera Equipment Use Policy, and Policy Governing the Use of Library Grounds

Recommendation:

1. Review and approve:
 - a. the draft Santa Clara City Library Collection Development Policy (Attachment 1); and
 - b. the draft Santa Clara City Library Community Room Use Agreements (Attachment 3-6).
2. Review and provide input on:
 - a. the draft Santa Clara Audiovisual and Camera Equipment Use Policy (Attachment 8); and
 - b. the draft Santa Clara City Library Policy Governing the use of Library Grounds (Attachment 10).

Deputy City Attorney Luis Haro informed the **Board** that the Library is working in coordination with the City Attorney's Office to review and update Library policies that are outdated or in need of revision to better meet contemporary service needs. He provided a summary of the policies being presented to the **Board**, and reviewed the changes made and the reasoning behind these. The **Board** asked questions and discussed the changes made. **Betsy Megas** attended the meeting as a member of the public, and provided additional feedback.

A motion was made by Trustee Mohammed, seconded by Trustee Huynh to approve Staff Recommendation.

Aye: 4 - Chair Evans, Trustee Huynh, Trustee Mohammed, and Trustee Tryforos

Nay: 1 - Vice-Chair Ricossa

STAFF REPORT

City Librarian Wong informed the **Board** that the Library system would be closed for at least half the day on December 10, 2024 for a citywide staff recognition event. It was shared that the system might be closed the full day, as discussions are in progress about a Library staff training and recognition following the citywide event. The **Board** was queried as to their interest in attending and recognizing staff, possibly including a potluck. The closure of Northside Branch Library on Thursday, November 7, 2024 from 10am to 12pm was shared, a result of necessary plumbing repairs. The **Board** inquired about the results of Comic Con, and **City Librarian Wong** shared that the post-event debrief was upcoming, and she hoped to update the **Board** at the December meeting. An update was provided on the Library Cafe, for which a request for proposal is being prepared for an operating vendor. The cafe has had repairs to the cabinets, fresh paint and new floors installed. Significant community feedback has been received during Strategic Plan and Facilities Master Plan community engagement efforts requesting the re-opening of the Cafe.

TRUSTEES REPORT

Discussion about proclaiming the Library as a Book Sanctuary was raised and agreed to be added as an item for discussion at the December meeting of the **Board**. **Chair Evans** reported attending the Halloween in the Park event, which was well attended, and noted that there was a picnic at Central Park Library scheduled at the same time. **Chair Evans** reported that he spoke to many community members there, who shared an interest in longer Library hours and shared that they love story times. **City Librarian Wong** inquired which hours the community mentioned, and **Chair Evans** shared appreciation for Saturday hours at Mission Library, and an interest in more hours outside of work hours. Items raised to consider addressing at the December meeting included sharing State Library survey data, discussion of programs the **Board** would like more information about, and a review of comparable library services and funding. **City Librarian Wong** shared that recruiting is underway for Sunday Hours, and that the Library is watching to learn the results of Sunnyvale's ballot measure supporting a new main library there, meant to be joint use with a new school building.

ADJOURNMENT

The meeting was adjourned at 8:11 PM.

A motion was made by Trustee Tryforos, seconded by Trustee Huynh to adjourn the meeting.

Aye: 5 - Chair Evans, Trustee Huynh, Trustee Mohammed, Vice-Chair Ricossa, and Trustee Tryforos

The Board of Library Trustees Special Meeting is adjourned to December 2, 2024, at 6:00 PM in the Mission Branch Library Community Room.

DRAFT

MEETING DISCLOSURES

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City of Santa Clara

Meeting Minutes

Parks & Recreation Commission

11/25/2024

7:00 PM

Hybrid Meeting

Cafeteria - City Hall East Wing
1500 Warburton Avenue
Santa Clara, CA 95050

The City of Santa Clara is conducting the Parks & Recreation Commission meeting in a hybrid manner (in-person and a method for the public to participate remotely).

Join Zoom Meeting

[https://santaclaraca.zoom.us/j/7952241237?](https://santaclaraca.zoom.us/j/7952241237?pwd=bHNnZ2o4RTd2WmpmVVFicWRHc1NSZz09&omn=87398322265)

[pwd=bHNnZ2o4RTd2WmpmVVFicWRHc1NSZz09&omn=87398322265](https://santaclaraca.zoom.us/j/7952241237?pwd=bHNnZ2o4RTd2WmpmVVFicWRHc1NSZz09&omn=87398322265)

Meeting ID: 795 224 1237

Passcode: 858218

CALL TO ORDER AND ROLL CALL

Chair Hai called the Parks & Recreation Commission meeting to order at 7:02 PM

Present 6 - Vice Chair Maureen Chu, Commissioner Eversley Forte, Commissioner Derek DeMarco, Chair Sajid Hai, Commissioner Brittany Ricketts, and Commissioner Vikas Gupta

Absent 1 - Commissioner Dana Caldwell

Commissioner Chu made a motion, seconded by Commissioner Forte to excuse Commissioner Caldwell from the November 25, 2024 Parks & Recreation Commission meeting.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Absent: 1 - Commissioner Caldwell

CONSENT CALENDAR

1.A [24-1093](#) Action on the Parks & Recreation Commission Minutes of the October 21, 2024, Meeting

Recommendation: Approve the Parks & Recreation Commission Minutes of the October 21, 2024, Meeting.

Commissioner Chu made a motion, seconded by Commissioner Ricketts to approve the October 21, 2024 Parks & Recreation Commission minutes as amended with the correction that Commissioner DeMarco abstaining from voting on Item 5, RTC 24-903.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Excused: 1 - Commissioner Caldwell

1.B [24-1089](#) Discussion of a Parks & Recreation Commission 2025 Calendar of Meetings

Recommendation: It is recommended that the Commission recommend that the City Council adopt the proposed 2025 calendar of meetings for the Parks and Recreation Commission.

Commissioner Chu made a motion, Seconded by Commissioner Gupta to accept the 2025 Parks & Recreation 2025 Calendar of meetings.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Excused: 1 - Commissioner Caldwell

PUBLIC PRESENTATIONS

None

GENERAL BUSINESS

2. [24-992](#) Approval of a Grant from the Wade Brummal Youth Sports Scholarship Program in the Amount of \$17,575 to Reimburse Santa Clara Westside Little League for Eligible Expenses Related to the 2024 Spring Season.

Recommendation: Approve a Grant in the Amount of \$17,575 from the Wade Brummal Youth Sports Scholarship Program in the Public Donations Fund to Reimburse the Santa Clara Westside Little League for Eligible Expenses Related to the 2024 Spring Season.

Commissioner Forte made a motion, seconded by Commissioner DeMarco to approve a grant in the amount of \$17,575 from the Wade Brummal Youth Sports Scholarship Program in the Public Donations Fund to reimburse the Santa Clara Westside Little League for eligible expenses related to the 2024 Spring Season.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Excused: 1 - Commissioner Caldwell

3. [24-1012](#) Approval of a Grant from the Wade Brummal Youth Sports Scholarship Program in the Amount of \$11,652 to Reimburse Santa Clara Swim Club for Eligible Expenses Related to the 2022-2023 Swim Season.

Recommendation: Approve the Grant in the Amount of \$11,652 from the Wade Brummal Youth Sports Scholarship Program in the Public Donations Fund to Reimburse Santa Clara Swim Club for Eligible Expenses Related to the 2022-2023 Swim Season.

Commissioner Chu made a motion, Seconded by Commissioner DeMarco for the approval of a grant for the Wade Brummal Youth Sports Grant Scholarship Fund Program in the amount of \$11,652.29 to reimburse Santa Clara Swim Club for eligible expenses related to the 2022 - 2023 Swim Season.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Excused: 1 - Commissioner Caldwell

4. [24-1003](#) Approval of a Grant from the Wade Brummal Youth Sports Scholarship Program in the Amount of \$22,240 to Reimburse the Santa Clara Youth Soccer League for Eligible Expenses Related to the 2023-2024 Soccer Season.

Recommendation: Approve a grant in the Amount of \$22,240 from the Wade Brummal Youth Sports Scholarship Program in the Public Donations Fund to reimburse the Santa Clara Youth Soccer League for eligible expenses related to the 2023-2024 Soccer Season

Commissioner Chu made a motion, Seconded by Commissioner DeMarco for the approval of a grant from the Wade Brummal Youth Sports Scholarship Program in the amount of \$22,240 to reimburse the Santa Clara Youth Soccer League for eligible expenses related to the 2023 - 2024 Soccer Season.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Excused: 1 - Commissioner Caldwell

5. [24-1061](#) Receive Presentation and Provide Input on the Study Session on the Library Facilities Master Plan

Recommendation: Recommend that the Commission provide input and feedback to the Consultant on the development of the City's Library Master Plan.

The Commission provided input on the Library Master Plan, to:

- Increase library hours,
- Provide appropriate room sizes for small groups,
- Consider the ideal Central Park Library layout including parking lots, cafe, and links to other community services,
- Promote workshops, and partner with external groups to expand accessible knowledge for the community,
- Develop strategies to reduce parking demands,
- Have the Central Park Library and other libraries as destinations for residents and non-residents,
- Develop and provide reservable open space for groups,
- Develop place making and maker spaces for the community,
- Reemphasize the importance of having early education programming,
- Provide an option to have some City Council meetings at the Central Park Library, and
- Have each library branch known for a specialization.

6. [24-1137](#) Status Update on the Progress Made on the FY 2024/25 Parks & Recreation Commission's Work Plan Goals

Recommendation: Provide status update on progress made on the FY 2024/25 Parks & Recreation Commission's work plan goals.

Goal A: Review park site and facility condition assessments and recommend priorities given existing and anticipated service levels and available resources--*No Update.*

Goal B.1.: Review and solicit community input on the existing City park rehabilitation projects based on the current Capital Improvement Program (CIP) Budget and schedule--*No update.*

Goal B.2.: Review residential developer proposed schematic designs for new neighborhood parks that serve new residential development--*No update.*

Goal C.1.: Host and develop recommendations for the annual Santa Clara Art & Wine Festival 2024--*Work plan completed.*

Goal C.2.: Participate in Citywide Special events--*Commissioners will attend and participate in the 2024 Holiday Tree Lighting Event.*

Goal D.: Partner with at least one other commission to build upon/expand at least one existing Parks & Recreation event by adding one extra element for patrons to interact with during the event--*No update*

Goal E.: Participate in the Parks & Recreation Master Plan Process--*Commissioners participated in focus groups for the Parks & Recreation Master Plan and provided feedback to the Consultant (WRT).*

Goal F.: Consider the annual budget of the Parks & Recreation Department during the budget preparation process and make recommendations with respect to the City Manager and City Council--*The Commission approved three Wade Brummal Grant Scholarship requests at the November 25 Meeting.*

STAFF REPORT

Parks & Recreation Director Sparacino

The Director reminded the Commission about the upcoming Holiday Tree Lighting Event on December 6. He was pleased to meet the Commission and is looking forward to seeing the commissioners at the event. Director Sparacino has been settling into his new role and has spent much of his time meeting staff, bringing himself up to speed about the intricacies of the new role, and gaining a more in depth perspective about the department while focusing on improving efficiencies.

COMMISSIONERS REPORT**Chair Hai**

The Commissioner visited Jenny Strand Park. Over the past month he also traveled to several cities in Colombia and parts of the Andes Mountain Range.

Commissioner Chu

Commissioner Chu visited Live Oak, Thamien and Henry Schmidt Parks. The recreation building at Lick Mill Park was rented out by her daughter's Girl Scout Troop for a meeting. She commented on how amazing the recreation programming staff is. The Ballet group is gearing up for their annual performance of The Nutcracker and was very thankful to Parks & Recreation Department staff for their support. "It's a fantastic community event!". Commissioner Chu also commented on the excellence of the Santa Clara Recreational Ballet program.

Commissioner DeMarco

Commissioner DeMarco visited Agnew Park. He and his family enjoyed the recently renovated playground. He made note of the "Mini Amphitheater" within the park, although it was a little muddy due to recent rain.

Commissioner Forte

He sampled the new Silicon Valley Hopper Service for commuting. He was somewhat disappointed that the service does not currently operate throughout the entire City of Santa Clara.

Commissioner Gupta

Commissioner Gupta has committed to weekly walks on Friday mornings within his local neighborhood and has started with Maywood Park. He expressed his joy about Measure I passing and how this will greatly benefit parks and recreation facilities in the City and what it will mean for the future of aquatics and the ISC in Santa Clara.

Commissioner Ricketts: She was traveling recently and visited Portland for a week and New York, and visited a library in each city.

ADJOURNMENT

Commissioner DeMarco made a motion, seconded by Commissioner Chu to adjourn the November 25, 2024 Parks & Recreation Commission Meeting at 8:26 PM until the next regular meeting at 7:00 PM on January 13, 2025.

Aye: 6 - Vice Chair Chu, Commissioner Forte, Commissioner DeMarco, Chair Hai, Commissioner Ricketts, and Commissioner Gupta

Excused: 1 - Commissioner Caldwell

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City of Santa Clara

Meeting Minutes

Senior Advisory Commission

11/18/2024

5:00 PM

Hybrid Meeting
Santa Clara Senior Center
Room 205
1303 Fremont Street
Santa Clara, CA 95050

The City of Santa Clara is conducting the Senior Advisory Commission meeting in a hybrid manner (in-person and a method for the public to participate remotely).

Via Zoom:

<https://santaclaraca.zoom.us/j/97590069803>

Meeting ID: 975 9006 9803

Or join by phone: 669-900-6833

CALL TO ORDER AND ROLL CALL

The regular meeting was called to order by Chair Drozek at 5:07 p.m.

Present 6 - Chair Edmund Drozek, Vice Chair Tom Freitas, Commissioner Judy Hubbard, Commissioner Rick Andrews, Commissioner Maria Vaz, and Commissioner Srinivasan Manivannan

Absent 1 - Commissioner Veena Sterling

A motion was made by Commissioner Freitas, seconded by Commissioner Vaz, to excuse Commissioner Sterling. The motion carried with the following vote.

Aye: 6 - Chair Drozek, Vice Chair Freitas, Commissioner Hubbard, Commissioner Andrews, Commissioner Vaz, and Commissioner Manivannan

Absent: 1 - Commissioner Sterling

CONSENT CALENDAR

1. [24-986](#) Review and Approve the Senior Advisory Commission Minutes of October 21, 2024

Recommendation: Approve the Senior Advisory Commission Minutes of October 21, 2024

A motion was made by Commissioner Hubbard, seconded by Commissioner Manivannan, to approve the minutes of October 21, 2024. The motion carried with the following vote.

Aye: 4 - Chair Drozek, Commissioner Hubbard, Commissioner Andrews, and Commissioner Manivannan

Nay: 1 - Vice Chair Freitas

Excused: 1 - Commissioner Sterling

Abstained: 1 - Commissioner Vaz

PUBLIC PRESENTATIONS

None

GENERAL BUSINESS

2. [24-1025](#) Receive Presentation and Provide Input for the Study Session on the Library Facilities Master Plan

Recommendation: Recommend that the Commission provide input and feedback to the Consultant on the development of the City's Library Master Plan.

Consultants from MSR Design presented the Library Facilities Master Plan to the Senior Advisory Commission and asked for input and feedback.

No action was taken on this item.

3. [24-1104](#) Discuss and take action to adopt the Senior Advisory Commission's Work Plan & Goals for FY2024/25.

Recommendation: Discuss and take action to adopt the Senior Advisory Commission's Work Plan & Goals for FY2024/25.

The Senior Advisory Commission prioritized and established measurable outcomes for the FY 2024/25 Commission Work Plan and adopted the following Work Plan:

1. Advocate for Affordable and Convenient Housing

- a. Educate the Older Adult Community on current low-income and affordable housing projects in Santa Clara
 - i. Provide educational presentations by the Housing and Community Services Department at Senior Center.
- b. Provide input to developers of Older Adult housing projects in the City of Santa Clara.
 - i. Attend Community workshops related to new Senior Housing developments in Santa Clara.

2. Encourage and Promote the use of Outdoor Spaces and Buildings

- a. Work with the Parks & Recreation Department to promote the development of dedicated pickleball courts in Santa Clara.
 - i. Meet with City staff monthly for updates.
- b. Work with the Parks & Recreation Department to support and advocate for the Lawn Bowl facility and Club at Central Park.
 - i. Meet with City staff monthly for updates.
- c. Advocate for outdoor spaces and activities for older adults.
 - i. Attend community meetings related to new or rehabilitated park projects in Santa Clara.

3. Advocate for Affordable, Convenient, and Safe Transportation and Streets

- a. Promote new projects related to the older adult community on transportation resources in Santa Clara.
 - i. Attend community meetings related to transportation and streets improvement projects in Santa Clara.
- b. Review and provide feedback to the Pedestrian and Bicycle Master Plans for potential access improvements, and provisions for general safety and develop strategies to address excessive speeding on bike paths.

- i. Send representative(s) to attend Bicycle & Pedestrian Advisory Committee meeting(s).
- 4. Develop Opportunities to Promote Health, Wellness, and Nutrition**
- a. Assist in implementation of Senior Needs Assessment survey and outreach plan.
 - b. Advocate for Age-Friendly accessibility in the built environment in Santa Clara.
 - i. Attend Community Meetings related to ADA updates within Santa Clara.

A motion was made by Commissioner Andrews, seconded by Commissioner Hubbard, to adopt the Senior Advisory Commission FY2024/25 Work Plan & Goals. The motion carried with the following vote.

Aye: 6 - Chair Drozek, Vice Chair Freitas, Commissioner Hubbard, Commissioner Andrews, Commissioner Vaz, and Commissioner Manivannan

Excused: 1 - Commissioner Sterling

STAFF REPORT

Recreation Manager Castro reported on the following:

- Recreation classes begin in January.
- Registration opens on December 3.
- The Holiday Tree Lighting will be held on December 6, from 5:30 - 8:00 p.m.
- Measure I, Infrastructure Bond passed in the City.
- Santa Clara County held an Age-Friendly County meeting and shared that they will be conducting a county-wide survey.

Recreation Supervisor Herb reported on the following:

- The Senior Center will be hosting Pie Day on Thursday, November 21 from 1:00 - 2:00 p.m.

COMMISSIONERS REPORT

Commissioner Hubbard shared that she will be moving out of the area and announced her resignation from the Commission. She thanked everyone for the time she served on the Commission.

Commissioner Andrews shared that he attended the Veteran's event at Central Park and commented on a job well done.

ADJOURNMENT

A motion was made by Commissioner Hubbard, seconded by Commissioner Andrews that the meeting be adjourned at 6:46 p.m.

Aye: 6 - Chair Drozek, Vice Chair Freitas, Commissioner Hubbard, Commissioner Andrews, Commissioner Vaz, and Commissioner Manivannan

Excused: 1 - Commissioner Sterling

MEETING DISCLOSURES

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City of Santa Clara

Meeting Minutes Youth Commission

12/10/2024

6:00 PM

Youth & Teen Center
2446 Cabrillo Avenue
Santa Clara, CA 95051

CALL TO ORDER AND ROLL CALL

This meeting was called to order by Chair Liang at 6:09 p.m.

- Present** 12 - Commissioner Allysa Domensino, Commissioner Namita Gaidhani, Commissioner Srikha Gopisetti, Commissioner Julianna Arias Hernandez, Commissioner Neha Israni, Commissioner Maryam Ismail, Commissioner Ryan Kim, Commissioner Rebecca Kunze, Commissioner Kira Liang, Commissioner Malia Martin, Commissioner Hiranya Parekh, and Commissioner Samarth Suresh
- Absent** 3 - Commissioner Simren Garg, Commissioner Samaira Mehta, and Commissioner Brian Rong

A motion was made by Commissioner Suresh, seconded by Commissioner Parekh to excuse Commissioner Garg, Commissioner Mehta, Commissioner Rong from the December 10, 2024 meeting. The motion was carried by the following votes:

- Aye:** 12 - Commissioner Domensino, Commissioner Gaidhani, Commissioner Gopisetti, Commissioner Arias Hernandez, Commissioner Israni, Commissioner Ismail, Commissioner Kim, Commissioner Kunze, Commissioner Liang, Commissioner Martin, Commissioner Parekh, and Commissioner Suresh

- Absent:** 3 - Commissioner Garg, Commissioner Mehta, and Commissioner Rong

CONSENT CALENDAR

1. [24-1190](#) Action on the Youth Commission Meeting Minutes of November 12, 2024

A motion was made by Commissioner Suresh, seconded by Commissioner Martin that this item be recommended for approval. The motion was carried by the following votes:

Aye: 12 - Commissioner Domensino, Commissioner Gaidhani, Commissioner Gopisetti, Commissioner Arias Hernandez, Commissioner Israni, Commissioner Ismail, Commissioner Kim, Commissioner Kunze, Commissioner Liang, Commissioner Martin, Commissioner Parekh, and Commissioner Suresh

Excused: 3 - Commissioner Garg, Commissioner Mehta, and Commissioner Rong

PUBLIC PRESENTATIONS

None

GENERAL BUSINESS

2. [24-1191](#) Discussion and Possible Actions on Youth Commission FY 2024/25 Work Plan & Goals.

Commissioners continued to brainstorm ideas for the FY 2024/25 Work Plan themes: Youth Empowerment, Public Outreach and Education, and Community Building. The committees will update progress at the next Youth Commission monthly meeting in January 2025.

STAFF REPORT

None

COMMISSIONERS REPORT

Commissioner Israni, attended a Santa Clara Vision Zero community workshop, where residents were asked about their concerns regarding traffic, safety, and accessibility on roads. Vision Zero also provided a website and interactive map where people can cite complaints and view other problem areas.

ADJOURNMENT

A motion was made by Commissioner Suresh, seconded by Commioner Parekh that this meeting be adjourned at 6:33 p.m. The motion was carried by the following votes:

Aye: 12 - Commissioner Domensino, Commissioner Gaidhani, Commissioner Gopisetti, Commissioner Arias Hernandez, Commissioner Israni, Commissioner Ismail, Commissioner Kim, Commissioner Kunze, Commissioner Liang, Commissioner Martin, Commissioner Parekh, and Commissioner Suresh

Excused: 3 - Commissioner Garg, Commissioner Mehta, and Commissioner Rong

MEETING DISCLOSURES

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City of Santa Clara

Meeting Minutes

Planning Commission

11/06/2024	6:00 PM	Hybrid Meeting City Hall Council Chambers/Virtual 1500 Warburton Avenue Santa Clara, CA 95050
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The City of Santa Clara is conducting Planning Commission meetings in a hybrid manner (in-person and continues to have methods for the public to participate remotely).

Via Zoom:
<https://santaclaraca.zoom.us/j/91729202898>
Webinar ID: 917 2920 2898 or

Phone:
1(669) 900-6833

Via the City's eComment

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6:00 PM REGULAR MEETING

Call to Order

Chair Saleme called the meeting to order at 6:02 p.m.

Pledge of Allegiance and Statement of Values

Secretary Crutchlow read the Statement of Values

Roll Call

Present 6 - Commissioner Yashraj Bhatnagar, Commissioner Nancy A. Biagini, Commissioner Qian Huang, Vice Chair Mario Bouza, Chair Lance Saleme, and Commissioner Eric Crutchlow

Absent 1 - Commissioner Priya Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Bouza to excuse Commissioner Cherukuru's absence.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

DECLARATION OF COMMISSION PROCEDURES

Secretary Crutchlow read the Declaration of Commission Procedures.

CONTINUANCES/EXCEPTIONS**CONSENT CALENDAR**

Chair Saleme moved the Consent Calendar to be heard before the Study Session.

A motion was made by Commissioner Crutchlow, seconded by Commissioner Biagini to approve the consent calendar.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

1.A [24-1072](#) Action to Recommend City Council Adoption of a Resolution of Local Support for Transit-Oriented Communities Implementation Grants

- Recommendation:**
1. Adopt a Resolution of Local Support for the City’s application for technical assistance grants related to ABAG’s Transit-Oriented Communities Policy; and
 2. Recommend that the City Council Authorize the City Manager to execute all documents related to accepting the technical assistance grants.

1.B [24-1100](#) Planning Commission Meeting Minutes of October 23, 2024

Recommendation: Approve the Planning Commission Meeting Minutes of the October 23, 2024 Meeting.

STUDY SESSION

[24-1115](#) Study Session on the Library Facilities Master Plan

Recommendation: There is no recommendation. The purpose of this report is to support a Study Session on this topic and to receive input from the Planning Commission on the development of the City’s Library Facilities Master Plan.

Staff presentation was provided by **City Librarian Patty Wong** and the City’s consultants from MSR Tracy Lesneski and Kristilyn Vercruysse.

Commissioners provided input on the goals for the needs of the Santa Clara community for new library facilities and programs. Comments included: easy access to public transportation, space for bicyclists, located near housing, socialization opportunities, cooking experiences, historical areas, and gardening opportunities.

PUBLIC PRESENTATIONS

None.

PUBLIC HEARING

2. [24-1095](#) PUBLIC HEARING CONTINUANCE: Action on a Recommendation to City Council with respect to: an Environmental Impact Report and Mitigation Monitoring and Reporting Program, General Plan Amendment from High-Intensity Office/Research-and-Development to newly created Urban Center Mixed Use and Urban Center Residential Mixed Use land use designations, a Rezoning to PD - Planned Development, a Vesting Tentative Subdivision Map, and a Development Agreement for a Mixed Use Project at 3005 Democracy Way comprised of up to 1,800 units (approximately 1.8 million square feet of residential uses) , up to 3 million square feet of office/research-and-development, approximately 100,000 square feet of retail, and approximately 10,000 square feet of childcare facilities ("Option A"), with a project alternative ("Option B") that allows for the flexibility of up to an additional 800 dwelling units (for a total of up to 2,600 residential units) with a corresponding reduction in office/research and development square footage to 2.2 million square feet.

Recommendation: 'Option A'

1. Adopt a resolution to recommend the City Council certify the Final EIR prepared for the Mission Point Project (SCH # 2018072068) and adopt a Mitigation Monitoring and Reporting Program, CEQA Findings, and a Statement of Overriding Considerations.
2. Adopt a resolution to recommend the City Council approve a General Plan amendment to add 2 new land use designations, Urban Center Mixed-Use (UCMU) and Urban Center Mission Point (UCMP), and to change the land use designation for the project site from High Intensity Office/Research & Development (HI O/R&D) to UCMU (Area D) and UCMP (Areas A, B, and C).
3. Adopt a resolution to recommend the City Council approve the Planned Development Rezoning from HO-RD - High-Intensity Office/Research and Development to PD - Planned Development.
4. Adopt a resolution to recommend the City Council approve a Vesting Tentative Subdivision Map.
5. Adopt a resolution to recommend the City Council adopt an ordinance to approving the Development Agreement.

Planning Manager Lesley Xavier provided the Staff Presentation.

Ben Tranel, Gensler provided the Applicant Presentation.

Public Speakers:

Mary Grizzle
Rick Franco
Doug Bloch
Danny Mangan
Armand Murrillo - Nor Cal Carpenters
Alex Shoor - Catalyze SV

Ali - Housing Action Coalition

A motion was made by Commissioner Biagini, seconded by Commissioner Bouza to close the public hearing.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Biagini, seconded by Commissioner Saleme, to Utilize "Option B" in subsequent motions.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Vice Chair Bouza

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Huang to approve Staff Recommendation 1 with the revised resolution for Option B.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Vice Chair Bouza

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Huang to Approve Staff Recommendation 2 with the revised resolution for Option B.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Vice Chair Bouza

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Biagini, to Approve a Rezoning of the Project Site from ML (Light Industrial) to PD (Planned Development) for the Project Site, with the revised resolution for Option B.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Vice Chair Bouza

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Biagini to Approve Staff Recommendation 4 with the revised resolution for Option B.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Vice Chair Bouza

Excused: 1 - Commissioner Cherukuru

Ms. Xavier then pointed out that Commissioner Crutchlow's earlier motion, concerning the rezoning of the Project Site to PD, erroneously stated that the existing zoning was ML (Light Industrial), when in fact it is High Intensity Office / Research & Development (HO-RD).

A motion was made by Commissioner Crutchlow, seconded by Commissioner Bouza, to rescind the prior rezoning motion, and to approve Staff Recommendation 3, a rezoning from HO-RD - High-Intensity Office/Research and Development to PD - Planned Development, with the revised resolution for Option B.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Biagini to Approve Staff Recommendation 5 with revised resolution for Option B.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Vice Chair Bouza

Excused: 1 - Commissioner Cherukuru

A Motion was made by Commissioner Biagini, seconded by Commissioner Crutchlow, to recommend that the City Council seriously consider additional parking in a way that better ensures a successful project, as the current consideration of 1:1, plus some shared parking with Levi's Stadium and commercial entities, raises grave concerns with the Planning Commission.

Aye: 4 - Commissioner Biagini, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Commissioner Huang

Excused: 1 - Commissioner Cherukuru

Abstained: 1 - Commissioner Bhatnagar

A motion was made by Commissioner Biagini, seconded by Commissioner Crutchlow, to recommend that City Council include the language set forth in condition of approval G10 as a part of the development agreement: “The City encourages the Owner and any contractors or subcontractors working on the project to evaluate hiring local labor, hiring from or contributing to approved, accredited apprenticeship programs, increasing resources for labor compliance, and providing living wages during the development of this Project.”

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

Abstained: 1 - Commissioner Huang

A motion was made by Commissioner Crutchlow, seconded by Commissioner Bouza, to recommend that the Council engage with the State of California about the cumulative impact of state-mandated high density housing policies on the environment and City resources, given concerns over long-term sustainability as available land and resources continue to diminish.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Nay: 1 - Commissioner Huang

Excused: 1 - Commissioner Cherukuru

3. [24-967](#) Public Hearing: Action on a Conditional Use Permit for a New Drive-through Restaurant (PLN22-00428) at 3575 Stevens Creek Boulevard (CEQA: Class 3 Categorical Exemption Section 15303).

Recommendation:

1. Determine that the project is categorically exempt from formal environmental review per Section 15303(c), New Construction or Conversion of Small Structures; and
2. Adopt a Resolution approving the Conditional Use Permit to allow a new drive-through restaurant at 3575 Stevens Creek Boulevard, subject to findings and conditions.

Meeting went into Recess at 8:59 p.m.

Meeting Reconvened at 9:10 p.m.

Senior Planner Steve Le provided the Staff Presentation.

Frank Coda, Greenbergfarrow provided the Applicant Presentation.

Public Speakers:

Tom Nelson - Colliers Parish

Traci Johnson

Royanna Gazlay

Chris Giangreco -

Public Speaker

Rob Mezzetti

Kara Mezzetti

John Faylor

A motion was made by Commissioner Biagini, seconded by Commissioner Biagini to continue the meeting after 10 pm.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Biagini, seconded by Chair Saleme to close public hearing.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Biagini, seconded by Commissioner Crutchlow to Approve Staff Recommendation 1.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Biagini, seconded by Commissioner Crutchlow to amend hours for the drive thru to 5:00 a.m. to 9:00 p.m., Monday-Saturday, and 6:00 a.m. to 9:00 p.m. Sunday.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

A motion was made by Commissioner Crutchlow, seconded by Commissioner Biagini to Approve Staff Recommendation 2, including the amended hours, an additional condition for a drive-through gate subject to City design approval; an additional condition setting trash collection for 7 a.m. – 5 p.m. Mon-Fri, 1-2 times per week; and a review 9 months after start of operations.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

4. [24-968](#) Public Hearing. Action on a Variance Request (PLN24-00343) from the Sign Ordinance to Allow for a 48 Square Foot Internally Illuminated Freestanding Monument sign, a 16 Square Foot Halo-Illuminated Wall Sign, and a Seven & Half Square Foot Halo-Illuminated Real Estate Sign in a Residential Development at 3131 Homestead Road

- Recommendation:**
1. Determine the project is exempt from the California Environmental Quality Act (“CEQA”) per CEQA Guidelines section 15311 (Class 11 - “Accessory Structures”); and
 2. Adopt a resolution approving a Variance from the Sign Ordinance to allow for a 48 square foot internally illuminated freestanding monument sign, a 16 square foot halo-illuminated wall sign, and a seven and a half square foot halo-illuminated real estate sign, subject to findings and conditions of approval for the property located at 3131 Homestead Road.

Meeting went into recess at 10:15 p.m.
 Meeting reconvened at 10:20 p.m.

Chair Saleme recused himself from this item due to the proximity of his residence to the project address. **Vice Chair Bouza** acted as Chair for this item.

Assistant Planner Alex Tellez provided the Staff Presentation.

Applicant Michael Burch provided the Applicant Presentation.

Public Speakers:

Audrey Mitchell
 Steve Quan
 Sue Houchen
 Jeff Z.
 Audrey Ito

A motion was made by Commissioner Biagini, seconded by Commissioner Huang to close public hearing.

Aye: 5 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

Recused: 1 - Chair Saleme

A motion was made by Commissioner Crutchlow, seconded by Commissioner Bouza to deny approval of the variance due to the size of the signs exceeding City standards without sufficient justification and the proposed lighting being incompatible with the surrounding neighborhood.

Aye: 4 - Commissioner Bhatnagar, Commissioner Biagini, Vice Chair Bouza, and Commissioner Crutchlow

Nay: 1 - Commissioner Huang

Excused: 1 - Commissioner Cherukuru

Recused: 1 - Chair Saleme

REPORTS OF COMMISSION/BOARD LIAISON AND COMMITTEE:

1. Announcements/Other Items
2. Commissioner Travel and Training Reports, Requests to attend Trainings

DIRECTOR OF COMMUNITY DEVELOPMENT REPORTS:

1. Planning Commission Budget Update

Staff Aide II Elizabeth Elliott provided budget updates.

2. Upcoming Agenda Items

Planning Manager Lesley Xavier provided updates.

3. City Council Actions

Planning Manager Lesley Xavier provided updates.

ADJOURNMENT:

The meeting adjourned at 11:05 p.m. The next regular scheduled meeting is December 11, 2024.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

Excused: 1 - Commissioner Cherukuru

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City of Santa Clara

Meeting Minutes

Planning Commission

12/04/2024	6:00 PM	Hybrid Meeting City Hall Council Chambers/Virtual 1500 Warburton Avenue Santa Clara, CA 95050
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6:00 PM REGULAR MEETING

Call to Order

Chair Saleme called the meeting to order at 6:07 p.m.

Pledge of Allegiance and Statement of Values

Commissioner Cherukuru read the Statement of Values.

Commissioner Crutchlow notified staff that would be arriving late to the meeting. Commissioner Crutchlow arrived at 6:15 p.m.

Roll Call

Present 7 - Commissioner Yashraj Bhatnagar, Commissioner Nancy A. Biagini, Commissioner Priya Cherukuru, Commissioner Qian Huang, Vice Chair Mario Bouza, Chair Lance Saleme, and Commissioner Eric Crutchlow

DECLARATION OF COMMISSION PROCEDURES

Commissioner Cherukuru read the Declaration of Commission Procedures.

CONTINUANCES/EXCEPTIONS

Planning Manager Lesley Xavier announced that staff had received one comment letter on this item, which was at the dais for Commissioners review, and that the letter would be attached to the staff report when the item comes forward to a future Planning Commission meeting.

1. [24-1203](#) CONTINUANCE of an action on a Variance (PLN24-00514) to Locate a Six-Foot Wrought Iron Fence Within the 10-Foot Street Side Setback and Within the 20-Foot Front Setback for a Single-Family Residence at 572 Woodhams Road

Recommendation: Staff recommends that the Planning Commission open the public hearing on this item and then immediately continue the proposed project to the January 15, 2025 Planning Commission meeting.

Public Hearing was opened.

A motion was made by Commissioner Cherukuru, seconded by Commissioner Bhatnagar to approve this item.

Aye: 6 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Cherukuru, Commissioner Huang, Vice Chair Bouza, and Chair Saleme

Absent: 1 - Commissioner Crutchlow

CONSENT CALENDAR

There are no consent items.

PUBLIC PRESENTATIONS

None.

PUBLIC HEARING

2. [24-1194](#) Public Hearing: Action on Conditional Use Permit (PLN23-00148) for a New Unmanned AT&T Telecommunication Facility with the Installation of a 60-Foot-Tall Monotree or an Alternative Design with Three 42'-6" Monopoles Located in the Parking Lot at 3111 Benton Street

Recommendation:

1. **Determine** that the project is categorically exempt from formal environmental review per Section 15303(d), New Construction of Utility Extensions, of the CEQA Guidelines; and
2. **Adopt** a Resolution to approve a Conditional Use Permit for a new unmanned AT&T wireless telecommunication facility with the installation of a 60-foot-tall monotree at 3111 Benton Street, subject to findings and conditions of approval.

Planning Manager Lesley Xavier provided the staff presentation and commented the Commission has heard this item 3 times previously and this hearing is to present the alternative three monopole design.

Steve Proo, representing AT&T provided the applicant presentation. During his presentation, Mr. Proo stated that the noise level at the nearest residences would be between 47 and 49 decibels, which is equivalent to a quiet conversation or a floor fan. He also stated that the proposed installation would comply with FCC Guidelines for radio frequency emissions. A third party engineering firm prepared a report demonstrating that emissions would be approximately 36% of the FCC limit.

Commissioners inquired upon:

- why the monotree would not be moved to the front of the property. **Steve Proo** replied that the property owner expressed they do not want the monotree at the front of the property.
- the height of the proposed monotrees and where else this design has been used.
- expressed concerns regarding the color of the poles (quite dark).
- inquired if Central Park had been considered for the cell tower location.

Steve Proo stated that he received no response from Parks and Recreation on his inquiry after numerous attempts.

Commissioner Saleme stated that the Commission has no purview over health concerns of the monotree and that the public is welcome to speak on other input they have on this item.

Public Speakers:

Lee Benton
Nicholas Rossi
Ken Kratz
Alexandra - provided list of 12 alternate locations
Dino
Diane Harrison

Vignesh

Steve Proo provided applicant rebuttal at 7:01 reviewing the process AT&T undergoes for proposing a cell tower location and that the process started in 2021 and that they have done their due diligence.

Commissioners expressed concerns that Parks and Recreation had not replied to the request. Commissioners inquired if AT&T would be willing to come back to another meeting if Parks and Recreation could provide a reply before the next meeting on the inquiry, **Mr. Proo** replied yes. **Commissioner Bouza** expressed concerns that Parks and Recreation may not be able to provide an easement for this project. **Assistant City Attorney Alexander Abbe** commented that for the City to provide a lease or easement of parkland would be a significant challenge, because the Charter would require voter approval.

Commissioner Huang volunteered to assist with contacting Parks and Recreation on this issue.

Assistant City Attorney Alexander Abbe asked Mr. Proo if he was in agreement to extend the existing shot clock tolling agreement between Cingular Wireless PCS and the City until February 15, 2025, and have this item continued to the January 2025 Planning Commission meeting, and the applicant agreed to the extension of the tolling agreement and the continuance.

Chair Saleme thanked the public for their input on this item.

A motion was made by Commissioner Crutchlow, seconded by Commissioner Cherukuru to continue this item to the January 15, 2025 Planning Commission Meeting.

Aye: 7 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Cherukuru, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

REPORTS OF COMMISSION/BOARD LIAISON AND COMMITTEE:

Meeting went into Recess at 7:40 p.m.

Meeting Reconvened at 7:45 p.m.

1. Announcements/Other Items

A motion was made by Commissioner Cherukuru, seconded by Commissioner Huang to expend funds for 4 Commissioners to attend LCC Planning Commissioners Academy taking place in Santa Rosa March 5-7, 2025.

Aye: 7 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Cherukuru, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

2. Commissioner Travel and Training Reports, Requests to attend Trainings

Staff Aide II Elizabeth Elliott provided details on the upcoming League of California Cities Planning Commissioner Academy.

DIRECTOR OF COMMUNITY DEVELOPMENT REPORTS:

1. Planning Commission Budget Update

Staff Aide II Elizabeth Elliott provided budget updates.

2. Upcoming Agenda Items

Planning Manager Lesley Xavier provided updates.

Commissioner Cherukuru inquired as to what the process is for Mobile Food Trucks to operate in the City.

Planning Manager Lesley Xavier commented she will provide a presentation on this topic.

Commissioner Bhatnagar mentioned that Council approved an increase to utility rates and that at the meeting it was mentioned that 90% of power is utilized by businesses.

Chair Saleme commented that Council did mention at the most recent Council Meeting that Councilmembers mentioned they did not understand why Planning Commissioners had voted against an upcoming data center item recently approved by Council and that he would like better communication with Council on this item and Commissioners commented some of the Planning Commissioner comments on data centers were taken out of context at the Council meeting..

Planning Manager Lesley Xavier reminded Commissioners to send their questions and comments to her in advance of a Data Center Study Session.

Commissioner Crutchlow requested a Study Session on cellular towers and a possible master plan for these projects.

3. City Council Actions

Planning Manager Lesley Xavier provided updates.

ADJOURNMENT:

The meeting adjourned at 8:02 p.m. The next regular scheduled meeting is January 15, 2025 at 6 p.m.

Aye: 7 - Commissioner Bhatnagar, Commissioner Biagini, Commissioner Cherukuru, Commissioner Huang, Vice Chair Bouza, Chair Saleme, and Commissioner Crutchlow

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

STREAMING SERVICES: As always, the public may view the meetings on SantaClaraCA.gov, Santa Clara City Television (Comcast cable channel 15 or AT&T U-verse channel 99), or the livestream on the City's YouTube channel or Facebook page.

Note: The public cannot participate in the meeting through these livestreaming methods; livestreaming capabilities may be disrupted at times, viewers may always view and participate in meetings in-person and via Zoom as noted on the agenda.

If a member of the public submits a speaker card for any agenda items, their name will appear in the Minutes. If no speaker card is submitted, the Minutes will reflect "Public Speaker."

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the City of Santa Clara will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities, and will ensure that all existing facilities will be made accessible to the maximum extent feasible. The City of Santa Clara will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities including those with speech, hearing, or vision impairments so they can participate equally in the City's programs, services, and activities. The City of Santa Clara will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities.

Agendas and other written materials distributed during a public meeting that are public record will be made available by the City in an appropriate alternative format. Contact the City Clerk's Office at 1 408-615-2220 with your request for an alternative format copy of the agenda or other written materials.

Individuals who require an auxiliary aid or service for effective communication, or any other disability-related modification of policies or procedures, or other accommodation, in order to participate in a program, service, or activity of the City of Santa Clara, should contact the City's ADA Coordinator at 408-615-3000 as soon as possible but no later than 48 hours before the scheduled event.



Agenda Report

25-1081

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Approval of the Annual Investment Policy for the City of Santa Clara, its Agencies and Corporations

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

Section 904 of the City Charter states that the Director of Finance is required to “have custody of all investments and invested funds of the City government, or in possession of such government in a fiduciary capacity, and have the safe-keeping of all bonds and notes of the City and the receipt and delivery of City bonds and notes for transfer, registration or exchange.” In accordance with Government Code §53646, the City Council adopted an investment policy (“Investment Policy”), and the Director of Finance brings that policy to City Council on an annual basis, particularly highlighting any changes to the policy for consideration and approval by the City Council. In addition, the Investment Policy itself (Section R) requires annual approval by the City Council.

Council Policy 017 (Investment Policy: Annual Statement) provides the framework and guidance for managing investment portfolio of the City of Santa Clara, its agencies and corporations (collectively referred to as “City”). The Investment Policy expands on this Council Policy by providing further guidance and processes.

The Investment Policy is a written document that governs the selection of investments and provides staff with guidance for consistent, informed investment decision making, which applies to all investable assets of the City of Santa Clara, its subsidiaries, the Successor Agency for the Redevelopment Agency of the City of Santa Clara, the Sports and Open Space Authority, the Stadium Authority, and the Housing Authority, except if otherwise specified. As required by Government Code §53600.5, the Investment Policy also makes clear its investment objectives, which are, in order of priority, 1) safety of principal, 2) liquidity, and 3) return on investment. The Investment Policy is reviewed and updated annually in order to promote prudent investment decisions and to remain compliant with State and Federal laws.

DISCUSSION

The City’s Investment Policy is regularly reviewed to determine if periodic updates are necessary and prudent. As part of this review, staff recommends the following key updates to the 2025 Investment Policy:

1. Increase Maximum per Issuer allowable portfolio percentage holdings in Mortgage-Backed Securities (MBS) and Collateralized Mortgage Obligations (CMO) issued or guaranteed by the U.S. government or any agency or instrumentality thereof from 5% to 10% of portfolio dollars.

The increase provides opportunities to further diversify the portfolio when this class of security presents relative value.

Section H. Authorized and Suitable Investments (page 4)

2. Add new Section I - Investment Pools. This new Section details an extensive due diligence review process prior to investing in Investment Pools. This conforms to best practices in accordance with California Municipal Treasurers Investment (CMTA) guidelines.

Section I. Investment Pools (page 8)

3. Retitle section previously named "Security Downgrades" to "Review of Investment Portfolio and Security Downgrades" which formalizes the practice of reviewing the portfolio quarterly. This also conforms to CMTA guidelines.

Section J. Review of Investment Portfolio and Security Downgrades (page 8)

The approved Investment Policy will be included in the City of Santa Clara Council Policy Manual as Council Policy 017 (Attachment 1) and published on the City's website.

The Investment Policy (Attachment 2 - redline and Attachment 3) as submitted is in compliance with the City Charter and applicable state law.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to section 15378(b)(5) of Title 14 of the California Code of Regulations in that it is an administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Approve in the form presented the updated Annual Investment Policy for the City of Santa Clara, its Agencies and Corporations.

Reviewed by: Kenn Lee, Director of Finance
Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. Council Policy 017 Investment Policy: Annual Statement
2. Investment Policy 2025 (redline)
3. Investment Policy 2025



INVESTMENT POLICY: ANNUAL STATEMENT

PURPOSE

To provide the framework and guidance for managing the City's investment portfolio. It is the policy of the City of Santa Clara (City) to invest public funds, including bond proceeds, reserves and other special City funds, in a manner that maximizes safety and liquidity while earning a market rate of return commensurate with the investment risk; meets the daily cash flow demands of the City; and conforms to all state and local statutes governing the investment of public funds.

POLICY

The investment policy of the City (the "Investment Policy") is intended to provide for the prudent and efficient investment of the City's temporarily idle cash while safely maximizing returns within carefully defined investment parameters. The City shall invest public funds, including bond proceeds, reserves and other special City funds, in a manner consistent with this Investment Policy while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds.

Authority, Scope and Prudence

- **Authority** - The City Charter, Article IX, Section 904 gives the Director of Finance (the "Director") the authority and responsibility to deposit and invest all City funds.
- **Scope** - The Investment Policy applies to all deposits, investments and other assets of the City, its subsidiaries, the Successor Agency for the Redevelopment Agency of the City of Santa Clara, the Sports and Open Space Authority, the Stadium Authority, and the Housing Authority.
- **Prudence** - Employees delegated responsibility for the investment of public monies by the Director ("Investment Personnel"), as trustees of public monies, shall adhere to the "prudent investor" standard when managing the City's funds in light of the purposes, terms, and other circumstances of the City. Investment Personnel shall refrain from engaging in any activity that impairs, or has the potential to impair, their ability to make impartial investment decisions for the City.

PROCEDURE

Investment Objectives and Criteria

The primary objectives, in priority order, of the City's investment activities shall be safety, liquidity, and yield.

Internal Controls

The City's Finance Department shall establish internal controls that are designed to prevent losses due to fraud, negligence, third-party misrepresentation, and



INVESTMENT POLICY: ANNUAL STATEMENT

other foreseeable circumstances that may arise in the operations of the investment function. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

Reporting

The Director of Finance shall provide periodic investment reports to the City Council. The reports shall contain, but not be limited to, the following:

- A listing of individual securities held at the end of the reporting period by authorized investment category.
- The rate of return on the unrestricted investment portfolio compared to selected benchmark.
- Final maturity of all investments listed.
- Weighted average maturity of the unrestricted investment portfolio.
- Coupon, discount or earnings rate.
- Par value, amortized book value and market value.
- Percentage of the portfolio represented by each investment category.

Investment Policy Adoption

The Investment Policy shall be reviewed annually by the City Council and any modifications made thereto must be approved by the City Council.

Attachments:

1. Investment Policy



CITY OF SANTA CLARA INVESTMENT POLICY

A. Introduction

The investment policy of the City of Santa Clara (the “Investment Policy”) is intended to provide for the prudent and efficient investment of the City of Santa Clara's temporarily idle cash while safely maximizing returns within carefully defined investment parameters. The City of Santa Clara (the “City”) shall invest public funds, including bond proceeds, reserves and other special City funds, in a manner consistent with this Investment Policy while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds.

It is the City's full intent, at the time of purchase, to hold all investments until maturity. Through the maintenance of sufficient diversification of investments of varying maturities, the forced liquidation of investments at a loss shall be avoided, if at all possible. However, securities may be sold prior to maturity to adjust the portfolio duration or improve the risk structure, liquidity, or yield of the portfolio.

For a list of terms and definitions commonly used in cash management, see “Appendix A - Glossary of Cash Management Terms”.

B. Authority, Scope and Prudence

- **Authority** - California Government Code Section 53607 gives the legislative body of a California local agency the authority to delegate the responsibility to invest or reinvest the funds of the local agency to a designated official. The City of Santa Clara Charter, Article IX, Section 904 gives the Director of Finance (the “Director”) the authority and responsibility to deposit and invest all City funds. It authorizes the Director to invest the City's idle cash in allowable investment vehicles with a maximum remaining maturity of five years at the time of purchase. The City Council may grant express authority either specifically or as part of an approved investment program to invest in securities with remaining maturities that exceed the five-year restriction. Authority must be given to the Director at least three months prior to the investment. California Government Code Section 53601 also allows the City to invest in the same investment securities as authorized by the City Council.
- **Scope** - The Investment Policy applies to all deposits, investments and other assets of the City, its subsidiaries, the Successor Agency for the Redevelopment Agency of the City of Santa Clara, the Sports and Open Space Authority, the Stadium Authority, and the Housing Authority, except otherwise specified. These funds are reported in the City's Annual Comprehensive Financial Report and include the General Fund, Special Revenue Funds, Debt Service Funds, Capital Project Funds, Trust and Agency Funds, and Enterprise Funds. Deposit of funds is in accordance with the provision of the State Constitution and the laws of the State of California (Government Code Sections 53601 and 53635) governing the handling, depositing and securing of public funds. Investment of City issued debt proceeds and debt reserve funds are separately governed by individual bond indentures adopted by the City Council.

Investment of the Forrest and Evalyne Bentzien Trust Fund is governed by the Agreement By and Between the City of Santa Clara, California and the Mission City Community Fund Regarding the Investment, Disbursement and Distribution of Funds in the Forrest and Evalyne Bentzien Non-Expendable Trust Fund approved by City Council and dated July 25, 2000 (the “Bentzien Trust Fund



Agreement”), and is not subject to the provisions of this Investment Policy. The Bentzien Trust Fund Agreement defines the rights and responsibilities of the City in its capacity as Trustee and the Mission City Community Fund as the beneficiary of the Trust, to assure compliance with the California Probate Code and the Evalyne Bentzien Will.

- **Prudence** - Employees delegated responsibility for the investment of public monies by the Director (“Investment Personnel”), as trustees of public monies, shall adhere to the “prudent investor” standard when managing the City’s funds in light of the purposes, terms, and other circumstances of the City. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments in the context of the total portfolio and as part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the City. Duties must be performed with the care, prudence and diligence that a person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the City.

Investment Personnel shall refrain from engaging in any activity that impairs, or has the potential to impair, their ability to make impartial investment decisions for the City.

Investment Personnel acting in accordance with written procedures and the Investment Policy and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

C. Investment Objectives and Criteria

The primary objectives, in priority order, of the City’s investment activities shall be:

- **Safety** - Safety of principal is the foremost objective of the investment program. Investment of City funds shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The City shall diversify its investments by investing funds among a variety of financial institutions and securities offering independent returns, all in accordance with this Investment Policy.
- **Liquidity** - The investment portfolio will remain sufficiently liquid to enable the City to meet all cash needs, which may be reasonably anticipated, for the operation of the City.
- **Yield** - The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow characteristics of the portfolio.

D. Delegation of Authority

Authority to manage the City’s banking depository and investment program is derived from the City Charter. Management responsibility for the banking depository and investment program is hereby delegated to the Director of Finance who shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities and procedures of Investment Personnel.

The City may engage the services of an external investment manager to assist in the management of the City’s investment portfolio in a manner consistent with the City’s objectives (“External Investment Manager”). The External Investment Manager may be granted discretion to purchase and sell investment securities in accordance with the State Constitution, the laws of the State of California and this Investment Policy. Any External



Investment Manager must be registered under the Investment Advisers Act of 1940 and shall act as a fiduciary to the City.

E. Ethics and Conflicts of Interest

Officers and Investment Personnel involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program-or impair their ability to make impartial investment decisions. Officers and Investment Personnel shall disclose in their annual conflict of interest statement all material financial interests in financial institutions that conduct business within the City, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City.

F. Authorized Financial Institutions

The Director of Finance, or his/her designee, shall maintain a list of financial institutions and broker/dealers authorized to provide investment services to the City ("Authorized Financial Institutions"). Authorized Financial Institutions must be authorized to provide investment services in the State of California and may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by State laws.

All financial institutions and broker/dealers who desire to become an Authorized Financial Institution must provide audited financial statements, proof of required licenses or registration, and written confirmation that they have read and shall abide by the City's Investment Policy.

Authorized Financial Institutions shall be expected to actively participate in the bid/offer process for securities in which they are market makers. In addition, it will be expected that the Authorized Financial Institutions will be able to fill the entire order being solicited and that there shall be no delay in completing the transaction on the contractual settlement date.

The Director of Finance, or his/her designee, periodically reviews the financial conditions and registrations of financial institutions and broker/dealers that deal with the City. The City is under no obligation to transact business with any financial institution and may at any time remove a financial institution from the list of Authorized Financial Institutions at the City's discretion.

If the City has contracted with an External Investment Manager, the External Investment Manager may use their own list of approved issuers, brokers/dealers and financial institutions ("Investment Manager Authorized Institutions") to conduct transactions on the City's behalf. All due diligence regarding Investment Manager Authorized Institutions shall be the responsibility of the External Investment Manager, if applicable.

G. Competitive Bidding Process

When practicable, Investment Personnel of the City and any External Investment Manager shall enter into transactions for the purchase or sale of securities on a competitive bid basis, seeking offers or bids from at least three authorized broker/dealers or Investment Manager Authorized Institutions, respectively. From time to time the City may enter into transactions involving securities for which there is not an active secondary market or where other Authorized Financial Institutions do not have the security available for sale and therefore, competitive bidding is not available. If competitive bidding on a security is not practicable or possible, Investment Personnel or any External Investment Manager will seek to verify pricing by other reasonable means.

The bidding process shall be fully documented for all transactions and complete records shall be available for audit and reporting purposes.



In all cases, placement shall be made consistent with the safety, liquidity and yield objectives of this Investment Policy.

H. Authorized and Suitable Investments

Special care must be taken to ensure that the list of instruments includes only those allowed by law and those that local investment managers are trained and competent to handle. The City is empowered by the State of California Government Code and the City Charter to invest in the following types of securities. Additionally, bond proceeds are invested in accordance with the requirements outlined in the specific bond indenture of trust. All percentage limitations and credit criteria apply at time of purchase.

➤ ***U.S. Treasury Bills, Notes and Bonds and Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government***

- Maximum Holdings = 100% of portfolio dollars
- Maximum per Issuer = 100% of portfolio dollars
- Maximum Maturity = 7 year final maturity

➤ ***U.S. Government Agency Securities*** (exclusive of Agency MBS or CMO Securities, see below category) such as the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Farm Credit Bank (FFCB), local agencies, and other U. S. government-sponsored enterprises. These investments must be rated in the top three rating categories by two of the three largest nationally recognized statistical rating organizations (NRSROs).

- Maximum Holdings = 80% of portfolio dollars
- Maximum per Issuer = 40% of portfolio dollars
- Maximum Callable = 30% of portfolio dollars
- Maximum Maturity = 7 year final maturity

➤ ***Mortgage-Backed Securities (MBS) and Collateralized Mortgage Obligations (CMO)*** issued or guaranteed by the United States of America or any agency or instrumentality (including government sponsored enterprises) of the United States of America. Defined as a mortgage passthrough security, collateralized mortgage obligation, or mortgage-backed bond). Securities eligible for investment under this subdivision shall be rated AA or its equivalent or better by an NRSRO and rated no lower than AA by any NRSRO.

- Maximum Holdings = 15% of portfolio dollars
- Maximum per Issuer = ~~5~~10% of portfolio dollars
- Maximum Weighted Average Life with Current Public Securities Association (PSA) Prepayment Assumptions = 12 years at time of purchase for MBS and 6 years at time of purchase for CMO
- Maximum Final Maturity for MBS's and CMO's = 30 years with balloon payments considered final

At the time of purchase, a CMO must pass the “high-risk” test, using current prepayment assumptions, mandated by the Federal Financial Institution Examination Council (the “FFIEC”) for U.S. Depository Institution investment holdings. Prohibited CMO securities are Interest Only (IO), Principal Only (PO), Residuals and Inverse Floaters. CMO issues must be a Sequential Pay (SEQ), a Planned Amortization Class (PAC), a Very Accurately Defined Maturity (VADM) class or a pass-through CMO.



- **Negotiable Certificates of Deposit** issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or by a federally licensed or by a state-licensed branch of a foreign bank. CDs eligible for investment under this subdivision shall be rated A or its equivalent or better by at least one NRSRO and no lower than A by any NRSRO or if the CD has a maturity less than 1 year then shall be rated A-1 or better by at least one NRSRO and rated no lower than A-1 by any NRSRO.

Maximum Holdings = 30% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 5 year final maturity

- **Bankers Acceptances** otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank.

Maximum Holdings = 25% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 180 days

- **Commercial Paper** of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by an NRSRO. The entity that issues the commercial paper shall meet all of the conditions in either paragraph (1) or (2) below:

1. The entity meets the following criteria:
 - a. Is organized and operating in the United States as a general corporation.
 - b. Has total assets in excess of five hundred million dollars (\$500,000,000).
 - c. Has debt other than commercial paper, if any, that is rated in a rating category of A or its equivalent or higher by an NRSRO.
2. The entity meets the following criteria:
 - a. Is organized within the United States as a special purpose corporation trust, or limited liability company.
 - b. Has program-wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond.
 - c. Has commercial paper that is rated A-1 or higher, or the equivalent, by an NRSRO.

Maximum Holdings = 25% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars and no more than 10% of the outstanding commercial paper of any single issuer
 Maximum Maturity = 270 days

- **Local Agency Investment Fund of the State of California.** Purchases may be made up to the maximum amount allowed by the State of California. Securities owned in the Local Agency Investment Fund of the State of California will not count towards maximum percentages of other categories.
- **Repurchase Agreements** subject to requirements of the California Government Code Section 53601(j). A Master Repurchase Agreement must be signed with the counterparty. The market value of securities that underlay a repurchase agreement shall be maintained at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted on a daily basis.



Maximum Holdings = 50% of portfolio dollars
 Maximum per Issuer = 20% of portfolio dollars
 Maximum Maturity = 60 days

- **Reverse Repurchase Agreements.** Reverse repurchase agreements with the prior approval of the City Council and subject to requirements of the California Government Code Sections 53601(j).

Maximum Holdings = 20% of portfolio dollars
 Maximum per Issuer = 10% of portfolio dollars
 Maximum Maturity = 92 days

- **Municipal Obligations**, including: (1) bonds, notes, warrants and other evidences of indebtedness of any local agency within California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency, (2) registered state warrants or treasury notes or bonds of the state of California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state, and (3) registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California. These investments shall be rated A or its equivalent or better by at least one NRSRO and rated no lower than A by any NRSRO.

Maximum Holdings = 20% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 7 year final maturity

- **Medium Term Corporate Notes** defined as all corporate and depository institution debt securities issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated A or its equivalent or better by at least one NRSRO and rated no lower than A- by any NRSRO.

Maximum Holdings = 25% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 5 year final maturity

- **Supranational Obligations** defined as United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated AA or its equivalent or better by an NRSRO and rated no lower than AA by any NRSRO.

Maximum Holdings = 20% of portfolio dollars
 Maximum per Issuer = 10% of portfolio dollars
 Maximum Maturity = 5 year final maturity

- **Asset-Backed Securities** defined as an equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond. Securities eligible for investment under



this subdivision shall be rated AA or its equivalent or better by an NRSRO and rated no lower than AA by any NRSRO.

- Maximum Holdings = 10% of portfolio dollars
- Maximum per Issuer = 5% of portfolio dollars
- Maximum Maturity = Maximum remaining maturity of 5 years or less

➤ **Non-negotiable Certificates of Deposit** of a public bank, as defined in State of California Government Code Section 57600 and pursuant to collateralization requirements of this Investment Policy.

- Maximum Holdings = 10% of portfolio dollars
- Maximum per Issuer = 5% of portfolio dollars
- Maximum Maturity = 5 year final maturity

➤ **Mutual Funds and Money Market Funds** consisting of investment vehicles permitted under Sections 53601 and 53635 of the California Government Code. To be eligible for City investments, mutual funds shall have the following:

1. The highest rating provided by not less than two of the three largest NRSROs.
2. An investment advisor registered with the Securities and Exchange Commission for not less than five years having investment experience in the underlying securities and with assets under management in excess of \$500 million.
3. The purchase price of the shares shall not include any commission fees.

Money Market Funds must meet either 1 or 2 above and 3. A thorough analysis of the pool/fund is required prior to investing, and on a continual basis. Analysis shall include creditworthiness, size, safety, ease of investment liquidation, frequency of earnings distributions, frequency of account statements, and investment portfolio strategy. Securities owned in mutual funds and investment pools will not count towards maximum percentages of other categories.

- Maximum Holdings = 20% of portfolio dollars
- Maximum per Fund = 10% of portfolio dollars

➤ **Joint Powers Authority Investment Pools** organized pursuant to Section 6509.7 that invests in the securities and obligations under Sections 53601 of the California Government Code. To be eligible for City investments, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

1. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
2. The adviser has not less than five years of experience investing in the securities and obligations authorized in under Section 53601.
3. The adviser has assets under management in excess of \$500 million.

- Maximum Holdings = 100% of portfolio dollars
- Maximum per Issuer = 100% of portfolio dollars



I. Investment Pools

The City will complete due diligence for any pooled investments the City invests in. The Director of Finance or his/her designee will collect and evaluate the following information for each fund prior to investment:

- Permitted investments and objectives
- Description of interest calculation
- Method/frequency of interest distribution
- Treatment of gains/losses
- Method/frequency of audits
- Description of eligible investors
- Limits/minimum account sizes, types of assets, transaction sizes, and number of transactions
- Limits on withdrawals
- Frequency of statements and reporting of underlying investments
- Reserves or retained earnings
- Fee schedules

J. Review of Investment Portfolio and Security Downgrades

The portfolio shall be reviewed quarterly to determine that all securities held by the City are in compliance with this Policy.

If securities owned by the City are downgraded to a level below the quality required for purchase under this Investment Policy, the Director of Finance, or his/her designee, shall review the credit situation and make a determination as to whether to sell or retain such securities in the portfolio. Such determination shall be documented and approved by the Director of Finance.

K. Sustainable Investing

The City desires to invest in entities that support community well-being through environmentally and socially sound practices and fair labor practices and equality of rights regardless of sex, race, age, disability, or sexual orientation. To meet these environmental and social investment goals the City or External Investment Manager shall apply the following criteria to investment selection:

The City's portfolio shall not include investment in companies in the industries or subindustries listed below. Where industry/subindustry classifications are not applicable, the City shall avoid investing in companies whose primary business involves one or more of the business activities detailed below. The City's External Investment Manager shall provide the City information on their screening process.

- Fossil Fuel Extraction, Refining, and Distribution
- Tobacco Manufacturing and Production
- Firearms Manufacturing



L. Collateralization

Collateralization with marketable securities will be required on non-negotiable certificates of deposit and repurchase (and reverse repurchase) agreements in accordance with California Government Code Section 53601 and 53630 et seq. In order to anticipate market changes and provide a level of security for all funds, the collateralization level shall be at least 102% of market value of principal and accrued interest for repurchase (and reverse repurchase) agreements and at least 110% of market value for non-negotiable certificates of deposit. The City reserves the right to require additional collateral if the City believes such additional amount is warranted. The City may waive the collateralization requirements for any portion of the deposit that is covered by Federal Deposit Insurance.

Collateral shall always be held by an independent third party with whom the City or the counterparty has a current custodial agreement. Clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained. The counterparty shall have the right to substitute substantially the same securities as originally deposited as collateral.

M. Safekeeping and Custody

All security transactions, including collateral for repurchase agreements, entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis. Securities shall be held by a third party custodian designated by the Director of Finance, or his/her designee, and evidenced by safekeeping receipts.

N. Diversification

The City will diversify its investments by security type and institution. Maximum percentage holdings for each security type and institution shall conform to this Investment Policy and the maximum allowed under the California Government Code Section 53601.

The minimum percentage of securities portfolio holdings for U.S. Treasury Bills, Notes and Bonds and Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government; U.S. Government Agency Securities (not including MBS and CMO), and Municipal Obligations shall be 30%, combined.

All percentage restrictions on authorized investments are based on the cost value of the portfolio as of the trade date of the investment. In the event that portfolio percentage restrictions are violated due to a reduction in cost value of the portfolio, the City may, but will not be required to, liquidate securities to meet the maximum holdings requirements.

O. Maximum Term of Investment

To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. Effective 2022, the City is authorized, per California Government Code Section 53601, to purchase securities maturing more than five years from the date of purchase for the following investment types: (a) U.S. Treasury Bills, Notes and Bonds and Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government, (b) U.S. Government Agency Securities (including MBS and CMO), and (c) Municipal Obligations. For purposes of compliance with this Policy, an investment's term or remaining maturity shall be measured from the settlement date to final maturity. A security purchased shall not have a forward settlement date exceeding 45 days from the time of investment.

No greater than 30% of the portfolio's cost value may include securities with a final maturity greater than five (5) years at any time.



P. Internal Controls

The City's Finance Department shall establish internal controls that are designed to prevent losses due to fraud, negligence, third-party misrepresentation, and other foreseeable circumstances that may arise in the operations of the investment function. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- **Collusion** - Collusion is a situation where two or more employees are working together to defraud their employer.
- **Separation of duties** - By separating the persons who perform and authorize the transactions from the people who record or otherwise account for the transactions, a separation of duties is achieved.
- **Safekeeping** - Securities purchased from any broker or dealer shall be placed with the City's depository bank in its trust department for safekeeping. Securities shall be held in a manner that establishes the City's right of ownership. Evidence of ownership shall be demonstrated by a monthly safekeeping statement which shall be reconciled on a timely basis to internal holding reports.
- **Clear Delegation of Authority** - Subordinate staff members must have a clear understanding of their authority and responsibility to avoid improper actions.
- **Written Confirmation** - Due to the potential for error arising from telephone transactions, all telephone transactions shall be supported by written communications and approved by appropriate Investment Personnel.
- **Delivery** - Where applicable, investment transactions of the City shall be conducted using standard delivery-vs-payment procedures.
- **Daily Procedures** - Detailed written procedures shall be created and regularly maintained so that critical investment functions may be performed in the absence of the person normally responsible for performing such work. The procedures should include reference to custody and safekeeping, wire transfer agreements, banking service contracts and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in a depository or investment transaction except as provided under the terms of this Investment Policy and the procedures established by the Director of Finance.
- **Annual Audit** - On an annual basis, the City's financial statements and business practices are audited by an external auditor. Included in the annual audit shall be testing of the City's compliance with the Investment Policy.

Q. Performance Standard

As preservation of capital is the City's top priority, the City's investment strategy shall assume that an investment is being held to maturity or other redemption date as set forth in the security's official offering documentation (i.e., callable securities). Trading in response to economic conditions and market valuations will be permitted in



response to changing market conditions; to improve the quality, yield, or target duration in the portfolio; address a liquidity need of the portfolio; or to remove a security with a declining credit or financial outlook.

The City also recognizes the importance of obtaining an adequate rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and cash flow requirements. The performance of the long-term securities portfolio managed by External Investment Manager shall be compared to a benchmark established by the Director of Finance. The benchmark shall reflect the objectives, strategy, and goals of the City's investment program.

- The benchmark is the ICE BaML 1-5 Year US Treasury Index.

In accordance with generally accepted accounting principles, the City or the External Investment Manager, if any, shall mark-to-market investments on a monthly basis using an independent pricing source. Market values will be looked upon as indications of market movements and volatility in making investment decisions rather than an indication of performance.

R. Reporting

The Director of Finance shall provide ~~periodic~~monthly investment reports to the City Council. The reports shall contain, but not be limited to, the following:

- A listing of individual securities held at the end of the reporting period by authorized investment category.
- [A listing of transactions pursuant to California Government Code 53607.](#)
- The performance of the portfolio compared to the established benchmark.
- Final maturity of all investments listed.
- Weighted average maturity of the unrestricted investment portfolio.
- Coupon, discount or earnings rate.
- Par value, cost value and market value.
- Percentage of the portfolio represented by each investment category.

S. Investment Policy Adoption

The Investment Policy shall be reviewed annually by the City Council and any modifications made thereto must be approved by the City Council.



APPENDIX A

GLOSSARY OF CASH MANAGEMENT TERMS

AGENCIES: A debt security issued by a federal or federally sponsored agency. Federal agencies are backed by the full faith and credit of the U.S. Government. Federally sponsored agencies (FSAs) are backed by each particular agency with a market perception that there is an implicit government guarantee. An example of a federal agency is the Government National Mortgage Association (GNMA). An example of an FSA is the Federal National Mortgage Association (FNMA).

ASK: The price at which securities are offered.

BANKERS' ACCEPTANCE (BA): A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BASIS POINT: A unit of measurement used in the valuation of fixed-income securities equal to 1/100 of 1 percent of yield (e.g., 1/4 of 1 percent is equal to 25 basis points).

BID: The price offered by a buyer of securities. (When you are selling securities you ask for a bid.) See Offer.

COST VALUE: The value at which a security is carried on the financial records of an investor. The cost value may differ significantly from the security's current value in the market.

BROKER: A broker brings buyers and sellers together for a commission.

CALLABLE BOND: A bond issue in which all or part of its outstanding principal amount may be redeemed prior to maturity by the issuer under specified conditions.

CALL PRICE: The price at which an issuer may redeem a bond prior to maturity.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMMERCIAL PAPER: Short-term obligations with maturity ranging from 2 to 270 days issued by banks, corporations, and other borrowers to investors with temporarily idle cash. Such instruments are unsecured and usually discounted, although some are interest-bearing.

COUPON: Interest rate on a debt security the issuer promises to pay to the holder until maturity, expressed as an annual percentage of face value.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT (DVP): There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DERIVATIVES: (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT RATE: Interest rate that the Federal Reserve charges member banks for loans, using government securities or eligible paper as collateral.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

DISCOUNT YIELD: Yield on a security sold at a discount.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits.

FEDERAL FUNDS (FED FUNDS): Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend Fed Funds to each other overnight or on a longer term basis. Depository institutions may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed Funds are considered to be immediately available funds.

FEDERAL FUNDS RATE: The rate of interest at which Federal Funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): Government sponsored wholesale banks which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLBs is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

FEDERAL FARM CREDIT BANK (FFCB): The Federal Farm Credit Banks Funding Corporation is an integral part of the Farm Credit System, a leading provider of loans, leases and services to U.S. agriculture and rural America. FFCB is a government-sponsored enterprise that consolidates the financing activities of the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives.

FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC): A publicly chartered agency that buys qualifying residential mortgages from lenders, packages them into new securities backed by those pooled mortgages, provides certain guarantees, and then resells the securities on the open market. FHLMC's stock is owned by savings institutions across the U.S. and is held in trust by the FHLB System.



FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA or Fannie Mae): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holders are protected by the full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FmHA mortgages. The term "pass-throughs" is often used to describe Ginnie Maes.

GUARANTEED INVESTMENT CONTRACT (GIC): A contract between an insurance company and a corporate profit-sharing or pension plan that guarantees a specific rate of return on the invested capital over the life of the contract.

IDLE FUNDS: Money in the treasury not required for the immediate needs of the local agency.

INVESTMENT-GRADE OBLIGATIONS: An investment instrument suitable for purchase by institutional investors under the prudent investor rule. Investment-grade is restricted to those obligations rated BBB or higher by a rating agency.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase---reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement often specifies, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.



MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, banker's acceptances, etc.) are issued and traded.

NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO): A credit rating agency that issues credit ratings that the U.S. Securities and Exchange Commission permits other financial firms to use for certain regulatory purposes.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Ask and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PREMIUM: The amount by which the price paid for a security exceeds the security's par value.

PORTFOLIO: A combined holding of a variety of investments. The purpose of a portfolio is to reduce risk by diversification.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include the Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRIMARY MARKET: A market for new issues of securities. A market is primary if the proceeds of sales go to the issuer of the securities sold.

PRIME RATE: A preferred interest rate charged by commercial banks to their most creditworthy customers. Many interest rates are keyed to this rate.

PRINCIPAL: The face value or par value of a debt instrument.

PRUDENT INVESTOR RULE: A guideline that states that a fiduciary must consider the needs of the beneficiaries, the provision of regular income, minimize risk and preserve assets. The Prudent Investor Rule applies to the investment decision-making process and no single investment decision should be judged in isolation, but rather as part of the entire portfolio. The Prudent Investor Rule mandates fiduciaries apply the principle of diversification when constructing portfolios.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price.

REPURCHASE AGREEMENT (RP or REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him/her for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money that is, increasing bank services.



SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vault for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES AND EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

STRUCTURED NOTES: Notes issued by Government Sponsored Enterprises (FHLB, FNMA, etc.) and Corporations that have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months or one year.

TREASURY BONDS: Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturity more than ten years.

TREASURY NOTES: Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturity from two to ten years.

WEIGHTED AVERAGE MATURITY (WAM): The average maturity of all the securities that comprise a portfolio.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in the purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

YIELD-TO-CALL (YTC): The rate of return an investor earns from a security assuming the security is redeemed (called) prior to its stated final maturity date.

YIELD-TO-MATURITY (YTM): The rate of return an investor earns on a security held to maturity when both interest payments and the investor's potential capital gain or loss are included in the calculation of return.



City of Santa Clara

2025

Investment Policy



**City of
Santa Clara**



CITY OF SANTA CLARA INVESTMENT POLICY

A. Introduction

The investment policy of the City of Santa Clara (the “Investment Policy”) is intended to provide for the prudent and efficient investment of the City of Santa Clara's temporarily idle cash while safely maximizing returns within carefully defined investment parameters. The City of Santa Clara (the “City”) shall invest public funds, including bond proceeds, reserves and other special City funds, in a manner consistent with this Investment Policy while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds.

It is the City's full intent, at the time of purchase, to hold all investments until maturity. Through the maintenance of sufficient diversification of investments of varying maturities, the forced liquidation of investments at a loss shall be avoided, if at all possible. However, securities may be sold prior to maturity to adjust the portfolio duration or improve the risk structure, liquidity, or yield of the portfolio.

For a list of terms and definitions commonly used in cash management, see “Appendix A - Glossary of Cash Management Terms”.

B. Authority, Scope and Prudence

- **Authority** - California Government Code Section 53607 gives the legislative body of a California local agency the authority to delegate the responsibility to invest or reinvest the funds of the local agency to a designated official. The City of Santa Clara Charter, Article IX, Section 904 gives the Director of Finance (the “Director”) the authority and responsibility to deposit and invest all City funds. It authorizes the Director to invest the City's idle cash in allowable investment vehicles with a maximum remaining maturity of five years at the time of purchase. The City Council may grant express authority either specifically or as part of an approved investment program to invest in securities with remaining maturities that exceed the five-year restriction. Authority must be given to the Director at least three months prior to the investment. California Government Code Section 53601 also allows the City to invest in the same investment securities as authorized by the City Council.
- **Scope** - The Investment Policy applies to all deposits, investments and other assets of the City, its subsidiaries, the Successor Agency for the Redevelopment Agency of the City of Santa Clara, the Sports and Open Space Authority, the Stadium Authority, and the Housing Authority, except otherwise specified. These funds are reported in the City's Annual Comprehensive Financial Report and include the General Fund, Special Revenue Funds, Debt Service Funds, Capital Project Funds, Trust and Agency Funds, and Enterprise Funds. Deposit of funds is in accordance with the provision of the State Constitution and the laws of the State of California (Government Code Sections 53601 and 53635) governing the handling, depositing and securing of public funds. Investment of City issued debt proceeds and debt reserve funds are separately governed by individual bond indentures adopted by the City Council.

Investment of the Forrest and Evalyne Bentzien Trust Fund is governed by the Agreement By and Between the City of Santa Clara, California and the Mission City Community Fund Regarding the Investment, Disbursement and Distribution of Funds in the Forrest and Evalyne Bentzien Non-Expendable Trust Fund approved by City Council and dated July 25, 2000 (the “Bentzien Trust Fund



Agreement”), and is not subject to the provisions of this Investment Policy. The Bentzien Trust Fund Agreement defines the rights and responsibilities of the City in its capacity as Trustee and the Mission City Community Fund as the beneficiary of the Trust, to assure compliance with the California Probate Code and the Evalyne Bentzien Will.

- **Prudence** - Employees delegated responsibility for the investment of public monies by the Director (“Investment Personnel”), as trustees of public monies, shall adhere to the “prudent investor” standard when managing the City’s funds in light of the purposes, terms, and other circumstances of the City. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments in the context of the total portfolio and as part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the City. Duties must be performed with the care, prudence and diligence that a person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the City.

Investment Personnel shall refrain from engaging in any activity that impairs, or has the potential to impair, their ability to make impartial investment decisions for the City.

Investment Personnel acting in accordance with written procedures and the Investment Policy and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

C. Investment Objectives and Criteria

The primary objectives, in priority order, of the City’s investment activities shall be:

- **Safety** - Safety of principal is the foremost objective of the investment program. Investment of City funds shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The City shall diversify its investments by investing funds among a variety of financial institutions and securities offering independent returns, all in accordance with this Investment Policy.
- **Liquidity** - The investment portfolio will remain sufficiently liquid to enable the City to meet all cash needs, which may be reasonably anticipated, for the operation of the City.
- **Yield** - The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow characteristics of the portfolio.

D. Delegation of Authority

Authority to manage the City’s banking depository and investment program is derived from the City Charter. Management responsibility for the banking depository and investment program is hereby delegated to the Director of Finance who shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities and procedures of Investment Personnel.

The City may engage the services of an external investment manager to assist in the management of the City’s investment portfolio in a manner consistent with the City’s objectives (“External Investment Manager”). The External Investment Manager may be granted discretion to purchase and sell investment securities in accordance with the State Constitution, the laws of the State of California and this Investment Policy. Any External



Investment Manager must be registered under the Investment Advisers Act of 1940 and shall act as a fiduciary to the City.

E. Ethics and Conflicts of Interest

Officers and Investment Personnel involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program-or impair their ability to make impartial investment decisions. Officers and Investment Personnel shall disclose in their annual conflict of interest statement all material financial interests in financial institutions that conduct business within the City, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City.

F. Authorized Financial Institutions

The Director of Finance, or his/her designee, shall maintain a list of financial institutions and broker/dealers authorized to provide investment services to the City ("Authorized Financial Institutions"). Authorized Financial Institutions must be authorized to provide investment services in the State of California and may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by State laws.

All financial institutions and broker/dealers who desire to become an Authorized Financial Institution must provide audited financial statements, proof of required licenses or registration, and written confirmation that they have read and shall abide by the City's Investment Policy.

Authorized Financial Institutions shall be expected to actively participate in the bid/offer process for securities in which they are market makers. In addition, it will be expected that the Authorized Financial Institutions will be able to fill the entire order being solicited and that there shall be no delay in completing the transaction on the contractual settlement date.

The Director of Finance, or his/her designee, periodically reviews the financial conditions and registrations of financial institutions and broker/dealers that deal with the City. The City is under no obligation to transact business with any financial institution and may at any time remove a financial institution from the list of Authorized Financial Institutions at the City's discretion.

If the City has contracted with an External Investment Manager, the External Investment Manager may use their own list of approved issuers, brokers/dealers and financial institutions ("Investment Manager Authorized Institutions") to conduct transactions on the City's behalf. All due diligence regarding Investment Manager Authorized Institutions shall be the responsibility of the External Investment Manager, if applicable.

G. Competitive Bidding Process

When practicable, Investment Personnel of the City and any External Investment Manager shall enter into transactions for the purchase or sale of securities on a competitive bid basis, seeking offers or bids from at least three authorized broker/dealers or Investment Manager Authorized Institutions, respectively. From time to time the City may enter into transactions involving securities for which there is not an active secondary market or where other Authorized Financial Institutions do not have the security available for sale and therefore, competitive bidding is not available. If competitive bidding on a security is not practicable or possible, Investment Personnel or any External Investment Manager will seek to verify pricing by other reasonable means.

The bidding process shall be fully documented for all transactions and complete records shall be available for audit and reporting purposes.



In all cases, placement shall be made consistent with the safety, liquidity and yield objectives of this Investment Policy.

H. Authorized and Suitable Investments

Special care must be taken to ensure that the list of instruments includes only those allowed by law and those that local investment managers are trained and competent to handle. The City is empowered by the State of California Government Code and the City Charter to invest in the following types of securities. Additionally, bond proceeds are invested in accordance with the requirements outlined in the specific bond indenture of trust. All percentage limitations and credit criteria apply at time of purchase.

➤ ***U.S. Treasury Bills, Notes and Bonds and Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government***

- Maximum Holdings = 100% of portfolio dollars
- Maximum per Issuer = 100% of portfolio dollars
- Maximum Maturity = 7 year final maturity

➤ ***U.S. Government Agency Securities*** (exclusive of Agency MBS or CMO Securities, see below category) such as the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Farm Credit Bank (FFCB), local agencies, and other U. S. government-sponsored enterprises. These investments must be rated in the top three rating categories by two of the three largest nationally recognized statistical rating organizations (NRSROs).

- Maximum Holdings = 80% of portfolio dollars
- Maximum per Issuer = 40% of portfolio dollars
- Maximum Callable = 30% of portfolio dollars
- Maximum Maturity = 7 year final maturity

➤ ***Mortgage-Backed Securities (MBS) and Collateralized Mortgage Obligations (CMO)*** issued or guaranteed by the United States of America or any agency or instrumentality (including government sponsored enterprises) of the United States of America. Defined as a mortgage passthrough security, collateralized mortgage obligation, or mortgage-backed bond). Securities eligible for investment under this subdivision shall be rated AA or its equivalent or better by an NRSRO and rated no lower than AA by any NRSRO.

- Maximum Holdings = 15% of portfolio dollars
- Maximum per Issuer = 10% of portfolio dollars
- Maximum Weighted Average Life with Current Public Securities Association (PSA) Prepayment Assumptions = 12 years at time of purchase for MBS and 6 years at time of purchase for CMO
- Maximum Final Maturity for MBS's and CMO's = 30 years with balloon payments considered final

At the time of purchase, a CMO must pass the “high-risk” test, using current prepayment assumptions, mandated by the Federal Financial Institution Examination Council (the “FFIEC”) for U.S. Depository Institution investment holdings. Prohibited CMO securities are Interest Only (IO), Principal Only (PO), Residuals and Inverse Floaters. CMO issues must be a Sequential Pay (SEQ), a Planned Amortization Class (PAC), a Very Accurately Defined Maturity (VADM) class or a pass-through CMO.



- **Negotiable Certificates of Deposit** issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or by a federally licensed or by a state-licensed branch of a foreign bank. CDs eligible for investment under this subdivision shall be rated A or its equivalent or better by at least one NRSRO and no lower than A by any NRSRO or if the CD has a maturity less than 1 year then shall be rated A-1 or better by at least one NRSRO and rated no lower than A-1 by any NRSRO.

Maximum Holdings = 30% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 5 year final maturity

- **Bankers Acceptances** otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank.

Maximum Holdings = 25% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 180 days

- **Commercial Paper** of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by an NRSRO. The entity that issues the commercial paper shall meet all of the conditions in either paragraph (1) or (2) below:

1. The entity meets the following criteria:
 - a. Is organized and operating in the United States as a general corporation.
 - b. Has total assets in excess of five hundred million dollars (\$500,000,000).
 - c. Has debt other than commercial paper, if any, that is rated in a rating category of A or its equivalent or higher by an NRSRO.
2. The entity meets the following criteria:
 - a. Is organized within the United States as a special purpose corporation trust, or limited liability company.
 - b. Has program-wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond.
 - c. Has commercial paper that is rated A-1 or higher, or the equivalent, by an NRSRO.

Maximum Holdings = 25% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars and no more than 10% of the outstanding commercial paper of any single issuer
 Maximum Maturity = 270 days

- **Local Agency Investment Fund of the State of California.** Purchases may be made up to the maximum amount allowed by the State of California. Securities owned in the Local Agency Investment Fund of the State of California will not count towards maximum percentages of other categories.
- **Repurchase Agreements** subject to requirements of the California Government Code Section 53601(j). A Master Repurchase Agreement must be signed with the counterparty. The market value of securities that underlay a repurchase agreement shall be maintained at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted on a daily basis.



Maximum Holdings = 50% of portfolio dollars
 Maximum per Issuer = 20% of portfolio dollars
 Maximum Maturity = 60 days

- **Reverse Repurchase Agreements.** Reverse repurchase agreements with the prior approval of the City Council and subject to requirements of the California Government Code Sections 53601(j).

Maximum Holdings = 20% of portfolio dollars
 Maximum per Issuer = 10% of portfolio dollars
 Maximum Maturity = 92 days

- **Municipal Obligations**, including: (1) bonds, notes, warrants and other evidences of indebtedness of any local agency within California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency, (2) registered state warrants or treasury notes or bonds of the state of California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state, and (3) registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California. These investments shall be rated A or its equivalent or better by at least one NRSRO and rated no lower than A by any NRSRO.

Maximum Holdings = 20% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 7 year final maturity

- **Medium Term Corporate Notes** defined as all corporate and depository institution debt securities issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated A or its equivalent or better by at least one NRSRO and rated no lower than A- by any NRSRO.

Maximum Holdings = 25% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 5 year final maturity

- **Supranational Obligations** defined as United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated AA or its equivalent or better by an NRSRO and rated no lower than AA by any NRSRO.

Maximum Holdings = 20% of portfolio dollars
 Maximum per Issuer = 10% of portfolio dollars
 Maximum Maturity = 5 year final maturity



- **Asset-Backed Securities** defined as an equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond. Securities eligible for investment under this subdivision shall be rated AA or its equivalent or better by an NRSRO and rated no lower than AA by any NRSRO.

Maximum Holdings = 10% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = Maximum remaining maturity of 5 years or less

- **Non-negotiable Certificates of Deposit** of a public bank, as defined in State of California Government Code Section 57600 and pursuant to collateralization requirements of this Investment Policy.

Maximum Holdings = 10% of portfolio dollars
 Maximum per Issuer = 5% of portfolio dollars
 Maximum Maturity = 5 year final maturity

- **Mutual Funds and Money Market Funds** consisting of investment vehicles permitted under Sections 53601 and 53635 of the California Government Code. To be eligible for City investments, mutual funds shall have the following:

1. The highest rating provided by not less than two of the three largest NRSROs.
2. An investment advisor registered with the Securities and Exchange Commission for not less than five years having investment experience in the underlying securities and with assets under management in excess of \$500 million.
3. The purchase price of the shares shall not include any commission fees.

Money Market Funds must meet either 1 or 2 above and 3. A thorough analysis of the pool/fund is required prior to investing, and on a continual basis. Analysis shall include creditworthiness, size, safety, ease of investment liquidation, frequency of earnings distributions, frequency of account statements, and investment portfolio strategy. Securities owned in mutual funds and investment pools will not count towards maximum percentages of other categories.

Maximum Holdings = 20% of portfolio dollars
 Maximum per Fund = 10% of portfolio dollars

- **Joint Powers Authority Investment Pools** organized pursuant to Section 6509.7 that invests in the securities and obligations under Sections 53601 of the California Government Code. To be eligible for City investments, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

1. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
2. The adviser has not less than five years of experience investing in the securities and obligations authorized in under Section 53601.
3. The adviser has assets under management in excess of \$500 million.

Maximum Holdings = 100% of portfolio dollars



Maximum per Issuer = 100% of portfolio dollars

I. Investment Pools

The City will complete due diligence for any pooled investments the City invests in. The Director of Finance or his/her designee will collect and evaluate the following information for each fund prior to investment:

- Permitted investments and objectives
- Description of interest calculation
- Method/frequency of interest distribution
- Treatment of gains/losses
- Method/frequency of audits
- Description of eligible investors
- Limits/minimum account sizes, types of assets, transaction sizes, and number of transactions
- Limits on withdrawals
- Frequency of statements and reporting of underlying investments
- Reserves or retained earnings
- Fee schedules

J. Review of Investment Portfolio and Security Downgrades

The portfolio shall be reviewed quarterly to determine that all securities held by the City are in compliance with this Policy.

If securities owned by the City are downgraded to a level below the quality required for purchase under this Investment Policy, the Director of Finance, or his/her designee, shall review the credit situation and make a determination as to whether to sell or retain such securities in the portfolio. Such determination shall be documented and approved by the Director of Finance.

K. Sustainable Investing

The City desires to invest in entities that support community well-being through environmentally and socially sound practices and fair labor practices and equality of rights regardless of sex, race, age, disability, or sexual orientation. To meet these environmental and social investment goals the City or External Investment Manager shall apply the following criteria to investment selection:

The City's portfolio shall not include investment in companies in the industries or subindustries listed below. Where industry/subindustry classifications are not applicable, the City shall avoid investing in companies whose primary business involves one or more of the business activities detailed below. The City's External Investment Manager shall provide the City information on their screening process.

- Fossil Fuel Extraction, Refining, and Distribution
- Tobacco Manufacturing and Production
- Firearms Manufacturing



L. Collateralization

Collateralization with marketable securities will be required on non-negotiable certificates of deposit and repurchase (and reverse repurchase) agreements in accordance with California Government Code Section 53601 and 53630 et seq. In order to anticipate market changes and provide a level of security for all funds, the collateralization level shall be at least 102% of market value of principal and accrued interest for repurchase (and reverse repurchase) agreements and at least 110% of market value for non-negotiable certificates of deposit. The City reserves the right to require additional collateral if the City believes such additional amount is warranted. The City may waive the collateralization requirements for any portion of the deposit that is covered by Federal Deposit Insurance.

Collateral shall always be held by an independent third party with whom the City or the counterparty has a current custodial agreement. Clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained. The counterparty shall have the right to substitute substantially the same securities as originally deposited as collateral.

M. Safekeeping and Custody

All security transactions, including collateral for repurchase agreements, entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis. Securities shall be held by a third party custodian designated by the Director of Finance, or his/her designee, and evidenced by safekeeping receipts.

N. Diversification

The City will diversify its investments by security type and institution. Maximum percentage holdings for each security type and institution shall conform to this Investment Policy and the maximum allowed under the California Government Code Section 53601.

The minimum percentage of securities portfolio holdings for U.S. Treasury Bills, Notes and Bonds and Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government; U.S. Government Agency Securities (not including MBS and CMO), and Municipal Obligations shall be 30%, combined.

All percentage restrictions on authorized investments are based on the cost value of the portfolio as of the trade date of the investment. In the event that portfolio percentage restrictions are violated due to a reduction in cost value of the portfolio, the City may, but will not be required to, liquidate securities to meet the maximum holdings requirements.

O. Maximum Term of Investment

To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. Effective 2022, the City is authorized, per California Government Code Section 53601, to purchase securities maturing more than five years from the date of purchase for the following investment types: (a) U.S. Treasury Bills, Notes and Bonds and Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government, (b) U.S. Government Agency Securities (including MBS and CMO), and (c) Municipal Obligations. For purposes of compliance with this Policy, an investment's term or remaining maturity shall be measured from the settlement date to final maturity. A security purchased shall not have a forward settlement date exceeding 45 days from the time of investment.

No greater than 30% of the portfolio's cost value may include securities with a final maturity greater than five (5) years at any time.

P. Internal Controls

The City's Finance Department shall establish internal controls that are designed to prevent losses due to fraud, negligence, third-party misrepresentation, and other foreseeable circumstances that may arise in the operations of the investment function. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- **Collusion** - Collusion is a situation where two or more employees are working together to defraud their employer.
- **Separation of duties** - By separating the persons who perform and authorize the transactions from the people who record or otherwise account for the transactions, a separation of duties is achieved.
- **Safekeeping** - Securities purchased from any broker or dealer shall be placed with the City's depository bank in its trust department for safekeeping. Securities shall be held in a manner that establishes the City's right of ownership. Evidence of ownership shall be demonstrated by a monthly safekeeping statement which shall be reconciled on a timely basis to internal holding reports.
- **Clear Delegation of Authority** - Subordinate staff members must have a clear understanding of their authority and responsibility to avoid improper actions.
- **Written Confirmation** - Due to the potential for error arising from telephone transactions, all telephone transactions shall be supported by written communications and approved by appropriate Investment Personnel.
- **Delivery** - Where applicable, investment transactions of the City shall be conducted using standard delivery-vs-payment procedures.
- **Daily Procedures** - Detailed written procedures shall be created and regularly maintained so that critical investment functions may be performed in the absence of the person normally responsible for performing such work. The procedures should include reference to custody and safekeeping, wire transfer agreements, banking service contracts and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in a depository or investment transaction except as provided under the terms of this Investment Policy and the procedures established by the Director of Finance.
- **Annual Audit** - On an annual basis, the City's financial statements and business practices are audited by an external auditor. Included in the annual audit shall be testing of the City's compliance with the Investment Policy.

Q. Performance Standard

As preservation of capital is the City's top priority, the City's investment strategy shall assume that an investment is being held to maturity or other redemption date as set forth in the security's official offering documentation (i.e., callable securities). Trading in response to economic conditions and market valuations will be permitted in



response to changing market conditions; to improve the quality, yield, or target duration in the portfolio; address a liquidity need of the portfolio; or to remove a security with a declining credit or financial outlook.

The City also recognizes the importance of obtaining an adequate rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and cash flow requirements. The performance of the long-term securities portfolio managed by External Investment Manager shall be compared to a benchmark established by the Director of Finance. The benchmark shall reflect the objectives, strategy, and goals of the City's investment program.

- The benchmark is the ICE BaML 1-5 Year US Treasury Index.

In accordance with generally accepted accounting principles, the City or the External Investment Manager, if any, shall mark-to-market investments on a monthly basis using an independent pricing source. Market values will be looked upon as indications of market movements and volatility in making investment decisions rather than an indication of performance.

R. Reporting

The Director of Finance shall provide monthly investment reports to the City Council. The reports shall contain, but not be limited to, the following:

- A listing of individual securities held at the end of the reporting period by authorized investment category.
- A listing of transactions pursuant to California Government Code 53607.
- The performance of the portfolio compared to the established benchmark.
- Final maturity of all investments listed.
- Weighted average maturity of the unrestricted investment portfolio.
- Coupon, discount or earnings rate.
- Par value, cost value and market value.
- Percentage of the portfolio represented by each investment category.

S. Investment Policy Adoption

The Investment Policy shall be reviewed annually by the City Council and any modifications made thereto must be approved by the City Council.



APPENDIX A

GLOSSARY OF CASH MANAGEMENT TERMS

AGENCIES: A debt security issued by a federal or federally sponsored agency. Federal agencies are backed by the full faith and credit of the U.S. Government. Federally sponsored agencies (FSAs) are backed by each particular agency with a market perception that there is an implicit government guarantee. An example of a federal agency is the Government National Mortgage Association (GNMA). An example of an FSA is the Federal National Mortgage Association (FNMA).

ASK: The price at which securities are offered.

BANKERS' ACCEPTANCE (BA): A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BASIS POINT: A unit of measurement used in the valuation of fixed-income securities equal to 1/100 of 1 percent of yield (e.g., 1/4 of 1 percent is equal to 25 basis points).

BID: The price offered by a buyer of securities. (When you are selling securities you ask for a bid.) See Offer.

COST VALUE: The value at which a security is carried on the financial records of an investor. The cost value may differ significantly from the security's current value in the market.

BROKER: A broker brings buyers and sellers together for a commission.

CALLABLE BOND: A bond issue in which all or part of its outstanding principal amount may be redeemed prior to maturity by the issuer under specified conditions.

CALL PRICE: The price at which an issuer may redeem a bond prior to maturity.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMMERCIAL PAPER: Short-term obligations with maturity ranging from 2 to 270 days issued by banks, corporations, and other borrowers to investors with temporarily idle cash. Such instruments are unsecured and usually discounted, although some are interest-bearing.

COUPON: Interest rate on a debt security the issuer promises to pay to the holder until maturity, expressed as an annual percentage of face value.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT (DVP): There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DERIVATIVES: (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT RATE: Interest rate that the Federal Reserve charges member banks for loans, using government securities or eligible paper as collateral.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

DISCOUNT YIELD: Yield on a security sold at a discount.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits.

FEDERAL FUNDS (FED FUNDS): Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend Fed Funds to each other overnight or on a longer term basis. Depository institutions may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed Funds are considered to be immediately available funds.

FEDERAL FUNDS RATE: The rate of interest at which Federal Funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): Government sponsored wholesale banks which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLBs is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

FEDERAL FARM CREDIT BANK (FFCB): The Federal Farm Credit Banks Funding Corporation is an integral part of the Farm Credit System, a leading provider of loans, leases and services to U.S. agriculture and rural America. FFCB is a government-sponsored enterprise that consolidates the financing activities of the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives.

FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC): A publicly chartered agency that buys qualifying residential mortgages from lenders, packages them into new securities backed by those pooled mortgages, provides certain guarantees, and then resells the securities on the open market. FHLMC's stock is owned by savings institutions across the U.S. and is held in trust by the FHLB System.



FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA or Fannie Mae): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holders are protected by the full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FmHA mortgages. The term "pass-throughs" is often used to describe Ginnie Maes.

GUARANTEED INVESTMENT CONTRACT (GIC): A contract between an insurance company and a corporate profit-sharing or pension plan that guarantees a specific rate of return on the invested capital over the life of the contract.

IDLE FUNDS: Money in the treasury not required for the immediate needs of the local agency.

INVESTMENT-GRADE OBLIGATIONS: An investment instrument suitable for purchase by institutional investors under the prudent investor rule. Investment-grade is restricted to those obligations rated BBB or higher by a rating agency.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase---reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement often specifies, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.



MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, banker's acceptances, etc.) are issued and traded.

NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO): A credit rating agency that issues credit ratings that the U.S. Securities and Exchange Commission permits other financial firms to use for certain regulatory purposes.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Ask and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PREMIUM: The amount by which the price paid for a security exceeds the security's par value.

PORTFOLIO: A combined holding of a variety of investments. The purpose of a portfolio is to reduce risk by diversification.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include the Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRIMARY MARKET: A market for new issues of securities. A market is primary if the proceeds of sales go to the issuer of the securities sold.

PRIME RATE: A preferred interest rate charged by commercial banks to their most creditworthy customers. Many interest rates are keyed to this rate.

PRINCIPAL: The face value or par value of a debt instrument.

PRUDENT INVESTOR RULE: A guideline that states that a fiduciary must consider the needs of the beneficiaries, the provision of regular income, minimize risk and preserve assets. The Prudent Investor Rule applies to the investment decision-making process and no single investment decision should be judged in isolation, but rather as part of the entire portfolio. The Prudent Investor Rule mandates fiduciaries apply the principle of diversification when constructing portfolios.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price.

REPURCHASE AGREEMENT (RP or REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him/her for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money that is, increasing bank services.



SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vault for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES AND EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

STRUCTURED NOTES: Notes issued by Government Sponsored Enterprises (FHLB, FNMA, etc.) and Corporations that have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months or one year.

TREASURY BONDS: Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturity more than ten years.

TREASURY NOTES: Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturity from two to ten years.

WEIGHTED AVERAGE MATURITY (WAM): The average maturity of all the securities that comprise a portfolio.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in the purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

YIELD-TO-CALL (YTC): The rate of return an investor earns from a security assuming the security is redeemed (called) prior to its stated final maturity date.

YIELD-TO-MATURITY (YTM): The rate of return an investor earns on a security held to maturity when both interest payments and the investor's potential capital gain or loss are included in the calculation of return.



Agenda Report

25-1251

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2024

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

A development impact fee is a monetary exaction other than a tax or special assessment that is charged by a local governmental agency to an applicant in connection with approval of a development project for the purpose of defraying all or a portion of a development project's impact on public facilities with certain exceptions. The legal requirements for enactment of a development impact fee program are set forth in Government Code §§ 66000-66025 (the "Mitigation Fee Act"), the bulk of which were adopted as 1987's AB 1600 and thus are commonly referred to as "AB 1600 requirements." Under AB 1600, there must be reasonable relation between amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

The allocation of all development impact fees is included in the annual budget process and detailed in the most recent FY 2024/25 & FY 2025/26 Biennial Capital Budget. In addition to the legal required uses of these fees, the allocation of these fees aligns with department and Council priorities. All programmed project allocations will strategically incorporate those priorities, community needs and the goals outlined in specific infrastructure plans (e.g. Park Master Plan).

DISCUSSION

Attached is the AB1600 Report on Development Impact Fees for the fiscal year ended June 30, 2024. This report contains all the information required by Government Code Section 66006(b). AB 1600 also require that the City make certain findings with respect to unexpended funds held by the City in excess of five years. Staff has determined that the following City funds and amounts meet this threshold: 1) Traffic Mitigation funds of \$3,134,582; 2) Sanitary Sewer Conveyance funds of \$21,913,625; and 3) Storm Drain Impact funds of \$159,214. In conformance with AB 1600, the City does not have any refund exposure for these funds as they have been budgeted to fund future projects. Therefore, Staff is submitting the attached Resolution to accept the AB1600 Report and make findings that there is a continuing need for these unexpended balances, among other required findings.

On December 20, 2024, the City posted notice and made copies of the report available for public review in the City Clerk's Office, the Finance Department, and online at www.Santaclaraca.gov/Finance. In addition, written notice of the time and place of the regularly

scheduled City Council meeting on January 28, 2025, along with a copy of the AB1600 Report, were sent to interested parties as requested.

Staff has scheduled a review of this report for the regularly scheduled City Council meeting on January 28, 2025. More than 15 days will have elapsed as of the date of City Council review since the report was made available to the public, as required by applicable state law.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to section 15378(b)(4) of Title 14 of the California Code of Regulations in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense to develop the report and resolution. There is no economic/fiscal impact since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to the Government Code Sections 66000-66003.

COORDINATION

This report has been coordinated with the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Adopt a Resolution accepting the AB1600 Report on Development Impact Fees for fiscal year ending June 30, 2024, and making findings regarding the continuing need for the unexpended balances of certain impact fees as of June 30, 2024.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Jovan Grogan, City Manager

ATTACHMENTS

1. AB1600 Report on Development Impact Fees
2. AB1600 Resolution

AB1600 REPORT ON DEVELOPMENT IMPACT FEES

For Fiscal Year ended June 30, 2024

BACKGROUND

Cities and counties often charge fees on new development to fund public improvements, public amenities and public services. For example, Traffic Mitigation Fees are used to fund transit facilities, streets, bike lanes and sidewalks. These fees are commonly known as development impact fees (Developer Fees). In 1989, the State Legislature passed Assembly Bill 1600 (AB1600) which added Section 66000, et seq., to the California Government Code. The chapter sets forth a number of requirements that local agencies must follow if they are to collect fees from developers to defray the cost of the construction of public facilities related to development projects. Government Code Sections 66000-66025 apply to developer fees established, increased or imposed on or after January 1, 1989, and generally sets forth four broad requirements:

1. A local jurisdiction must follow the process set forth in the bill and make certain determinations regarding the purpose and use of the fees and to establish a "nexus" or connection between a development project or class of project and the public improvement being financed with the fee.
2. The fee revenue must be segregated from the General Fund to prevent commingling of public improvement fees and the General Fund.
3. If a local jurisdiction has had possession of a developer fee for five years or more and has not committed that money to a project or actually spent that money, then it must make findings describing the continuing need for that money each fiscal year after the five years have expired.
4. If a local jurisdiction cannot make the findings required under paragraph 3, then the city or county must go through a refund procedure.

The Traffic Mitigation Fee, Sanitary Sewer Outlet Fee, Sanitary Sewer Connection Fee, Sanitary Sewer Conveyance Fee, Storm Drain Fee, Parks Mitigation Fee, Tasman East Specific Plan Infrastructure Impact Fee, Affordable Housing Fees, and Patrick Henry Drive Infrastructure Impact Fee that the City of Santa Clara (City) collects qualify as Development Impact Fees and therefore must comply with the above referenced Government Code Sections. The amount of each of these development impact fees for fiscal year 2023-24 is reflected in the City's Municipal Fee Schedule, previously adopted by the City Council. The adopted City's Municipal Fee Schedule for fiscal year 2023-24 is available at: <https://www.santaclaraca.gov/home/showpublisheddocument/80140/638458521893270000>. As required by law, these fees are segregated and accounted for as Special Revenue Funds. Government Code Section 66001 requires the City to make available to the public certain information regarding these fees for each fund within 180 days after the end of each fiscal year. Accordingly, the following report is presented to the City Council for review.

AB1600 REPORT ON DEVELOPMENT IMPACT FEES

For Fiscal Year ended June 30, 2024

ANALYSIS

Utilizing the first in, first out (FIFO) accounting method – where the initial revenue received is the first expended, staff analyzed the year-end balances for the fiscal year 2023-24. This analysis is to identify any portion of the balances that had been outstanding for five or more years. In instances where a balance exceeded the five-year threshold, a thorough review of previously identified projects is initiated to assess whether any developer fees collected require refunding.

Many of the identified projects are already underway, and the City has appropriated funds for these projects as noted in the City’s FY2022-23 and 2023-24 Adopted Biennial Capital Improvement Program Budget. The publication can be found on the City’s website and is accessible at the following location: <https://www.santaclaraca.gov/home/showpublisheddocument/77216/638085057478270000>. Exhibit A provides a detailed breakdown of the identification of every Capital Project where fees were utilized, along with the corresponding expenditure amounts for each project. This exhibit also specifies the total percentage of the Capital Project cost covered by these fees.

Traffic Mitigation Fee

The Traffic Mitigation Fee is levied to fund improvements or programs to mitigate City traffic impacts that result either directly or indirectly from development projects. To determine the traffic mitigation fees the City conducts a Traffic Impact Fee Nexus study and the most recent report was approved by Council August 21, 2018. The basis of Santa Clara’s traffic mitigation fee, also more commonly known as a traffic impact fee is the number of net new PM peak hour vehicle trips generated by new development. Those additional trips result in the traffic impacts the fee is intended to mitigate. The fee is calculated by dividing the total cost of the improvement projects in the Traffic Mitigation Program by the number of additional PM peak hour trips generated by new development, which results in a “per PM peak hour trip” fee amount. For simplicity of application, this fee is then converted to a fee per square foot, per hotel room, or per dwelling unit, based on the trip generation rates in the latest ITE Trip Generation Manual. The fee is automatically adjusted for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes the activity for the Traffic Mitigation Fee from fiscal year 2019-20 through fiscal year 2023-24.

Fund 123 & 533	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24⁽¹⁾</u>
Beginning Balance	\$ 10,353,046	\$ 10,448,972	\$ 10,505,590	\$ 10,938,618	\$ 11,413,512
Developer Fees	182,518	728,208	978,860	1,092,092	(165,694)
Interest Income	200,204	152,901	165,723	177,957	188,580
Expenditures	(286,796)	(824,491)	(711,555)	(795,155)	(2,445,380)
Ending Balance	<u>\$ 10,448,972</u>	<u>\$ 10,505,590</u>	<u>\$ 10,938,618</u>	<u>\$ 11,413,512</u>	<u>\$ 8,991,018</u>

(1) The negative developer fees in FY23-24 is due to a \$474,695 voluntary developer contribution received in December 2018 being reclassified out of the Traffic Mitigation Fund in FY23-24.

During the fiscal year 2023-24, the City collected \$309,001 in traffic mitigation fees and reclassified a \$474,695 voluntary developer contribution received in December 2018. As a result, the developer fees

AB1600 REPORT ON DEVELOPMENT IMPACT FEES For Fiscal Year ended June 30, 2024

reported in fiscal year 2023-24 totaled a negative \$165,694. The City earned \$188,580 in interest, and expended \$2,455,380 on various projects. The ending balance of the Traffic Impact Fees available at the end of fiscal year 2023-24 is \$8,991,018 with \$3,134,582 being held for over five years. Exhibit A identifies the projects that will make use of all unspent fees held over five years.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000 and subsequent section.

Sanitary Sewer Outlet Fee

The Sanitary Sewer Outlet Fee is collected from developers to construct public sanitary sewer facilities. City Council passed Ordinance 1778 on December 3, 2002 which created the sanitary sewer outlet charge which is used for the acquisition, construction, reconstruction, maintenance, and operation of off-site sewerage facilities, and to repay principal and interest on bonds issued for the construction and reconstruction of such sewerage facilities. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes the activity for the Sanitary Sewer Outlet Fees from fiscal year 2019-20 through fiscal year 2023-24.

Fund 594	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>
Beginning Balance	\$ (1,588,864)	\$ (1,288,884)	\$ (1,089,598)	\$ (669,142)	\$ 131,522
Developer Fees	299,980	199,286	420,456	798,692	(3,133)
Interest Income	-	-	-	1,972	2,518
Ending Balance	<u>\$ (1,288,884)</u>	<u>\$ (1,089,598)</u>	<u>\$ (669,142)</u>	<u>\$ 131,522</u>	<u>\$ 130,907</u>

In fiscal year 2023-24, the City collected \$3,924 in developer fees, and issued a refund of \$7,057, resulting a net negative balance of \$3,133 in developer fees. The City earned \$2,518 in interest, and no project expenditures were incurred. The remaining balance of Sanitary Sewer Outlet Fees at the end of fiscal year 2023-24 is \$130,907.

There is no impact on City resources since all qualified impact fees collected by the City have been spent, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Sanitary Sewer Connection Fee

The Sanitary Sewer Connection Fee was adopted to improve and expand the sewer collection system. City Council passed Ordinance 1428 on August 25, 1981 which created the sanitary sewer connection fee which is charged whenever a property is initially connected or requires an addition of a new connection to the sanitary sewer system. The fee is charged based on type of dwelling unit for residential (single family, duplex, condominium, etc.) and non-residential which charges based on connection size. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

AB1600 REPORT ON DEVELOPMENT IMPACT FEES For Fiscal Year ended June 30, 2024

The following table summarizes activity for the Sanitary Sewer Connection Fee from fiscal year 2019-20 through fiscal year 2023-24.

Fund 594	2019-20	2020-21	2021-22	2022-23	2023-24
Beginning Balance	\$ (87,737,999)	\$ (116,641,597)	\$ (114,296,942)	\$ (145,899,755)	\$ (154,958,451)
Developer Fees	1,124,123	1,007,031	1,389,253	2,610,881	307,449
Expenditures	(30,027,721)	(5,488,096)	(37,645,683)	(13,852,060)	(13,099,087)
Refunded Expenditures	-	6,825,720	4,653,617	2,182,483	-
Ending Balance	<u>\$ (116,641,597)</u>	<u>\$ (114,296,942)</u>	<u>\$ (145,899,755)</u>	<u>\$ (154,958,451)</u>	<u>\$ (167,750,089)</u>

In fiscal year 2023-24, the City collected \$307,449 in developer fees and expended \$13,099,087 on the San Jose/Santa Clara Regional Wastewater Facility construction project. As of June 30, 2024, the accumulative deficit in Sanitary Sewer Connection Fee is \$167,750,089. To address the deficit in the capital projects funded by Sanitary Sewer Connection Fees, transfers were made within the Sewer Enterprise Fund.

There is no impact on City resources since all qualified impact fees held by the City have been spent, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Sanitary Sewer Conveyance Fee

The Sewer Conveyance Fee was approved by City Council in June 2007 and is intended to mitigate development impacts to the City's sanitary sewer conveyance system resulting from increases in the sanitary sewer discharges. The amount of Sanitary Sewer Conveyance Fee is based directly on the potential sewer discharge volumes of the proposed land uses. The fee was based on a Sanitary Sewer Capacity Assessment Report 2006, and subsequent update in 2016. The basis of Santa Clara's sewer conveyance fee is sewer flow rate generated by a new development. The fee is calculated by dividing the total cost of the capacity improvement projects in the Sanitary Sewer Master Plan or its predecessor reports by the total projected sanitary sewer flow rate generated by future developments, which results in a "per gallon per day (GPD)" fee amount. The per GPD fee multiplied by the estimated sanitary sewer flow rate (GPD) generated by a new development is the sanitary sewer conveyance fee for that development.

The following table summarizes the activity for the Sanitary Sewer Conveyance Fees from fiscal year 2019-20 through fiscal year 2023-24.

Fund 594	2019-20	2020-21	2021-22	2022-23	2023-24
Beginning Balance	\$ 34,179,296	\$ 38,232,186	\$ 39,419,207	\$ 44,853,964	\$ 54,098,272
Developer Fees	4,079,586	3,126,854	5,214,338	9,053,180	1,110,240
Interest Income	705,177	559,621	720,262	811,032	1,090,180
Expenditures	(731,873)	(2,499,454)	(499,843)	(619,904)	(483,074)
Ending Balance	<u>\$ 38,232,186</u>	<u>\$ 39,419,207</u>	<u>\$ 44,853,964</u>	<u>\$ 54,098,272</u>	<u>\$ 55,815,618</u>

The developer fees of \$1,110,240 along with interest income of \$1,090,180 were partly offset by expenditures of \$483,074 in fiscal year 2023-24. The net change yielded a current balance of

AB1600 REPORT ON DEVELOPMENT IMPACT FEES For Fiscal Year ended June 30, 2024

\$55,815,618, out of which \$21,913,625 has been held for over five years. Exhibit A outlines the projects that will make use of all unspent fees held over five years.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Storm Drain Fee

The Storm Drain Fee is levied to mitigate City storm drainage that results either directly or indirectly from development projects. The Storm Drain Fee is codified in the Santa Clara City Code Section 17.15.220 Sanitary Sewer and Storm Drains and was created for the purpose of defraying the estimated costs of constructing planned drainage facilities for removal of surface and storm waters from local drainage areas. The fee is charged based on the amount of acreage being developed with a project. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes the activity for the Storm Drain Fees from fiscal year 2019-20 through fiscal year 2023-24.

Fund 535	2019-20	2020-21	2021-22	2022-23	2023-24
Beginning Balance	\$ 586,578	\$ 613,299	\$ 650,435	\$ 423,110	\$ 433,968
Developer Fees	15,409	27,903	33,450	4,352	6,119
Interest Income	11,312	9,233	6,794	6,506	5,784
Expenditures with Prior Year Adjustment	-	-	(267,569)	-	(145,201)
Ending Balance	<u>\$ 613,299</u>	<u>\$ 650,435</u>	<u>\$ 423,110</u>	<u>\$ 433,968</u>	<u>\$ 300,670</u>

In the fiscal year 2023-24, the City collected \$6,119 in developer fees, earned \$5,784 in interest, and incurred expenditures of \$145,201 on various projects. The accumulative amount of Storm Drain Fees available at the end of fiscal year 2023-24 is \$300,670 with \$159,214 being held for over five years. Exhibit A identifies the projects that will make use of all unspent fees held over five years.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Parks Mitigation Fee

The Parks Mitigation Fee was adopted in fiscal year 2014-15 and went into effect in fiscal year 2016-17. Fees received can be used to acquire public parkland and/or make necessary park improvements according to the restrictions of the Mitigation Fee Act and help the City to address its park, recreation and open space needs. The City completed a Parks & Recreation Facilities Development Impact Fee Study in 2014 and in 2019 which were both reviewed and approved by the City Council after community and stakeholder public comment hearings. These reports provide the necessary findings required by the Mitigation Fee Act and Quimby Act for the adoption of this fee by Council resolution contained in the

AB1600 REPORT ON DEVELOPMENT IMPACT FEES For Fiscal Year ended June 30, 2024

Municipal Fee Schedule. These reports provide facility cost and land acquisition cost data and analysis and describe the methodology for calculation of the fees.

The parks and recreation facilities fees use an existing inventory demand standard translated into facility costs per capita to determine new development's fair share of planned facility costs. A cost standard provides a reasonable method for converting disparate types of facilities, in this case parkland and special use recreational facilities, into a single measure of demand (capital cost per capita). New residential development would fund the expansion of facilities at the same rate that existing residential development has provided facilities to date. The City uses the existing ratio of developed parkland per 1,000 residents. In 2010 the standard was 2.45 acres. The current standard is 2.60 acres. (Quimby Act allows a 3.0 acres/1,000 resident standard).

The calculation tables are provided in the in-Lieu Fee Resolution adopted by Council, posted on the City website and incorporated into the Municipal Fee Schedule. Based on the date the resident developer's project application is deemed complete, the total parkland due can be calculated, the developed parkland dedicated, and credits deducted for eligible on-site recreational amenities.

The following table summarizes the activity for the Parks Mitigation Fee from fiscal year 2019-20 through fiscal year 2023-24.

Fund 532	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>
Beginning Balance	\$ 5,261,415	\$ 10,771,523	\$ 8,937,718	\$ 20,682,234	\$ 45,670,527
Developer Fees	7,159,545	1,522,149	14,634,898	36,637,032	2,177,539
Interest Income	176,942	110,320	124,450	577,716	852,739
Expenditures	<u>(1,826,379)</u>	<u>(3,466,274)</u>	<u>(3,014,832)</u>	<u>(12,226,455)</u>	<u>(4,933,326)</u>
Ending Balance	<u>\$ 10,771,523</u>	<u>\$ 8,937,718</u>	<u>\$ 20,682,234</u>	<u>\$ 45,670,527</u>	<u>\$ 43,767,479</u>

During the fiscal year 2023-24, the City collected \$2,177,539 in Parks Mitigation Fees, earned \$852,739 in interest, and incurred expenditures of \$4,933,326 on various projects. The balance of the Parks Mitigation Fees as of June 30, 2024 is \$43,767,479 with no fees being held for over five years.

AB1600 REPORT ON DEVELOPMENT IMPACT FEES

For Fiscal Year ended June 30, 2024

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Tasman East Specific Plan Infrastructure Impact Fee

On November 13, 2018, the City Council adopted the Tasman East Specific Plan to guide the transition of an underutilized 45-acre industrial neighborhood east of the Great America Transit Center into a pedestrian-friendly, transit-oriented development, providing for the addition of 4,500 new residential units, 100,000 square feet of retail, and 10 acres of open space near transit and jobs. In coordination with developers within the specific plan area, the City established an Infrastructure Impact Fee for the specific plan area to create an equitable distribution of area-wide and common public infrastructure costs for all residential developments within the specific plan and to finance capital facility and infrastructure costs to serve these developments.

Ordinance No. 2026 Adding Subsection 17.15.350 to Chapter 15 of Title 17 of the Santa Clara City Code Regarding the Tasman East Specific Plan Infrastructure Impact Fee was adopted on November 17, 2020.

The following table summarizes the activity for the Tasman East Specific Plan Infrastructure Impact Fee from fiscal year 2019-20 through fiscal year 2023-24.

Fund 541	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>
Beginning Balance	\$ -	\$ -	\$ (170,921)	\$ 3,260,003	\$ 5,960,739
Developer Fees	-	-	3,465,453	4,411,858	335
Interest Income	-	-	5,896	75,296	118,993
Expenditures	-	(170,921)	(40,425)	(1,786,418)	(136,404)
Ending Balance	<u>\$ -</u>	<u>\$ (170,921)</u>	<u>\$ 3,260,003</u>	<u>\$ 5,960,739</u>	<u>\$ 5,943,663</u>

In the fiscal year 2023-24, the City received \$335 in developer fees, earned \$118,993 in interest and incurred expenditure of \$136,404 in project costs. The accumulative balance of the Tasman East Specific Plan Infrastructure Impact Fees at the end of fiscal year 2023-24 is \$5,943,663 with no fees being held for over five years.

There is no impact on City resources since all qualified impact fees collected by the City have been spent, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Affordable Housing Fee

The Affordable Housing Fee was adopted to mitigate the impacts of new market-rate housing development and non-residential development on the need for affordable housing, in addition to assisting in meeting the City's share of the region's housing need and implementing the goals, policies and actions specified in the Housing Element of the general plan. City Council passed Ordinance 1974 on December 5, 2017 which established the affordable housing fee applicable to residential and nonresidential projects and to encourage the development of rental housing and as well as smaller units that may be more

AB1600 REPORT ON DEVELOPMENT IMPACT FEES For Fiscal Year ended June 30, 2024

affordable by design. The fees established are significantly lower than the amount needed to fully mitigate the impacts of the new for sale and rental resident projects and non-residential project on the need for affordable housing. The fees shall automatically adjust for inflation annually using the Engineering News Record McGraw-Hill Construction Weekly Building Index for San Francisco.

The following table summarizes the activity for the Affordable Housing Fee from fiscal year 2018-19 through fiscal year 2023-24.

Fund 565	2019-20	2020-21	2021-22	2022-23	2023-24
Beginning Balance	\$ -	\$ -	\$ 131,284	\$ 5,760,577	\$ 6,487,986
Developer Fees	-	130,201	5,613,415	630,142	16,150
Interest Income	-	1,083	15,878	97,267	31,068
Expenditures	-	-	-	-	(4,944,484)
Ending Balance	<u>\$ -</u>	<u>\$ 131,284</u>	<u>\$ 5,760,577</u>	<u>\$ 6,487,986</u>	<u>\$ 1,590,720</u>

During the fiscal year 2023-24, the City collected \$16,150 in developer fees and earned \$31,068 in interest. The accumulative balance of Affordable Housing Fees as of June 30, 2024 is \$1,590,720 with no fees being held for over five years.

There is no impact on City resources since all qualified impact fees collected by the City have been spent, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Patrick Henry Drive Infrastructure Impact Fee

On March 22, 2022, the City Council adopted the Patrick Henry Drive Specific Plan (Specific Plan) to guide the transition of an underutilized 74-acre industrial neighborhood bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west into a pedestrian-friendly, transit-oriented neighborhood. The Specific Plan contemplates two unique land use scenarios related to proposed residential units and office uses. The Specific Plan also incorporates approximately 310,000 square feet of neighborhood-oriented convenience retail and up to 14 acres of open space which will include a diverse network of public parks, publicly accessible green infrastructure, and private recreational spaces.

Ordinance No. 2046 Adding Subsection 17.15.360 to Chapter 15 of Title 17 of the Santa Clara City Code Regarding the Patrick Henry Drive Specific Plan Infrastructure Impact Fee was adopted on March 22, 2022.

In the fiscal year 2023-24, no activities were conducted for this impact fee.

PUBLIC NOTICE: Public notification was achieved by posting the availability of the report 15 days prior to the meeting, as required by Government Code Section 66006(b)(2).

Attachments:

Exhibit A: Summary of Development Impact Fees

Exhibit A

**City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2024**

Streets and Highways (Fund 123 & 533)

Traffic Mitigation Fee (Fund 123 and 533)

FY 2022-23 Ending Fund Balance	\$ 11,413,512
Fees Collected	(165,694)
Interest Earned	188,580
Expenditures	(2,445,380)
FY 2023-24 Ending Fund Balance	\$ 8,991,018
Funds Accumulated in Current and Last 5 Years	\$ 5,856,436
Funds Held Longer than 5 Years	\$ 3,134,582
Projects Programmed for Impact Fees	\$ 8,661,449

**Traffic Mitigation Fee
Since Inception Date Through June 30, 2024**

Project #	Description	Project Status/ Estimated Completion Year	Total Project Appropriation All Funding Sources	Funding Status	Traffic Mitigation Fee				FY 2023-24 Impact Fee Expenditure
					% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
1217	Traffic Signal Management Software Upgrade/Replacement	2025	\$ 3,372,871	100%	89%	\$ 3,000,942	\$ 2,132,191	\$ 868,751	\$ 504,362
1218	Traffic Pre-Emptors	2025	1,445,259	100%	94%	1,358,104	647,831	710,273	139,230
1219	Traffic Signal Enhancements	Ongoing	1,437,831	100%	54%	781,824	629,065	152,759	57,014
1220	Pedestrian and Bicycle Enhancement Facilities	Ongoing	1,460,196	100%	96%	1,395,196	1,383,560	11,636	430
1232	Traffic Signal Interconnect Upgrade	2032	1,043,217	100%	100%	1,043,217	139,518	903,699	31,862
1234	Transportation Modeling Update	Ongoing	266,700	100%	94%	250,000	147,971	102,029	18,540
1237	MCB/GAP Intersection Improvement Project	2025	12,988,606	100%	36%	4,735,310	2,183,001	2,552,309	352,881
1245	Benton Bike Lanes	2025	1,726,000	100%	14%	249,000	129,810	119,190	-
1246	Bassett and Laurelwood Bicycle Lanes	2025	1,428,058	52%	29%	410,000	-	410,000	-
1251	HAWK Beacon on Scott and Harrison	2025	750,000	100%	100%	750,000	488,312	261,688	(810)
1259	Monroe Los Padres Traffic Signal Modification	2025	680,000	100%	19%	127,856	7,890	119,966	7,890
1261	Santa Clara School Access Improvements	2025	2,471,000	86%	54%	1,325,000	1,211,633	113,367	997,637
1272	TDA21 Bicycle Facilities Upgrade	2024	131,410	28%	28%	37,356	36,717	639	36,717
1274	Lafayette St Class IV Bike Lanes	2026	600,000	67%	3%	20,000	297	19,703	-
1275	De La Cruz Boulevard Class IV Bikeway Study	2024	250,083	80%	44%	110,083	52,906	57,177	46,952
1276	Monroe Street Class II Buffered Bike Lane Study	2024	263,700	97%	47%	123,700	90,112	33,588	86,072
1277	Walsh Avenue Class IV Bikeway Study	2024	301,708	87%	42%	126,708	83,778	42,930	78,020
1280	MCB Class IV Bike Lanes	2025	65,000	83%	83%	53,877	-	53,877	-
1282	Traffic Impact Fee Nexus Study Update	2026	300,000	100%	100%	300,000	19,000	281,000	19,000
1283	Steven Creek Boulevard Vision Study	2025	100,296	100%	100%	100,296	-	100,296	-
1285	Pruneridge Avenue Signal Timing	2025	1,000,000	92%	92%	915,030	-	915,030	-
1376	Safe Route to School	Ongoing	1,234,157	67%	8%	102,653	5,726	96,927	-
1386	Santa Clara Citywide ITS Project 2	2025	1,304,198	77%	62%	804,198	69,583	734,615	69,583
Totals			\$ 34,620,290			\$ 18,120,350	\$ 9,458,901	\$ 8,661,449	\$ 2,445,380

Exhibit A
City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2024

Sanitary Sewer Outlet Fee (Fund 594)

Sanitary Sewer Outlet Fee (Fund 594)	
FY 2022-23 Ending Fund Balance	\$ 131,522
Fees Collected (Refunded)	(3,133)
Interest Earned	2,518
FY 2023-24 Ending Fund Balance	\$ 130,907
Funds Accumulated in Current and Last 5 Years	\$ 130,907

Exhibit A
City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2024

Sanitary Sewer Connection Fee (Fund 594)

Sanitary Sewer Connection Fee (Fund 594)	
FY 2022-23 Ending Fund Balance	\$ (154,958,451)
Fees Collected	307,449
Expenditures	(13,099,087)
FY 2023-24 Ending Fund Balance	\$ (167,750,089)
Funds Accumulated in Current and Last 5 Years	\$ -
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ -

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					Sanitary Sewer Connection Fee				
					Since Inception Date Through June 30, 2024				
Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee		Impact Fee Appropriation Remaining ⁽¹⁾	FY 2023-24 Impact Fee Expenditure
						Appropriation	Total Impact Fee Expenditures		
1908	S.J.- S.C. Regional Wastewater Facility	Ongoing	\$ 255,554,918	100%	39%	\$ 98,948,905	\$ 98,948,905	\$ -	\$ 13,099,087

Note (1) Amounts have been transferred within the Sewer Enterprise Operating Fund and Debt Service Fund to make up the negative balance for Capital Projects financed with AB1600 Development Fees

Exhibit A

**City of Santa Clara
 Summary of Local Agency Improvement Fees
 (AB 1600 Development Impact Fees)
 Report for Fiscal Year Ended June 30, 2024**

Sanitary Sewer Conveyance Fee (Fund 594)

Sanitary Sewer Conveyance Fee (Fund 594)	
FY 2022-23 Ending Fund Balance	\$ 54,098,272
Fees Collected	1,110,240
Interest Earned	1,090,180
Expenditures	(483,074)
FY 2023-24 Ending Fund Balance	\$ 55,815,618
Funds Accumulated in Current and Last 5 Years	\$ 33,901,993
Funds Held Longer than 5 Years	\$ 21,913,625
Projects Programmed for Impact Fees	\$ 22,579,186

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					Sanitary Sewer Conveyance Fee Since Inception Date Through June 30, 2024				
Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	FY 2023-24 Impact Fee Expenditure
1909	Sanitary Sewer Capacity Improvements	Ongoing	\$ 34,476,651	100%	100%	\$ 34,476,651	\$ 11,897,465	\$ 22,579,186	\$ 322,772
1920	Sanitary Sewer Master Plan Update	Ongoing	980,038	100%	49%	480,038	480,038	-	160,302
Totals			\$ 35,456,689			\$ 34,956,689	\$ 12,377,503	\$ 22,579,186	\$ 483,074

Exhibit A

**City of Santa Clara
 Summary of Local Agency Improvement Fees
 (AB 1600 Development Impact Fees)
 Report for Fiscal Year Ended June 30, 2024**

Storm Drain Fee (Fund 535)

Storm Drain Fee (Fund 535)	
FY 2022-23 Ending Fund Balance	\$ 433,968
Fees Collected	6,119
Interest Earned	5,784
Expenditures Adjustment	(145,201)
FY 2023-24 Ending Fund Balance	\$ 300,670
Funds Accumulated in Current and Last 5 Years	\$ 141,546
Funds Held Longer than 5 Years	\$ 159,124
Projects Programmed for Impact Fees	\$ 159,124

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				Storm Drain Fee					
				Since Inception Date Through June 30, 2024					
Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	FY 2023-24 Impact Fee Expenditure
1831	Miscellaneous Storm Drain Improvements	Ongoing	\$ 316,577	100%	32%	\$ 100,000	\$ -	\$ 100,000	\$ -
1834	Storm Drain System Improvement	Ongoing	451,320	100%	100%	451,320	392,106	59,214	-
1835	Storm Drain Outfall Reconstruction Program	Ongoing	1,673,000	100%	55%	917,569	917,569	-	145,201
Totals			\$ 2,440,897			\$ 1,468,889	\$ 1,309,675	\$ 159,214	\$ 145,201

Exhibit A

**City of Santa Clara
 Summary of Local Agency Improvement Fees
 (AB 1600 Development Impact Fees)
 Report for Fiscal Year Ended June 30, 2024**

Parks Mitigation Fee (Fund 532)

Parks Mitigation Fee (Fund 532)	
FY 2022-23 Ending Fund Balance	\$ 45,670,257
Fees Collected	2,177,539
Interest Earned	852,739
Expenditures	(4,933,326)
FY 2023-24 Ending Fund Balance	\$ 43,767,209
Funds Accumulated in Current and Last 5 Years	\$ 43,787,209
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ 20,047,399

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Project # Description		Project Status/ Estimated Completion Year	Total Project Appropriation All Funding Sources	Funding Status	Parks Mitigation Fee Since Inception Date Through June 30, 2024				FY 2023-24 Impact Fee Expenditure
					% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
3101	Park & Recreation Master Plan	Ongoing	\$ 442,700	100%	84%	\$ 371,350	\$ 121,669	\$ 249,681	\$ 121,669
3102	Facility Condition Assessment Update	Ongoing	400,000	100%	100%	400,000	-	400,000	-
3126	Patrick Henry Community Art Center	Ongoing	75,000	100%	100%	75,000	55,426	19,574	55,426
3127	Parkland Acquisition	Ongoing	10,525,560	100%	90%	9,509,570	-	9,509,570	-
3128	MFA Developer Reimbursement Project	Ongoing	210,572	100%	100%	210,572	-	210,572	-
3133	Central Park Master Plan New Improvement	2027	2,691,175	100%	100%	2,691,175	262,031	2,429,144	89,895
3136	Westwood Oaks Park Playground Rehabilitation	2025	3,570,800	100%	100%	3,570,800	2,894,878	675,922	2,642,055
3181	Park Impact Fees Monitoring Project	Ongoing	2,002,596	100%	72%	1,432,754	1,136,899	295,855	299,655
3183	Central Park Arbor Playground	2025	9,134,455	66%	48%	4,363,500	18,820	4,344,680	18,820
3184	Montague Park Enhancement	2025	7,858,340	100%	100%	7,858,340	6,852,411	1,005,929	821,601
3195	Henry Schmit Park Playground Rehabilitation	2026	510,000	100%	54%	275,000	-	275,000	-
3196	Central Park Aquatic Center Planning & Design	2026	917,000	100%	39%	358,000	226,216	131,784	226,216
3197	Parks Service Center Improvement	2028	800,000	100%	63%	500,000	312	499,688	-
3199	Park&Rec Engineering Management	Ongoing	1,020,457	100%	64%	657,990	657,990	-	657,990
Totals			\$ 40,158,655			\$ 32,274,051	\$ 12,226,652	\$ 20,047,399	\$ 4,933,327

Exhibit A

**City of Santa Clara
 Summary of Local Agency Improvement Fees
 (AB 1600 Development Impact Fees)
 Report for Fiscal Year Ended June 30, 2024**

Tasman East Specific Plan Infrastructure Impact Fee (Fund 541)

Tasman East Specific Plan Infrastructure Impact Fee (Fund 541)	
FY 2022-23 Ending Fund Balance	\$ 5,960,739
Fees Collected	335
Interest Earned	118,993
Expenditures	(136,404)
FY 2023-24 Ending Fund Balance	\$ 5,943,663
Funds Accumulated in Current and Last 5 Years	\$ 5,943,663
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ 1,424,215

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Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	Affordable Housing Fee Since Inception Date Through June 30, 2024				FY 2023-24 Impact Fee Expenditure
					% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
4610	Tasman East Admin Study and Engineering	Ongoing	\$ 375,354	100%	97%	\$ 363,522	\$ 362,452	\$ 1,070	\$ 136,404
4611	Tasman East Developer Reimbursement Project	Ongoing	3,194,861	100%	100%	3,194,861	1,771,716	1,423,145	-
Totals			\$ 3,570,215			\$ 3,558,383	\$ 2,134,168	\$ 1,424,215	\$ 136,404

Exhibit A

**City of Santa Clara
 Summary of Local Agency Improvement Fees
 (AB 1600 Development Impact Fees)
 Report for Fiscal Year Ended June 30, 2024**

Affordable Housing Fee (Fund 565)

Affordable Housing Fee (Fund 565)	
FY 2022-23 Ending Fund Balance	\$ 6,487,986
Fees Collected	16,150
Interest Earned	31,068
Expenditures	(4,944,484)
FY 2023-24 Ending Fund Balance	\$ 1,590,720
Funds Accumulated in Current and Last 5 Years	\$ 1,590,720
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ -

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Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	Affordable Housing Fee Since Inception Date Through June 30, 2024				FY 2023-24 Impact Fee Expenditure
					% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining ⁽¹⁾	
16506	Civic Center	Ongoing	\$ 4,944,484	100%	100%	4,944,484	-	\$ -	\$ 4,944,484

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,
ACCEPTING THE AB1600 REPORT ON DEVELOPMENT IMPACT
FEES FOR FISCAL YEAR ENDED JUNE 30, 2024 AND MAKING
FINDINGS REGARDING THE CONTINUING NEED FOR
UNEXPENDED BALANCES OF IMPACT FEES AS OF JUNE 30,
2024**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Government Code Sections 66000 et seq. (commonly known as, and referenced herein as, “AB1600”) regulate the imposition, collection, maintenance, expenditure and reporting of impact fees imposed on developers for the purpose of defraying their impacts on public facilities;

WHEREAS, the City of Santa Clara (“City”) has identified nine (9) impact fees collected from developers that are subject to AB1600’s requirements. Those funds are the Traffic Mitigation Fee (Funds 123/533), the Sanitary Sewer Outlet Fee (Fund 594), the Sanitary Sewer Connection Fee (Fund 594), the Sanitary Sewer Conveyance Fee (Fund 594), the Storm Drain Fee (Fund 535), the Parks Mitigation Fee (Fund 532), the Tasman East Specific Plan Infrastructure Impact Fee (Fund 541), the Patrick Henry Drive Infrastructure Impact Fee (Fund 542), and the Affordable Housing Fee (Fund 565);

WHEREAS, in accordance with the provisions of AB1600, the City has set up separate special revenue funds for each type of fee, crediting earned interest to those funds, and spending the accumulated fees and related interest on appropriate expenditures;

WHEREAS, the City has prepared an annual report for fiscal year 2023-24 in accordance with AB1600, “AB1600 Report on Development Impact Fees for Fiscal Year ended June 30, 2024,”

WHEREAS, this report includes (1) the beginning and ending balances of each separate fund containing impact fees; (2) the amount of fees collected and the interest earned for the year; (3) the amount of expenditures and refunds made in the year; (4) the percentage of expenditures paid for by fees; and (5) a description of the type of fees. The amount of each of these AB1600

fees for FY 2023-24 is reflected in the City's Municipal Fee Schedule, previously adopted by the City Council;

WHEREAS, a copy of the annual report has been on file and available for review in the City Clerk's Office and the Finance Department at Santa Clara City Hall, and online at Santaclaraca.gov/Finance since December 20, 2024;

WHEREAS, AB1600 requires the City to make to do the following every five (5) years with respect to any portion of the fees remaining unexpended or uncommitted after a period of five (5) years: 1) identify the purpose to which the fee is to be put, 2) demonstrate a reasonable relationship between the fee and the purpose for which it was charged, 3) identify all sources and amounts of funding anticipated to complete financing of the improvement, and 4) designate the approximate date on which such funding will be available;

WHEREAS, the Traffic Mitigation Impact Fee, which was established for the purpose of providing a source of funding for traffic improvements, contains some fee revenues which were received more than five (5) years ago. The sum of \$3,134,582 representing fees and accrued interest collected for traffic mitigation remains unexpended five (5) or more years after their initial deposit;

WHEREAS, the Storm Drain Fee, which was established for the purpose of mitigating storm drainage that results directly or indirectly from development projects, contains some fee revenues which were received more than five (5) years ago. The sum of \$159,214 representing fees and accrued interest collected for storm drainage mitigation remains unexpended five (5) or more years after their initial deposit ;

WHEREAS, the Sanitary Sewer Conveyance Fee, which was established for the purpose of mitigating sanitary sewer conveyance load that results directly or indirectly from development projects, contains some fee revenues which were received more than five (5) years ago. The sum of \$21,913,625 representing fees and accrued interest collected for sewer conveyance mitigation remains unexpended five (5) or more years after their deposit ; and

WHEREAS, the City desires to make the findings required by law with respect to these unexpended fees.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby accepts the attached AB1600 Report on Development Impact Fees for Fiscal Year ended June 30, 2024 (“Report”), and makes the following findings:

A. The Traffic Mitigation Impact Fee revenues are to be used to construct traffic improvements needed by new development. The amount of the fee for different land use types is proportionate to the need for traffic improvements generated by such land use types. This fee is still necessary as several projects are tied to larger development projects that have yet to occur. These development projects are still anticipated to take place based on the City’s General Plan. The traffic mitigation fee is set at a lower rate than justified, and as a result projects are underfunded. This has also slowed down progress on projects resulting in some project costs increasing. Periodically, as the City updates the General Plan and as new development occurs, additional improvement projects are identified and added to the Traffic Mitigation Fee Project List.

B. The portion of the \$8,991,018 development fee in the Traffic Mitigation Fund that was at least five (5) years old as of June 30, 2024, totals \$3,134,582. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Traffic Mitigation Fund has projects scheduled in the current Capital Improvement Plan for the next five (5) years, and depends upon additional fees and interest each year. Projects identified in Exhibit A which are funded at less than 100% with Traffic Mitigation Impact Fees are funded by other sources totaling \$16,499,940. Remaining appropriations totaling \$8,145,714 from the other sources are as follows: Reimbursable Grants \$248,235; Santana Row Settlement \$1,145,433, Vehicle Registration Fee \$1,201,722; Bonds Proceeds \$1,451,057; Measure B \$249,013; Gas Tax \$1,704,032; Electric Utility Contribution

\$1,059,409; Water Utility Contribution \$23,959, Sewer Utility Contribution \$19,935, Regional Traffic Mitigation Fee \$3,301,046; General Fund \$180,000; and Developer Contributions \$766,700. All these amounts have been received and are available except the Reimbursable Grants and Measure B.

C. The Storm Drain Impact Fee revenues are to be used to mitigate City storm drainage that results either directly or indirectly from development projects. The amount of the fee is proportionate to the need for storm drainage improvements generated by development projects. This fee is still necessary as several storm drain projects are tied to larger development projects that have yet to occur. These development projects are still anticipated to take place based on the City's General Plan. As new development occurs, additional improvement projects are identified and added to the Storm Drain Impact Fee Project List.

D. The portion of the \$300,760 development fee in the Storm Drain Impact Fee Fund that was at least five (5) years old as of June 30, 2024, totals \$159,214. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Storm Drain Impact Fee Fund has projects scheduled in the current Capital Improvement Plan for the next five (5) years, and depends upon additional fees and interest each year. The projects identified in Exhibit A which are funded at less than 100% with Storm Drain Impact Fees is funded by the General Fund Capital Project Reserve (CPR) totaling \$972,008. The remaining appropriation from the CPR is \$542,829.

E. The Sanitary Sewer Conveyance Fee was adopted in fiscal year 2006-07 to address Sewer Main capacity deficiencies resulting from increased development.

F. The portion of the \$55,815,618 development fee in the Sanitary Sewer Conveyance Fees Fund that was at least five (5) years old as of June 30, 2024, totals \$21,913,625. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Sanitary Sewer Conveyance Fee has projects scheduled in the current Capital Improvement Plan for the next

five (5) years, and depends upon additional fees and interest each year. The project identified in Exhibit A which is funded at less than 100% with Sanitary Sewer Conveyance Fees is funded by the Sewer Utility Customer Service Fees totaling \$500,000. The remaining appropriation from the Sanitary Sewer Conveyance Fees is \$309,718.

2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28TH DAY OF JANUARY, 2025, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. AB1600 Report on Development Impact Fees FYE June 30, 2024



Agenda Report

25-920

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action on Award of Task Orders Not to Exceed \$2,231,704 to Kastech Software Solutions Group for PeopleSoft Upgrade and Functional Improvements in Purchasing and Central Warehouse Operations and Approval of Related Budget Amendments

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Since 2002, the City of Santa Clara (City) has used PeopleSoft to manage essential functions across finance, human resources, benefits, accounting, payroll, and purchasing. The two primary PeopleSoft systems in use are:

- Financial and Supply Chain Management (FSCM): Managed by the Finance Department, this system supports financial operations such as general ledger, accounts payable, capital asset management, purchasing, inventory, accounts receivable, and billing.
- Human Capital Management (HCM): Managed by the Human Resources (HR) and Finance Departments, this system manages HR functions, including human resources, benefits, time & labor, and payroll.

Over the years, various modifications were made to PeopleSoft to address immediate operational needs, but some changes were inconsistent with the system's intended use. Specific issues within FSCM include:

- System Configuration Challenges: Certain configurations across core modules, including Purchasing, Accounts Payable, and Inventory Management, were implemented to bypass controls due to limited staffing. However, these changes resulted in foundational issues that have hindered system efficiency.
- Ceasing Use of Requisition Module: Use of the Requisition module is a standard best practice for all Enterprise Resource Planning (ERP) systems and not just PeopleSoft. It provides a clear delineation of procurement responsibilities between operating departments and Purchasing. When use of the Requisition module was stopped, departments began entering purchase orders directly, resulting in limited control over procurement processes.
- Lack of Centralized Contracts Management: The Procurement Contracts module was never implemented, resulting in decentralized contract management. Departments have relied on

manual methods to manage contracts and track spending, increasing the risk of inconsistencies and reducing oversight.

Recognizing these issues and the need for improved PeopleSoft functionality citywide, the City initiated a PeopleSoft enhancement initiative in 2020. An internal working group from the Finance, Human Resources, and Information Technology Departments identified over 70 areas for improvement. Following a Request for Proposals (RFP) process, the City Council approved nine master agreements, each with a five-year term, to support these initiatives. Under these agreements, the City Manager was authorized to issue task orders up to \$250,000 without requiring additional City Council approval. Kastech Software Solutions Group (Kastech) was awarded one of these agreements, which was executed on September 1, 2020.

In January 2022, the Finance Department selected Kastech to implement several key improvements to FSCM. These improvements include the implementation of a capital assets module, along with enhancements to the billing, accounts receivable, and accounts payable modules. Building on these efforts, staff now proposes a series of projects with Kastech to optimize purchasing operations and to upgrade PeopleSoft to the latest versions.

This report seeks City Council authorization to issue task orders exceeding \$250,000 to Kastech for four PeopleSoft projects, as outlined below.

DISCUSSION

I. Projects Related to FCSM

In June 2024, the Purchasing Division of the Finance Department requested a proposal from Kastech to implement the PeopleSoft Procurement Contracts and Expense Management modules and reinstate the Requisition module (currently, departments create their own purchase orders that bypass the requisition process). Due to uncertainties around project scope, an initial task order of \$55,200 was issued for a preliminary review. Over four weeks, Kastech reviewed the configuration of the Purchasing module, assessed business processes, and identified system usage issues affecting purchasing and warehouse operations. This review led to a project roadmap to implement the Procurement Contracts module, reinstate the Requisition module, and address system-related issues. These efforts are identified below as Projects 1 - 3.

A. Project 1 - Procurement Contracts and Requisition Module

For this project, Kastech will work on the following tasks to improve the procurement process:

- Conduct a thorough review of system configurations across key PeopleSoft modules, including Purchasing, Commitment Control, Accounts Payable, Warehouse, Item Management, and General Ledger
- Address and correct system configuration issues
- Set up the traditional requisition channel
- Implement the PeopleSoft Purchasing Contracts module citywide, which will centralize contract management, provide uniformity across the organization on how contracts are stored, and enhance control over all contract-related activities throughout their term.

The completion of the project will streamline processes related to procurement and contracts management functions, allow staff to manage procurement contracts in a centralized system, resolve multiple system issues, and improve the ability to track contract expenditures more effectively.

B. Project 2: Inventory/Warehouse Management

This project focuses on enhancing inventory and warehouse management. Kastech will:

- Perform data cleansing to remove duplicate records
- Conduct item maintenance and correct inventory locations
- Setup additional inventories as needed
- Address mobile inventory issues to improve real-time data entry
- Review and correct cost accounting rules to ensure accurate cost accounting entries for inventory transactions are posted and reflected in the General Ledger
- Automate various warehouse management activities, including the inventory replenishment process.

Upon completion, this project will improve data management, inventory management, and cost accounting entries to the General Ledger, automate the stock replenishment process, and enhance the use of mobile devices for real-time data entry.

C. Project 3: Purchase-Cards (P-Card), Expense Management, Dashboards, and Other Functionalities

This project includes a series of improvements to optimize several functionalities. Kastech will:

- Implement the P-Card and Expense Management feature within PeopleSoft Purchasing
- Develop and automate approval workflows within Accounts Payable
- Configure dashboards and work centers for staff to manage their day-to-day activities around Purchasing, Accounts Payable, and Commitment Control more efficiently

Upon completion, this project will streamline purchasing activities through the P-card and Expense Management modules, automate approval workflows in Accounts Payable, and provide staff with user-friendly dashboards and work centers to improve daily task management.

II. System-Wide Upgrade (Applicable to Both FSCM and HCM)

This effort is part of necessary system maintenance to ensure the compliance and performance of the PeopleSoft platform. The implementation will involve city-wide participation outside of the core departments of Information Technology, Finance, and Human Resources to address system-wide capabilities.

A. Project 4 - General PeopleSoft Upgrade

A Request for Proposals (RFP) was conducted for the PeopleSoft upgrade. Sixteen proposals were received and evaluated. In October 2024, Kastech was selected based on “best value” pursuant to

Section 2.105.140(c) of the Santa Clara City Code.

This project will upgrade PeopleSoft infrastructure and applications to the latest releases for compliance and performance and improve the architecture for external access to support planned enhancements. In addition, new functional and technical capabilities available and desired will be prioritized and implemented. Upon completion, this project will strengthen data security and ensure delivery of Oracle security patches, enhance system performance, and support business continuity.

To maintain streamlined management of the various tasks that will be issued to Kastech, staff plans to issue a task order under the existing agreement with Kastech, so that all project and contract management activities can be managed under one agreement.

Total Estimated Project Costs

Table 1 provides the total estimated cost for all four projects.

Table 1

Project Name	Total
Project 1: Procurement Contracts and Requisition Module	\$623,599
Project 2: Inventory/Warehouse Management	\$362,799
Project 3: P-Card, Expense Management, Dashboards, and Other Functionalities	\$317,599
Project 4: General PeopleSoft Upgrade	\$724,825
Subtotal	\$2,028,822
Contingency (10%)	\$202,882
Maximum Compensation	\$2,231,704

Staff is requesting City Council authorization to issue task orders to Kastech for the projects outlined above, with a total aggregate amount of \$2,231,704, inclusive of a 10% contingency. Payments will be based on successful completion of key project milestones and deliverables.

The City currently holds all necessary licenses to complete the projects, except for the Expense Management module, which will be procured under the existing agreement with Oracle Corporation, the provider of PeopleSoft, if needed.

Task Orders Process and Project Timelines

To facilitate the successful implementation of the PeopleSoft upgrade and improvements, task orders will be issued for each of the projects (Projects 1 - 4). Given the complexity of the effort, these projects will not necessarily follow a sequential order. Instead, staff will work closely with Kastech to define the specific activities and ensure the successful completion of major milestones before issuing additional task orders.

This phased approach is typical of complex software implementations where coordination across

multiple activities is crucial to achieving the overall project objectives. Such projects often require flexible scheduling, allowing the project team to address unforeseen challenges and adjust timelines. The implementation will also involve coordination across multiple departments and will be planned around any key operational periods to minimize disruptions.

Table 2 provides the estimated completion dates, which are subject to change based on the progress of the implementation and other factors.

Table 2

Project Name	Estimated Start Date	Estimated Completion Date
Project 1: Procurement Contracts and Requisition Module	April 2025	February 2026
Project 2: Inventory/Warehouse Management	November 2025	April 2026
Project 3: P-Cards, Expense Management, Dashboards, and Other Functionalities	June 2025	August 2026
Project 4: PeopleSoft HCM Upgrade	April 2025	April 2026
Project 4: PeopleSoft FSCM Upgrade	April 2025	April 2026

Future Projects

Additional projects, such as e-Signature integration and supplier management, have been identified for future consideration. These will be presented to the City Council at a later date should a decision be made to move forward with them.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of a California Environmental Quality Act (“CEQA”) pursuant to section 15378 (b)(5) of Title 14 of the California Code of Regulations in that it is an administrative activity that will not result in direct or indirect physical changes in the environment.

FISCAL IMPACT

Existing funding is available in the Financial and Human Resources Management System Update Project in the General Government Capital Fund (539-6501) to partially cover the cost of these projects. An additional \$1,466,705 is needed to fully fund the four projects and 10% contingency.

In anticipation of these additional costs, \$1.0 million was allocated to the project from the General Fund as part of the FY 2023/24 Year End Close Report approved by the City Council on December 3, 2024. At that time, the allocation of costs to other funds was unknown. With the further development of the project scopes, an equitable distribution of costs has been calculated to determine the funding share of the General Fund and other funds. This distribution is based on the anticipated usage of the four projects. While the General Fund’s portion of the costs, \$361,995, is below the \$1.0 million that was already appropriated, it is recommended to retain the remaining amount of \$638,005 in the project for future needed improvements. Additional funding of \$1,104,710 is recommended to be allocated from the Electric, Water and Sewer, Solid Waste, Recycled Water, Building Development,

and Fire Development Funds in the budget amendments below.

	Budget Amendment FY 2024/25		
	Current	Increase/ (Decrease)	Revised
General Government Capital Fund (539)			
<u>Transfers From</u>			
Electric Utility Fund	\$377,700	\$902,586	\$1,280,286
Water Utility Fund	\$150,456	\$89,048	\$239,504
Sewer Utility Fund	\$27,404	\$57,597	\$85,001
Solid Waste Fund	\$19,256	\$29,514	\$48,770
Recycled Water Fund	\$251	\$6,311	\$6,562
Building Development Services Fund	\$43,111	\$16,425	\$59,536
Fire Development Services Fee Fund	\$8,481	\$3,229	\$11,710
<u>Expenditure</u>			
Human Resources Management System Update Project (CIP 6501)	\$2,662,831	\$1,104,710	\$3,767,541
Electric Utility Fund (091)			
<u>Transfers To</u>			
General Government Capital Fund	\$377,700	\$902,586	\$1,280,286
<u>Ending Fund Balance</u>			
Unrestricted Fund Balance	\$64,769,140	(\$902,586)	\$63,866,554
Water Utility Fund (092)			
<u>Transfers To</u>			
General Government Capital Fund	\$150,456	\$89,048	\$239,504
<u>Ending Fund Balance</u>			
Unrestricted Fund Balance	\$2,004,664	(\$89,048)	\$1,915,616
Sewer Utility Fund (094)			
<u>Transfers To</u>			
General Government Capital Fund	\$27,404	\$57,597	\$85,001
<u>Ending Fund Balance</u>			

Unrestricted Fund Balance	\$1,966,377	(\$57,597)	\$1,908,780
<u>Solid Waste Fund (096)</u>			
<u>Transfers To</u>			
General Government Capital Fund	\$19,256	\$29,514	\$48,770
<u>Ending Fund Balance</u>			
Operations and Maintenance Reserve	\$10,354,799	(\$29,514)	\$10,325,285
<u>Recycled Water Fund (097)</u>			
<u>Transfers To</u>			
General Government Capital Fund	\$251	\$6,311	\$6,562
<u>Ending Fund Balance</u>			
Unrestricted Fund Balance	\$918,589	(\$6,311)	\$912,278
<u>Building Development Services Fund (155)</u>			
<u>Transfers To</u>			
General Government Capital Fund	\$43,111	\$16,425	\$59,536
<u>Ending Fund Balance</u>			
Unrestricted Fund Balance	\$34,036,388	(\$16,425)	\$ 34,019,963
<u>Fire Development Services Fund (158)</u>			
<u>Transfers To</u>			
General Government Capital Fund	\$8,481	\$3,229	\$11,710
<u>Ending Fund Balance</u>			
Unrestricted Fund Balance	\$2,373,910	(\$3,229)	\$ 2,370,681

COORDINATION

This report has been coordinated with the Information Technology Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the

public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Authorize the City Manager or designee to negotiate and execute task orders with Kastech Software Solutions Group under the agreement for services dated September 1, 2020 (Agreement) for PeopleSoft upgrades and functional improvements in Purchasing and warehouse operations, with a total aggregate amount not to exceed \$2,231,704, subject to the appropriation of funds and the review and approval as to form by the City Attorney;
2. Authorize the City Manager or designee to (a) take any necessary actions to implement and administer the Agreement or any task orders; and (b) amend the Agreement to extend the term as needed to complete the task orders or amend any task orders authorized herein, subject to the review and approval as to form by the City Attorney; and
3. Approve the following FY 2024/25 budget amendments:
 - A. In the General Government Capital Fund, recognize transfers of \$902,586 from the Electric Utility Fund, \$89,048 from the Water Utility Fund, \$57,597 from the Sewer Utility Fund, \$29,514 from the Solid Waste Fund, \$6,311 from the Recycled Water Fund, \$16,425 from the Building Development Services Fund, and \$3,229 from the Fire Development Services Fee Fund, and increase the Human Resources Management System Update project by \$1,104,710 (five affirmative Council votes required to appropriate additional revenue);
 - B. In the Electric Utility Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$902,586 (five affirmative Council votes required for the use of unused balances);
 - C. In the Water Utility Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$89,048 (five affirmative Council votes required for the use of unused balances);
 - D. In the Sewer Utility Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$57,597 (five affirmative Council votes required for the use of unused balances);
 - E. In the Solid Waste Fund, increase the transfer to the General Government Capital Fund and reduce the Operations and Maintenance Reserve by \$29,514 (five affirmative Council votes required for the use of unused balances);
 - F. In the Recycled Water Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$6,311 (five affirmative Council votes required for the use of unused balances);
 - G. In the Building Development Services Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$16,425 (five affirmative Council votes required for the use of unused balances); and
 - H. In the Fire Development Services Fee Fund, increase the transfer to the General Government Capital Fund and reduce the unrestricted ending fund balance by \$3,229 (five affirmative Council votes required for the use of unused balances).

Reviewed by: Kenn Lee, Director of Finance
Approved by: Jovan Grogan, City Manager

ATTACHMENTS

1. Agreement with Kastech, dated September 1, 2020
2. Kastech Task Order for PUR-001-0

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
KASTECH SOLUTIONS, LLC**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Kastech Solutions, LLC a Texas limited liability company, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Consultant shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes



and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on July 14, 2020 and terminate on July 31, 2025.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional one-year period ending July 31, 2026. City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.



5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

Consultant shall be paid in accordance with Exhibit B, Compensation.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.
- B. Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons directly employed by it.

9. NO THIRD-PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.



10. INDEPENDENT CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Consultant may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant



11/11/2018 10:00:00 AM

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Consultant warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement



shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Kenn Lee, Director of Finance
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at klee@santaclaraca.gov

And to Consultant addressed as follows:

Kastech Solutions, LLC
Attention: Aaron Canchola
6918 Corporate Drive, Suite A-1
Houston, TX 77036
and by e-mail at aaron@kastechssg.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and



following and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Consultant shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

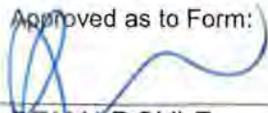


25. COUNTERPARTS

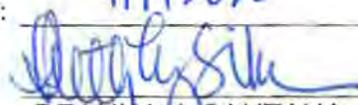
This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:


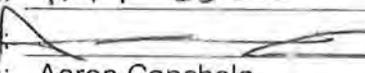
For **BRIAN DOYLE**
City Attorney

Dated: 9/11/2010


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

KASTECH SOLUTIONS, LLC
a Texas limited liability company

Dated: 7-19-2020
By (Signature): 

Name: Aaron Canchola

Title: Director of Business Development

Principal Place of Business Address: 6918 Corporate Drive, Suite A-1
Houston, TX 77036

Email Address: aaron@kastechssg.com

Telephone: (281) 724-4566 Ext. 117

Fax: (281) 724-6464

"CONSULTANT"



EXHIBIT A
SCOPE OF SERVICES

1. Consultant shall provide as-needed PeopleSoft professional/technical services for various projects in support the City of Santa Clara's ("City") HR and Finance Departments initiatives. Projects may include, but not limited to, the following:

- 1.1. Evaluate and Automate the following HR/Payroll functions:

- 1.1.1. Retroactive pay including impacts on:
 - 1.1.1.1. Wages
 - 1.1.1.2. FLSA
 - 1.1.1.3. Out of Class
 - 1.1.1.4. Automation of MOU changes/merit changes
 - 1.1.2. Implement PERS Compensation Limit
 - 1.1.3. Revalidate regular pay of rate
 - 1.1.4. Review pay codes and eliminate or streamline business process to reduce the number of codes
 - 1.1.5. Research time entry for efficiencies
 - 1.1.6. Evaluate and streamline processes for premium pay

- 1.2. Additional Items:

- 1.2.1. Integrate NeoGov into PeopleSoft
 - 1.2.2. Review and enhance Profile management
 - 1.2.3. Evaluate systems in order to implement automation for
 - 1.2.3.1. Electronic timekeeping
 - 1.2.3.2. Vacation cash out
 - 1.2.4. Implement Benefits Administration module
 - 1.2.5. Workflow automation
 - 1.2.6. Proration of management leave (new hires and promotion)
 - 1.2.7. Research potential discrepancies between timesheet leave balance and paycheck leave balances
 - 1.2.8. Leave management workflow
 - 1.2.9. Auditing on all HR/Payroll screens
 - 1.2.10. PeopleSoft patches
 - 1.2.11. Exception based time reporting for management
 - 1.2.12. Default pay
 - 1.2.13. Mass changes to benefits that are bargained/apply new updated changes
 - 1.2.14. Add termination rows for all benefits and pays when adding termination row on Job Data
 - 1.2.15. Track completion of probation period and other milestones in system



2. The City will issue a task order (Exhibit D) to Consultant as services are needed to complete various projects. The task order will describe the services and deliverables the Consultant must provide.

A handwritten signature or mark, possibly the letter 'A', located in the bottom right corner of the page.

EXHIBIT B
COMPENSATION

1. MAXIMUM COMPENSATION

- 1.1. The maximum compensation shall be as set forth in each Approved Task Order (Maximum Task Order Compensation). No services will be performed unless both Parties execute an Approved Task Order outlining the services requested and the compensation agreed for such services.
- 1.2. Consultant shall fully complete all work required by the Approved Task Order for no more than the maximum task order compensation.
- 1.3. City shall only be liable for charges expressly authorized in the Approved Task Order.

2. INVOICING

- 2.1. Consultant shall render invoices in accordance with the fees, payment schedule, and other terms and conditions specified applicable Approved Task Order.
- 2.2. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

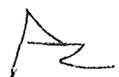


EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.



B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

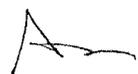
In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subconsultants involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant or any subconsultant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.



E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.



F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subconsultant (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications



and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



EXHIBIT D
TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>



Consultant:
Task Order No.:

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. Services:

B. Deliverable:

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date:
 On or before ____ Business Days from
_____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. Services:

B. Deliverable:

C. Completion Time: The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- On or before the following date:
 On or before ____ Business Days from
_____.



ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. *If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).*

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				



Consultant:
Task Order No.:

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Task Order:

- The Consultant cannot use any subconsultants.
- The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	



Consultant:
Task Order No.:

ATTACHMENT C: COMPENSATION TABLE

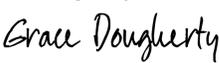
The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables			
Column 1	Column 2	Column 3	Column 4
Task Nos. from Attachment A	Basis of Compensation	Invoice Period	Compensation
1	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses			
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:	\$
Part 3 – Subconsultant Costs			
<input type="checkbox"/> Subconsultant costs are <i>not</i> separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.		<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:	\$
Maximum Task Order Compensation (sum of Parts 1 through 3):			\$

7

TASK ORDER FORM

Cover Page

1.	Approved Task Order No.: PUR-001-0		
2.	Consultant's Name: Kastech Solutions, LLC		
3.	Project Name: PeopleSoft FSCM 9.2 Purchasing System Improvements		
4.	Project Location: City of Santa Clara at 1500 Warburton Avenue, Santa Clara, CA 95050		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement dated September 1, 2020 between the City of Santa Clara and Kastech Solutions, LLC (Agreement), this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are hereby incorporated into the Agreement by references.		
6.	Budget/Fiscal:		
	a. Maximum Task Order Compensation for this Approved Task Order:	\$	\$55,200
	b. Revised Maximum Task Order Compensation for this Approved Task Order	\$	N/A
7.	Department/Analyst Approval:	DocuSigned by:  5FAF96D69F88462...	Date: <u>5/29/2024</u>
8.	Consultant Approval:	 _____	Date: <u>5/21/2024</u>
9.	Department Director Approval:	DocuSigned by:  246673D6CF804B9...	Date: <u>5/29/2024</u>
10.	City Attorney Approval:	DocuSigned by:  4BC723195C94448...	Date: <u>5/29/2024</u>
11.	City Manager Approval:	DocuSigned by:  9EAD66B5D3C049A...	Date: <u>6/4/2024</u>

Consultant: Kastech Solutions, LLC
Task Order No.: PUR-001-0

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

- A. **Services:** Attached behind this Page.
- B. **Deliverable:** Attached behind this page.
- C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
 - On or before the following date: December 31, 2024 or sooner
 - On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

- A. **Services:**
- B. **Deliverable:**
- C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
 - On or before the following date:
 - On or before ____ Business Days from _____.

SCOPE OF SERVICES

SECTION 1. COMPREHENSIVE ASSESSMENT

- 1.1** Contractor shall conduct meetings and discovery sessions to conduct a detailed analysis of the City's current business structure and provide recommendations for improving the use of PeopleSoft FSCM 9.2 Purchasing ("PeopleSoft Purchasing"). This includes but is not limited to:
- 1.1.1** Review integrations with other PeopleSoft applications including:
 - 1.1.1.1** PeopleSoft Asset Management
 - 1.1.1.2** PeopleSoft eProcurement
 - 1.1.1.3** PeopleSoft General Ledger including Commitment Control
 - 1.1.1.4** PeopleSoft Inventory
 - 1.1.1.5** PeopleSoft Payables
 - 1.1.1.6** PeopleSoft Strategic Sourcing
 - 1.1.1.7** PeopleSoft Supplier Contract Management
 - 1.1.2** Review operations of each City department PO processing options.
 - 1.1.3** Review PO approval process/workflow/controls to streamline approvals and enhance efficiency.
 - 1.1.4** Review PO change order process.
 - 1.1.5** Review potential use of the Procurement Card feature to manage P-Card transactions in JPMorgan Chase.
 - 1.1.6** Evaluate existing system functions for optimization or potential process changes.
 - 1.1.7** Assess the system's reporting and analytics capabilities to track procurement activities and identify improvement areas.
 - 1.1.8** Evaluate the availability of training documents and resources to help users effectively utilize the Purchasing Module.
- 1.2** Contractor will use the Contracts Management Requirements Matrix Version 1.0_2024-03-14 shared by the City and review Leckey Consulting's Recommended Optimization Plan for PeopleSoft Procurement, Contracts Management and Warehouse Inventory Functions Report dated May 26, 2020.

Consultant: Kastech Solutions, LLC
Task Order No.: PUR-001-0

- 1.3** Contractor shall identify the precise requirements for implementing (a) the PeopleSoft Procurement Contracts Module to address prioritized needs, including tracking spend, pricing enforcement, multi-supplier contract grouping, and optimizing procurement processes for efficiency and (b) the PeopleSoft Requisition function.

SECTION 2. PROJECT MANAGEMENT

2.1 Contractor's Responsibilities

- 2.1.1** The principal members of the Contractor's project team are shown below. In the event that the Contractor's dedicated project lead is removed from the Project, Contractor will identify a replacement as quickly as possible in order to limit the impact to project deliverables and timelines.

Name	Role
Aaron Canchola	Account Executive
Jayan Ravindranathan	Project Manager
Ron Bolakowski	PeopleSoft Functional Consultant
Krishna Gavvagi	PeopleSoft Functional Consultant

- 2.1.2** The Contractor's Project Manager shall be the primary person communicating with the City and keeping City fully apprised on the status and progress of the project. The Contractor's Project Manager shall also be responsible for project schedule updates; creation and preparation of progress reports and meeting minutes; adherence to project scheduling; and general project coordination.
- 2.1.3** In general, the Contractor's Project Manager has the leadership role in carrying out the scope of work and implementation to successful completion and go-live. The City's Project Manager is primarily a support role to ensure the City's requirements are met and project is completed successfully and on schedule.
- 2.1.4** Contractor's Project Manager shall submit weekly progress reports to the City's Project Manager on the project status. Reports shall include a summary of activities undertaken, progress achieved compared to plan, percent of overall work completed, and any other information deemed important.
- 2.1.5** Contractor shall respond within two (2) business days or sooner as agreed upon between both parties for project-related activities.

2.2 City's Responsibilities

- 2.2.1** City shall provide oversight for the entire Project, but Contractor must provide overall project management for all tasks required for this project.
- 2.2.2** City shall assign a project manager who will work closely with Contractor to facilitate the successful completion of the project. The City's Project Manager shall maintain project communications with Contractor's Project Manager.
- 2.2.3** The City shall make available facilities for Contractor project staff while on-site, including: on-site office space for Contractor project staff, supplies, outside network connection, conference call and meeting facilities including any necessary logistics support for meeting rooms and general administrative support when required.
- 2.2.4** City will provide Contractor with the names and email addresses of key City personnel Contractor must speak with in order to properly execute the scope of services. While Contractor will drive the scheduling process, City will assist Contractor in coordinating the availability of key City personnel.
- 2.2.5** City will provide Contractor with assistance in connecting Contractor's team to necessary VPN and network equipment.
- 2.2.6** City will provide a project portal for Contractor to store and manage project-related documentation.
- 2.2.7** City will provide Contractor with access to PeopleSoft and related applications in order to properly execute the scope of services.

2.3 Mutual Responsibilities

- 2.3.1** City and Contractor shall work together in good faith to agree upon acceptable modalities and templates for communication, reporting, issue management, status updates, and assessment progress monitoring.
- 2.3.2** City and Contractor Project Managers will jointly coordinate day-to-day execution of the Project Schedule.
- 2.3.3** City and Contractor Project Managers will collaboratively manage project scope, budgets, issues, risks, communications and Change Orders.

SECTION 3. PROJECT SCHEDULE

3.1 Comprehensive Assessment Project Schedule

Consultant: Kastech Solutions, LLC
Task Order No.: PUR-001-0

- 3.1.1** Contractor will conduct a comprehensive assessment pursuant to Section 1 of the Scope of Services on a timeline of four weeks. The first two weeks shall be performed on site at the City of Santa Clara and the last two weeks will be remote.
 - 3.1.1.1** During Week 1 of 4, Contractor will conduct a business process review of the City's current processes.
 - 3.1.1.2** During Week 2 of 4, Contractor will review the City's system integration and reporting structure.
 - 3.1.1.3** During Week 3 and 4 of 4, Contractor will consolidate the scope detailing the activities required to implement subsequent phases and develop a project schedule for implementation of subsequent phases.
 - 3.1.1.4** The Project Manager, Account Executive, and PeopleSoft Functional Consultant will be on site for 40 hours per week for the first two weeks.

SECTION 4. DELIVERABLE(S):

Contractor shall deliver:

- 4.1** A report with proposed recommendations to improve the procurement process in PeopleSoft including identification of the required effort to implement such effort.
- 4.2** A comprehensive list of identified issues categorized by impact on successful implementation of the Procurement Contracts Module and the Requisition function.
- 4.3** A project plan to implement the PeopleSoft Procurement Contracts module and e-Procurement module, including a revised business process map.
- 4.4** Two 2-hour presentations of the final report to City-designated personnel, such as members of Finance, IT, or other departments.

SECTION 5. SUBSEQUENT PHASES

The City will issue a separate task order or amend this task order for subsequent work after completion of the assessment.

SECTION 6. CHANGE ORDERS

- 6.1** Any changes to the Scope of Services, project schedule, or cost of services requires a change order signed by both parties. Contractor shall communicate notification of intended changes in writing to the City's Project Manager via a

Consultant: Kastech Solutions, LLC
Task Order No.: PUR-001-0

Service Change Request (SCR) form and shall include justification for the change and the impact to the project's scope, schedule, or cost.

- 6.2** The City's Contract Manager will approve or reject the change within five (5) Business Days from the date the City's Project Manager receives the SCR form.
- 6.3** If the City does not approve or reject the change request within five (5) Business Days from the receipt of the SCR form and does not communicate a timeframe in which a decision will be made, the requested change will be considered deferred:
 - 6.3.1** The SCR status will be logged, tracked, and managed as a 'deferred' request.
 - 6.3.2** Work will proceed without incorporating the requested change into the work plan.
- 6.4** Where an approval or rejection decision is necessary for the work to proceed, Contractor shall immediately notify the City's Project Manager.
- 6.5** Contractor and City shall work in good faith to resolve disputes, including disputes over the classification of work being "in scope" or "out of scope."

Consultant: Kastech Solutions, LLC
 Task Order No.: PUR-001-0

ATTACHMENT B: STAFFING

1. **City’s Contract Manager:** The City’s contract manager for this Approved Task Order is:

Name: Grace Dougherty	Phone No.: 408-615-2039
Department: Finance/Purchasing Division	E-mail: gdougherty@santaclaraca.gov
Address: 1500 Warburton Avenue, Santa Clara, CA 95050	

2. **Consultant’s Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant’s contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant’s Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name: Suresh Katamreddy	Phone No.: 210 859 3259	X (01/09/19)		
6918 Corporate Dr, Suite A1, Address: Houston, TX – 77036	E-mail: suresh@kastechssg.com			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant: Kastech Solutions, LLC
Task Order No.: PUR-001-0

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- The Consultant cannot use any subconsultants.
- The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

Consultant: Kastech Solutions, LLC
 Task Order No.: PUR-001-0

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance with this Compensation Table.

Part 1 – Compensation for Services and Deliverables			
Column 1	Column 2	Column 3	Column 4
Task Nos. from Attachment A	Basis of Compensation	Invoice Period	Compensation
1	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Deliverables	\$ 55,200
2	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Deliverables	N/A
3	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Deliverables	N/A
4	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	N/A
Part 2 – Reimbursable Expenses			
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:	\$0
Part 3 – Subconsultant Costs			
<input checked="" type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.		<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:	\$0
Maximum Task Order Compensation (sum of Parts 1 through 3):			\$55,200



Agenda Report

25-1258

Agenda Date: 1/28/2025

REPORT TO CITY COUNCIL

SUBJECT

Action on Award of Purchase Order to STOMMEL, INC., dba LEHR for Panasonic Mobile Data Computers for Police and Fire Vehicles

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Mobile data computers (MDCs) installed in the City's police patrol vehicles are a vital piece of equipment for officers, providing officer safety and efficiency in the field. These MDCs enable patrol officers to access critical information relating to their safety, calls for service and contacts, report writing, and data from national, state, and regional law enforcement databases. Industry best practices recommend replacing MDCs every three to five years to maintain reliability and performance.

The current Panasonic MDCs installed in police vehicles have proven reliable with a low failure rate. However, the current Panasonic MDCs, along with the modems and antennas used by both the Police and Fire Departments, are aging and lack 5G capability. This presents risks such as lack of warranty coverage and increased cost for support and maintenance. Based on these factors, the Information Technology Department (ITD) has recommended replacing the MDCs, modems, keyboards, docks, and antennae.

DISCUSSION

Staff recommends issuing Purchase Orders (POs) to STOMMEL, INC., dba LEHR for the purchase of Panasonic Mobile Data Computers and related peripherals under the authority of City Code Section 2.105.270(c) which states that the City may, without observing formal bidding requirements, "contract with a vendor under a contract awarded using preestablished cooperative purchasing agreements, when such agreement resulted from a competitive bid process that meets or exceeds the City's competitive bid process."

The Finance Department's Purchasing Division Manager has determined that the cooperative purchasing agreement with STOMMEL, INC., dba LEHR, established through a competitive Request for Proposals process conducted by NASPO ValuePoint (with the State of Minnesota as the lead public agency), meets or exceeds the City's competitive bidding process.

As a result, staff is seeking City Council authorization to issue POs to STOMMEL, INC., dba LEHR under NASPO ValuePoint Master Agreement 23019. This agreement is effective from July 19, 2023 to June 30, 2025, with the option to extend for up to an additional 36 months through June 30, 2028. The Police Department, Fire Department, ITD, and the Public Work's Fleet Management Division will

coordinate the installation of the new hardware and software. This effort will be synchronized with the installation of the new P25 radios to minimize disruptions to public safety units and reduce the need for Automotive Services Division staff to access the vehicles multiple times.

ENVIRONMENTAL REVIEW

This action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

The equipment purchase is \$661,298, factoring in a 5% contingency of \$33,065 and sales tax of \$60,311, the purchase totals \$754,674. In addition, costs to install and program the hardware and software are estimated at \$129,760, bringing the total project costs to \$884,434.

On December 12, 2023, the Police Department received City Council approval to allocate \$379,136 in Citizen’s Option for Public Safety (COPS) funding for the replacement of the MDCs. As approved as part of the FY 2024/25 and FY 2025/26 Adopted Capital Improvement Program budget, an additional \$515,804 was appropriated from the General Fund Capital Projects Reserve for this project, bringing the total available funding to \$894,940 for Police Department MDC’s, Police and Fire Department 4G Modems and Antennas. It is anticipated that any savings from the MDC replacement project will be returned to the General Fund Capital Project Reserve.

COORDINATION

This report has been coordinated with the Finance Department, Information Technology Department, as well as the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Authorize the City Manager, or designee, to execute a purchase order with LEHR for Panasonic Toughbooks and Components with a total amount not-to-exceed \$754,674, under NASPO ValuePoint Master Agreement 23019, in a final form approved by the City Attorney; and
2. Authorize the City Manager, or designee, to execute purchase orders with LEHR through June 30, 2028, under NASPO ValuePoint Master Agreement 23019, for additional purchases or replacement of MDCs or components as-needed, subject to the appropriation of funds and in a final form approved by the City Attorney.

ATTACHMENT

1. NASPO ValuePoint Master Agreement 23019

Reviewed by: Cory Morgan, Chief of Police
Approved by: Jovan Grogan, City Manager



NASPO ValuePoint Master Agreement No.: 23019

This Contract is between the State of Minnesota, acting through its Commissioner of Administration (“Lead State”) and Panasonic Connect North America, Division of Panasonic Corporation of North America, whose designated business address is Two Riverfront Plaza, 9th Floor, Newark, NJ 07102-5490 (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

Recitals

1. The State of Minnesota, Department of Administration, Office of State Procurement, on behalf of the State of Minnesota and NASPO ValuePoint Cooperative Procurement Program (“NASPO ValuePoint”) issued a solicitation to establish Minnesota NASPO ValuePoint Master Agreement(s) (“Contract”) with qualified manufacturers for Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage, including related Peripherals & Services);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract; and
4. That Contractor changed its name from Panasonic Corporation of North America (PNA), doing business as Panasonic System Solutions Company of North America (PSSNA) to Panasonic Connect North America, Division of Panasonic Corporation of North America during negotiations; and
5. All authorized governmental entities in any state or participating US Territory are welcome to use the resulting Master Agreement through NASPO ValuePoint with the approval of the State Chief Procurement Official. Upon final award of the overarching Master Agreement, Contractors are able to sign Participating Addendums (PA) at the option of Participating States. Participating States reserve the right to add state specific terms and conditions and modify the scope of the contract in their Participating Addendum as allowed by the Master Agreement.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

- a. Effective date. July 1, 2023, or the date the Lead State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
- b. Expiration date. June 30, 2025. This Master Agreement may be extended for up to an additional 36 months, in increments as determined by the Lead State, through a duly executed amendment.
- c. If, in the judgment of the Lead State, a follow-on, competitive procurement will be unavoidably delayed beyond the planned date of execution of the follow-on master agreement, this Master Agreement may be extended for a

reasonable period of time, not to exceed six months. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

2. Representations and Warranties

- a. Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the Lead State is empowered to engage such assistance as deemed necessary.
- b. Contractor warrants that it is duly qualified and shall perform its obligations under this Master Agreement in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor’s industry, trade, or profession, and in accordance with the specifications set forth in this Master Agreement, to the satisfaction of the Lead State.
- c. Contractor warrants that it possesses the legal authority to enter into this Master Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Master Agreement, or any part thereof, and to bind Contractor to its terms.

3. Awarded Band(s)

The solicitation included three product Bands: Band 1, Personal Computing Devices – Windows Operating Systems: Desktops, Laptops, Tablets; and Band 2, Personal Computing Devices – Non-Windows Operating Systems: Desktops, Laptops, Tablets; and Band 3, Servers and Storage. The Contractor is awarded the following Band(s):

- Band 1, Personal Computer Devices – Windows Operating Systems
- Band 2, Personal Computer Devices - Non-Windows Operating Systems

4. Configuration Dollar Limits

The following configuration limits apply to the Master Agreement. Participating Entities may define their configuration limits in their Participating Addendum. The Participating Entity’s Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Product and Service Schedule.

The dollar limits identified below are based on a SINGLE computer/system configuration. This is NOT a restriction on the purchase of multiple configurations (e.g., an entity could purchase 10 laptops at \$15,000 each, for a total purchase price of \$150,000).

<u>ITEM</u>	<u>CONFIGURATION</u>
Band One	\$15,000
Band Two	\$15,000
Band Three	\$1,000,000
Peripherals	\$10,000
Services	Addressed in the Participating Addendum

5. Restrictions

The following restrictions apply to the Master Agreement. A Participating Entity may set further restrictions of products in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Entity’s Product and Service Schedule.

- a. Software

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
2. Any software purchased must be related to the procurement of equipment.
3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment, except for the exceptions allowed under Paragraph 5.a.4.
4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (Band 3) purchased, is allowed and may be procured after the initial purchase of equipment.

b. General Services

1. Services must be related to the procurement of equipment.
2. Service limits will be addressed by each State.
3. Wireless phone and internet service is not allowed.
4. Managed Print Services are not allowed.

c. Cloud Services

1. Cloud Services are restricted to Services that function as operating systems and software needed to support or configure hardware purchased under the scope of the contract and is subject to equipment configuration limits.
2. Any Cloud Service purchased must be related to the procurement of equipment.

d. Third-Party Products

1. Third-Party Products can be offered only in the Bands they have been awarded. All third-party products must meet the definition(s) of the Band(s) in which they are being offered.
2. Products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment cannot be offered unless approved by the Lead State.

e. Additional Product/Services

1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.
2. Lease/Rentals of equipment may be allowed and will be addressed by each State.
3. Cellular Phone Equipment is not allowed.
4. EPEAT Bronze requirement may be waived, on a State case-by-case basis, if approved by the State's Chief Procurement Officer. EPEAT Bronze requirement does not currently apply to storage.

6. Authorized Representative

a. Master Agreement Administrator. The Master Agreement Administrator designated by NASPO ValuePoint and the State of Minnesota, Department of Administration is Elizabeth Randa, Acquisition Management Specialist.

Elizabeth Randa, Acquisition Management Specialist
Department of Administration
Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
E-mail: elizabeth.randa@state.mn.us
Phone: 651.201.3122

b. Contractor's Authorized Representative. The Contractor's Authorized Representative is Solomon Surles III, Government Contracts Manager.

Solomon Surles III, Government Contracts Manager
Panasonic Connect North America, Division of Panasonic Corporation of North America
Two Riverfront Plaza, 9th Floor
Newark, NJ 07102-5490
Email: Solomon.SurlesIII@us.panasonic.com
Phone: 775.895.2401

If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the Lead State.

7. Notices

If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. An email shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed to the Master Agreement Administrator.

8. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

Exhibit A: NASPO ValuePoint Terms and Conditions
Exhibit B: Minnesota Terms and Conditions
Exhibit C: Requirement
Exhibit D: Price Schedule

9. Survival of Terms:

The following clauses survive the expiration or cancellation of this Master Agreement: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that states it shall survive, shall survive.

10. Entire Agreement

This Contract and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.

1. Contractor

The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: Richard Elliot
DocuSigned by:
549B07E1FBB7432...

Signature: Richard Elliot

Title: SVP Finance and Business Operations Date: 7/19/2023

2. State Agency

With delegated authority

Print name: Elizabeth M. Randa
DocuSigned by:
742DE739C8ED492...

Signature: Elizabeth M. Randa

Title: Acquisition Management Specialist Date: 7/19/2023

3. Commissioner of Administration

As delegated to The Office of State Procurement

Print name: Andy Doran
DocuSigned by:
68D02A26D7604BA...

Signature: Andy Doran

Title: IT Acquisitions Supervisor Date: 7/19/2023

Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Conflict of Terms/Order of Precedence.

- a. Any order placed under this Master Agreement shall consist of the following documents:
 1. A Participating Entity's Participating Addendum ("PA");
 2. Minnesota NASPO ValuePoint Master Agreement, as negotiated, including all exhibits;
 3. A Purchase Order issued against a PA (terms and conditions set forth in a Purchase Order will not be deemed to modify, diminish, or otherwise derogate the terms and conditions set forth in a Participating Addendum or Minnesota NASPO ValuePoint Master Agreement).
- b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- c. Contractor terms and conditions may be incorporated if expressly accepted by the Lead State and attached to the Master Agreement as an Exhibit or Attachment, or by written reference (including reference to information contained in a URL or referenced policy). A written reference, including by URL or policy, is incorporated into the Master Agreement only if the Master Agreement expressly identifies that reference. URL's must be explicitly referenced to be incorporated into the Master Agreement. URL's contained within the URL's that are explicitly referenced are not incorporated into the Master Agreement. Any Contractor term or condition incorporated by URL or written reference applies to this Master Agreement only to the extent such term or condition is not prohibited by applicable law. Any change to information contained in a URL or referenced policy will not affect any financial obligation, place any additional material obligation on an ordering entity, or materially diminish an ordering entity's ability to use the product or service.
- d. A written Master Agreement (which may include the contents of the RFP and selected portions of Contractor's response incorporated therein by reference) will constitute the entire agreement of the parties to the Master Agreement. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the RFP, or terms listed or referenced on the Contractor's website not otherwise incorporated into the Master Agreement, in the Contractor quotation/sales order, or in similar documents subsequently provided by the Contractor.
- e. Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

2. Definitions.

- a. **Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.
- b. **Accessory** means a product that enhances the user experience but does not extend the functionality of the computer (e.g., mouse pad or monitor stand). For the purposes of this Contract, accessories are considered peripherals.

- c. _____ as a **Service (_aaS)** refers to any good provided in a subscription-based model that is defined in the industry as “_____ as a Service”. Examples are “Software as a Service”, “Infrastructure as a Service”, and “Storage as a Service”, and shall follow the NIST definitions of those services. _____ as a Service are permitted only when they meet the restrictions found in Paragraph 5.c, above.
- d. **Band** means a category of products. There are three product bands which may be awarded through this Contract. Each product band includes related peripherals and services.
- e. **Components** are the parts that make up a computer configuration.
- f. **Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.
- g. **Configuration** means the combination of hardware and software components that make up the total functioning system.
- h. **Customer** (see Purchasing Entity).
- i. **Desktop** means a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: (1) the processor, 2) display monitor, and 3) input devices usually a keyboard and a mouse. Desktops, including desktop virtualization endpoints such as zero and thin clients, are included in Bands 1 and 2 of this Contract.
- j. **Embedded Software** means one or more software applications which permanently reside on a computing device.
- k. **Energy Star®** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes it easy to identify energy efficient computers by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.
- l. **EPEAT** is a type-1 ecolabel for identifying and purchasing sustainable IT products. EPEAT-registered products must meet sustainability criteria detailed in voluntary consensus-based standards that are free and publicly available on the Green Electronics Council’s website at www.greenelectronicscouncil.org. Products are classified as Bronze, Silver, or Gold based on meeting criteria that address the life cycle of the products. Product life cycle includes material extraction, hazardous substance reduction, end-of-life management, packaging, and corporate sustainability. Only products listed as Active in the online EPEAT Registry are considered to meet the EPEAT criteria.
- m. **FOB Destination** means that shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.
- n. **FOB Inside Delivery** means that shipping charges are included in the price of the item, and that the shipped item becomes the legal property and responsibility of the receiver when it reaches the inside delivery point, which is beyond the front door or loading dock. FOB Inside Delivery is a special shipping arrangement that may include additional fees payable by the Purchasing Entity. FOB Inside Delivery must be annotated on the Purchasing Entity ordering document.

- o. **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- p. **Laptop** means a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad, and speakers in a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptops include notebooks, ultrabooks, netbooks, Zero and thin client devices, and computers with mobile operating systems. Laptops are included in Bands 1 and 2 of this Contract.
- q. **Lead State** means the State centrally administering any resulting Master Agreement(s).
- r. **Mandatory Requirement** is a requirement that the failure to meet results in the rejection of the responder's proposal unless all responders are unable to meet the mandatory requirement. The terms "must" and "shall" identify a mandatory requirement. Any objection to a mandatory requirement should be identified by responders in the Question and Answer period.
- s. **Manufacturer** means a company that, as one of its primary business functions, designs, assembles, owns the trademark/patent for, and markets branded computer equipment.
- t. **Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint, and the Contractor.
- u. **Middleware** means the software "glue" that helps programs and databases (which may be on different computers) work together. The most basic function of middleware is to enable communication between different pieces of software.
- v. **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
- w. **Option** means an item of equipment or a feature that may be chosen as an addition to or replacement for standard equipment and features.
- x. **Order or Purchase Order** means any purchase order, sales order, contract or other method used by a Purchasing Entity to order the Products.
- y. **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.
- z. **Participating Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- aa. **Participating State** means a state that has executed a Participating Addendum.

bb. **Partner** means a company, authorized by the Contractor and approved by the Participating Entity, to provide marketing, support, or other authorized contract services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Agreement. A Partner may include, but is not limited to, an agent, subcontractor, fulfillment partner, channel partner, business partner, servicing subcontractor, etc.

cc. **Peripherals** means any hardware product that can be attached to, added within, or networked with personal computers, servers, or storage. Peripherals extend the functionality of a computer without modifying the core components of the system.

dd. **Per Transaction Multiple Unit Discount** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase.

ee. **Premium Savings Package(s) (PSP)** are deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. NASPO ValuePoint reserves the right to expand and modify the PSP throughout the life of the contract. For more information see: <https://www.naspovaluepoint.org/portfolio/57/>.

ff. **Product** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

gg. **Purchasing Entity** means a state (including the District of Columbia and U.S. territories), city, county, district, other political subdivision of a state, other public entities domestic or foreign, and nonprofit organizations under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order under the terms of the Master Agreement, or any Participating Addendum thereto, and becomes financially committed to the purchase.

hh. **Ruggedized** means equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures, and wet or dusty conditions. Ruggedized equipment may be proposed under the band that most closely fits the equipment being proposed.

ii. **Server** means computer hardware dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. Servers may be either physical or virtual. Servers, including server appliances, are included in Band 3 of this Contract. Server appliances have their hardware and software preconfigured by the manufacturer, and include embedded networking components such as those found in blade chassis systems.

jj. **Services** are broadly classified as installation or de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These classifications of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or hardware components), asset management, recycling or disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk or helpdesk, imaging, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contractors may offer limited professional services related ONLY to the equipment and configuration of the equipment purchased through the resulting contracts.

EACH PARTICIPATING ENTITY WILL DETERMINE RESTRICTIONS AND NEGOTIATE TERMS FOR SERVICES THROUGH THEIR PARTICIPATING ADDENDUM.

kk. **Software** means, for the purposes of this Contract, commercial operating off the shelf machine-readable object code instructions including microcode, firmware, and operating system software that meet the restrictions specified

in Paragraph 5.a. "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.

ll. **Storage** means hardware or a virtual appliance with the ability to store large amounts of data. Storage, including SAN switching necessary for the proper functioning of storage equipment, is included in Band 3 of this Contract

mm. **Storage Area Network (SAN)** is a high-speed special-purpose network (or subnetwork) that interconnects different kinds of data storage devices with associated data servers on behalf of a larger network of users.

nn. **Tablet** means a mobile computer that provides a touchscreen that acts as the primary means of control. Tablets, including notebooks, ultrabooks, and netbooks with touchscreen capabilities, are included in Bands 1 and 2 of this Contract.

oo. **Takeback Program** means the Contractor's process for accepting the return of equipment or other products at the end of the product's life.

pp. **Thin Client** is a lightweight computer that has been optimized for establishing a remote connection with a server-based computing environment.

qq. **Third Party Product** is a good sold by the Contractor that is manufactured by another company. Third Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of any Contractor's total sales under this Master Agreement.

rr. **Upgrade** means the replacement of existing software, hardware, or hardware component with a newer version.

ss. **Warranty** means the Manufacturer's general warranty tied to the product at the time of purchase.

tt. **Wide Area Network (WAN)** is a data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.

3. **Term of the Master Agreement.**

a. The initial term of this Master Agreement is for 2 years. This Master Agreement may be extended beyond the original contract period for 36 additional months at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. **Amendments.**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without a written amendment to the Master Agreement executed by the Contractor and Lead State as required by law. Master Agreement amendments will be negotiated by the Lead State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work.

5. **Participants and Scope.**

a. **Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador,

Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

b. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

c. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

d. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

e. NASPO and NASPO ValuePoint are not parties to the Master Agreement.

f. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

g. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

h. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the Master Agreement, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees

associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Individual Customers.

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

7. Independent Contractor.

The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as an agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

8. Contracting Personnel.

Contractor must provide adequate contracting personnel to assist states with the completing and processing Participating Addenda. It is preferred that each Contractor be able to provide each Participating Entity with a primary contact person for that Participating Entity.

9. Changes in Contractor Representation.

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. Such approval shall not be unreasonably withheld. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

10. Contractor Verification.

The Contractor is responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contractor must ensure partners utilized in the performance of this contract adhere to all the terms and conditions. The term Partner will be utilized in naming the relationship a Contractor has with another company to market and sell under the contract. Participating Entities will have final determination/approval if a Partner may be approved for that state in the role identified by the Contractor.

11. Contractor Performance Meeting.

An annual performance meeting may be held each year with the NASPO ValuePoint Sourcing Team. Historically performance meetings have been held in Minnesota, but the Lead State may hold the meetings in person or virtually at the Lead State's discretion.

All contractors that are invited to participate must send their Primary Account Representative, unless an exception is granted in writing by the Lead State. It is possible that not all contractors will be invited to participate in a performance meeting.

12. Laws and Regulations.

Any and all Products offered and furnished shall comply fully with all applicable Federal, State, and local laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State. To the extent any purchase is subject to Federal Acquisition Regulations, as

may be required by the terms of a federal grant, a Participating Entity and Contractor may include in their Participating Addendum terms that reflect such a requirement.

13. Price and Rate Guarantee Period.

All minimum discounts and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for minimum discount or rate adjustment must be for a guarantee period as offered by the Contractor, and must be made at least 30 days prior to the effective date. Requests for minimum discount or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to minimum discounts or rates will be allowed.

14. Premium Savings Package Program.

The Lead State reserves the right to create a Premium Savings Package Program (PSP) as outlined in the Definitions, Paragraph 2.ee of Exhibit A. Participation by Contractor is voluntary. The details and commitments of the PSP will be detailed as a part of any request for Contractor to participate.

15. Services.

Participating Entities must explicitly allow services in their Participating Addenda for the approved services to be allowed under that Participating Addendum. The Participating Addendum by each Participating Entity will address service agreement terms and related travel.

16. Ordering.

- a. Master Agreement and purchase order numbers shall be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - 1. The service description or supplies being delivered;
 - 2. The place and requested time of delivery;
 - 3. A billing address;

4. The name, phone number, and address of the Purchasing Entity representative;
 5. The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
 6. A ceiling amount of the order for services being ordered;
 7. The Master Agreement identifier; and
 8. Statement of Work, when applicable.
- g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

17. Trade-In.

Any trade-in programs offered during the life of the Master Agreement must be approved by the Lead State. Participating Entities must explicitly allow trade-in programs in their Participating Addenda for the approved programs to be allowed under that Participating Addendum. Trade-in value shall not decrease the discounts offered through the Master Agreement.

18. Shipping and Delivery.

- a. The prices are the delivered price to any Purchasing Entity via standard shipping as follows:
 1. For large or custom builds, shipping is 30-45 days after receipt of order (ARO)
 2. For in-stock products, shipping is 3-5 days ARO. If deployment services are required, shipping is 3-5 days after such services are rendered.

If an order is requested with expedited shipping, the Contractor must provide a firm "not to exceed" price for the expedited shipping on the quote. All deliveries shall be FOB Destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any

portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. Specific delivery instructions, including FOB Inside Delivery, will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to promptly notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipment shall be marked with the Purchasing Entity's Purchase Order number and other information sufficient for the Purchasing Entity to properly identify the shipment as outlined in the Participating Addendum of the Purchasing Entity.

19. Inspection and Acceptance.

a. Where the Master Agreement, a Participating Addendum, or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and quality assurance requirements under this Master Agreement. Upon delivery, the Purchasing Entity shall have 30 days to inspect. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance. The Purchasing Entity will make every effort to notify the Contractor, within thirty (30) calendar days following delivery, of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31st day after delivery of Product or completion of Services. This clause shall not be applicable, if acceptance testing and corresponding terms have been mutually agreed to by both parties in writing.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and

Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

20. Title of Product.

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include a license to use any Embedded Software in the Product, as follows:

- a. To the extent that the Software sold under the Master Agreement is Commercial Off-the-Shelf Software, such Software is licensed, not sold, to the Purchasing Entity. The Contractor and its licensors reserve and retain all rights not expressly granted to the Purchasing Entity. No right, title or interest to any trademark, service mark, logo or trade name of Contractor or its licensors is granted to the Purchasing Entity. Licenses to such Software is provided in accordance with the terms of the manufacturer's written End User License Agreement tied to the product at the time of purchase unless otherwise negotiated between Purchasing Entity and the Contractor or the Licensor in a duly executed contract.
- b. Contractor will perform services for the Purchasing Entity, subject to the following section pursuant to a fully executed Statement of Work entered into between the Purchasing Entity and the Contractor.
- c. The Contractor grants the Purchasing Entity a perpetual, non-exclusive, royalty free the license in Contractor's pre-existing intellectual property that is contained in the products, materials, equipment or services, excluding software, that are purchased through this Master Agreement.
- d. Any and all licensing, maintenance, cloud services, or order specific agreements referenced within the terms and conditions of this Master Agreement are agreed to only to the extent that the terms do not conflict with the terms of the Participating Addendum or the terms of the Master Agreement as incorporated into the Participating Addendum, and to the extent the terms are not in conflict with the Participating Entities' applicable laws. In the event of a conflict in the terms and conditions, the conflict shall be resolved as detailed in the Order of Precedence defined herein. Notwithstanding the foregoing, licensing, maintenance, cloud services agreements, or order specific agreements may be further negotiated by the Contractor or, if applicable, the Licensor, and the potential Purchasing Entity, provided the contractual documents are duly executed in writing.

21. Warranty.

The Contractor must ensure warranty service and maintenance for all equipment, including third party products provided. The Contractor must facilitate the Manufacturer or Publisher warranty and maintenance of third party products furnished through the Master Agreement. The Contractor shall provide the warranty service and maintenance for equipment and all peripherals on the Master Agreement.

22. System Failure or Damage.

In the event of system failure or damage caused by the Contractor or its Product, the Contractor shall use reasonable efforts to restore or assist in restoring the system to operational capacity. The Contractor shall be responsible under this provision to the extent a 'system' is defined at the time of the Order; otherwise the rights of the Purchasing Entity shall be governed by the Warranty.

23. Payment.

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law.

Payments will be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

Prices are exclusive of taxes, duties, and fees, unless otherwise quoted. If a withholding tax is required by law, the tax will be added and identified on the applicable invoice. All applicable taxes, duties, and fees must be identified on the quote.

24. Leasing or Alternative Financing Methods.

Lease purchase and term leases are allowable only for Purchasing Entities whose rules and regulations permit leasing of software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process and if the applicable PAs permit leasing. No lease agreements will be reviewed or evaluated as part of the RFP evaluation process.

25. Contract Provisions for Orders Utilizing Federal Funds.

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

26. Self Audit.

The Contractor must conduct at a minimum a quarterly self-audit, unless approved by the Lead State. The audit will sample a minimum of one tenth of one percent (.001) of orders with a maximum of 100 audits per quarter conducted. For example: Up to 1,000 sales = 1 audit; 10,000 sales = 10 audits; Up to 100,000 sales = 100 audits. This will be a random sample of orders and invoices and must include documentation of pricing. Summary findings must be reported to Lead State with actions to correct documented findings.

27. Assignment/Subcontracts.

- a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- b. The Lead State, or Participating Entity, shall not assign, delegate or otherwise transfer all or any part of this Master Agreement without prior written consent from Contractor, except for assignment or delegation to a Participating Entity State agency or eligible Purchasing Entity. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO ValuePoint and other third parties.

28. Insurance.

- a. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Lead State and in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the

required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

1. Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

2. Contractor must comply with any applicable statutory State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Should any of the described policies be cancelled before the expiration date thereof or not renewed, Contractor will provide to a Participating Entity notice within five (5) business days.

d. Prior to commencement of performance, Contractor shall provide to the Participating Entity a certificate of insurance showing the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating Entity as an additional insured, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's Commercial General liability insurance policy shall be primary, with any liability insurance of any Participating Entity as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. During the term of this Master Agreement, the Lead State and Participating Entities may request Contractor provide evidence of coverage that meets the requirements of this Section. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

29. Administrative Fees.

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable.

b. The NASPO ValuePoint Administrative Fee in this section shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

c. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Purchasing Entity may allow the Contractor to adjust the Master Agreement pricing to account for these additional fees for purchases made by Purchasing Entities within the jurisdiction of the Participating Entity. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

30. NASPO ValuePoint Reports

- a. Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum (“Sales Data”). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.
- b. Summary Sales Data. “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- c. Detailed Sales Data. “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- d. Sales Data Crosswalks. Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.
- e. Executive Summary. Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

31. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review.

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the Participating Entity.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to Paragraph 42 of Exhibit A, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to Section Paragraph 42 of Exhibit A or to terminate for default pursuant to Paragraph 44 of Exhibit A.
- g. Contractor agrees to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in any Cooperative Purchasing Agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions. For the purposes of this paragraph, Cooperative Purchasing Agreement shall mean a cooperative purchasing program facilitating public procurement solicitations and agreements using a lead agency model. This does not include contracts with any federal agency or any federal contract.

32. Right to Publish.

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the public release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

33. Records Administration and Audit.

- a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders

placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

34. Indemnification

a. General Indemnity. Contractor shall indemnify, defend (to the extent permitted by a state's Attorney General), and hold harmless an Indemnified Party from any third-party claims or causes of action, including reasonable attorney's fees, to the extent arising from Contractor's intentional, willful, or grossly negligent acts or omissions; actions that give rise to strict liability; and actions arising from breach of contract or warranty.

"Indemnified Party" means NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the Indemnified Party's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the Indemnified Party's failure to fulfill its obligation under this Contract.

b. Intellectual Property Indemnification. Notwithstanding Paragraph 34.a of Exhibit A, the Contractor shall indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the Purchasing Entity, at the Contractor's expense, from any third-party action or claim brought against the Purchasing Entity to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, reasonable attorney fees.

1. If such a claim or action arises, or in the Contractor's or the Purchasing Entity's opinion is likely to arise, the Contractor must, at the Purchasing Entity's discretion, either procure for the Purchasing Entity the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the Purchasing Entity will be in addition to and not exclusive of other remedies provided by law.

2. Notwithstanding the foregoing, Contractor will not be liable under this section to the extent the infringement was caused by: 1) Contractor modification of the infringing material where such modification is made specifically for the Purchasing Entity, and where the Purchasing Entity has set forth the specific manner in which the modifications shall be made, as opposed to where the Purchasing Entity has requested modifications and given Contractor discretion over how to implement said modifications; 2) Purchasing Entity modification of the infringing material where such modification is not made under the direction of Contractor; 3) Use of the Deliverables or the System in a manner not contemplated by this Contract or as otherwise authorized by the Contractor in writing; 4) use of the Deliverables or the System in combination, operation, or use with other

products in a manner other than as contemplated by the Contract or otherwise authorized by the Contractor in writing.

35. Limitations of Liability

- a. The Parties agree that neither Contractor nor the indemnified party shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except any claim related to bodily injury or death an unauthorized release or breach of not public data as set forth more fully in Minn. Ch. 13; or a claim or demand based on patent, copyright, or other intellectual property infringement.
- b. Contractor's liability is limited to the greater of (i) the aggregate annual value amount of all fees paid to the Contractor by the Purchasing Entity under this Master Agreement; and (ii) \$5,000,000. This limit on liability does not apply to claims for bodily injury or death or for intellectual property infringement.
 1. Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is provided by the Contractor or the Contractor's subsidiaries or affiliates;
 2. specified by the Contractor to work with the Product; or
 3. reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 4. It would be reasonably expected to use the Product in combination with such product, system or method.

36. License of Pre-Existing Intellectual Property.

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, transfer with any sale of tangible media or Product, perform, and display the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

37. Assignment of Antitrust Rights.

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

38. Debarment.

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

39. **Governing Law and Venue.**

- a. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- b. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

40. **Confidentiality, Non-Disclosure, and Injunctive Relief.**

- a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep

one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to Paragraph 33 of Exhibit A. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

41. Public Information.

This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

42. Cancellation.

Unless otherwise set forth in this Master Agreement, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate as set forth in Paragraph 44 of Exhibit A.

43. Force Majeure.

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, restrictions on the movement of people or goods imposed by public health order or by a declared state of emergency, or war, which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon thirty (30) days' notice to Contractor for an opportunity to remediate or minimize the impact of such event on Contractor's performance, after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

44. Defaults and Remedies.

- a. The occurrence of any of the following events shall be an event of default under this Master Agreement:
1. Nonperformance of contractual requirements; or
 2. A material breach of this Master Agreement; or

3. Any certification, representation or warranty by Contractor in response to the RFP or in this Master Agreement that proves to be untrue or materially misleading; or
4. Institution of proceedings under any bankruptcy, insolvency, court-ordered reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
5. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, except for material breach, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement. The Lead State may immediately terminate this Master Agreement upon material breach of the Master Agreement by Contractor.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

1. Exercise any remedy provided by law; and
2. Terminate this Master Agreement and any related contracts or portions thereof; and
3. Impose liquidated damages as provided in this Master Agreement; and
4. Suspend Contractor from being able to respond to future bid solicitations; and
5. Suspend Contractor's performance; and
6. Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

45. Waiver of Breach.

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or

requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

46. Notices.

If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile or electronic transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed as follows:

Elizabeth Randa, Acquisition Management Specialist
112 Administration Bldg.
50 Sherburne Avenue
St. Paul, MN 55155
elizabeth.randa@state.mn.us

47. No Waiver of Sovereign Immunity.

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Exhibit B: Minnesota Terms and Conditions

1. Change Requests.

The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered within the Band(s). Products introduced during the term of the Master Agreement shall go through a formal review process. The process for updating the products offered within a Band is outlined in Paragraph 2 of Exhibit B. The Contractor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contractor to provide a summary of its research of those products being recommended for inclusion in the Master Agreement as well as defining how adding the product will enhance the Master Agreement. The Lead State may request that products, other than those recommended, are added to the Master Agreement.

In the event that the Lead State desires to add new products and services that are not included in the original Master Agreement, the Lead State requires that independent manufacturers and resellers cooperate with the already established Contractor in order to meet the Lead State's requirements. Evidence of the need to add products or services should be demonstrated to the Lead State. The Master Agreement shall be modified via supplement or amendment. The Lead State will negotiate the inclusion of the products and services with the Contractor. No products or services will be added to the Master Agreement without the Lead State's prior approval.

2. Product and Service Schedule (PSS).

a. Creating the Product and Service Schedule (PSS). Contractor will use the attached sample PSS to create and maintain a complete listing of all products and services offered under the Master Agreement. The PSS must conform to the contracted minimum discounts. Contractor may create and maintain a separate PSS for a Participating Entity based on the requirements and restrictions of the Participating Entity.

Contractors are encouraged to provide remote learning bundles for K-12 Education. These bundles can be included in the response to the PSS.

b. Maintaining the PSS.

1. In General. Throughout the term of the Master Agreement, on a quarterly basis, Contractor may update the PSS to make model changes, add new products or services, or remove obsolete or discontinued products or services. Any updates to the PSS must conform to the Master Agreement requirements, including the scope of the Master Agreement and contracted minimum discounts.

2. Process. Contractor must provide notification to the Lead State of any changes to their PSS using the attached Action Request Form (ARF).

a) The Lead State does not need to approve Contractor's request to make model changes, add their own manufactured products, or remove discontinued or obsolete products or services, and Contractor does not need the Lead State's approval prior to posting an updated PSS.

b) The Lead State must approve Contractor's request to add new third party manufacturers to Contractor's PSS. If the proposed third-party manufacturer holds a NASPO Master Agreement for Computer Equipment, Contractor must obtain written authorization from that manufacturer. Contractor must have the Lead State's approval prior to posting the updated PSS.

c) Contractor must maintain a historic record of all past PSSs on their dedicated NASPO ValuePoint website.

d) Pursuant to the audit provisions of the Master Agreement, upon the request of NASPO ValuePoint, the Lead State, or a Participating Entity, Contractor must provide an historic version of any Baseline Price List.

3. Purchase Orders.

There will be no minimum order requirements or charges to process an individual purchase order. The Participating Addendum number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract.

4. Risk of Loss or Damage.

The Purchasing Entity is relieved of all risks of loss or damage to the goods or equipment during periods of transportation, and installation by the Contractor and in the possession of the Contractor or their authorized agent.

5. Payment Card Industry Data Security Standard and Cardholder Information Security.

Contractor assures all of its Network Components, Applications, Servers, and Subcontractors (if any) comply with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" shall include, but are not limited to, Contractor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances; "Applications" shall include, but are not limited to, all purchased and custom external (web) applications. "Servers" shall include, but are not limited to, all of Contractor's web, database, authentication, DNS, mail, proxy, and NTP servers. "Cardholder Data" shall mean any personally identifiable data associated with a cardholder, including, by way of example and without limitation, a cardholder's account number, expiration date, name, address, social security number, or telephone number.

Subcontractors (if any) must be responsible for the security of all Cardholder Data in its possession; and will only use Cardholder Data for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law. Contractor must have a business continuity program which conforms to PCIDSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or system failure which may occur to operations; will continue to safeguard Cardholder Data in the event this Agreement terminates or expires; and ensure that a representative or agent of the payment card industry and a representative or agent of the Purchasing Entity shall be provided with full cooperation and access to conduct a thorough security review of Contractor's operations, systems, records, procedures, rules, and practices in the event of a security intrusion in order to validate compliance with PCIDSS.

6. Foreign Outsourcing of Work.

Upon request, the Contractor is required to provide information regarding the location of where services, data storage, and location of data processing under the Master Agreement will be performed.

7. State Audits (Minn. Stat. § 16C.05, subd. 5).

The books, records, documents, and accounting procedures and practices of the Contractor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Lead State's Legislative Auditor or State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The Lead State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions.

8. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the contractor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

9. Human Rights/Affirmative Action.

The Lead State requires affirmative action compliance by its Contractors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

- a. Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.
- b. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400 5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552 5000.3559.
- c. Disabled Workers. Minn. R. 5000.3550 provides the Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (b) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (e) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- d. Consequences. The consequences of a Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by

the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.

e. Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

10. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the Lead State may require Contractor to verify its exempt status.

11. Americans with Disabilities Act (ADA).

Products provided under the Master Agreement must comply with the requirements of the Americans with Disabilities Act (ADA). The Contractor's catalog and other marketing materials utilized to offer products under the Master Agreement must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contractor agrees that the customer can assume the product meets or exceeds the ADA requirements.

12. Nonvisual Access Standards.

Pursuant to Minn. Stat. § 16C.145, the Contractor shall comply with the following nonvisual technology access standards:

- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

13. Accessibility Standards.

Contractor acknowledges and is fully aware that the Lead State (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to

develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the Lead State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the Lead State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the Lead State to consider the Contractor in default.

14. Conflict Minerals.

Contractor agrees to provide information upon request regarding adherence to the Conflict Minerals section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1502).

See: <http://beta.congress.gov/111/bills/hr4173/111hr4173enr.pdf#page=838>
<http://www.sec.gov/news/press/2012/2012-163.htm>

15. Hazardous Substances.

To the extent that the goods to be supplied by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable state and federal laws and regulations, the Contractor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

16. Copyrighted Material Waiver.

The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all third-party claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.

17. Publicity.

The Contractor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

18. Performance While Dispute is Pending.

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

19. Organizational Conflicts of Interest.

An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a. the Contractor is unable or potentially unable to render impartial assistance or advice to the State;
- b. the Contractor's objectivity in performing the work is or might be otherwise impaired; or
- c. the Contractor has an unfair competitive advantage.

The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Lead State's Department of Administration's Office of State Procurement that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Lead State may, at its discretion, cancel the Master Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the Lead State may terminate the Master Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

20. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

- a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions. Instructions for certification:

1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding \$25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from federal procurement and nonprocurement programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and debarment.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

21. Government Data Practices.

The Contractor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the Lead State to the Contractor and all data provided to the Lead State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with the Master Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the Lead State. The Lead State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the Lead State.

The Contractor agrees to indemnify, save, and hold the Lead State, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota

Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Master Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Master Agreement, the Contractor shall retain responsibility under the terms of this article for such work.

22. Survivability.

Certain rights and duties of the Lead State and Contractor will survive the expiration or cancellation of the RFP and resulting Master Agreement. These rights and duties include but are not limited to paragraphs: Indemnification; Limitations of Liability; State Audits; Government Data Practices; Governing Law and Venue; Publicity; and Administrative Fees.

23. Severability.

If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the Lead State and the Contractor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.

Exhibit C: Requirements

1. Contractor Verification.

Contractor must be a manufacturer of a Product in the Band(s) it is awarded a Master Agreement. "Re-branding" a product that is manufactured by another company does not meet this requirement. If the Contractor ceases production, sells or assigns their manufacturing to another vendor, or otherwise no longer manufactures a product during the life of the Master Agreement the Lead State reserves the right to terminate the Contractor's Master Agreement.

2. Warranty and Maintenance.

Contractor must ensure warranty service and maintenance for all equipment, including third party products provided. The Contractor must facilitate the Manufacturer or Publisher warranty and maintenance of third party products furnished through the Master Agreement. The Contractor shall provide the warranty service and maintenance for equipment and all peripherals on the Master Agreement.

3. Website.

Contractor must develop and maintain a URL to a web site specific to the awarded Master Agreement. Contractor's Master Agreement website must offer twenty-four (24) hours per day, seven (7) days per week availability, except for regularly scheduled maintenance times. The website must be separate from the Contractor's commercially available (i.e., public) on-line catalog and ordering systems. No other items or pricing may be shown on the website without written approval from the Lead State

a. Mandatory Specifications:

- Designated Baseline Price List(s) (e.g., MSRP, List, or Education)
- Product and Service Schedule (PSS)
- Product specifications, pricing, and configuration aids for the major product categories proposed that can be used to obtain an on-line quote,
- Service options and service agreements available on the contract. Please refer to Paragraph 5.
- Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns
- Sales representatives for participating entities
- Links to environmental certification, including but not limited to take-back/recycling programs, EPEAT, Energy Star, etc.

b. Desirable Specifications:

- Purchase order tracking
- Information on accessibility and accessible products
- Signed Master Agreement
- Online ordering capability with the ability to remember multiple ship to locations (if applicable to product)
- List of approved partners, if applicable

Within 30 calendar days of the notice of intent to award a Master Agreement, Contractor must provide a sample URL of the Master Agreement webpage to the Lead State for review and approval. The Lead State will review and determine acceptability of the website format and data. If the information is determined to be unacceptable or incorrect, the Contractor will have 15 calendar days to provide revisions to the Lead State. After the Lead State approves the website, Contractor may not make material changes to the website without notifying the Lead State through the ARF process and receiving written approval of the changes.

4. Environmental Certifications.

Contractor must include environmental or supply chain responsibility certifications and registrations for products sold through this Contract on their website. Contractor must provide these certifications and registrations for specific products to Participating Entities upon request.

5. EPEAT Registration.

Contractor agrees that applicable products offered that have EPEAT Standards provided under the Master Agreement must have achieved a minimum EPEAT Bronze registration. This requirement does not apply to Band 3.

Contractor may propose the addition of a product that has not yet achieved a minimum EPEAT Bronze registration. The Lead State, in its sole discretion may require Contractor to provide the following documentation to support the addition of the proposed product:

- A letter from the Green Electronics Council (GEC) on GEC's letterhead confirming that the verification process is underway; or
- A copy of Contractor's GEC contract, Conformity Assurance Board (CAB) contract, and a letter from Contractor's CAB stating that the relevant product has been registered with the CAB and that verification is underway.

The Lead State reserves the right to reject the inclusion of such product, or if approved, require Contractor to remove the product at a later date if the product does not achieve a minimum EPEAT Bronze registration. The Contractor must remove any products that subsequently exit the verification process without achieving EPEAT Bronze or greater from the Master Agreement.

6. Third-Party Products.

Some products offered may be manufactured by a third party. Contractor, however, must provide or facilitate the warranty service and maintenance for all Third-Party Products on the Master Agreement either directly or pass-through from the manufacturer. Contractor may not offer products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment without approval from the Lead State. Warranty for third-party products must be provided by the Contractor. Warranty documents for products manufactured by a third party are preferred to be delivered to the Participating Entity with the products. Contractor can only offer Third-Party Products in a Band they have been awarded.

Third-Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of Contractor's total sales under this Master Agreement. The Lead State may limit the sale of Third-Party Products through the Master Agreement during the life of the Master Agreement should Third-Party Product sales be determined to consistently exceed one third of the total sales under this Master Agreement. Such limitation may take the form of any action the Lead State so chooses, up to and including non-renewal or cancellation of the Master Agreement.

7. Partner Utilization.

If utilizing partners, the Contractor is responsible for the partners providing products and services, as well as warranty service and maintenance for equipment the partner provides. Participating Entities have the option of utilizing partners. Contractor must provide a Participating Entity a copy of its plan for partner utilization upon request. Contractor must make available a list of approved partners for each Participating Entity. Participating Entities must approve specific Partners as outlined within the relevant Participating Addendum, and only partners approved by the Participating Entity may be deployed. The Participating Entity will define the process to add and remove partners in their Participating Addendum.

8. 2019 National Defense Authorization Act, Section 889(f)(3).

Under the 2019 National Defense Authorization Act, Section 889(f)(3), the US military is prohibited from purchasing video surveillance and telecommunications equipment from certain Chinese-owned technology firms. While US state are

not subject to this act, there is increasing concern for the security of state data. Contractor certifies for the term of this Master Agreement that it is not subject to laws, rules, or policies potentially requiring disclosure of, or provision of access to, customer data to foreign governments or entities controlled by foreign governments, and that Contractor's Products do not contain, include, or utilize components or services supplied by any entity subject to the same. Contractor also certifies that its Products do not contain, include, or utilize any covered technology prohibited under Section 889 of the National Defense Authorization Act, as amended.

Exhibit D: Pricing Schedule

Attached and incorporated into this Master Agreement as Exhibit D is the Price Schedule.

Exhibit D: Price Schedule*NASPO ValuePoint Computer Equipment (2023-2028)***CONTROL SET****Master Agreement:** 23019**Contractor Name:** Panasonic Connect North America, Division of Panasonic Corporation of North America**Awarded Bands:**

<input checked="" type="checkbox"/>	Band 1: Personal Computing Devices (Windows)
<input checked="" type="checkbox"/>	Band 2: Personal Computing Devices (Non-Windows)
<input type="checkbox"/>	Band 3: Servers and Storage

Band	Category Code	Category Description	Discount off Baseline List
1	1B	Band 1 - Minimum Discount	0.0%
1	1B-1	Fully Rugged TOUGHBOOK Computer	16.0%
1	1B-2	Semi-Rugged TOUGHBOOK Computer	13.0%
1	1B-3	TOUGHBOOK Tablet	12.0%
1	1B-4	TOUGHBOOK Handheld	9.0%
1	1B-5	Accessory	11.0%
1	1B-6	Peripheral: Professional Video	5.0%
1	1B-7	Peripheral: Professional Audio	10.0%
1	1B-8	Peripheral: Display	22.0%
1	1B-9	Peripheral: Display Accessory	10.0%
1	1B-10	Peripheral: Projector (Large Venue, Installation)	48.0%
1	1B-11	Peripheral: Projector (Portable, Short Throw, Space Player)	38.0%
1	1T	Band 1 - Third Party Product Minimum Discount	2.0%
1	1T-1	Absolute Software/Licenses	0.0%
1	1T-2	Agora Peripherals and Related Accessories	11.0%
1	1T-3	Airgain Peripherals and Related Accessories	11.0%
1	1T-4	Brother Peripherals and Related Accessories	11.0%
1	1T-5	CradlePoint Peripherals and Related Accessories	11.0%
1	1T-6	Crossmatch Software/Licenses	0.0%
1	1T-7	Gamber-Johnson Peripherals and Related Accessories	11.0%
1	1T-8	Havis Peripherals and Related Accessories	11.0%
1	1T-9	Ikey Peripherals and Related Accessories	11.0%
1	1T-10	Lind Peripherals and Related Accessories	11.0%
1	1T-11	Nuance Peripherals/Accessories	11.0%
1	1T-12	Nuance Software/Licenses	0.0%
1	1T-13	Panasonic i-Pro Sensing Solution Peripherals and Related Accessor	11.0%
2	2B	Band 2 - Minimum Discount	0.0%
2	2B-1	TOUGHBOOK Tablet	12.0%
2	2B-2	TOUGHBOOK Handheld	9.0%
2	2B-3	Accessory	11.0%
2	2B-4	Peripheral: Professional Video	5.0%
2	2B-5	Peripheral: Professional Audio	10.0%
2	2B-6	Peripheral: Display	22.0%

Exhibit D: Price Schedule

Band	Category Code	Category Description	Discount off Baseline List
2	2B-7	Peripheral: Display Accessory	10.0%
2	2B-8	Peripheral: Projector (Large Venue, Installation)	48.0%
2	2B-9	Peripheral: Projector (Portable, Short Throw, Space Player)	38.0%
2	2T	Band 2 - Third Party Product Minimum Discount	2.0%
2	2T-1	Absolute Software/Licenses	0.0%
2	2T-2	Agora Peripherals and Related Accessories	11.0%
2	2T-3	Airgain Peripherals and Related Accessories	11.0%
2	2T-4	Brother Peripherals and Related Accessories	11.0%
2	2T-5	CradlePoint Peripherals and Related Accessories	11.0%
2	2T-6	Crossmatch Software/Licenses	0.0%
2	2T-7	Gamber-Johnson Peripherals and Related Accessories	11.0%
2	2T-8	Havis Peripherals and Related Accessories	11.0%
2	2T-9	Ikey Peripherals and Related Accessories	11.0%
2	2T-10	Lind Peripherals and Related Accessories	11.0%
2	2T-11	Nuance Peripherals/Accessories	11.0%
2	2T-12	Nuance Software/Licenses	0.0%
2	2T-13	Panasonic i-Pro Sensing Solution Peripherals and Related Accessor	11.0%
	S	Installation	0.0%
	S	Extended Warranty	0.0%
	S	Training	0.0%
	S	Complimentary software	0.0%

Exhibit D: Price Schedule**Discount Structure**

Master Agreement: 23019
Contractor Name: Panasonic Connect North America, Division of Panasonic Corporation of North America
Baseline Price List: Posted on Contractor's dedicated NASPO ValuePoint website

Band 1: Personal Computer Equipment (Windows OS)

Band	Category Code	Category Description	Discount off Baseline List
1	1B	Band 1 - Minimum Discount	0.0%
1	1B-1	Fully Rugged TOUGHBOOK Computer	16.0%
1	1B-2	Semi-Rugged TOUGHBOOK Computer	13.0%
1	1B-3	TOUGHBOOK Tablet	12.0%
1	1B-4	TOUGHBOOK Handheld	9.0%
1	1B-5	Accessory	11.0%
1	1B-6	Peripheral: Professional Video	5.0%
1	1B-7	Peripheral: Professional Audio	10.0%
1	1B-8	Peripheral: Display	22.0%
1	1B-9	Peripheral: Display Accessory	10.0%
1	1B-10	Peripheral: Projector (Large Venue, Installation)	48.0%
1	1B-11	Peripheral: Projector (Portable, Short Throw, Space Player)	38.0%
1	1T	Band 1 - Third Party Product Minimum Discount	2.0%
1	1T-1	Absolute Software/Licenses	0.0%
1	1T-2	Agora Peripherals and Related Accessories	11.0%
1	1T-3	Airgain Peripherals and Related Accessories	11.0%
1	1T-4	Brother Peripherals and Related Accessories	11.0%
1	1T-5	CradlePoint Peripherals and Related Accessories	11.0%
1	1T-6	Crossmatch Software/Licenses	0.0%
1	1T-7	Gamber-Johnson Peripherals and Related Accessories	11.0%
1	1T-8	Havis Peripherals and Related Accessories	11.0%
1	1T-9	Ikey Peripherals and Related Accessories	11.0%
1	1T-10	Lind Peripherals and Related Accessories	11.0%
1	1T-11	Nuance Peripherals/Accessories	11.0%
1	1T-12	Nuance Software/Licenses	0.0%
1	1T-13	Panasonic i-Pro Sensing Solution Peripherals and Related Accessories	11.0%

Band 2: Personal Computer Equipment (Non-Windows OS)

Band	Category Code	Category Description	Discount off Baseline List
2	2B	Band 2 - Minimum Discount	0.0%
2	2B-1	TOUGHBOOK Tablet	12.0%
2	2B-2	TOUGHBOOK Handheld	9.0%
2	2B-3	Accessory	11.0%
2	2B-4	Peripheral: Professional Video	5.0%
2	2B-5	Peripheral: Professional Audio	10.0%
2	2B-6	Peripheral: Display	22.0%
2	2B-7	Peripheral: Display Accessory	10.0%
2	2B-8	Peripheral: Projector (Large Venue, Installation)	48.0%
2	2B-9	Peripheral: Projector (Portable, Short Throw, Space Player)	38.0%
2	2T	Band 2 - Third Party Product Minimum Discount	2.0%

Exhibit D: Price Schedule**Discount Structure**

Band 2: Personal Computer Equipment (Non-Windows OS)			
Band	Category Code	Category Description	Discount off Baseline List
2	2T-1	Absolute Software/Licenses	0.0%
2	2T-2	Agora Peripherals and Related Accessories	11.0%
2	2T-3	Airgain Peripherals and Related Accessories	11.0%
2	2T-4	Brother Peripherals and Related Accessories	11.0%
2	2T-5	CradlePoint Peripherals and Related Accessories	11.0%
2	2T-6	Crossmatch Software/Licenses	0.0%
2	2T-7	Gamber-Johnson Peripherals and Related Accessories	11.0%
2	2T-8	Havis Peripherals and Related Accessories	11.0%
2	2T-9	Ikey Peripherals and Related Accessories	11.0%
2	2T-10	Lind Peripherals and Related Accessories	11.0%
2	2T-11	Nuance Peripherals/Accessories	11.0%
2	2T-12	Nuance Software/Licenses	0.0%
2	2T-13	Panasonic i-Pro Sensing Solution Peripherals and Related Accessories	11.0%

Exhibit D: Price Schedule**Volume-Based Discounts**

Master Agreement: 23019

Contractor Name: Panasonic Connect North America, Division of Panasonic Corporation of North America

All Awarded Bands**1. Per Transaction Multiple Unit Discount(s)**

Contractor provides a contractual volume discount program as follows based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity, or multiple entities conducting a cooperative purchase.

Panasonic's volume discount applies to fully ruggedized TOUGHBOOK computers and tablets. It is calculated not on purchase price but on the quantity of the same model of TOUGHBOOK equipment purchased by each specific end-user customer per transaction.

An end-user customer purchasing 50 to 99 units of the same TOUGHBOOK model will receive a 2-percent discount off contract pricing.

An end-user customer purchasing 100 units or more will receive a 4-percent discount off contract pricing.

2. Cumulative Discount(s)

Contractor provides a cumulative volume discount as follows based on dollars resulting from the cumulative purchases by all purchases made by Purchasing Entities for the duration of the Master Agreement.

Cumulative discounts are not available at this time; however, in the instance that a State defines standardization of a Panasonic equipment model for use across the State, and multiple State entities or local entities within the State subsequently purchase the equipment model per State standardization, Panasonic may work with the State to provide additional discounts to the end-user purchasers.

3. Other Discount(s)

Additional discount(s) available.

Panasonic offers promotional pricing in which deeper discounts—an additional percentage off contract pricing—are available on specified products based on inventory and sales. Such promotional pricing is offered for a defined period (e.g., quarterly, defined as approximately 3 months).

Panasonic also provides piggyback pricing to local entities within States that have signed a NASPO Participating Addendum.

Exhibit D: Price Schedule**Services****Master Agreement:** 23019**Contractor Name:** Panasonic Connect North America, Division of Panasonic Corporation of North America

Each Purchasing Entity will determine if and how services will be offered in the Participating Addendum.

Travel for Services will be negotiated with each Participating Entity in the Participating Addendum.

All Awarded Bands		
Category Code	Description of Service	Percent Discount
S	Installation	0.0%
S	Extended Warranty	0.0%
S	Training	0.0%
S	Complimentary software	0.0%

Exhibit D: Price Schedule

Lease Rates

Master Agreement: 23019

Contractor Name: Panasonic Connect North America, Division of Panasonic Corporation of North America

All Awarded Bands

Optional: Lease Rates

0% Financing

Short-term rental available

Exhibit D: Price Schedule

Prompt Payment Discount

Master Agreement: 23019

Contractor Name: Panasonic Connect North America, Division of Panasonic Corporation of North America

All Awarded Bands

<input type="checkbox"/>	<input type="checkbox"/>	in 30
<input type="checkbox"/>	<input type="checkbox"/>	in 15, Net 30
<input type="checkbox"/>	<input type="checkbox"/>	in 10, Net 30
<input checked="" type="checkbox"/>		Net 30
<input checked="" type="checkbox"/>		Other (specify):

Panasonic sales are indirect, executed through its authorized reseller partners; therefore, prompt payment discounts do not apply to Panasonic. However, reseller partners may individually provide this discount to the end-user customer.



Agenda Report

25-1019

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Authorize the City Manager to (1) Issue Purchase Orders to Atlas Copco Rental for the Rental of an Air Compressor at the Donald Von Raesfeld Power Plant and (2) Execute Amendment No. 1 to the Agreement for Services with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co., to Provide Gas and Air Compressor Preventative Maintenance Services, Both to be Funded by Silicon Valley Power

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City of Santa Clara's Electric Department, Silicon Valley Power (SVP), operates two power plants in Santa Clara, the Donald Von Raesfeld Power Plant (DVR) and the Gianera Generating Station (Gianera), as well as other power generating assets. These facilities rely on air compressors to supply clean, dry air that is essential for controlling critical equipment, including turbines, pumps, and pressure vessels.

At DVR, two air compressors are integral to ensure optimal operation. In August 2023, one of these air compressors failed. To address this urgent issue, staff secured a rental air compressor to maintain operations. SVP is now seeking City Council authorization for actions necessary to maintain operational continuity, including securing services and equipment, until a new air compressor can be procured and installed.

DISCUSSION

Authorization to Issue Purchase Orders to Atlas Copco Rental

Following the failure of one of the air compressors at DVR in August 2023, SVP has been renting an air compressor from Atlas Copco Rental (Atlas Copco), the original equipment manufacturer (OEM) for DVR's compressors. Atlas Copco is the sole vendor offering trailer-mounted air compressors for rental. This rented unit is critical to ensuring redundancy for DVR's instrument air systems and maintaining uninterrupted operations. The current monthly rental cost is \$15,000 for this unit.

To date, SVP has spent \$195,000 on rental costs which is within the City Manager's approval authority of \$250,000. To allow for sufficient time to complete the solicitation and installation process for a new air compressor, staff requests City Council authorization for the City Manager to issue purchase orders to Atlas Copco in an amount not to exceed \$600,000, which includes rental expenses previously incurred (\$195,000 through September 2024), projected rental costs for an additional 24 months (\$360,000), and additional contingency for potential rent increases or

unanticipated expenses (\$45,000). This authorization is anticipated to cover rental expenses through September 30, 2026.

Amendment No. 1 to the Agreement for Services with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co. (Northwest)

In June 2023, the City entered into an agreement with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co. (Northwest) for gas and air compressor preventative maintenance services, testing, and repairs. The agreement resulted from a formal Request for Proposal (RFP) conducted pursuant to City Code Section 2.105.140(c) and awarded based on “best value.” The RFP was published on the City’s e-procurement system and viewed by 23 companies. Three companies demonstrated interest, but only one proposal was received from Northwest.

The agreement with Northwest has a current maximum compensation not to exceed \$150,000, which is within the City Manager’s approval authority of \$250,000 and has an initial term of five years ending on June 30, 2028, with a one-year option to extend the term through June 30, 2029.

Given the anticipated increased demand for these services primarily associated with aging equipment, staff is now seeking approval to execute Amendment No. 1 to increase the maximum compensation by \$850,000, for a revised maximum compensation of \$1,000,000. Based on the current spending trajectory, the requested funds will be sufficient for the term of the agreement plus the 1-year option.

The proposed maximum compensation of \$1,000,000 under Amendment No. 1 of this agreement is based on past usage of the services and known projects. Future requirements for the services may increase due to unanticipated repairs or regulatory changes. In addition, the solicitation included an optional one-year extension of term.

ENVIRONMENTAL REVIEW

Staff recommends that the City Council determine that the proposed actions are exempt from the California Environmental Quality Act (“CEQA”) pursuant to sections 15301 and 15302 of Title 14 of the California Code of Regulations as the proposed actions involve (1) the operation, maintenance, and repair of existing mechanical equipment; and (2) the replacement of utility equipment with negligible or no expansion of capacity.

FISCAL IMPACT

Sufficient funds are available in the FY 2024/25 Operating Budget in the Electric Utility Operating fund and may be included in capital projects budget where appropriate. Budget for future years will be requested through the biennial process.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City

Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Determine that the proposed actions are exempt from CEQA pursuant to Sections 15301 (Existing Facilities) and 15302 (Replacement or Reconstruction) of Title 14 of the California Code of Regulations;
2. Authorize the City Manager or designee to issue Purchase Orders to Atlas Copco Rental for the rental of an air compressor at the Donald Von Raesfeld Power Plant in an amount not to exceed \$600,000, until approximately September 30, 2026, to be funded by Silicon Valley Power;
3. Authorize the City Manager or designee to execute Amendment No. 1 to the Agreement for Services with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co., for gas and air compressor preventative maintenance for a five-year term ending on June 30, 2028, to increase the maximum compensation of \$150,000 by \$850,000 for a revised maximum compensation amount of \$1,000,000; to be funded by the SVP Operating or Capital Fund as applicable, subject to the review and approval as to form by the City Attorney; and
4. Authorize the City Manager or designee to negotiate and execute further amendments to the agreement with Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Co to (a) add or delete services consistent with the scope of services, (b) adjust future rates to account for reasonable changes in labor and material rates, (c) exercise a one-year option to extend the term through June 30, 2029, and (d) increase the compensation by up to \$500,000 for a total maximum compensation of \$1,500,000 over a six-year period, subject to the appropriation of funds and the review and approval as to form by the City Attorney, to be funded by the SVP Operating or Capital Fund as applicable.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. Agreement with Gavin D. Yates doing business as Northwest Industrial Engine & Compressor Co.
2. Proposed Amendment No. 1 with Gavin D. Yates doing business as Northwest Industrial Engine & Compressor Co.

BLUE ROUTE SHEET - CITY MANAGER REVIEW/APPROVAL REQUIRED

Originating Department (OD): Electric Date Submitted: 6/14/23 Return To: Ahcomb Hardwick Phone Ext.: 2733

OD: FILL OUT SECTIONS #1-#7 (FRONT) AND #1-#4 (BACK) BEFORE ROUTING

(1) Document: Northwest Industrial Engine & Compressor Co. - Agreement for Services
[NAME OF DOCUMENT AND CONTRACTOR/OTHER PARTY]

- (2) Indicate signature authority:
- Service Agreements with a total taxable value of \$250,000 or less (exclusive of taxes and shipping) over a five-year period per Ordinance 2050 (CC Action – August 30, 2022)
 - Miscellaneous Agreements including those that allow the use of the City name; rental agreements for City-owned property; licensing or conditional use agreements; confidentiality agreements; nondisclosure agreements; and partnership, cost sharing, in-kind and service agreements with other public or private entities per Resolution 6603 (CC Action - July 13, 1999)
 - Certificate of Acceptance for Designated Property Interests per Resolution 5600 (CC Action – May 28, 1991)
 - Routine Police Agreements including the use of City facilities; off-duty officers; special events; hold harmless and indemnification agreements from third parties; and releases of liability per Resolution 6000 (CC Action - April 4, 1995)
 - Other: _____

(3) Cost impact: \$150,000

(4) Was this service budgeted for this fiscal year?
 Yes
 No. If no, please describe below how the department will fund this unbudgeted service and consult with department's assigned budget analyst to ensure that there is sufficient funding.

(5) Is insurance compliant?
 Yes, per attached EBIX printout. (Disregard #8)
 No, this agreement requires Risk Management review. (Complete #8)
 N/A (i.e. Hold Harmless Agreements, Grant Funding, Indemnification language in lieu of insurance, etc.) (Disregard #8)

(6) Is Notary needed?
 Yes (Please tag Notary page)
 No

(7) Department head originating agreement: Manuel Pineda
Manuel Pineda (Jun 14, 2023 16:32 PDT) [SIGNATURE]

(8) **RISK MANAGEMENT**
Please describe why contract does not require EBIX approval: _____
Approved: _____ Date: _____
[RISK MANAGER]

(9) **CITY ATTORNEY'S OFFICE**
Approved as to form: [Signature] Date: 6/20/23
[CITY ATTORNEY/AUTHORITY COUNSEL]
Assignment Number: CAO 23.0071
Reviewing Attorney's Initials: DB

(10) **CITY CLERK'S OFFICE**
Attached: 2 original(s) _____ copy(ies)
 Transmit the attached original / copy to contractor
 Fully executed original on file in City Clerk's Office
Fully executed original to dept.
Date Processed by Clerk's Office: 6/21/23 SD

CITY MANAGER REQUIRED INFORMATION

(1) Scope of Services: [BRIEFLY SUMMARIZE THE SCOPE OF WORK/PURPOSE OF DOCUMENT]
Agreement for Services with Northwest Industrial Engine & Compressor Co. for gas and air compressor preventative maintenance and as needed services. Will need to go to City Council to increase the amount of the Agreement in the near future. RFP# 21-22-56

(2) Term of Agreement: July 1, 2023 - June 30, 2028; one-year option to extend through June 30, 2029.
[START DATE AND END DATE OF THE AGREEMENT/DOCUMENT]

(3) **VENDOR SELECTION INFORMATION:** (Please reference the Procurement Guide on the City's Intranet Site.)

Indicate Procurement Process:

Sole/Single Source (Please include justification memo with this form)

Purchase from other public agency or utilization of other public agency competitive process (Specify other agency competitive process or pre-negotiated contract, if applicable): _____

Selection Process: Informal Request for Quotes with an estimated total taxable value greater than \$15,000 and less than or equal to \$100,000 (exclusive of taxes and shipping) over a five-year period, inclusive of any options to extend the agreement during the five-year period.

Selection Process: Informal Request for Quotes with an estimated total taxable value greater than \$100,000 and less than or equal to \$250,000 (exclusive of taxes and shipping) over a five-year period, inclusive of any options to extend the agreement during the five-year period.

Selection Process: Formal Request for Proposals (RFP)/Statement of Qualifications (SOQ), or Request for Bids (RFB) with an estimated total taxable value of greater than \$250,000 (exclusive of taxes and shipping) over a five-year period, inclusive of any options to extend the agreement during the five-year period.

Other (Specify): _____

This contract requires prevailing wage compliance and registration with Department of Industrial Relations. If this box is checked, attach proof of DIR registration.

Vendor Outreach Process: Telephone Email Bid Notification System Other: _____

Briefly summarize the number of bids received and the basis for recommending this vendor for contract award:

RFP Award - RFP No. 21-22-56

(4) **HISTORY:**
Has the department retained the same contractor for similar services in last 5 years?
 No. If no, no further information required.
 Yes. If yes, please complete the following section.

Term of Agreement: July 1, 2022 - June 30, 2023, Purchase Orders

Contract Amount: \$ 97,200

Search

Insured Name

Northwest Industrial Engine And Compres

Northwest Industrial Engine And

Active Records Only

Advance Search

Insured Tasks Admin Tools

View

- Insured
- Notes
- History
- Deficiencies
- Coverages
- Requirements
- Contract Screen

- Add
- Edit
- Help
- Video Tutorials

Insured

Name:	Northwest Industrial Engine And Compressor Company
Account Number:	S200004564
Address:	PO Box 737, Riverbank, CA, 95367
Status:	<u>Compliant with minor/expiring deficiencies.</u>

Insured ▲

[Business Unit\(s\)](#)
[Insured History](#)
[Print Insured Info](#)

Account Information

Account Number:	S200004564
Risk Type:	Exhibit C1 - Service Contract <\$50,000
Do Not Call:	Address Updated:

Address Information

Mailing Address	Physical Address
Insured:	Northwest Industrial Engine And Compressor Company
Address 1:	PO Box 737
Address 2:	
City:	Riverbank
State:	CA

Country:

Contract Information

Contract Number:

Contract Start Date:

Contract End Date:

Contract Effective Date:

Contract Expiration Date:

Description of Services:

Equipment
Repair

Safety Form II:

Contact Information

Contact Name:

Sandy
Garcia

Misc:

Phone Number:

Alt Phone Number:

Fax Number:

E-Mail Address:

sandy_garcia@nwiec.com

Approval Date:

Rush:

Yes

Contract on File:

No

Certificate Received:

No

Indemnification Agreement:

No

Tax Id:

This Account created by c65 on 07/13/2020.

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
GAVIN D. YATES
DOING BUSINESS AS
NORTHWEST INDUSTRIAL ENGINE & COMPRESSOR CO.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation ("City") and Gavin D. Yates, doing business as Northwest Industrial Engine & Compressor Co., a California sole proprietorship ("Contractor"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

- A. City desires to secure the services ("Services") more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain Services and goods of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such Services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Exhibit

Exhibit E – Sample Work Authorization Form

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on July 1, 2023, and terminate on June 30, 2028 (“Initial Term”).
- B. After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for one (1) additional year through June 30, 2029 (“Option Periods”). Such extension of term shall be authorized through an Amendment to this Agreement executed by the Parties. The Initial Term and Option Period shall collectively be referred to as “Term”.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

In addition to those warranties contained in Exhibit A, Contractor expressly warrants that all Services and materials covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions applicable to this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services or materials at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace Services or materials, City may make corrections or replace the Services or materials and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor’s representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of

California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is one hundred fifty thousand (\$150,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All Services performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the Term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other

agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the Term, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at SVPContracts@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Northwest Industrial Engine & Compressor Co.
P.O. Box 737
Riverbank, CA 95367
and by e-mail at amanda_yates@nwiec.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate

these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to Services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties.

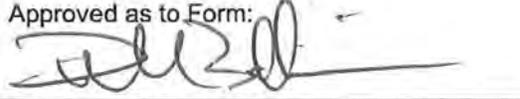
25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:



GLEN R. GOOGINS
City Attorney

Dated:

6/21/23



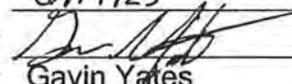
JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

**GAVIN YATES, DOING BUSINESS AS NORTHWEST INDUSTRIAL ENGINE &
COMPRESSOR CO.,**
a California sole proprietorship

Dated: 6/19/23

By (Signature):



Name: Gavin Yates

Title: Owner

Principal Place of

Business Address: P.O. Box 737 Riverbank, CA 95367

Email Address: Deon_yates@nwiec.com and
amanda_yates@nwiec.com

Telephone: (209) 847-2299

Fax: (209) 847-8800

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are gas and air compressor preventative maintenance Services and as needed Services that include (but are not limited to) maintenance, repair, installation and commissioning of new air compressors and their related equipment, in support of the City's Electric Department doing business as Silicon Valley Power ("SVP") as further defined in this exhibit. The terms "City" and "SVP" are used interchangeably throughout this document.

1. GENERAL REQUIREMENTS

- 1.1.** Contractor shall furnish all labor, materials, tools, and equipment necessary to provide gas and air compressor maintenance Services, testing, and repairs, in all locations within the City.
- 1.2.** Contractor shall perform the Services in accordance with generally accepted industry best practices, and all applicable federal, state, or local regulations.
- 1.3.** Contractor shall be responsible for obtaining City permits necessary for the proper execution and completion of the work.
- 1.4.** Any deviations from the requirements described in this Attachment A, whether due to emergencies or any other unforeseen events, must be approved in writing by SVP.
- 1.5.** SVP may participate in or observe any inspection.

2. GAS COMPRESSOR PREVENTATIVE MAINTENANCE SERVICES

- 2.1.** Contractor shall provide for routine compressor maintenance. Tasks may include, but are not limited to:
 - 2.1.1.** Level 1 Compressor Preventative Maintenance (PM): Includes removing, inspecting and replacing all compressor suction and discharge valves. Inspect and clean all cylinder valve retainers, seats and ports. Position piston at BDC (back dead center), inspect all cylinder bores, measure piston to cylinder bore clearance using feeler gauges to determine piston rider band life. Next, using micrometer, measure piston rod Outside Diameter O.D. (packing wear area). Measure crosshead running clearance using feeler gauges. Setup dial indicator and measure compressor piston rod run out readings. Record all measurements on clearance data sheet. Replace crankcase oil and filters as needed. Reassemble compressor cylinders with new gaskets, O-rings and reconditioned or requalified valves. Torque all critical fasteners to original equipment manufacturer (OEM) specifications. Inspect force feed lubricator system operation

and rate. Notify customer of any out of tolerance conditions. Normal Intervals of up to 10,000 operating hours depending on gas integrity and service.

- 2.1.2.** Level 2 Compressor Preventative Maintenance: Includes all Level 1 PM tasks plus removal of piston and rod assemblies. Perform in-depth inspection of pistons, rings, rider bands, cylinder bores, piston rods, pressure packing cases, oil wiper cases. Inspect the force feed lubricator system – service lubricator box oil, drive coupling, pump(s), divider block(s), in-line filter and related check valves as needed. Reassemble compressor with new gaskets and new or requalified consumable wear item parts. Set piston spacing 1/3 – 2/3. Torque all critical fasteners to OEM specifications, including all cylinder to distance piece and distance piece to frame bolting. Adjust all cylinder and bottle supports. Record all readings on clearance data sheet. Notify customer of any out of tolerance conditions. Normal intervals up to 20,000 operating hours depending on gas integrity and service.
- 2.1.3.** Level 3 Compressor Preventative Maintenance: Includes all Level 1 and Level 2 PM tasks plus crankcase inspection and replacement of all Connecting-Rod and Main Bearings, Thrust Bearings, Crosshead Shoes, Crosshead Pins and Pin Bushings. Service and/or replace the force feed lubricator system components - lubricator drive box, drive coupling/chain, pump(s), divider block(s), in-line filter and check valves. Inspect Compressor main drive coupling and re-torque all coupling bolts. Inspect motor to frame shaft alignment using laser alignment tooling.
- 2.1.4.** Reassemble Compressor with new gaskets and new or reconditioned/requalified wear item parts. Torque all critical fasteners to OEM specifications including Frame Base Bolts. Re-measure and record all updated clearance readings on clearance data sheet. Notify customer of any out of tolerance conditions. Normal Intervals up to 50,000 operating hours depending on gas integrity and service.
- 2.1.5.** Contractor shall provide for any required materials to facilitate on-site compressor maintenance including inventory requested by SVP.

3. AIR COMPRESSOR PREVENTATIVE MAINTENANCE SERVICES

- 3.1.** Contractor shall provide routine quarterly, semiannually, and annual maintenance. Tasks may include, but are not limited to:

 - 3.1.1.** Take service readings before and after maintenance
 - 3.1.2.** Check air filter element(s)
 - 3.1.3.** Change air filter element(s)

- 3.1.4. Check filter element of gear case breather
- 3.1.5. Replace filter element, gear case breather
- 3.1.6. Check cycle of air intake throttle valve
- 3.1.7. Replace diaphragm of air throttle valve
- 3.1.8. Replace shaft bushing (air intake valve)
- 3.1.9. Overhaul air intake valve
- 3.1.10. Replace blow-off silencer
- 3.1.11. Verify check valve operation
- 3.1.12. Check coolers function
- 3.1.13. Overhaul check valve
- 3.1.14. Check condition of balance piston diaphragm
- 3.1.15. Change balance piston diaphragm
- 3.1.16. Check/clean condensate drain(s)
- 3.1.17. Grease main drive motor bearings
- 3.1.18. Clean fan cowl of electric motor
- 3.1.19. Overhaul main drive motor
- 3.1.20. Clean cooler block
- 3.1.21. Check rubber inserts, drive coupling
- 3.1.22. Replace inserts, drive coupling
- 3.1.23. Check for air- water- & oil leakage
- 3.1.24. Check condition of drive gear teeth
- 3.1.25. Replace LP/HP element
- 3.1.26. Replace main shaft bearings
- 3.1.27. Replace rubber buffers
- 3.1.28. Blast clean cubicle

- 3.1.29. Check for loose wiring & connections in cubicle
- 3.1.30. Check bolt/coupling connections
- 3.1.31. Clean injector nozzle breather (needle)
- 3.1.32. Check safety valve switches
- 3.1.33. Check for presence of water in lube oil
- 3.1.34. Oil change
- 3.1.35. Change compressor oil filter
- 3.1.36. Check condition of air intake chamber

4. AS NEEDED SERVICES

- 4.1. Contractor shall provide as needed services (As Needed Services) that include the repair and replacement of air compressor parts and consumables. Such parts and consumables include, but are not limited to:

- 4.1.1. Compressor(s)
- 4.1.2. Motors
- 4.1.3. Bearings
- 4.1.4. Coolers
- 4.1.5. Belts
- 4.1.6. Pumps
- 4.1.7. Valves
- 4.1.8. Relief valves
- 4.1.9. Regulators
- 4.1.10. Instrumentation
- 4.1.11. Local gauges
- 4.1.12. Hoses
- 4.1.13. Tubing
- 4.1.14. Piping

- 4.1.15. Receivers
- 4.1.16. Dryers
- 4.1.17. Oil water separators
- 4.1.18. Desiccant
- 4.1.19. Gaskets and seals
- 4.1.20. Oils
- 4.1.21. Filters
- 4.1.22. Contactors
- 4.1.23. Housings and insulation
- 4.2. Contractor shall also provide the following As Needed Services:
 - 4.2.1. Rental of a temporary air compressor and air dryer.
 - 4.2.2. Supply of all types of air compressor parts as aforementioned.
 - 4.2.3. Installation and commissioning of new air compressors and their related equipment.
 - 4.2.4. Other miscellaneous air compressor work to support the successful operation of power plants.
 - 4.2.5. Waste removal generated by the contractor, including hazardous waste.
 - 4.2.6. Recycle all material scrap and the value credited to the project.
 - 4.2.7. All maintenance and inspections per the respective air compressor's OEM standards and maintenance manual.
 - 4.2.8. Project management services.

5. PROCESS FOR REQUESTING AND AUTHORIZING SERVICES

5.1. Non-Emergency Work

- 5.1.1. When the City requires Services, the City shall request a proposal from Contractor ("Work Request"). In its request, the City will provide a description of the Services required, the deadline for response, and any other relevant information.

- 5.1.2.** Contractor shall prepare and submit a proposal (“Proposal”) for each Work Request that includes:
- 5.1.2.1.** The specific Service(s) to be performed. The detail of the Services shall have a level of detail reflective of the Scope, timeline, and cost of the specific Services.
 - 5.1.2.2.** Locations where Services will be performed.
 - 5.1.2.3.** The project timeline/schedule which shall be approved by SVP. Such schedule shall indicate any activities and/or products or materials that may impact the project timeline, including but not limited to, lead time(s) for material sourcing; shipping and receiving delays; and any other delays.
 - 5.1.2.4.** Estimated cost for the requested Service, including, but not limited to:
 - 5.1.2.4.1.** Hours and rates by position and/or service as listed in Exhibit B for both Contractor and subcontractor personnel if applicable. Indicate labor subject to prevailing wage requirements;
 - 5.1.2.4.2.** Project management costs (if applicable);
 - 5.1.2.4.3.** Subcontractors, including subcontractor California Department of Industrial Relations (DIR) number;
 - 5.1.2.4.4.** Parts and materials;
 - 5.1.2.4.5.** Tools and special equipment;
 - 5.1.2.4.6.** Rental Equipment (tools, equipment, etc.);
 - 5.1.2.4.7.** Reimbursable expenses, in accordance with the limitations set forth in Exhibit B.
 - 5.1.2.4.8.** Any additional costs including, but not limited to freight, permits, fees;
 - 5.1.2.4.9.** Estimated total amount including sales tax;
 - 5.1.2.4.10.** Any drawings, photos or documents required; and
 - 5.1.2.4.11.** Total not to exceed price.

- 5.1.2.5.** All submitted Proposals shall be in accordance with the rates authorized in Exhibit B of this Agreement and the Proposal shall include sufficient information for the City to determine that rates are in accordance with the Agreement.
- 5.1.2.6.** Costs for any additional equipment, parts, or services required for completion of the Services as detailed in the Work Request and in Contractor's Proposal but not reflected in the Contractor's Proposal shall be the sole responsibility of the Contractor and at no cost to the City.

5.1.3. Work Authorization:

- 5.1.3.1.** If the completion of the Services in the Proposal will not exceed the maximum compensation in Section 6 of the Agreement (Compensation and Payment), additional Services may be authorized as set forth in this Section.
- 5.1.3.2.** City shall review the Proposal and, if there are no issues or concerns, City will approve the and issue a purchase order (Purchase Order) as authorization for Contractor to begin Services.
- 5.1.3.3.** The Purchase Order shall serve as final authorization and, except in the case of emergency which shall confirm to the conditions of Section 5.2 or where the circumstances in Section 5.1.6.4. apply, Contractor shall not commence Services until it receives a Purchase Order and notice to proceed from SVP.
- 5.1.3.4.** For Proposals with a total cost exceeding \$50,000, a work Authorization ("Work Authorization") shall be issued in substantially the same format as Exhibit E. Each Work Authorization shall describe the services and deliverables the Contractor must provide, the time limit within which the Contractor must complete the service and deliverables, the system acceptance criteria, warranty provisions, and the compensation for the additional services.
- 5.1.3.5.** Subject to the terms and conditions of this Agreement, Contractor and City will negotiate the specific scope and requirements of each Work Authorization. Upon execution by the Parties, the Work Authorization shall become an Approved Work Authorization.
- 5.1.3.6.** Each Approved Work Authorization shall have a purchase order ("Purchase Order") attached to it.

- 5.1.3.7.** For Proposals with a total cost less than \$50,000, a signed Work Authorization is not required. The City will issue a Purchase Order authorizing Services and the Purchase Order will serve as the Approved Work Authorization.
- 5.1.3.8.** Only the Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer may, on behalf of the City, execute a Work Authorization. Purchase Orders are issued by the Finance Department.
- 5.1.3.9.** Except in the case of emergency which shall confirm to the conditions of Section 5.2 or where the circumstances in Section 5.1.6.4 apply, Contractor shall not initiate the additional services and the City will not compensate the Contractor until the City has executed the Work Authorization for such additional services where applicable ("Approved Work Authorization") and issued a Purchase Order.
- 5.1.3.10.** If Contractor begins Services or fails to dispute a Purchase Order within three (3) business days, Contractor is assumed to have accepted the terms of the Purchase Order.
- 5.1.3.11.** An Approved Work Authorization must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in an Approved Work Authorization – even if the Approved Work Authorization expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Work Authorization are invalid and unenforceable.
- 5.1.4.** Each Approved Work Authorization and Purchase Order shall be incorporated into the Agreement by reference and subject to its terms and conditions and the services contained therein shall be included within the Services.
- 5.1.5.** Proposals are not confidential and will not be treated as confidential even if marked confidential when submitted.
- 5.1.6.** Changes to Work Authorization:
 - 5.1.6.1.** Contractor shall notify the City immediately when a situation occurs that may result in a change to the total project cost or specific line items in an Approved Work

Authorization or Purchase Order. Contractor shall provide the reason for the change specific to each Approved Work Authorization or Purchase Order.

- 5.1.6.2.** If Contractor requires changes to a fixed price Work Authorization, Contractor shall only be permitted to request changes with justification such as additional scope requested by City or unanticipated field conditions. For such changes, Contractor shall submit justification demonstrating that changes in cost are associated with changes in scope. Contractor shall not be entitled to additional compensation for issues such as errors in calculation of original pricing, changes in staff, or other changes that are not directly related to changes requested by City.
- 5.1.6.3.** In the event that unanticipated site conditions or other issues result in costs that exceed the approved Proposal or changes to line items in an Approved Work Authorization order in the Purchase Order, Contractor shall submit to the City an updated Proposal for review and approval from the City in advance of performing Services. The City will issue a new or amended Work Authorization (if required pursuant to Section 5.1.3.) or Purchase Order (as applicable) to authorize such additional Services. Each changed Work Authorization and Purchase Order shall amend the Services and be incorporated into the Services by reference.
- 5.1.6.4.** In the event that issues are identified that can be most efficiently and economically resolved while on site, changes may be approved verbally (in the field), by telephone, or e-mail by the following authorized individuals: Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer. Such authorization shall be defined as an Interim Work Order. Contractor shall provide an updated Proposal within two (2) business days so that such changes can be documented in a Work Authorization and/or Purchase Order.

5.2. Emergency Work Orders

- 5.2.1.** An emergency work order ("Emergency Work Order") should be utilized only in instances of a threat to public health or safety, loss of or damage to property, or serious disruption to essential services. An emergency ("Emergency") is defined as an unforeseen event,

circumstance, or combination of circumstances that the City reasonably determines to require immediate action.

5.2.2. Emergency Work Orders do not need to be in writing and may only be authorized by the Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer. Such verbal authorizations will be confirmed by the City in writing within three (3) business days by a Purchase Order or, where applicable, a Work Authorization and Purchase Order.

5.2.3. When Emergency services are required, Contractor shall send a Proposal to the City for the required services as soon as possible, but no later than three (3) business days after starting Services. The Proposal shall be detailed in accordance with this Section and shall also include any completed Services. The City will issue a Work Authorization (if required pursuant to Section 5.1.3.) and a Purchase Order as soon as reasonably practicable.

6. DISPOSAL OF WASTE AND SCRAPS

- 6.1.** Contractor shall be responsible for disposing of all hazardous material generated during the performance of Services under this agreement.
- 6.2.** Contractor shall recycle all material scraps, and the value credited to the City.
- 6.3.** Contractor shall keep their work site(s) free from all surplus material, waste material, dirt and rubbish caused by Contractor's performance of Services.
- 6.4.** Contractor shall leave the work site in a neat and orderly condition. All clean-up work will be done to the satisfaction of the City, and at the sole expense of Contractor.

7. REPORTING AND DOCUMENTATION

- 7.1.** Contractor shall provide regular status updates on Services performed during the term of the agreement. Depending on work activity, status updates may be required daily, weekly, or monthly at the direction of SVP.
- 7.2.** Contractor shall provide weekly cost and schedule updates during each project.

8. E-BUILDER

- 8.1.** Contractor may utilize e-Builder for submission of data and documents throughout the term of this agreement, as requested by the City.
 - 8.1.1.** e-Builder is a web-based construction management application hosted by e-Builder, Inc. For certain projects to be defined by the City,

e-Builder shall be the primary means of project information submission and management or as otherwise agreed upon with the City.

- 8.1.2.** The City will establish the Contractor's access to e-Builder by providing licenses to Contractor's personnel at City's cost. The Contractor's designated users will be required to set up their computers/systems to use e-Builder in accordance to the e-Builder User Training Guider. The City reserves the right to limit the licenses issued to Contractor in the future.
- 8.1.3.** Contractor is required to obtain all necessary training to use the software. The City will provide one classroom training or a web-based seminar. A training session is 1 - 2 hours.
- 8.1.4.** Contractor e-Builder is a web-based environment and therefore it is subject to the inherent speed and connectivity limitations of the Internet. The Contractor is responsible for its own connectivity to the Internet. e-Builder's response time is dependent on the Contractor's equipment, including processor speed, Internet access speed, etc. and current traffic on the Internet. The City will not be liable for any delays associated from the usage of e-Builder including, but not limited to: slow response time, down time periods, connectivity problems, or loss of information. The Contractor shall ensure connectivity to the e-Builder system whether at the home office or job site. Under no circumstances will usage of e-Builder be grounds for a time extension or cost adjustment to the Contract.
- 8.1.5.** Data entered in a collaborative mode (entered with the intent to share as determined by permissions and workflows within the e-Builder system) by the City and the Contractor will be jointly owned.
- 8.1.6.** The Contractor is responsible for managing, tracking, and documenting the work to comply with the requirements of this Agreement. The City's acceptance via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute validation of the Contractor's submitted information.
- 8.1.7.** At the City's sole discretion, project documents may be processed and distributed digitally over the internet or may be required to be presented in hard copy format.
- 8.1.8.** While regular email may still be used for communication, when requested by the City, e-Builder shall be utilized as much as possible in connection with all document and information management required in the performance of projects where City has directed the

use of e-Builder. Contractor shall be responsible for scanning or otherwise converting to electronic format all project submittals and Contractor correspondence, drawings, sketches, etc., and uploading them to the e-Builder web site and shall be responsible for the validity of its information placed in e-Builder. The Contractor shall utilize the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, the Contractor shall include a form of its own or one provided by the City (if available) as an attachment to a submittal or process. Documents and information to be submitted electronically include, but are not limited to:

- 8.1.8.1.** Correspondence
- 8.1.8.2.** Meeting minutes
- 8.1.8.3.** Submittals and shop drawings
- 8.1.8.4.** Product data, reports, certifications, etc. must be submitted in PDF format. (If a sample is able to be scanned, it is requested a scanned PDF copy is submitted with the sample.)
- 8.1.8.5.** Requests for Information (RFI's)
- 8.1.8.6.** Change order requests and documentation, including record copies of change orders, proposals, modifications
- 8.1.8.7.** Pay applications
- 8.1.8.8.** "Official" correspondence (such as letters) including informal correspondence, such as e-mail
- 8.1.8.9.** Pre-Task Plans (PTPs)
- 8.1.8.10.** Daily construction reports and other daily reports including Contractor Quality Control (CQC) reports
- 8.1.8.11.** Quality Control (QC) documentation
- 8.1.8.12.** All official reports, such as commissioning reports
- 8.1.8.13.** Notices and claims
- 8.1.8.14.** Operations and maintenance manuals
- 8.1.8.15.** All close-out documents
- 8.1.8.16.** All testing results

8.1.9. Archive Copies: When requested by City, Contractor shall keep an archive copy of all digital data created by Contractor, or submitted to Contractor via e-mail, or resident on the e-Builder for the duration of the Project. Such data shall be available to City, authorities with jurisdiction (including funding agencies or representatives) on demand.

8.1.10. Should the City replace e-Builder with a different project management tool, Contractor, and subcontractors, shall be required to utilize the new project management tool selected by the City.

9. SCHEDULE

9.1. For scheduled outages, Contractor shall be available to provide Services within thirty (30) days of request by SVP.

9.2. Remedial measures shall be completed within 24-hours or less in a timely, efficient manner to ensure the power plant equipment is operational as soon as possible.

9.3. Except where otherwise directed by the City, Contractor shall perform the required Services between 7:00 AM - 7:00 PM, Monday through Friday and avoid overtime except when requested and approved by the City.

9.4. If SVP requires Services outside of regular business hours, Contractor shall provide to SVP a Proposal for the required Services (listing labor costs and parts/equipment costs separately). Contractor shall not begin work until SVP has given written approval.

10. STAFFING REQUIREMENTS

10.1. The Contractor shall be solely responsible for selecting, hiring, employing, paying, supervising, training and discharging all personnel necessary for the efficient testing, inspection, maintenance, and repair Services.

10.2. Contractor shall ensure the following employment standards for all employees (including subcontractors) are complied with and enforced throughout the term of the contract.

10.3. Contractor shall employ only competent craftsmen/skilled workers who are well-qualified to perform the job duties for which they are being hired, appropriately trained, licensed to perform the required Services.

10.4. Contractor shall be responsible for understanding and complying with any training and licensing required for the performance of the Services described in this Attachment A, including but not limited to, Department of Transportation (DOT) requirements for commercial driver's license and required drug testing if applicable.

- 10.5.** Contractor shall ensure that all its employees and agents abide by established local, state and federal safety rules and regulations.
- 10.6.** Contractor's employees and any subcontractors shall supply proper identification when requested by SVP.
- 10.7.** Classification and Duties of Employees: The Contractor shall include the classifications of employee positions and the duties of each position in their proposal. Classifications may include, but are not limited to:
- 10.7.1.** Project Manager/General Manager: Responsible for the day-to-day management and supervision of the required Services. On-site responsibilities shall also include, but not be limited to, correcting problems, managing conflicts and complaints, and overseeing work schedules, personnel, and equipment requirements. If the Project Manager/General Manager is off-site or otherwise unable to give direction to Contractor's employees (including subcontractors), the City may give directions to the personnel until the Project Manager/General Manager returns.
- 10.7.2.** Technician/Field Personnel: Performs the required valve inspection, maintenance and repair Services.
- 10.7.3.** Administrative Personnel: Assists in the administration and reporting of the required Services.
- 10.8.** Contractor shall inform SVP immediately of any change in key personnel assigned to this project.
- 10.8.1.** Contractor shall submit the resumes and other qualifications of the proposed replacement employee(s) to SVP for review and approval.
- 10.8.2.** SVP shall not unreasonably withhold approval.
- 10.9.** SVP reserves the right to request the removal of any Contractor employee(s) who does not conduct themselves in a courteous, professional manner, or whose actions endanger the safety of people or property. The Contractor shall promptly respond to requests for replacement personnel.

11.EMPLOYEE TRAINING

- 11.1.** Contractor shall provide training to its employees (including subcontractors) for them to perform their work in a safety manner.
- 11.2.** Contractor's employee training shall be at no cost to SVP.
- 11.3.** Contractor shall ensure that all employees (including subcontractors) who will be involved in the performance of Services understand how to safely inspect,

maintain, and repair the valves and the systems they are installed in as required for their respective positions.

- 11.4.** Contractor shall review its training procedures annually and shall submit any revisions in writing to SVP.
- 11.5.** Contractor shall provide ongoing training at least once per year. Contractor shall ensure that all assigned employees attend this annual training.
- 11.6.** Contractor shall provide ongoing training such as LOTO, confined space, fall protection or other job-related trainings for starters at least once per year. Contractor shall ensure that all assigned employees attend this annual training.
- 11.7.** Contractor shall be responsible for understanding and complying with any training and licensing required for the performance of the Services described in this Exhibit B.

12. SAFETY

- 12.1.** Contractor shall comply with all site-specific safety requirements and procedures including but not limited to Lockout/Tagout (LOTO), Confined Space, Fall Protection, Chemical Safety, Hazardous Waste and Personnel Protective Equipment (PPE).
- 12.2.** Contractor, its employees, and any subcontractors shall always act in a safe manner Contractor shall assume full responsibility for the protection and safekeeping of material and tools stored at the site and shall lock all Contractor vehicles when parked and unattended, to prevent unauthorized use. Contractor shall not leave vehicles or equipment unattended with the motor running or the ignition key in place.
- 12.3.** The Contractor shall be responsible for creating a safe work environment for all personnel and City employees as well as for traffic control at the job site.
- 12.4.** Contractor's safety provisions shall be in accordance with all applicable federal, state, county, and local laws, ordinances and codes.
- 12.5.** Contractor shall be responsible for remaining up to date on all applicable federal, state, county, and local laws, ordinances and codes in the event they are amended. Where any amended applicable laws or ordinances are in conflict with the City's requirements, the more stringent requirement(s) shall be followed. The Contractor's failure to be thoroughly familiarized with the safety provisions shall not relieve the Contractor from compliance with the obligations and penalties resulting therefrom.
- 12.6.** Contractor shall provide and maintain an Injury and Illness Prevention Program (IIPP) pursuant to Title 8, Section 3203 of the California

Administrative Code. The program shall include, but not be limited to, a safety training program instructing Contractor's employees in general safe work practices and shall include specific instructions with regard to hazards unique to the employee's job assignment. A copy of the Contractor's IIPP shall be submitted to the City prior to the execution of an agreement, and be made available on site upon request.

- 12.7.** Contractor shall schedule periodic safety inspections to identify and correct unsafe conditions and work practices. SVP reserves the right to accompany Contractor during these inspections.
- 12.8.** Contractor's employees (including any subcontractors) shall not use or possess alcohol, narcotics, firearms, or drugs of any nature other than medical (for which the Contractor's employee has a current doctor's prescription) on City property and while performing Services for the City. Employees using prescribed medication will not engage in any work if the medication can potentially impair the employee's ability to perform the work safely.
- 12.9.** Contractor's employees (including any subcontractors) shall utilize appropriate Personal Protective Equipment (PPE) and Fire Resistant (FR) clothing, as required. Contractor shall provide the required PPE and FR clothing at its own expense.
- 12.10.** Contractor shall immediately remove any personnel who is acting in an unsafe or dangerous manner.
- 12.11.** Contractor shall notify the City immediately in event of an injury or property damage that occurs during the performance of the Services described in this Attachment A. Contractor shall investigate the reported injury or damage upon request from SVP, and provide SVP with regular updates until the investigation is resolved. SVP reserves the right to perform its own investigation. Should SVP choose to conduct its own investigation, Contractor shall assist the City as required.
- 12.12.** Contractor and its employees shall watch an SVP safety video once per calendar year prior to the commencement of work or as assigned by SVP.

13. TOOLS AND EQUIPMENT

- 13.1.** Contractor is responsible for identifying all tools and equipment necessary to perform work. SVP will not loan tools or equipment to the Contractor.
- 13.2.** All equipment shall be operated and well-maintained in a satisfactory condition at all times and in compliance with state and federal regulations including, but not limited to, the Occupational Safety and Health Administration (OSHA).

- 13.3.** SVP may suspend work where they observe that proper tools and equipment are not being used.
- 13.4.** Contractor shall assume full responsibility for the protection and safekeeping of material and tools stored at the site and shall lock all Contractor vehicles when parked and unattended, to prevent unauthorized use. Contractor shall not leave vehicles or equipment unattended with the motor running or the ignition key in place.
- 13.5.** Upon the end of the workday, or suspension of work, Contractor shall remove all equipment and obstructions from any property typically open for use by public traffic. Any incomplete work shall be secured in a manner that does not present a hazard to the City or public.

14. PROFESSIONAL BEHAVIOR

- 14.1.** Contractor shall be responsible for the conduct, demeanor and appearance of its employees while on or about the job site or while acting in the course and scope of employment.
- 14.2.** Contractor's employees shall be neat and clean and shall act in a courteous and professional manner. No employee shall use improper language or act in a loud, offensive, or otherwise improper manner.
- 14.3.** Contractor's employees shall be trained as to the requirements of their positions and the importance of performing their jobs according to the SVP's instructions.
- 14.4.** Contractor's employees shall be all times polite and courteous in their dealings with SVP staff and members of the public, treating them with patience and respect.
- 14.5.** Contractor's employees shall speak clearly and in a professional manner while interacting with members of the public, offering the assistance needed by each person.
- 14.6.** Contractor shall submit any complaints received against it to the City immediately.

15. WORKMANSHIP

- 15.1.** The Contractor shall perform the required Services in an environmentally responsible manner.
- 15.2.** Contractor shall take all necessary precautions to protect SVP, City and private property from damage during the performance of the required Services. Contractor shall be responsible for the repair of any property damaged during the performance of Services. Damage to City property that

- cannot be repaired shall be replaced at the Contractor's sole expense, prior to issuance of payment to the Contractor by SVP. Any expenses incurred by SVP to repair property damage will be deducted from the Contractor's compensation.
- 15.3.** Contractor will make all reasonable efforts to minimize obstructions and inconvenience to private property owners such as, but not limited to, noise associated with testing.
 - 15.4.** Contractor shall keep their work site(s) free from all surplus material, waste material, dirt and rubbish caused by Contractor's performance of Services.
 - 15.5.** Contractor shall leave the work site in a neat and orderly condition. All clean-up work will be done to the satisfaction of the City, and at the sole expense of Contractor.
 - 15.6.** Upon the end of the workday, or suspension of work, Contractor shall remove all equipment and obstructions from any property typically open for use by public traffic. Any incomplete work shall be secured in a manner that does not present a hazard to the City or public.
 - 15.7.** SVP shall have the right to inspect any work performed by the Contractor and any subcontractors. Should the City determine upon inspection any unsatisfactory or defective work, the Contractor shall immediately correct the work at no additional cost to SVP.
 - 15.8.** SVP shall not perform any work for Contractor except in an emergency situation or as determined necessary by the City such as, but not limited to adequately protect the SVP's electrical or other facilities or to restore work area to a safe condition. SVP will be reimbursed for any work done for the Contractor (deduction from the Contract or invoice to Contractor at the sole discretion of SVP). This will include all costs (direct straight time or overtime wages, all overhead, administration, engineering, vehicle, and equipment costs).

16. WARRANTY

- 16.1.** Manufacturer's warranty shall apply to all parts.
- 16.2.** Parts fabricated by Contractor shall have a warranty equal to or greater than manufacturer's warranty for similar parts.
- 16.3.** Labor shall be warranted for at least twelve (12) months from the date of acceptance.
- 16.4.** Contractor shall correct any deficiencies and/or errors in Contractor's work discovered during the warranty period, at no cost to the City.

EXHIBIT B
SCHEDULE OF FEES AND PAYMENT PROVISIONS

1. Maximum Compensation

- 1.1. The maximum amount of compensation to be paid to Contractor under this Agreement shall not exceed the amount specified in Section 6 of the Agreement (Compensation and Payment).
- 1.2. Any Services or materials requested by the City that exceeds the Maximum Compensation shall require the execution of an amendment to this Agreement before commencement of Services.
- 1.3. The City does not guarantee a minimum compensation under this Agreement.

2. Rates and Fees

- 2.1. Services shall be performed at the rates and fees specified in Exhibit B-1 – Hourly Rates and Fees.
- 2.2. Definitions:
 - 2.2.1. Standard Rate is applicable for the first eight hours of work Monday through Friday during normal business hours.
 - 2.2.2. Overtime Rate is the Standard Rate times one and one-half (1.5). Overtime Rate is applicable for work performed over eight hours Monday through Friday, work performed before or after normal working hours, and work performed on Saturdays.
 - 2.2.3. Observed holidays are: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday following Thanksgiving Day, and Christmas Day.
 - 2.2.4. Double Time Rate is the Standard Rate times two (2.0). Double Time Rate is applicable for work performed after twelve hours Monday through Saturday and work performed on Sunday or holidays.
- 2.3. Unless otherwise noted on the Work Authorization, a four-hour minimum of man hours plus truck fee is required for callouts.
- 2.4. Rates shall remain fixed for the initial two years of the Agreement. After the initial two years Contractor may request adjustments to the compensation rates no more than annually.
 - 2.4.1. Contractor shall demonstrate to the satisfaction of City that a price increase is warranted.

2.4.2. Contractor shall notify City ninety (90) days in advance of any proposed rate increase.

2.4.3. City approval or denial of the requested rate adjustment will be provided in writing (e-mail acceptable). Once accepted, such rates shall be incorporated into the agreement by reference.

3. Reimbursable Expenses

3.1. Reimbursable Expenses. Contractor may submit invoices for reimbursement of expenses set forth subject to the following conditions. Any reimbursement to the Contractor is limited to the expenses set forth below in the Reimbursable Expense Schedule.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Charges for outside services and materials (including subcontractor fees, equipment, materials, and facilities not furnished directly by Contractor).	Not to exceed 10%
4.	Other reimbursable expenses with prior written approval from the City	No Markup
5.	Allowable mileage will be charged at the prevailing IRS rate per mile.	No Markup
6.	Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related per diem shall not exceed the rates outlined by United States General Services Administration (GSA). https://www.gsa.gov/travel-resources . Airfare or rental car, where applicable shall be at economy rates.	No Markup

3.2. Expenses shall be reimbursable only to the extent that the Contractor submits supporting information (such as receipts or invoices) for reimbursable expenses as well as sufficient documentation to City that the expenses were directly incurred in providing the Services, that such expenses aren't included in fixed or hourly rates, and (when a Work Authorization is required), such expenses were included in Work Authorization.

3.3. Except in the case of emergency, the City will only reimburse expenses to the extent such expenses are in Proposals submitted pursuant to Section 9 of Exhibit A.

3.4. City shall not reimburse local travel (within Santa Clara County).

4. Invoicing and Payment

- 4.1. Contractor shall submit invoices to City monthly, in arrears, for payment for preventative maintenance Services and/or Services performed per task or project for the previous month.
 - 4.1.1. Each invoice shall include the task costs for the previous month.
 - 4.1.2. Each invoice shall provide sufficient detail for City to verify that the rates in Exhibit B are charged.
- 4.2. City shall review the invoice submitted by Contractor and shall notify Contractor of any discrepancies or deficiencies in said invoice.
- 4.3. **Pre-Payment.** City shall not be required to pay a deposit or any other form of pre-payment prior to Contractor beginning of the Services.
- 4.4. **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until the City concludes that the Services have been satisfactorily completed.
- 4.5. **Disputed Invoices.** If the City in good faith disputes any portion of an invoice, the City shall pay the undisputed portion of the invoice and submit written notice to Contractor regarding the disputed amount. The notice shall include documentation supporting the disputed amount.
- 4.6. **Certified Payroll.** When applicable, Contractor shall submit all necessary certified payrolls with its request for payment, in accordance with Exhibit D and such submittals are subject to verification by City. In no event shall Services subject to Certified Payroll be invoiced in advance of the Services being performed.
- 4.7. **Payment.** If there are no discrepancies or deficiencies in the submitted invoice and Contractor has submitted all required Certified Payroll, City shall process the invoice for payment.

**EXHIBIT B-1
HOURLY BILLING RATES AND FEES
EFFECTIVE July 1, 2023**

<u>Classification</u>	<u>Standard Rate</u>	<u>Overtime Rate</u>	<u>Double Time Rate</u>
Foreman	\$145.00/hour	\$217.50/hour	\$290.00/hour
Journeyman	\$140.00/hour	\$210.00/hour	\$280.00/hour
Apprentice	\$111.00/hour	\$166.50/hour	\$222.00/hour
Supervisor	\$155.00/hour	\$232.50/hour	\$310.00/hour
Truck and Tool	\$25.00/hour	\$25.00/hour	\$25.00/hour
Borescope	\$250.00 Setup, Standard hourly crew rates apply		
Emissions Analyzer	\$250 Setup		
Laser Alignment	\$250 Setup, Standard hourly crew rates apply		

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$5,000,000 Each occurrence
 - \$5,000,000 General Aggregate
 - \$5,000,000 Products/Completed Operations Aggregate
 - \$5,000,000 Personal Injury
 - \$5,000,000 Project Aggregate
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Liability Insurance policy with coverage limits not less than two million dollars (\$2,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Contractor will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

1. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

2. Products/completed operations coverage shall extend a minimum of three (3) years after project completion.
3. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors.
4. If the insured is using subcontractors the Policy must include work performed "by or on behalf" of the insured.
5. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of

non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Document 00820.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
3. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in

compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.

5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.

11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
12. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its

equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT D LABOR COMPLIANCE EXHIBIT

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

A. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified

payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Exhibit shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is

practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Exhibit.

City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

EXHIBIT E

SAMPLE WORK AUTHORIZATION FORM

This work authorization ("Work Authorization") is made pursuant to the Agreement for Service between the City of Santa Clara and Gavin D. Yates, doing business as Northwest Industrial Engine & Compressor Co. ("Agreement"), a California Sole Proprietorship. This Work Authorization is governed by the provisions of the Agreement and is hereby incorporated into that Agreement by reference. All Services shall be using the terms and rates included in the Agreement. In the event of any inconsistency between the terms and conditions of the Work Authorization and the Agreement, the terms and conditions of the Agreement shall govern and control.

PART A: GENERAL INFORMATION

WORK AUTHORIZATION NUMBER:		<input type="checkbox"/> Original
Contract No.		<input type="checkbox"/> First Revised
Contractor Name/Address:		<input type="checkbox"/> Second Revised
Expiration Date of Agreement:		<input type="checkbox"/> Other _____
Contractor's Project Manager:	Name:	Email:
City's Project Manager	Name:	Email:
Period of Performance for this Work Order:	Start Date:	Expected Completion Date:
Maximum Compensation of Agreement:		
Previously Committed Funds:		
Available Funds		
Maximum Compensation for this Work Authorization		
Remaining Available Funds		
Sufficient funds are available in Fund #: (to be completed by City)		
Contractor Representative Name (Print)		
Contractor Representative Signature		
Contractor Representative Signature Date		
City Project Manager Name (Print)		
Authorized City Representative (Print)		
City Representative Signature		
City Representative Signature Date		
* Authorized City Representatives include Electric Utility Assistant Director, Chief Electric Utility Operating Officer, Chief Electric Utility Officer		

PART B: SERVICES TO BE PERFORMED

1. REVISED WORK AUTHORIZATION

No

If yes, provide a brief description of the change(s).

2. SCOPE OF SERVICES TO BE PERFORMED

The Contractor shall perform the service(s) described below in accordance with all of the terms and conditions of the Agreement. (Insert a detailed Scope of Services below or attach as a separate file.) Scope of Services and cost proposal shall meet all of the provisions of Section 5 of Exhibit B.

3. COMPENSATION

a. **Basis of Compensation:** Time & Materials Fixed Fee

b. **Reimbursable Expenses:**

No expenses are reimbursable.

Expenses are separately reimbursable in the maximum amount of:

c. **Payment Schedule:**

Monthly Completion of Deliverable/Milestone Completion of Services

d. **Payment Terms.** Provide payment terms below or attach as a separate file.

*Payment for on-site labor may not be paid in advance. On-site labor shall not be invoiced until completed and Customer will not make payment until certified payroll is approved.

4. LIQUIDATED DAMAGES

Liquidated Damages do not apply.

Liquidated Damages apply as follows:

It is mutually agreed by Contractor and City that, in event completion of the Services to be provided by the Contractor under this Agreement is delayed beyond _____, 20____, City will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, Contractor shall pay to City the sum of _____ dollars (\$_____) per day in liquidated damages to a cap of _____. Contractor agrees that City may deduct the amount of said unpaid damages from any money due or that may become due to Contractor under this Agreement.

Notwithstanding the foregoing both Parties understand and agree that no liquidated damages shall accrue for delivery delays due to any modification of the Scope of Services, for delays caused by or attributable to the City, for delays caused by or attributable to third parties not under the direct control of Contractor or any force majeure event during the period of service of this Work Authorization.

Such liquidated damages shall be the City's sole and exclusive remedy for Contractor's failure to meet the agreed delivery schedule.

5. ACCEPTANCE CERTIFICATE

- Acceptance Certificate not required.
- Acceptance Certificate required:

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
GAVIN D. YATES
DOING BUSINESS AS
NORTHWEST INDUSTRIAL ENGINE & COMPRESSOR CO.**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Gavin D. Yates, doing business as Northwest Industrial Engine & Compressor Co., a California sole proprietorship ("Contractor"). City and Contractor may be referred to individually as a "Party or collectively as the "Parties".

RECITALS

- A. The Parties previously entered into an agreement entitled Agreement for Services by and Between the City of Santa Clara, California and Gavin D. Yates Doing Business as Northwest Industrial Engine & Compressor Company, dated June 21, 2023; and
- B. The Parties entered into the Agreement for the purpose of having Contractor provide gas and air compressor preventative maintenance, and as needed services; and
- C. The Parties now wish to amend the Agreement to update the Work Authorization Process and increase the maximum compensation.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

- 1. Section 6 of the Agreement, entitled "COMPENSATION AND PAYMENT" is amended to read as follows:

"In consideration for Contractor's complete performance of Services, City shall pay Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is one million dollars (\$1,000,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services including any taxes. All Services performed or supplies, materials and equipment provided in excess of the maximum compensation shall be at Contractor's expense.

Contractor shall not be entitled to any payment above the maximum compensation under any circumstance."

2. Section 5 of Exhibit A entitled of the Agreement is hereby amended in its entirety to read as follows: .

5. WORK AUTHORIZATION PROCESS

5.1 Non-Emergency Work

5.1.1 When Services are required, City will notify Contractor to provide a proposal for Services. City will provide a description of the Services required and any other relevant information (Work Request).

5.1.1. Proposal. Contractor shall prepare and submit a proposal (Proposal) for each Work Request that includes:

5.1.1.1 A work plan that includes a detailed description by task of the services to be performed.

5.1.1.2 A project timeline/schedule with discussion on any activities that may impact the project timeline/schedule.

5.1.1.3 A list of Contractor's personnel and subcontractors including subcontractor Department of Industrial Relations (DIR) number where required.

5.1.1.4 Any required drawings or documents.

5.1.1.5 A list of City responsibilities.

5.1.1.6 A final acceptance criteria.

5.1.1.7 An itemized cost proposal showing:

5.1.1.7.1 Hours and hourly rates by position as listed in Exhibit B for both Contractor and subcontractor personnel if applicable. Indicate labor subject to prevailing wage requirements.

5.1.1.7.2 Parts/materials.

5.1.1.7.3 Rental and/or specialty equipment.

5.1.1.7.4 Reimbursable expenses, in accordance with the limitations set forth in Exhibit B.

5.1.1.7.5 Any additional costs including, but not limited to freight, permits, and fees.

5.1.1.7.6 Breakdown of materials and labor sufficient to calculate all required taxes.

5.1.1.7.7 Estimated total cost including any required taxes.

5.1.1.8 All submitted pricing shall be in accordance with the rates authorized in Exhibit B of this Agreement and the Proposal shall include sufficient information for the City to determine that rates are in accordance with the Agreement.

5.1.1.9 Cost for any additional equipment, parts, or services required for completion of services as detailed in the Work Request and in Contractor's Proposal but not reflected in the Contractor's cost proposal shall be the sole responsibility of the Contractor and at no additional cost to the City.

5.1.1.10 The City will review the Proposal, and may elect to approve it, reject it, or use it as a basis for further negotiations with Contractor.

5.1.1.11 Contractor must submit a revised Proposal to the City based upon such negotiations.

5.1.2 Work Authorization:

5.1.2.1 If the completion of the services in the Proposal will not result in total costs under this Agreement exceeding the maximum compensation in Section 6 of the Agreement (when combined with all previously authorized Services), the City may authorize services as set forth in this Section.

5.1.2.2 For Proposals with a total cost exceeding \$50,000, Work Authorizations shall be issued in substantially the same format as Exhibit E. Each Work Authorization shall describe the proposed services and deliverables the Contractor must provide, the time limit within which the Contractor must complete the proposed service and deliverables, the system acceptance criteria, warranty provisions, and the compensation for the Services.

5.1.2.3 Subject to the terms and conditions of this Agreement, Contractor and City will negotiate the specific scope and requirements of each Work Authorization.

5.1.2.4 Each Work Authorization shall have a Purchase Order attached to it. A Purchase Order ("Purchase Order") is a document issued by the City of Santa Clara Finance

Department which will reference the terms and conditions of this Agreement and serves as final approval for each Work Authorization, except in those situations set forth in Section 5.1.1.5 below.

5.1.2.5 For Proposals with a total cost less than \$50,000, a signed Work Authorization is not required. The City will issue a Purchase Order authorizing services and the Purchase Order will serve as the Work Authorization.

5.1.2.6 Only the Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer may, on behalf of the City, execute a Work Authorization. Purchase Orders are issued by the Finance Department.

5.1.3 Changes to Work Authorization:

5.1.3.1 Contractor shall notify the City immediately when a situation occurs that may result in a change to the total project cost or specific line items in an Work Authorization or purchase order. Contractor shall provide the reason for the change specific to each Work Authorization or purchase order.

5.1.3.2 In the event that unanticipated site conditions or other issues result in costs that exceed total of the Work Authorization or Purchase or changes to line items in a Purchase Order, Contractor shall submit to the City an updated Proposal for review and approval from the City in advance of performing any additional services. The City will issue a new or amended Work Authorization (if required pursuant to Section 5.1.2.2) or Purchase Order (as applicable) to authorize such additional services.

5.1.3.3 In the event that issues are identified that can be most efficiently and economically resolved while on site, changes may be approved verbally (in the field), by telephone, or e-mail by the following authorized individuals: Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer. Such authorization shall be defined as an Interim Work Order. Contractor shall provide an updated Proposal within two (2) business days so that such changes can be documented in a Work Authorization and/or Purchase Order.

5.2 Emergency Work Orders

5.2.1 An emergency work order (Emergency Work Order) should be utilized only in instances of a threat to public health or safety, loss of

or damage to property, or serious disruption to essential services. An emergency is defined as an unforeseen event, circumstance, or combination of circumstances that the City reasonably determines to require immediate action.

- 5.2.2 Emergency Work Orders do not need to be in writing and may only be authorized by the Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer. Such verbal authorizations will be confirmed by the City in writing within three (3) business days by a Purchase Order or, where applicable, a Work Authorization and Purchase Order.
- 5.2.3 When emergency services are required, Contractor shall send a Proposal to the City for the required Services as soon as possible, but no later than three (3) business days after starting Services. The Proposal shall be detailed in accordance with this Section 5 and shall also include all services required including those services already completed or initiated. The City will issue a Work Authorization (if required pursuant to Section 5.1.2.2) and a Purchase Order as soon as reasonably practicable.
- 5.3 A Work Authorization must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in a Proposal, Work Authorization, Interim Work Order, or Emergency Work Order - even if the Proposal, Work Authorization, Interim Work Order, or Emergency Work Order expressly states that it is intended to control. Any conflicting terms and conditions in a Work Authorization are invalid and unenforceable.
- 5.4 Each Work Authorization, Purchase Order, Interim Work Order, and Emergency Work Order including those authorizations issued pursuant to Section 5.2 and 5.1.3.3 shall be incorporated into the Agreement by reference and subject to its terms and conditions and the Services contained therein shall be included within the Services.
- 5.5 If Contractor begins services or fails to dispute a Purchase Order within three (3) business days, Contractor is assumed to have accepted the terms of the Purchase Order.
- 5.6 The City (through the individuals listed in Section 5.1.2.6 or, in the case of Purchase Orders, the Finance Department) may terminate a Work Authorization, Purchase Order, Interim Work Order, or an Emergency Work Order for convenience with ten (10) days prior written notice to Contractor. In such event, the Contractor shall have no further rights hereunder, except that Contractor shall be paid for all Services adequately rendered prior to such termination.

- 5.7 Proposals, pricing, and quotes are not confidential and will not be treated as confidential even if marked confidential when submitted.
- 5.8 **Except in the case of emergency which shall conform to the conditions of Section 5.2 or where the circumstances in Section 5.1.3.3 apply, Contractor shall not initiate services and the City will not compensate Contractor until the City has (1) executed the Work Authorization for such services, when applicable, (2) issued a Purchase Order, and (3) directed the Contractor to perform services.**
6. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

[SIGNATURES ON FOLLOWING PAGE]

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

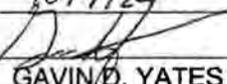
Dated: _____

GLEN R. GOOGINS
City Attorney

JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

**GAVIN YATES, DOING BUSINESS AS NORTHWEST INDUSTRIAL ENGINE &
COMPRESSOR CO.**
a California sole proprietorship

Dated: 10/7/24
By (Signature): 
Name: GAVIN D. YATES
Title: Owner
Principal Place of Business Address: P.O. Box 737
Riverbank, CA 95367
Email Address: Deon_yates@nwiec.com and
amanda_yates@nwiec.com
Telephone: (209)847-2299
Fax: (209)847-8800
"CONTRACTOR"



Agenda Report

25-1219

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action to Authorize the City Manager to Execute an Agreement with EQR-Lincoln Laguna Clara L.P. ("Developer") for the Installation and Operation of Private Recreational Amenity Improvements to Satisfy a Portion of Developer's Parkland Obligations for the 447 Unit Apartment Project Located at 3131 Homestead Road, such Improvements to be Funded at Developer's Sole Cost

COUNCIL PILLAR

Enhance Community Sports, Recreational and Arts Assets
Enhance Community Engagement and Transparency
Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

In July 2014, the City Council adopted Ordinance No.1937, adding Chapter 17.35 "Park and Recreational Land" to the Santa Clara City Code (SCCC). The purpose of City Code Chapter 17.35 is to help mitigate the impacts of new housing development growth on existing parkland and recreational facilities pursuant to the provisions of the State of California Quimby Act (Quimby) and/or the California Mitigation Fee Act (MFA). New residential developments are required to dedicate developed park and recreational land and/or pay a fee in-lieu of parkland dedication.

On September 16, 2020, the Architectural Review Committee approved a development application located at 3131 Homestead Road to construct a four-story apartment building with 447 apartment units, subgrade and surface parking on-site, landscaping, and site improvements (Project).

The Project will meet its parkland dedication requirements of 1.0484 acres as follows:

1. Installation of 1.2 acres of private recreational amenity improvements which provides a credit of 50% against the parkland dedication requirement; and
2. Payment of \$1,928,714 in Mitigation Fee Act in-lieu fees which was received in May 2023. An additional payment of \$93,271 was received in May 2024 due to a reduction in the amount of private recreational amenity space, which lowered the eligible credit against the parkland dedication requirement, resulting in total fee payments of \$2,021,985 in accordance with City Code Chapter 17.35.

This item requests Council consideration and approval of the Private Recreational Amenity Agreement (Attachment 1) necessary to implement the Project's overall park and recreational land requirements.

DISCUSSION

In conformance with the City Code, the City and EQR-Lincoln Laguna Clara L.P. (Developer) negotiated the terms and conditions for the construction and the completion of the private recreational amenity improvements of the Private Recreational Amenity Agreement (Agreement). Key provisions of the Agreement include:

1. The Developer will construct and install the private recreational amenity improvements onsite for which credit will be provided in the amount of \$2,150,875.
2. The Developer is not eligible for credit for any private recreational improvements which are not completed prior to occupancy and will be required to pay any additional equivalent park in-lieu fees for such improvements.
3. The Developer shall maintain, repair, and replace the private recreational amenity improvements to preserve them from failure or deterioration.
4. The Developer shall submit payment in the amount of \$2,021,985 for Mitigation Fee Act in-lieu fees in accordance with City Code Chapter 17.35 (The City acknowledges full payment of said fee as of May 2024).
5. The Developer agrees to restrict the use of private recreational improvements for active recreational uses for the benefit of future owners/renters.
6. The Agreement includes covenants running with the land and shall be binding upon Developer and Developer's successors and assigns during the term of their respective ownership of the private recreational improvements.
7. Developer shall furnish a performance security to ensure completion of the private recreational improvements for which Developer will be receiving credit.

As noted above, the Agreement contains provisions that restrict use of the private park recreational improvements for recreational purposes only. Such requirement will run with the land and bind Developer and future owners of the property.

ENVIRONMENTAL REVIEW

The Mitigated Negative Declaration for the Project, which included the construction of the private amenity improvements, was approved on September 16, 2020, pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). Accordingly, no further environmental review is required.

FISCAL IMPACT

There is no cost to the City for consideration of the Private Recreational Amenity Agreement with EQR-Lincoln Laguna Clara L.P. The Developer will meet its parkland dedication requirement by installing private recreational amenity improvements onsite, for which credit will be provided in the amount of \$2,150,875, and by submitting Mitigation Fee Act in-lieu fees in the amount of \$2,021,985

(fully received by May 2024) allocated to the Parks and Recreation Capital Fund.

COORDINATION

This report has been coordinated with the City Attorney's Office, the Community Development Department, the Finance Department, and the City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Authorize the City Manager to negotiate and execute the agreement with EQR-Lincoln Laguna Clara L.P. for the installation of private recreational amenity improvements at 3131 Homestead Road at the developer's sole cost on substantially the terms and in the forms presented, with such minor, non-substantive changes and amendments that may be necessary to implement the parkland dedication requirements for this project, in final forms approved by the City Attorney.

Prepared by: Gina Saporito, Staff Analyst

Reviewed by: Damon Sparacino, Director, Parks and Recreation

Approved by: Jōvan Grogan, City Manager

ATTACHMENTS

1. Private Recreational Amenity Agreement with EQR-Lincoln Laguna Clara L.P.

**RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103**

RECORDING REQUESTED BY:
Office of the City Attorney
City of Santa Clara, California

WHEN RECORDED, MAIL TO:
City of Santa Clara
City Clerk's Office
1500 Warburton Avenue
Santa Clara, California 95050

Form per Gov't Code Section 27361.6

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Santa Clara and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code §11922.

EBIX Insurance No. *S200005556

PRIVATE RECREATIONAL AMENITY AGREEMENT

3131 HOMESTEAD ROAD

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

EQR-LINCOLN LAGUNA CLARA L.P.,

a Delaware limited partnership

AND COVENANTS AND RESTRICTIONS FOR

PRIVATE RECREATIONAL AMENITIES

PREAMBLE

This PARKLAND AGREEMENT (“Agreement”) is entered into between the CITY OF SANTA CLARA, a chartered California municipal corporation (“City”) and EQR-LINCOLN LAGUNA CLARA L.P., a Delaware limited partnership (“Developer”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

City and Developer enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement.

- A. Developer desires to develop a residential project (“Development”) on the Development Project Site (as hereinafter defined). Developer has obtained building permit BLD2020-60146 with the City’s Planning Department for the Development.
- B. Under the provisions of Santa Clara City Code (“SCCC”) Chapter 17.35 (“Park and Recreational Land Dedication Ordinance”), every person who constructs or causes to be constructed a dwelling unit or dwelling units or who subdivides residential property shall dedicate land for neighborhood and community parks, pay a fee in lieu thereof, or provide a combination of such dedication and fee, at the discretion of the City (“Parkland Dedication Requirement”). A developer that provides private active recreational amenity space may request to receive credit against the amount of parkland dedication or the amount of the parkland in-lieu fee (“Parkland Fees”).
- C. Developer has agreed to build private recreation amenities pursuant and subject to the Conditions of Approval and architectural review approved at the Development Review Hearing on September 16, 2020, described in **Exhibit D** (“Conditions of Approval”), and later modified as shown in **Exhibit B (“Private Improvements”)**, and approved under BLD2020-60146.
- D. Developer is the fee title owner of that certain real property located at 3131 Homestead Road, in the City of Santa Clara, County of Santa Clara, State of California and more particularly described in **Exhibit A** attached hereto (the “Development Project Site”).
- E. In order for Developer to satisfy Developer’s Parkland Dedication Requirement for the residential units identified in the Development Review Hearing approved on September 16, 2020, and later modified as shown in **Exhibit B**, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy Project’s Parkland Dedication Requirement as follows:
 - i. Install private recreational amenity improvements as described in **Exhibit B** within the Development in conjunction with the construction of the Development in accordance with the requirements of the Conditions of Approval and later modifications as shown in **Exhibit B**, and for which Developer is also eligible to receive credit against its Parkland Dedication Requirement as set forth in the Park and Recreational Land Ordinance and this Agreement.

- ii. Pay City Mitigation Fee Act (“MFA”) Parkland Fees in the amount of Two Million Twenty-One Thousand Nine Hundred Eighty-Five Dollars (\$2,021,985).

City’s Director of Parks & Recreation (“Director”), or designee, is charged with the administration of this Agreement. The Director or their designee is responsible for the review, inspection, approval, and acceptance on behalf of the City of the Private Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Developer shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

- Exhibit A – Development Project Site
- Exhibit B – Private Recreational Amenity Improvements Plan
- Exhibit C – Parkland Requirements, Fees and Credit Summary
- Exhibit D – Conditions of Approval
- Exhibit E – Insurance Requirements
- Exhibit F – Bond Forms

This Agreement, including the Exhibits set forth above, contains all the agreements, representations, and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Term. The term (“Term”) of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall continue for a period of 5 years, unless sooner terminated or extended as hereinafter provided.

Expiration. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City as set forth herein.

3. REPRESENTATIONS AND WARRANTY

Developer expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform, in all material respects, to the specifications, requirements, and instructions upon which this

Agreement is based. Developer agrees to replace or correct any incomplete, inaccurate, or defective materials and services at no cost to City when defects are due to the negligence, errors, or omissions of Developer. If Developer fails to correct or replace materials and services, City may make corrections or replace materials and services and charge Developer for the cost incurred by City.

Developer represents and warrants to City that the following facts are true and correct:

- A. The statements and certificates made on the Development approved by the City Architectural Review Committee and documents filed in conjunction with the Development approved by the City Architectural Review Committee remain true and correct. Modifications to these documents, referenced in **Exhibit B**, have been approved under BLD2020-60146.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, shall contain no known inaccuracies or misstatements of fact. Developer covenants that if it becomes aware that any of these documents contain inaccuracies, misstatements or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete and current.
- C. Developer has the legal ability to enter into this Agreement and Developer's signatories to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Developer is not the legal owner(s) of the Development Project Site, the legal owner(s) shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

4. **CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS**

- A. The Development is eligible to receive credit for private recreational improvements pursuant to the Park and Recreational Land Ordinance. The itemized inventory and description of the private recreational improvements to be included in the Development by Developer that will receive credit pursuant to Chapter 17.35 is set forth in **Exhibit B** and **Exhibit C**. Developer shall complete the installation of the private recreational improvements described in **Exhibit B** and **Exhibit C** on or before the issuance of certificate of occupancy for the Development (including any temporary certificate of residential occupancy). The final certificate of occupancy for the Development shall not be issued, unless and until, all private recreational improvements have been constructed, accepted at City's discretion, and in full compliance with this Agreement, and all Parkland Fees are paid.
- B. With respect to any credit for private recreational improvements which have not been completed pursuant to Section 4A of this Agreement, Developer shall be ineligible for credit and shall be required to pay all applicable Parkland Fees in accordance with the fee rate in effect at the time of this Agreement or the amount of the credit received, whichever is greater, as set forth in the Park and Recreational Land Dedication Ordinance.

- C. Developer acknowledges and agrees that use of the private recreational improvements shall be restricted for active recreational uses by this recorded covenant which runs with the land in favor of the future owners/renters of the residential units located within the Development and which expressly cannot be defeated or eliminated without the consent of the City.
- D. Developer shall provide maintenance and repair of the private recreational improvements for the life of the development, keeping such property in good condition and repair. “Maintenance” or to “maintain” shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, cleaning, and minor, non-structural upkeep, or replacement when the improvement has significantly deteriorated and has reached the end of its useful life. In the case of landscaping, “maintenance” or to “maintain” shall mean regular fertilizing, irrigation, pruning, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.
- E. Developer acknowledges and agrees that Developer shall not receive any credit for eligible private recreational improvements pursuant to Park and Recreational Land Dedication Ordinance except those private recreational improvements that are set forth in **Exhibit B** and **Exhibit C** and constructed in full compliance with this Agreement.

5. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE

- A. City acknowledges and agrees that Developer’s performance of this Agreement shall satisfy Developer’s obligations under the City’s Park and Recreational Land Ordinance for the residential units identified in the Development Review Hearing for the Development. Provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with the Development and this Agreement, City shall issue all building permits necessary for the residential units identified on the Tentative Map.
- B. The Parties acknowledge and agree that the calculation of the Developer’s Parkland Dedication Requirement is accurately set forth in **Exhibit C**, including the parkland dedicated, the calculation of the Parkland Fees, the credits for the Private Recreational Improvements (“Credits), and any other fees, charges, or reimbursements. Developer shall pay to City the Parkland Fees specified in accordance with the payment instructions set forth in **Exhibit C**.
- C. In the event there is an increase in the number of residential units to be built, a change in the dwelling unit type, or any change to the private amenity area calculations, Developer agrees to immediately notify the Director and to provide additional parkland and/or pay such additional Parkland Fees as required by the Park and Recreational Land Ordinance. Where Developer makes such a notification to the Director, and additional Parkland Fees are owed, the fee in effect at the time of the notification shall apply to the additional residential units, the units affected by change in unit type, and/or the reduction/elimination of recreational amenity space that received credit against the project’s parkland dedication requirement.

For example: Developer submitted an application to City to amend its project. In the event there is a change in the number of residential units to be built, a change in dwelling unit type, and/or the reduction/elimination of recreational amenity space that received credit against the project's parkland dedication requirement, City will prepare an amendment to this Agreement to change the amount of parkland that must be dedicated, or the Parkland Fees to be paid to City in accordance with the number and type of residential units identified on the new or amended project application or request for this Development.

6. REVIEW FOR FEES AND CHARGES RELATED TO PRIVATE IMPROVEMENTS

- A. Developer shall pay to City a fee for review and approval of the Project Specifications for the Private Improvements and the inspection of the Private Improvements (collectively, "Review Fee"). City's Review Fee shall be based on:
- i. The 2% Administrative Fee portion of the applicable in lieu fee schedule in effect when the project was deemed complete by the City Planning Department.
 - ii. Developer shall pay all applicable Parkland Fees to the City prior to issuance of a building permit for each dwelling unit.

7. BONDS AND SECURITY

Developer shall furnish to City the following security prior to the issuance of a Notice to Proceed and commencement of any work under this Agreement and for the purposes, in the amounts, and under the conditions that follow:

A. Type and Amounts.

- i. Performance Security. To assure the Developer's faithful performance of this Agreement to complete Private Improvements for credit toward the total Parkland Fees owed to City, Developer shall furnish a performance security in an amount of One Hundred Percent (100%) of the estimated credit of the Private Improvements (hereinafter "Performance Security").

B. Conditions.

- i. Developer shall provide the required security on the forms attached hereto as **Exhibit F** or as otherwise approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance.
- ii. As a condition of granting any extension for the commencement or completion of the work under this Agreement, Director may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any adjustments in Parkland Fees owed based on changes to Development plans.

- iii. If Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director; and (3) upon its written acceptance by Director, be deemed to be a part of this Agreement. Upon Director's acceptance of a replacement security, the former security may be released by City.
- C. Release of Securities. City shall release the securities required by this Agreement as follows:
- i. Performance Security. City shall release the Performance Security upon issuance of the final certificate of occupancy.
 - ii. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.
- D. Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Private Improvements.

8. DEFAULT

- A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events ("Event of Default"):
- i. Developer's failure to timely cure any defect in the Private Improvements.
 - ii. Developer's failure to perform substantial construction work for a period of thirty (30) calendar days after commencement of the work.
 - iii. Developer's insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within thirty (30) days.
 - iv. Developer assigns this Agreement in violation of Section 9.
 - v. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement, subject to any applicable notice and cure periods.
- B. If an Event of Default occurs and the Event of Default is not cured by Developer, City shall rescind Developer's eligibility for credit towards its Parkland Fee requirement. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. Developer acknowledges and agrees that City's right to draw upon or use the security is in addition to any other remedies available by law or in equity to City. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of the Private Improvements, and therefore, City's damages in the

Event of Default by Developer shall be measured by the actual cost of completing the required Private Improvements to the satisfaction of City.

- C. Unless the Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 8 in order to preserve the public health, safety, and welfare, the Director shall give twenty (20) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this Section 8 if Developer commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.
- D. City's rights and remedies specified in this Section 8 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity.

9. ASSIGNMENT AND SUBCONTRACTING

City and Developer bind themselves, their successors and assigns to all covenants of this Agreement. Prior to completion of the Private Improvements and issuance of the certificate of occupancy therefore ("Completion"), this Agreement shall not be assigned or transferred without the prior written approval of City, not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Developer have the right to assign this Agreement to an entity under the direct or indirect control of Developer or an Affiliate of Developer without prior approval of City. Any attempts to assign or transfer any terms, conditions, or obligation under this Agreement without the express written consent of City, except as otherwise expressly set forth herein, shall be voidable at City's sole discretion. Subject to this Section, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives. From and after completion, no consent or approval shall be required to assign or transfer this Agreement, however, Developer shall provide City with written notice of any assignment or transfer within 30 days following such transaction. For the purposes of this paragraph, "Affiliate" shall mean (1) any corporation, limited liability company, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with Developer, ERP Operating Limited Partnership, an Illinois limited partnership ("ERP"), or Equity Residential, a Maryland real estate investment trust ("EQR"); and (2) a limited partnership (or a limited liability company) in which Developer or an entity controlled by Developer, ERP, or EQR is the managing general partner (or managing member)

10. INDEPENDENT CONTRACTOR

Developer and all person(s) employed by or contracted with Developer to furnish labor and/or materials under this Agreement are independent contractors and do not act as

agent(s) or employees(s) of City. Developer has full rights to manage its employees in their performance under this Agreement.

11. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Developer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the performance by Developer pursuant to this Agreement – including claims of any kind by Developer's employees or persons contracting with Developer to perform any portion of the work under this Agreement and shall expressly include passive or active negligence by City connected with the services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Developer's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Developer is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Developer warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Developer's responsibilities under the Act.

12. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in **Exhibit E**, Developer shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in **Exhibit E**.

13. WAIVER

Developer agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, nor acceptance required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

14. NOTICES

All notices to Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at parksandrecreation@santaclaraca.gov

And to Developer addressed as follows:

EQR-Lincoln Laguna Clara, L.P.
c/o Equity Residential
135 Main Street, Suite 1600
San Francisco, CA 94105
Attn: Drew Sullins
and by e-mail at dsullins@eqr.com

With a copy to:

Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attn: General Counsel

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

15. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

16. FORCE MAJEURE

A. "Force Majeure Event" shall be defined as any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, epidemics, quarantine restrictions, shortages in necessary materials, freight embargoes, subsurface conditions (environmental and geotechnical) not known or anticipated as of the Effective Date, litigation brought by third parties against either the City or Developer or both, actions (or inaction when action is required) of governmental authorities or utilities, or any governmental order or law which causes an interruption in the construction of the Private Improvements

(the “Work” for purposes of this section) or prevents timely delivery of materials or supplies.

- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section shall notify the other Party within ten business (10) days of the affected Party’s knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
 - i. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
 - ii. Negligence or failure of a Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
 - iii. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

17. BOOKS AND RECORDS

- A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Private Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City’s acceptance of the Private Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon three (3) business days’ prior written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it

is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at 135 Main Street, Suite 1600, San Francisco, CA 94105.

- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Developer, Developer's representatives, or Developer's successor-in-interest.
- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in **Exhibit D**.

18. MISCELLANEOUS PROVISIONS

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals contained in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- D. Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section 18(D) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- E. This Agreement binds and inures to the benefit of the Parties and their respective successors, assigns and legal representatives. This Agreement and all provisions thereof constitute covenants running with the land and shall be binding upon Developer, and Developer's successors and assigns during the term of their respective ownership of the private recreational improvements.
- F. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- G. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall

include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation.

- H. This Agreement is entered into pursuant to and shall be governed by the Park and Recreational Land Ordinance. If not otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in Chapter SCCC 17.35.
- I. Amendment. City Manager, or designee, is authorized on behalf of City to execute any amendments pursuant to Section 3C of this Agreement.
- J. Compliance with Laws. Developer certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following and certifies that it does not know of any facts which would violate these code provisions. Developer will advise City if, to Developer's knowledge, a conflict arises.
- K. Fair Unemployment. Developer shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
- L. No Use of City Name or Emblem. Developer shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.
- M. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, Santa Clara, California.
- N. Severability Clause. In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

19. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

20. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of Developer, and further represent that they have the authority to bind Developer to the performance of its obligations in this Agreement.

21. COUNTERPARTS

This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts.

SIGNATURES FOLLOW ON PAGES 15 & 16

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLENN R. GOOGINS
City Attorney

JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

- * All signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for signatures is required to be submitted concurrently with this Agreement.

EQR-LINCOLN LAGUNA CLARA, L.P., a Delaware limited partnership

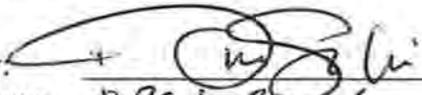
By: EQR-Lincoln Santa Clara, L.L.C., a Delaware limited liability company, its general partner

By: EQR-Rehab Master Limited Partnership, a Delaware limited partnership, its managing member

By: EQR-Rehab Master GP, L.L.C., a Delaware limited liability company, its general partner

By: ERP Operating Limited Partnership, an Illinois limited partnership, its member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: 
Name: DREW SULLINS
Title: FIRST VICE PRESIDENT
DEVELOPMENT

Dated: 12-30-24
Local Business Address: c/o Equity Residential, 135 Main Street, Suite 1600,
San Francisco, CA 94105
Email Address: dsullins@eqr.com
Telephone: (415) 744-4287

“DEVELOPER”

- * All signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for signatures is required to be submitted concurrently with this Agreement.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF ~~SANTA CLARA~~ ^{Marin}) SS

On 12/30/2024 before me Jonathan Emanuel Quevedo, Notary Public
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared Andrew Sullins who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jonathan Emanuel Quevedo (Seal)
(Signature of Notary)

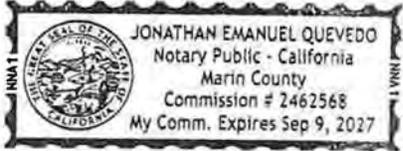


EXHIBIT A

LEGAL DESCRIPTION / DEVELOPMENT PROJECT SITE

The Land referred to herein below is situated in the City of Santa Clara, County of Santa Clara, State of California, and is described as follows:

PARCEL B AS SHOWN ON CERTIFICATE OF LOT LINE ADJUSTMENT, AS EVIDENCED BY DOCUMENT RECORDED JUNE 17, 2014 AS INSTRUMENT NO. 22623085 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL ONE AND A PORTION OF PARCEL TWO AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED AUGUST 7, 2000, AS DOCUMENT NUMBER 15346919, SANTA CLARA COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL ONE, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF HOMESTEAD ROAD.

THENCE ALONG THE EXTERIOR LINES OF SAID PARCELS ONE AND TWO THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

1. WEST, 705.38 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
2. ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 89°57'33" FOR AN ARC DISTANCE OF 31.40 FEET TO A POINT ON THE EASTERLY LINE OF QUINCE AVENUE;
3. ALONG SAID EASTERLY LINE OF QUINCE AVENUE, NORTH 00°02'27" WEST, 460.01 FEET TO THE SOUTHWEST CORNER OF PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON AUGUST 2, 2007 IN BOOK 816 OF MAPS AT PAGES 42 AND 43, SANTA CLARA COUNTY RECORDS;
4. LEAVING LAST EASTERLY LINE, EAST, 130.00 FEET ALONG THE SOUTHERLY LINE OF PARCELS "A", "B", "C" AND "D" TO THE SOUTHEAST CORNER OF PARCEL "D" OF SAID PARCEL MAP;
5. NORTH 00°02'27" WEST, 260.52 FEET ALONG THE EASTERLY LINE OF SAID PARCEL "D" AND THE EASTERLY LINE OF LOTS 3 AND 4 AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 8355 FILED FOR RECORD ON JULY 2, 1990 IN BOOK 615 OF MAPS AT PAGES 28 AND 29, SANTA CLARA COUNTY RECORDS, TO A POINT ON THE SOUTHERLY LINE OF PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON FEBRUARY 17, 1971 IN BOOK 278 OF MAPS AT PAGE 56, SANTA CLARA COUNTY RECORDS;

6. EAST, 695.90 FEET ALONG THE SOUTHERLY LINE OF LAST SAID PARCEL A AND THE SOUTHERLY LINE OF LOTS 6, 7, 8 AND 9 AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 5585 FILED FOR RECORD ON AUGUST 26, 1974 IN BOOK 344 OF MAPS AT PAGE 55, SANTA CLARA COUNTY RECORDS, TO THE NORTHWEST CORNER OF LOT 9 AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 1589 FILED FOR RECORD ON OCTOBER 18, 1955 IN BOOK 63 OF MAPS AT PAGES 18, 19 AND 20, SANTA CLARA RECORDS;

7. SOUTH ALONG THE WESTERLY LINE OF LOTS 4, 5, 6, 7, 8 AND 9 AS SHOWN ON SAID MAP OF TRACT NO. 1589, 378.32 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT NORTHERLY 82.20 FEET, MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF SAID PARCEL TWO;

THENCE LEAVING THE EXTERIOR LINE OF SAID PARCEL TWO AND CONTINUING THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1. WEST, ALONG LAST SAID PARALLEL LINE, 100.00 FEET;

2. LEAVING SAID PARALLEL LINE, SOUTH, 82.20 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL ONE;

THENCE SOUTH ALONG THE EASTERLY LINE OF SAID PARCEL ONE, A DISTANCE OF 280.00 FEET TO THE POINT OF BEGINNING.

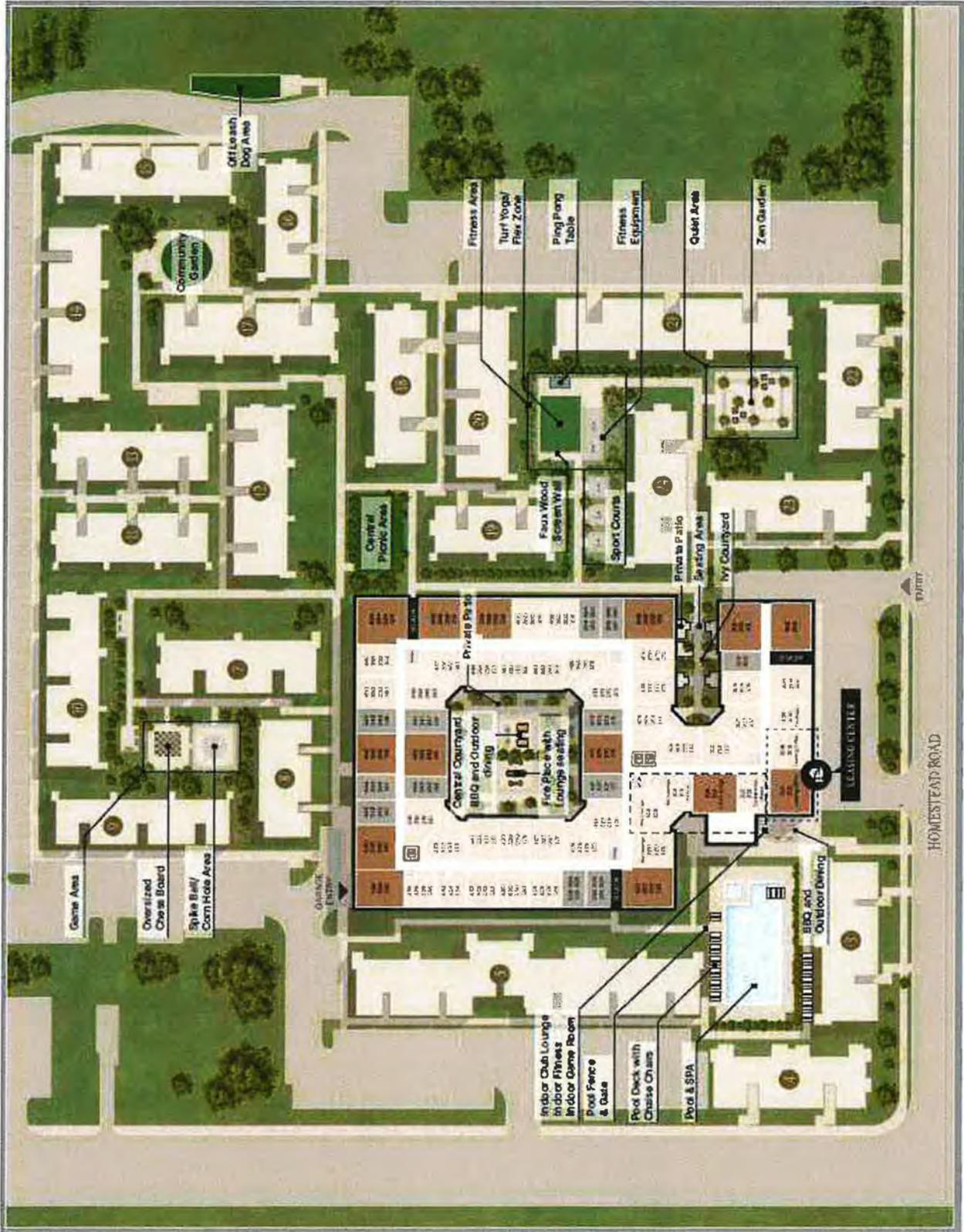


EXHIBIT B

PRIVATE RECREATIONAL AMENITY IMPROVEMENTS PLANS
(beginning on the next page)



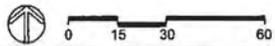
SCHMATIC LANDSCAPE PLAN- ENLARGEMENTS



Scale: 1" = 30'-0"

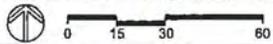


Scale: 1" = 40'-0"

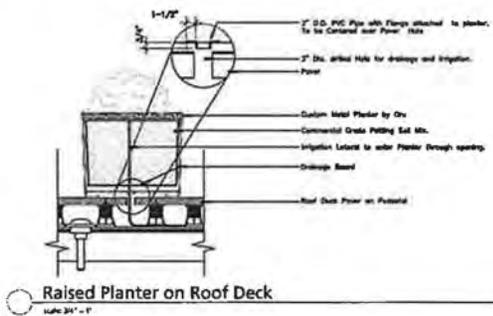
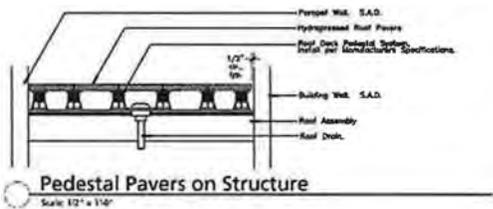


SCHEMATIC LANDSCAPE PLAN- ENARGEMENTS

Scale: 1" = 30'-0"

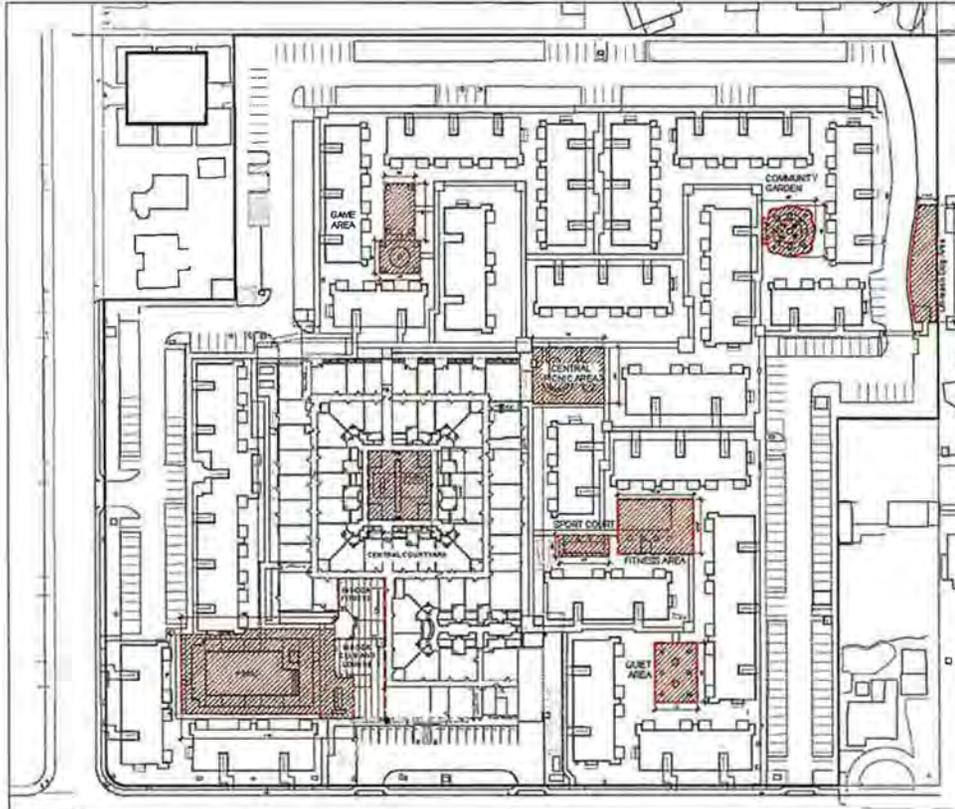


SCHEMATIC LANDSCAPE PLAN- ENLARGEMENTS
 Scale: 1" = 30'-0"

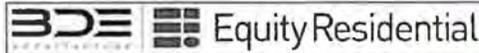


SCHEMATIC LANDSCAPE PLAN - LEVEL 4
 Scale: 1" = 30'-0"

3131 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS | 2.14.24 | L-2.6

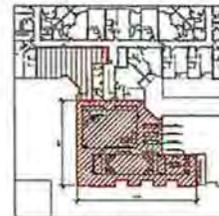


GROUND LEVEL COURTYARDS



PARK CREDIT LEGEND

CATEGORY	ELEMENT #	COMPONENTS	AREA PROVIDED
POOL COURTYARD	7	POOL (12 x 75 W/ SPA) (2 x 3) POOL DECK, LOUNGERS, OUTDOOR SHOWER, TABLES AND CHAIRS	13,765 SF
PICNIC AREA	5	BIRD TABLE, COUNTER TOPS AND DINING AREA SEATING AREA WITH FIREPLACE	4,245 SF
PICNIC AREA ROOF DECK	5	TRELLIS COVERED DRILLS, COUNTER TOPS AND DINING AREAS, GAME TABLES WITH SOFT SEATING, POOL OVERLOOK, VEGETABLE GARDEN AND FRUIT TREES IN RAISED BEDS	7,830 SF
GAME AREA	6	OVERSIZED CHESS BOARD AND SPIRE BALLYHORN HOLE COURT WITH ADJACENT SEATING AND SHADE TREES	2,880 SF
COMMUNITY GARDEN	4	VEGETABLE CUTTING GARDEN AND FRUIT TREES IN RAISED BEDS WITH TOOL STORAGE	2,120 SF
CENTRAL PICNIC AREA	5	MEANDERING PATHS IN GARDEN PLANTING WITH VARIOUS SIZED PICNIC POOLS AND MULTI USE TABLES	3,400 SF
OFF LEASH DOG AREA		FENCED OFF LEASH DOG AREA WITH PET STATION, WATER AND DOUBLE GATED ENTRY	2,730 SF
SPORT COURT	6	PETAQUE COURT WITH BENCH SEATING	1,000 SF
FITNESS AREA	6	YOGA AREA WITH BENCH SEATING, ACCENT WALL, FITNESS EQUIPMENT AND SHADE GAME TABLES	3,832 SF
QUIET AREA	3	CENTRAL ACCENT PLANTING WITH SOFT SEATING AND OUTDOOR WORK SPACE UNDER ADJACENT TREE GROVE	2,430 SF
INDOOR CLUB AND LOUNGE	8	COMMUNITY ROOM PROVIDING SPACE FOR ENTERTAINMENT, LOUNGE, KITCHENETTE, AND SPACE FOR TENANTS TO HOST PARTY/EVENTS	3,245 SF
INDOOR FITNESS	9	COMMUNITY SPACE WITH EXERCISE EQUIPMENT FOR THE PURPOSE OF PHYSICAL EXERCISE	2,115 SF
INDOOR GAME ROOM	8	COMMUNITY ROOM PROVIDING SPACE FOR ENTERTAINMENT, GAMES, LOUNGE, KITCHENETTE, AND SPACE FOR TENANTS TO HOST PARTY/EVENTS	2,685 SF
		SEE ARCHITECTURAL DRAWINGS FOR BUILDING INTERIOR AMENITY AREA LOCATIONS	52,301 SF TOTAL



LEVEL 4 - ROOF DECK

OVERALL SITE COVERAGE

CATEGORY	SQUARE FOOTAGE	PERCENTAGE
TOTAL SITE	549,300 SF	
TOTAL BUILDING FOOTPRINT	187,270 SF	
VEHICULAR PAVING, PARKING AND CARPORTS	127,913 SF	
OPEN SPACE	254,177 SF	46%

(OPEN SPACE=(TOTAL SITE)-(TOTAL BUILDING FOOTPRINT)-(VEHICULAR PAVING, PARKING AND CARPORTS))

Scale: 1" = 100'-0"

PARK CREDIT DIAGRAM

3131 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS

11.11.19

L-4.1

EXHIBIT C

PARKLAND REQUIREMENTS, FEES AND CREDIT SUMMARY

Developer will construct 185 dwelling units generating an estimated 414 net new residents (2.24 persons/household x 185 net new multi-family dwelling units). Based on the Mitigation Fee Act Dedication Standard of 2.53 acres of parkland per 1,000 residents, the amount of public parkland required for this Project to mitigate the impact of the total new resident demand is 1.0484 acres. The equivalent fee in-lieu of parkland dedication is anticipated to be \$4,172,860 before accounting for deductions and credits.

Developer has proposed to meet the required parkland dedication of 1.0484 acres through the dedication of 1.2007 acres (52,301 sq. ft.) of private recreational amenities, and to pay the remainder owed as a fee in lieu of parkland dedication in the amount of \$2,021,985.

According to City Code Chapter 17.35, projects may submit a written request for up to 50% credit against the amount of parkland dedication or the amount of the in-lieu fee thereof for eligible onsite private parkland and recreational amenities devoted to active recreational uses provided the development meets the requirements contained in City Code. This Project includes 1.2007 acres of private recreational amenities. The credit is therefore approximately 0.6003 acres with a value of \$2,150,875. The balance of fees due in lieu of parkland dedication is \$2,021,985.

In summary, the calculations above are:

\$4,172,860	Fee Due in Lieu of Parkland Dedication
<u>\$2,150,875</u>	Credit for Onsite Private Parkland and Recreational Amenities
\$2,021,985	Balance of Fee Due in Lieu of Parkland Dedication

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi Fam Dwelling	Mitigation Fee Act
Persons/Dwelling Type	2.24
Net New Multi Family Project Units	185
Total New Residents	414
Parkland Dedication Required (acres): R/1,000 x 2.53	1.0484
Equivalent In Lieu Fee	\$4,172,860

Table 2. Public Parkland Dedications Proposed, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
N/A			
Total to be dedicated:	0	0	

Table 3. Credit for Proposed Private Onsite Park & Recreation “Active Rec Uses”

	Square Feet	Acres
Accessible Swimming Pool w Adjacent Deck	13275	0.3048
Picnic Area on the Podium	4245	0.0975
Picnic Area on the Roof Deck	7630	0.1752
Game Area	2960	0.0680
Community Garden	2120	0.0487
Picnic Area – centrally located	3920	0.0900
Off Leash Dog Area	2738	0.0629
Sport Court	1000	0.0230
Fitness Area	3932	0.0903
Park-Like Quiet Area	2436	0.0559
Recreation Building – Community Room	3245	0.0745
Fitness Room	2115	0.0486
Game Room	2685	0.0616
Total:	52301	1.2007
Credit at 50% for Private Active Recreation & Equivalent Value:		0.6003 / \$2,150,875
Balance of Fees Due In-Lieu of Parkland Dedication:		\$2,021,985

EXHIBIT D

PARKS & RECREATION DEPARTMENT CONDITIONS OF APPROVAL

*Please note the Conditions of Approval below represent those required by the Park and Recreation Department and have been updated with current numbers and changes to the private recreational amenities; other Conditions of Approval by other City departments still apply.

- PR1. This Project is not a subdivision and the Mitigation Fee Act provisions apply. The project will generate an estimated 414 new residents (2.24 persons/household x 185 net new units). Based on the Mitigation Fee Act standard of 2.53 acres/1,000 residents, the amount of public parkland required for this project to mitigate the impact of the new resident demand is approximately 1.0484 acres. The equivalent fee due in lieu of parkland dedication is therefore \$4,172,860.
- PR2. In lieu fees imposed under Chapter 17.35 shall be due and payable to the City prior to issuance of a building permit for each dwelling unit.
- PR3. Application for Credit. Developers may request up to 50% credit for eligible private active recreational uses provided the development contains at least four (4) of the eight (8) elements itemized in the City Code. These elements must equal a minimum of 0.75 acres, or 32,670sf, of private open space. The calculation of private open space shall not include features required to be included by zoning, building codes and other applicable laws such as court areas, setbacks, decorative landscape, etc. The Project includes 52,301 sq. ft., after deducting a 4-foot set-back, of private on-site active recreational amenities and will receive credit at 50%, or 26,151 sq. ft. See Table 3.
- PR4. The balance of fees due in lieu of parkland dedication is \$2,021,985. See Table 3.
- PR5. Dwelling Unit Tax. According to City Code Chapter 3.15, a dwelling unit tax is also due based upon the number of units and additional bedrooms. The Project mix includes 46 studio units, 115 one-bedroom units, and 24 two-bedroom units. The total DUT owed for the net new units is \$2,895.
- PR6. Calculations may change if the number of units change or if any areas do not conform to the Ordinance and City Code Chapter 17.35.

EXHIBIT E

INSURANCE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 Each occurrence
\$5,000,000 General aggregate
\$5,000,000 Products/Completed Operations aggregate
\$5,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be sufficiently broad to meet the requirements of this Agreement.
3. To the extent that the following provisions are included in the ISO CG 00 01 form, they shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, a blanket additional insured endorsement, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal. If such policies cannot be so endorsed, Developer shall be responsible to provide notice of such cancellation or modification.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice

has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal. If such policies cannot be so endorsed, Developer shall be responsible to provide notice of such cancellation or modification.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit E, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Developer and City agree as follows:

1. Developer agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

F. **EVIDENCE OF COVERAGE**

Prior to commencement of any Services under this Agreement, Developer, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, reasonably satisfactory to City and as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. **EVIDENCE OF COMPLIANCE**

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by

EXHIBIT F
BOND FORMS

 **AIA**® Document A312™ – 2010

Performance Bond

Bond No.

CONTRACTOR:

(Name, legal status and address)
EQR-LINCOLN LAGUNA CLARA L.P.
135 Main Street, Suite 1600
San Francisco, CA 95050

SURETY:

(Name, legal status and principal place of business)
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA
One Tower Square
Hartford, CT 06183

OWNER:

(Name, legal status and address)
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date:

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars
(\$2,150,875.00)

Description:

(Name and location)
Private Recreational Amenity Agreement 3131 Homestead Road

BOND

Date: December 3, 2024
(Not earlier than Construction Contract Date)

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars
(\$2,150,875.00)

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*
EQR-LINCOLN LAGUNA CLARA L.P.

SURETY

Company: _____ *(Corporate Seal)*
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Signature: _____

Name
and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: _____

Name Susan A. Welsh, Attorney-in-Fact
and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

AON RISK SERVICES CENTRAL, INC.
200 E. Randolph St.
Chicago, IL 60601
(312) 381-1000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party.)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____, Attorney-in-Fact

Address: _____

Address: _____



AIA® Document A312™ – 2010

Payment Bond

Bond No. _____

CONTRACTOR:

(Name, legal status and address)
EQR-LINCOLN LAGUNA CLARA L.P.
135 Main Street, Suite 1600
San Francisco, CA 95050

SURETY:

(Name, legal status and principal place of business)

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA
One Tower Square
Hartford, CT 06183

OWNER:

(Name, legal status and address)
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date: _____

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars (\$2,150,875.00)

Description:

(Name and location)

Private Recreational Amenity Agreement 3131 Homestead Road

BOND

Date: December 3, 2024

(Not earlier than Construction Contract Date)

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars (\$2,150,875.00)

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*
EQR-LINCOLN LAGUNA CLARA L.P.

SURETY

Company: _____ *(Corporate Seal)*
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Signature: _____

Name _____

and Title: _____

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: _____

Name Susan A. Welsh, Attorney-in-Fact

and Title: _____

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

AON RISK SERVICES CENTRAL, INC.
200 E. Randolph St.
Chicago, IL 60601
(312) 381-1000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title: ,

Address:

Signature: _____

Name and Title: , Attorney-in-Fact

Address:



Agenda Report

25-1116

Agenda Date: 1/28/2025

REPORT TO CITY COUNCIL

SUBJECT

Action to Authorize the City Manager to Amend the City Loan Terms for the Belovida Apartments to Enable the County to Structure a Hard Loan to Replace the Current Bank Loan to Stabilize the Project and to Increase the City loan by up to \$90,000 to Cover the Gap in Repair Costs and Approve the Related Budget Amendment

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

In July 2008, the City of Santa Clara appropriated up to \$4,955,000 for a loan (the "City Loan") to CORE Affordable Housing LLC and Charities Housing Development Corporation ("Developer") for the construction of Belovida Santa Clara, a new affordable senior housing project with 27 one-bedroom units for residents with incomes ranging from 30-50% of area median income. The project is located at 1828-1878 Main Street in Santa Clara and consists of one three-story residential building (the "Project" or "Belovida Apartments"). The project was initially funded through bond funds, a loan from the City, a loan from the California Housing Finance Authority, a bank loan, and tax credit equity. The City Loan came from set aside funds collected by the Redevelopment Agency of the City of Santa Clara. The City Loan was structured to mature on June 30, 2065 with a 2.75% interest rate to be paid by residual receipts when cash flow is available after covering senior debt service, ground lease payments, and other permitted expenses. The City entered into this agreement in July 2008 to further affordable housing goals pursuant to California Community Redevelopment Law.

The City Loan is secured by a leasehold deed of trust. The ground lease between the Developer and a third-party family trust requires annual lease payments of \$48,000 with an annual increase of \$500. The lease is set to expire on February 28, 2077.

Residents at Belovida Apartments are elderly and extremely low-income. The Developer has held rents lower than allowed by State income limits to avoid the displacement of vulnerable residents and this has put financial strain on the Project. The result is that the Project has been unable to produce enough cash flow to make payments on the City Loan and maintenance has been deferred. The Project is nearing the end of its 15-year Low Income Housing Tax Credit (LIHTC) compliance period and now is a good time to reposition the Project financially.

City staff have been working with the Developer, the County Office of Supportive Housing, Department of Veteran's Affairs, and Destination Home to structure a long-term solution to stabilize Belovida Apartments and to address deferred maintenance. The current strategy will replace the existing bank loan with a low-interest loan from the County and will convert seven units into supportive housing for veterans using a variety of sources, including Veteran Affairs Supportive

Housing (VASH) vouchers. Charities Housing also received a commitment from Destination Home for a two-year rent subsidy to eliminate the rent burden for existing elderly tenants and to partially fund rehabilitation work for deferred maintenance. Destination Home intends to use this as a pilot project for addressing the growing problem of severely rent burdened seniors living in income restricted affordable housing.

On May 28, 2024, the City Council allocated up to \$409,950 from the City's Permanent Local Housing Allocation (PLHA) to help rehabilitate the Belovida Apartments. Following this meeting, County staff determined that PLHA funds could not be used for repairs on this specific project type. To address this, the County intends to pay for repairs using another source and to use PLHA funds as the operating subsidy to lower rent for impacted residents. This funding swap will create a \$90,000 gap in the repair budget.

On October 8, 2024, the County committed up to \$1,310,500 to originate two loans to stabilize the Project: (1) a new County Affordable Housing Fund (AHF) permanent loan for \$990,050 to pay off the higher interest rate private loan from Bank of America and (2) a PLHA permanent loan for \$319,950, using the City's allocation, was also approved to subsidize rents for extremely low and very low-income seniors.

The County anticipates requiring hard payments on the County AHF loan while the PLHA loan will require residual receipts payments.

DISCUSSION

The funding swap mentioned above has resulted in the City putting only \$319,950 in PLHA funds into this preservation deal. This leaves the project \$90,000 short for meeting the stated repair budget. To make the project whole and allow the full scope of repairs and maintenance to move forward, staff recommends increasing the City Loan by up to \$90,000 from \$4,955,000 to \$5,045,000.

The County AHF loan terms require hard payments which means that the County will receive a fixed annual principal payment of approximately \$24,147 subject to net available cash flow. After operating expenses, ground lease, and County AHF loan payments are made, any residual cash flow would be split proportionally between the City and the Developer (50/50). The City's share will be used to pay the City Loan and the PLHA loan. The County AHF loan will bear a 2.75% interest rate and will mature on February 28, 2065 with a 41-year term for the affordability restrictions. However, the County AHF loan (junior lien) will have priority for payments during the term of the loan. In the event of a sale or foreclosure, the City Loan (senior lien) shall have priority in repayment. Without the restructuring of the loans, it is unlikely the City will be repaid with the cash flow that the project has incurred. A lower cost loan and vouchers and one-time repairs will reposition the project to restart to pay the City's loan while keeping senior vulnerable residents in place.

The financial repositioning of Belovida will allow the project to continue operating at deep affordability levels, it will prevent the displacement of vulnerable residents, and it will safeguard against the risk of foreclosure. It is unlikely the project will pay off the entire City Loan and accrued interest by February 28, 2065, but the Developer estimates the Project could begin paying down the City Loan by 2036.

The term sheet for the City Loan Amendment is included as Attachment 1.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

This Project has yet to generate sufficient cash flow to begin repaying its soft debt. However, this Project restructuring will lower debt service cost by replacing the existing senior bank loan and adding funding from various sources including Veterans Affairs Supportive Housing (HUD-VASH) vouchers. This will increase cash flow and help ensure that the City Loan will be at least partially repaid. Without this collaborative restructuring, it is likely the City would see little or no repayment over the same term.

Increasing the City Loan by up to \$90,000 will allow for deferred maintenance and repairs to move forward and will ensure the building can operate well in future years. This increase is recommended to be funded using available unrestricted fund balance in the City Affordable Housing Fund.

Budget Amendment
FY 2024/25

	Current	Increase/ (Decrease)	Revised
<u>City Affordable Housing Fund (165)</u>			
<u>Expenditures</u>			
Capital Outlay	\$10,264,353	\$90,000	\$10,354,353
<u>Fund Balance</u>			
Unrestricted Ending Fund Balance	\$5,631,765	(\$90,000)	\$5,541,765

COORDINATION

This report was coordinated with City Manager’s Office, City Attorney’s Office, Department of Finance, and Department of Community Development.

PUBLIC CONTACT ,

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Approve and authorize the City Manager or designee, to negotiate, execute and amend the loan documents to permit the repayment of the County AHF loan in a junior lien position prior to the repayment of the City loan in a senior lien position, before the distribution of residual receipts, in a final form approved by the City Attorney;
2. Approve and authorize the City Manager or designee, to negotiate, execute and amend the

loan agreement to increase the City Loan by up to \$90,000, from \$4,955,000 to \$5,045,000 to address the gap created when the PLHA funds were swapped and replaced with Destination Home funds to pay for repairs, to make modifications to the loan documents consistent with the Term Sheet and as reviewed by the City Attorney for form and consistency; and

3. Approve the FY 2024/25 budget amendment in the City Affordable Housing Fund, increasing the Capital Outlay appropriation in the amount of \$90,000 and decreasing the unrestricted ending fund balance in the amount of \$90,000 (five affirmative Council votes required for the use of unused balances).

Reviewed by: Afshan Hamid, Director of Community Development

Approved by: Jovan Grogan, City Manager

ATTACHMENTS

1. City Loan Amendment Term Sheet



**BELOVIDA SENIOR APARTMENTS – TERM SHEET
AMENDMENT TO THE CITY LOAN**

Date: December 17, 2024

OWNER REQUEST: Belovida Santa Clara, L.P., a California limited partnership (“Borrower”), hereby requests the City to consider the following items (“Transactions”):

1. Increase the existing City Loan by up to \$90,000, from \$4,955,000 to \$5,045,000.
2. Consent to a new loan refinance transaction in the total principal amount of up to \$1,310,500 to be made by the County of Santa Clara to pay off the existing senior debt and provide funds to rehabilitate Belovida Senior Apartments; and
3. Consent to the exits/substitution of the limited partner and general partner.

SUMMARY OF CITY ACTIONS:

The summary below describes the City requirements as part of the Transaction.

- A. *Amendment of Loan Terms:* Associated with the Transaction, the terms and conditions of the existing City loan will be amended, and the loan documents will be modified to reflect the requested changes as set forth herein. See **Exhibit A** for details of the amendments to the terms of the City Loan.

PROJECT DESCRIPTION & FINANCING OVERVIEW

1. **PROJECT DESCRIPTION:** The Property is a low-income apartment building consisting of 28 units located at 1420 Main Street, Santa Clara. The Property has 27 rent-restricted units restricted by the City’s existing Agreement Containing Covenants to 9 Extremely Low-Income and 18 Very Low-Income senior households.
2. **EXISTING CITY LOAN:** The Project currently has a \$4,955,000 permanent loan from the City of Santa Clara (“City Loan”). The City Loan is evidenced by a Promissory Note dated August 1, 2008, that bears 2.75% simple interest and secured by a leasehold deed of trust. The City Loan is scheduled to mature on June 30, 2065 (“Maturity Date”). The City receives 50% Residual Receipt payments. As of November 30, 2024, the outstanding unpaid principal balance of the City Loan is \$4,955,000 and \$2,140,552.16 in accrued unpaid interest.
3. **SPONSOR:** Charities Housing Development Corporation of Santa Clara County

4. AMENDED AND RESTATED CITY LOAN

The revised Loan terms are set forth in Exhibit A “Amended Terms and Conditions to the Existing City Loan,” attached hereto.

5. DOCUMENTATION

- a. This Term Sheet is not intended to set all of the terms, conditions and documents required by the City for this Transaction, which shall include customary provisions and documents to be approved by City (including, but not limited to, all such documents mentioned in this Term Sheet and all City documents evidencing, securing or related to City documents related to this Project, shall in all respects be satisfactory to City (collectively, “City Documents”).
- b. Borrower shall promptly deliver to City any further documentation which may be required by City.
- c. Changes or Amendments: No Project loan documents which are subject to City’s review or approval shall be modified in any material aspect or terminated without the prior written approval of the City. Such approval will be focused on whether such changes are consistent with the long-term viability and financial projections for the Project.
- d. Conflict: If a conflict arises between terms herein and terms in the City Documents, the City Documents shall prevail.
- e. Expiration: The subject Term Sheet expires 10 days from the date written above. Please return a fully executed copy to the City by January 9, 2025.

ATTACHMENT

Exhibit A: Amended Terms and Conditions to the Existing City Loan

ACCEPTED BY:

“BORROWER”

Belovida Santa Clara, L.P., a California limited partnership

By: Charities Belovida LLC, a California limited liability company
its Managing General Partner

By: Charities Housing Development Corporation of Santa Clara County
a California nonprofit public benefit corporation
its sole member

By: _____
Mark J. Miki
Executive Director

Date: _____

By: CORE Belovida, LLC, a California limited liability company
Its Co-General Partner

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

AMENDED TERMS AND CONDITIONS TO THE EXISTING CITY LOAN

1. **AMENDED LOAN AMOUNT:** The City Loan shall be increased by up to \$90,000, from \$4,955,000 to \$5,045,000. Any accrued unpaid interest shall not be capitalized into the principal amount of the Loan but will remain payable as a separate obligation.
2. **INTEREST RATE:** No change.
3. **MATURITY DATE:** No change.
4. **LOAN DOCUMENTS:** The Borrower will enter into an Amended and Restated City Loan Documents which shall evidence the City Loan terms as set forth in this Term Sheet.
5. **PAYMENTS:** Payable from City's proportionate share of the Residual Receipts. City's "Proportionate Share" shall mean the City's pro-rata share of the total outstanding principal amount due under the proposed County PLHA loan in the amount of \$319,550, which is .95%, so long as the County PLHA loan is outstanding at the time of determination of City's Proportionate Share.
6. **RESIDUAL RECEIPTS SPLIT:** 50% to Borrower and 50% to lenders listed in #5 above.
7. **NO SUBORDINATION:** The City shall not subordinate its deed of trust and the Covenants to any lenders' deed of trust or regulatory agreement.
8. **PROFORMA BUDGET:** Borrower shall submit for City approval a financial pro forma (the "Pro forma") reflecting Borrower's sources and uses of funds and projections of estimated income and operating expense cash flow for the Project.
9. **SCOPE OF WORK:** Borrower shall submit a scope of work for the proposed rehab work.
10. **ORGANIZATIONAL AGREEMENTS:** Borrower shall submit to City, Articles of Incorporation /By-Laws, Corporate Resolutions and Incumbency Certificate, LLC documents, limited partnership agreement with all exhibits and amendments thereto and related filings or recorded documents, a current good status certificate and such related documentation as City may request.
11. **COMPLIANCE:** Prior to closing, the Sponsor must be in compliance on all of its projects with the City including, but not limited to, rent and income compliance and document submission compliance.



Agenda Report

25-1257

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action on Authorizing the Use of City Electric Forces for Public Works at Various Locations

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Section 1310 of the Santa Clara City Charter (Contracts on Public Works) states “that every contract involving an expenditure of more than one thousand dollars (\$1,000) for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder.” The section further states that “the City Council may declare and determine that, in its opinion, the work in question may be performed better or more economically by the City with its own employees, and after the adoption of a resolution to this effect by at least four affirmative votes, it may proceed to have said work done in the manner stated, without further observance of the provisions of this section.”

DISCUSSION

Staff believes that the work described below is better performed with City forces based upon the following factors: (1) the work is limited in size and scope; (2) City forces have knowledge and training in operating and maintaining the electric system that can be leveraged to more economically perform this work; and (3) bidding out the work and contracting with a private entity would not likely result in a lower overall cost or time savings. Therefore, staff recommends that the City Council declare and determine that City forces can better perform the installation of the following electric facilities and approve the use of City forces.

Estimate Number: 39771
 Location: 3390 Forest Avenue
 Type of Service: New Business (2005)
 Description of Work: Remove ±100' streetlight conductor, and install ±200' low voltage overhead conductor, 1-200A residential meter.
 Estimated Cost: \$2,686
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 39956
 Location: 5201 Patrick Henry Drive
 Type of Service: Temporary Power (2005)
 Description of Work: Remove 2500A meter, 400A meter, ±15' low voltage conductor and

connectors. Install 2500A meter, 400A meter, ±15' low voltage conductor and connectors.

Estimated Cost: \$11,552
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 38962
 Location: 2441 Mission College Boulevard
 Type of Service: New Business (2005)
 Description of Work: Reconnecting the customer service cables and disconnecting from temporary power.

Estimated Cost: \$7,512
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work
 Source of Revenue: Customer/Developer Contribution

ENVIRONMENTAL REVIEW

Staff recommends that the City Council determine that the action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15302 (Class 2 - Replacement or Reconstruction) of Title 14 of the California Code of Regulations as the proposed work involves the replacement or reconstruction of existing utility systems and facilities involving negligible expansion of capacity.

FISCAL IMPACT

The funds to support the staff time for work performed by Silicon Valley Power (SVP) and related construction materials for the work detailed in this report totaling \$21,750 is included in the FY 2024/25 Adopted CIP Budget, in the New Business Estimate Work project in the Electric Utility Capital Fund. All referenced work will be performed by City SVP staff. Some work associated with encroachment permits may be performed by the Department of Public Works (DPW). DPW costs are recovered through payment of permit fees.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Determine that the proposed action is exempt from CEQA pursuant to Section 15302 (Class 2 - Replacement or Reconstruction) of Title 14 of the California Code of Regulations; and
2. Declare and determine in accordance with Section 1310 of the City Charter that the public

works located at 3390 Forest Avenue, 5201 Patrick Henry Drive, and 2441 Mission College Boulevard are better performed by the City with its own employees based on the information set forth in this Report to Council and authorize the performance of the public works consistent with this authorization.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



Agenda Report

25-63

Agenda Date: 1/28/2025

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Action on Stadium Authority Bills and Claims for the Month of November 2024

BOARD PILLARS

Enhance Community Engagement and Transparency
Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

Disbursements made by the Stadium Authority are based on invoices submitted for payment. Prior to payment, staff reviews all disbursement documents to ensure that the invoiced goods or services have been provided.

The Bills and Claims listing represents the cash disbursements required of normal and usual operations during November 2024. Budget control is set by the Stadium Authority Board through the budget adoption process.

DISCUSSION

At its March 12, 2024 meeting, the Stadium Authority Board adopted the Santa Clara Stadium Authority Fiscal Year 2024-25 Operating, Debt Service, and Capital Budget which runs from April 1, 2024 to March 31, 2025. Significant expenditures (greater than \$5,000) paid in November 2024 include:

- Payments totaling \$262,218.03 to the City of Santa Clara for the following:
 - \$189,245.48 for reimbursement of General and Administrative (G&A) City payroll costs (e.g., Executive Director's Office (City Manager's Office), Stadium Authority Counsel's Office (City Attorney's Office), and Treasurer's Office (Finance Department))
 - \$72,972.55 for Senior/Youth Fees for NFL Games 3-5
- Payments totaling \$117,651.50 to CWS Construction Group, Inc. for the following:
 - \$84,863.25 for CapEx Project - Overhead Doors, Motors, Sensors and Track Replacements
 - \$32,788.25 for CapEx Project - Smoke Evacuation System - Fire Smoke Curtain Replacement
- Payment totaling \$14,537.63 to EyeP Solutions, Inc. for CapEx Project - Secure Video File Sharing Software Integration
- Payments totaling \$1,407,163.64 to Forty Niners Stadium Management Company, LLC for the following:
 - \$1,405,045.18 for November 2024 Stadium Manager Expenses, inclusive of Shared Stadium Expenses
 - \$387.40 for CapEx Project - Lighting Fixture Replacement / LED Retrofit / Sports

- Lighting
 - \$619.84 for CapEx Project - Levi's Naming Rights Signage Refurbishment/Replacement
 - \$1,111.22 for CapEx Project - Plumbing
- Payments totaling \$20,432.36 to InTWO, Inc. for Financial Management System Monthly Services (July - October 2024)
- Payment totaling \$11,705.00 to KPMG LLP for SCSA 2023-24 Audit
- Payment totaling \$128,200.00 to Populous Group, LLC for the following:
 - \$81,000.00 for CapEx Project - Levi's Naming Rights Signage Refurbishment/Replacement
 - \$47,200.00 for CapEx Project - Lighting Fixture Replacement / LED Retrofit / Sports Lighting
- Payment totaling \$36,194.69 to Stryker for CapEx Project - Lucas CPR Assist Device
- Payments totaling \$14,126.26 to Wilson, Ihrig & Associates, Inc. for Stadium Noise Monitoring Services (June - September 2024)
- Payment totaling \$10,728.00 for Legal Services (September - October 2024)

Names of law firms have been redacted from the Bills and Claims report. The Supreme Court of California in Los Angeles County Board of Supervisors v. Superior Court, (2016) 2 Cal.5th 282, held that invoices specifying the amounts billed by a law firm to a client fall within the scope of attorney-client privilege while the matters are active. In accordance with the Supreme Court's ruling, the names of law firms retained by the Stadium Authority, and the specific amounts billed by each, have been redacted from the public report to maintain the confidentiality of billing records for specific legal services. The aggregate amount spent on legal services in the subject time period has been provided.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to section 15378(b)(4) of Title 14 of the California Code of Regulations in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

The fiscal impact to the Stadium Authority is \$2,022,957.11

COORDINATION

This report has been coordinated with the Executive Director and Stadium Authority Counsel's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Approve the list of Stadium Authority Bills and Claims for November 2024.

Reviewed by: Kenn Lee, Treasurer

Approved by: Jovan D. Grogan, Executive Director

ATTACHMENTS

1. November 2024 SCSA Bills and Claims

Santa Clara Stadium Authority

Bills and Claims Expenses Paid by Wire or ACH Transfer For the Month of November 2024

Payment Date	Vendor	Invoice No.	Description	Fund	Amount
11/4/2024	City of Santa Clara	N/A	B2420 SCSA Payroll Costs	Operating	\$ 94,209.42
11/4/2024	City of Santa Clara	N/A	B2421 SCSA Payroll Costs	Operating	95,036.06
11/8/2024	City of Santa Clara	N/A	Senior/Youth Fees for NFL Game 3	Operating	24,271.45
11/8/2024	City of Santa Clara	N/A	Senior/Youth Fees for NFL Game 4	Operating	24,341.45
11/8/2024	City of Santa Clara	N/A	Senior/Youth Fees for NFL Game 5	Operating	24,359.65
					<u>262,218.03</u>
11/1/2024	CWS Construction Group, Inc.	Application 2	CapEx Project - Overhead Doors, Motors, Sensors and Track Replacements	CapEx	79,785.75
11/1/2024	CWS Construction Group, Inc.	Application 2 (2)	CapEx Project - Smoke Evacuation System - Fire Smoke Curtain Replacement	CapEx	30,813.25
11/25/2024	CWS Construction Group, Inc.	Application 3	CapEx Project - Overhead Doors, Motors, Sensors and Track Replacements	CapEx	5,077.50
11/25/2024	CWS Construction Group, Inc.	Application 3 (2)	CapEx Project - Smoke Evacuation System - Fire Smoke Curtain Replacement	CapEx	1,975.00
					<u>117,651.50</u>
11/8/2024	EyeP Solutions, Inc.	24-688	CapEx Project - Secure Video File Sharing Software Integration	CapEx	14,537.63
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Security	Operating	133,473.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Stadium Ops	Operating	281,995.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Engineering	Operating	327,933.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Guest Services	Operating	51,714.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Groundskeeping	Operating	26,374.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - SBL Sales & Service	Operating	203,970.46
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - BNY Inclusive	Operating	180,000.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Insurance	Operating	86,686.52
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - StadCo Tenant Improvements	Operating	2,371.45
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Naming Rights	Operating	48,213.00
11/1/2024	Forty Niners Stadium Management Co, LLC	SLS-24754	November 2024 Stadium Manager Expenses - Other G&A	Operating	62,314.75
11/25/2024	Forty Niners Stadium Management Co, LLC	SLS-24776	CapEx Project - Lighting Fixture Replacement / LED Retrofit / Sports Lighting	CapEx	387.40
11/25/2024	Forty Niners Stadium Management Co, LLC	SLS-24776	CapEx Project - Levi's Naming Rights Signage Refurbishment/Replacement	CapEx	340.91
11/25/2024	Forty Niners Stadium Management Co, LLC	SLS-24776	CapEx Project - Plumbing	CapEx	1,111.22
11/25/2024	Forty Niners Stadium Management Co, LLC	SLS-24776	CapEx Project - Levi's Naming Rights Signage Refurbishment/Replacement	CapEx	278.93
					<u>1,407,163.64</u>
11/1/2024	InTWO, Inc.	41057-US	Financial Management System Monthly Services (July 2024)	Operating	350.52
11/1/2024	InTWO, Inc.	41056-US	Financial Management System Monthly Services (July 2024)	Operating	4,757.57
11/26/2024	InTWO, Inc.	41261-US	Financial Management System Monthly Services (August 2024)	Operating	350.52
11/26/2024	InTWO, Inc.	41262-US	Financial Management System Monthly Services (August 2024)	Operating	4,757.57
11/26/2024	InTWO, Inc.	41962-US	Financial Management System Monthly Services (September 2024)	Operating	350.52
11/26/2024	InTWO, Inc.	41990-US	Financial Management System Monthly Services (September 2024)	Operating	4,757.57
11/26/2024	InTWO, Inc.	42204-US	Financial Management System Monthly Services (October 2024)	Operating	350.52
11/26/2024	InTWO, Inc.	42251-US	Financial Management System Monthly Services (October 2024)	Operating	4,757.57
					<u>20,432.36</u>
11/25/2024	KPMG LLP	8005731003	SCSA 2023-24 Audit	Operating	11,705.00

Santa Clara Stadium Authority

**Bills and Claims
Expenses Paid by Wire or ACH Transfer
For the Month of November 2024**

Payment Date	Vendor	Invoice No.	Description	Fund	Amount	Amount
11/25/2024	Populous Group, LLC	0079097	CapEx Project - Levi's Naming Rights Signage Refurbishment/Replacement	CapEx	81,000.00	
11/25/2024	Populous Group, LLC	0079092	CapEx Project - Lighting Fixture Replacement / LED Retrofit / Sports Lighting	CapEx	<u>47,200.00</u>	128,200.00
11/25/2024	Stryker	9204942063	CapEx Project - Lucas CPR Assist Device	CapEx	883.09	
11/25/2024	Stryker	9205263261	CapEx Project - Lucas CPR Assist Device	CapEx	31,997.47	
11/25/2024	Stryker	9206029770	CapEx Project - Lucas CPR Assist Device	CapEx	<u>3,314.13</u>	36,194.69
11/1/2024	Wilson, Ihrig & Associates, Inc.	22162N11	Stadium Noise Monitoring Services (June - August 2024)	Operating	12,246.26	
11/4/2024	Wilson, Ihrig & Associates, Inc.	22161N12	Stadium Noise Monitoring Services (September 2024)	Operating	<u>1,880.00</u>	14,126.26
11/25/2024		1506645	Legal Services (September 2024)	Operating		
11/25/2024		1506653	Legal Services (September 2024)	Operating		
11/25/2024		1509281	Legal Services (October 2024)	Operating		10,728.00
November 2024 Total						<u>\$ 2,022,957.11</u>



Agenda Report

25-125

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with Care Solace, Inc. to Provide Coordination for Mental Health Care and Social Services to Residents and Employees of the City of Santa Clara and Related Budget Amendment

COUNCIL PILLAR

Deliver and Enhance High-Quality Efficient Services and Infrastructure

BACKGROUND

According to the National Alliance on Mental Illness (NAMI), 1 in 5 U.S. adults experience mental illness each year and 1 in 6 U.S. youth, aged 6-17, experience a mental health disorder each year. According to NAMI, individuals experiencing a mental health issue can find it challenging to live everyday life and maintain recovery. Without treatment, the consequences of mental illness for the individual and society are staggering. Untreated mental health conditions can result in unnecessary disability, unemployment, substance abuse, homelessness, inappropriate incarceration, suicide, and poor quality of life.

The following are a few facts and statistics on mental illness listed on NAMI's website:

- In 2020, 1 in 15 U.S adults experienced both a substance use disorder and mental illness
- In 2020, among U.S. adults who received mental health services:
 - 17.7 million experienced delays or cancellations in appointments
 - 7.3 million experienced delays in getting prescriptions
 - 4.9 million were unable to access needed care
- High school students with significant symptoms of depression are more than twice as likely to drop out compared to their peers
- 21.1% of people experiencing homelessness in the U.S. have a serious mental health condition
- Suicide is the 2nd leading cause of death among people aged 10-34
- Caregivers of adults with mental or emotional health issues spend an average of 32 hours per week providing unpaid care
- The rate of unemployment is higher among U.S. adults who have mental illness (7.4%) compared to those who do not (4.6%)
- Across the U.S. economy, serious mental illness causes \$193.2 billion in lost earnings each year

The City of Santa Clara is committed to ensuring and supporting a culture of safety and wellbeing for its residents and employees. The City continues to actively explore new partnerships and services

that will complement and/or enhance existing services with the goal of improving the provision of and connections to mental health care services and social services for the community, including those who may be experiencing homelessness and/or affected by opioid use disorder (OUD) or substance use disorder/mental health conditions.

In alignment with supporting a culture of safety and wellbeing, staff is requesting Council consideration and approval to authorize the City Manager to negotiate and execute an Agreement with Care Solace, Inc. (Care Solace) for a three-year term in an amount not to exceed \$390,000 (\$130,000 annually), with the option to extend for two (2) additional one-year periods. The contract will provide coordination for mental health care and social services to residents and employees of the City of Santa Clara at a cost equivalent to approximately \$1 per person annually.

DISCUSSION

The sections below describe Care Solace's services and how the proposed partnership will further complement City services through a streamlined system that will improve residents and employees' access to mental health care and social services, regardless of coverage.

Care Solace

Care Solace is a mental health care coordination service on a mission to improve access to care, regardless of circumstances. By providing a tech-enabled human approach, Care Solace ensures that individuals receive equitable access to reliable, ethical, and high-quality mental health care, regardless of coverage, including private insurance, Employee Assistance Program (EAP), Medicaid, and sliding scale options for those without insurance. This enables referred individuals, regardless of need severity or type, to receive a rapid connection to well-matched care. Care Solace provides timely connections to verified mental health providers and City and County of Santa Clara (County) social services, expands on existing programs, and bridges the gaps for needs that exceed the scope of those services.

Serving as a coordinated point of entry to mental health and social services, Care Solace supports the entire City ecosystem, including but not limited to: City departments, first responders, crisis centers, social workers, courts/jails, and the school district(s). Care Solace's services will be made available to all City of Santa Clara residents and employees ("Eligible Users"). Staff is currently in the process of engaging the Santa Clara Unified School District (SCUSD) on its interest to utilize Care Solace's services through the City's agreement for school district families and employees (who are not City residents), at no cost to SCUSD and no additional cost to the City. Should SCUSD confirm its interest, staff will include SCUSD families and employees as "Eligible Users" in the City's final agreement with Care Solace.

Care Solace's two main services - Care Match and Care Companion™(s) - will enhance the City's current services while filling gaps. Care Solace will be accessible to all City residents and employees through a simple warm handoff process, or self-guided process through Care Match. Care Solace will deliver these services to City residents and employees through the following:

Care Companions provide care coordination to users by assessing the situation, finding appropriate providers, securing an appointment, and following through on care in a Warm Handoff® process.

Care Companions provide empathetic, personal support that lowers stigma and expedites connection

to well-matched care. The team is available by phone, email, video chat, or text 24 hours per day, 7 days per week, 365 days per year, and can coordinate care in over 200 languages. Care Companions are dedicated advocates that help people looking for treatment every step of the way, finding providers based on needs, making calls to confirm availability and specialties, scheduling appointments, following up to see if appointments are attended, and if Care Solace and provider services have met expectations. If not, they will assist in locating additional providers.

Care Companions will research options based on language, treatment modalities, preferences for cultural identity, religious background, gender of a therapist, or insurance: free, low-cost, or private pay options, and more. Before connecting an individual with a resource, the Care Companion will verify that the provider matches the needs of the individual and will confirm the provider has been through our verification process.

Care Companions are experienced in care coordination and empathetic customer service - supporting individuals in need from diverse cultural and socioeconomic backgrounds - and navigating the mental health and insurance systems. Each Care Companion receives 150 hours of extensive training before supporting Care Solace users. Their initial training and ongoing professional development cover topics including: mandated reporting; mental health and substance use awareness; pathways of care; cultural and LGBTQIA+ awareness; nuances of mental health and insurance systems; suicidal ideation; and supporting vulnerable populations.

Care Companions will be available and work directly with users to connect them with mental health and social services providers. The team is supervised by Care Solace's licensed mental health team, which manages complex needs and escalated cases.

Care Match is Care Solace's online tool for self-guided care navigation. This portal/software supports self-guided access to the Care Solace provider network. This is an anonymous search tool that offers the same providers' search capabilities to all Eligible Users. The link to this software can be co-branded with the City's logo, subject to the express written consent of the City, and will be made available to residents and employees on any website or benefit platform.

Care Match is a self-service 24/7/365 online portal that provides an anonymous way for individuals to find care matched to their needs. Care Solace will create and operate a proprietary custom web link to Care Match, branded for the City, allowing authorized users access to its robust proprietary database of mental health care providers serving all pathways of care. From any cell phone, mobile device, or computer, any individual can confidentially search Care Solace's proprietary database in any language. They will be matched to verified community providers based on their needs and preferences, including mental health concern(s), wait, availability, insurance or financial needs, type of preferred treatment, language, or other preferences for care such as proximity, gender, or cultural identity of a therapist, faith-based services or LGBTQIA+ allied services.

Care Solace's Provider Database offers Eligible Users access to a continually growing more than 673,000 verified mental health providers, including those offering advanced pathways to care. Providers are geo-coded so an individual can select a local provider for in-person sessions if that is their preference. Selection filters also include language, ethnicity, age, specialization, and more.

Care Solace's robust proprietary database of community health partners serves all care pathways and severity of need. Care Solace's Provider Research and Development Team continuously updates

its database to ensure it contains extensive options and the most recent information on providers. Care Solace maintains high standards for verifying and including providers in the database. For an individual provider to be listed in the database, they must be a licensed, master's level clinician.

The verification process includes confirming the following:

- The provider or facility possesses a current and active professional state license authorizing the practice of the type of services being provided
- The professional state license is in good standing: i.e., there are no disciplinary entries, the provider is not on probation, or the license is not expired, etc.
- The individual provider or facility does not appear on the current State (if available) or Federal Office of Inspector General's List of Excluded Individuals/Entities. The individual provider or organization has not received a "D" or "F" from the Better Business Bureau.
- Location, specialty/ies, phone number, and accepted insurances are also confirmed.

Care Solace does not have a financial relationship with any community providers and does not pay or collect monies to/from providers, or have an agreement in place to promote mental health resources, and does not accept advertisements or sponsorship sales. This allows Care Solace to have an unbiased and objective approach to identifying providers for users.

Social Services Coordination: Additionally, the City and Care Solace recognize that users utilizing Care Solace's services may also require connections to available social services, including but not limited to food and shelter. Care Solace will work with the City to build and implement a Social Services database that offers users connections to social services offered by the City, County, service providers, and/or community organizations to support all of the social determinants of health.

Reporting: Understanding the importance of data and how it guides decision making, Care Solace will provide a monthly impact report including key performance indicators (KPIs) on total utilization, number of users, total communications, confirmed appointments, type of needs, anonymous searches, referrals from staff, insurance pathways utilized for services, and the primary community-based mental health services that people are connecting with. Reporting of services provided can be delineated by age, gender, and ethnicity. Data also includes the number of individuals who declined services or were unreachable, individual time saved, and communications breakdown by the time of day. Reporting of services provided can be delineated by office location, age, gender, and ethnicity. As part of the proposed agreement, Care Solace will attend City Council meetings to present on its reporting and impact as requested by the City.

Enhancement of City Services

The City provides a variety of services related to mental health care access and response to the community and its employees respectively through existing programs and partnerships. These services and partnerships include but are not limited to the following:

Community Services

- The City's Police Department Community Response Team (CRT) conducts outreach and responds to the most concerning societal issues facing our community today including homelessness and mental health crises. CRT implements a wide range of work efforts, including connecting people experiencing homelessness to existing services in partnership

with service providers. The Police Department has an existing Memorandum of Understanding (MOU) with the County of Santa Clara to establish a Psychiatric Emergency Response Team (PERT) program and dedicate a mental health clinician to support CRT. This cross-system collaboration is intended to provide rapid intervention and improved response and outcomes for individuals with mental illness and substance abuse who come in contact with law enforcement.

- In partnership with WeHOPE, the City provides weekly mobile shower and laundry services (Dignity on Wheels) for unsheltered individuals. Dignity on Wheels also provides connections to other support services.

Employee Resources

- The City provides a confidential Employee Assistance Program (EAP) to employees and their spouse/domestic partner, household members, and dependent children up to age 26 at no cost to the employee. The EAP includes 1) confidential counseling on a variety of issues including stress, substance use, emotional wellbeing, 2) work-life resources and services (including financial and legal consultations) and parenting and childcare referrals, and 3) coaching. Attached to the report is a flyer summarizing the City's EAP benefits.
- The City has also hired a Wellness Coordinator to provide coaching and counseling to employees on various matters.

The City plans to incorporate Care Solace's services to further enhance the programs and services described above and complement future services that City staff is currently in the process of developing to better support community members from vulnerable populations, including those experiencing homelessness.

Sole Source Justification

The recommendation to enter into an agreement with Care Solace is being made under the authority of Santa Clara City Code (SCCC) Section 2.105.280(b)(4) which allows for an exemption from the City's purchasing requirements when a service is considered unique such that requirements for competitive procurement are contrary to public interest. A sole source contract with Care Solace is being recommended for the following reasons:

- Uniqueness of the Services. Care Solace's provides a single interface to social and mental health services and thereby ensures that communities have access to reliable, ethical, and equitable mental health care services, regardless of the circumstances. Care Solace is the only service provider that aggregates hundreds of thousands of clinical therapy and telehealth resources as well as insurance information from state Medicaid agencies, sliding scale, and private insurances into one database to streamline care coordination and reduce time, frustration, and attrition in accessing mental health care. Care Solace provides flexible options to those in need of care so that they can utilize an anonymous pathway to care, a self-service portal, and/or a specially-tailored collaborative process with dedicated care companions to assist in finding the right mental health and social services match. The uniqueness of Care Solace's services makes a competitive procurement contrary to public interest, particularly given the urgent need for social and mental health coordination services.
- Proven Track Record. Care Solace's services have been widely adopted by school districts and public agencies in the State, underscoring their effectiveness in providing mental health

care coordination. Notably, many of these agencies have entered into sole source contracts with Care Solace based on the uniqueness of their services and the urgency to address mental health need. The following agencies are among those utilizing Care Solace:

- Cupertino Union School District
- San Mateo County Office of Education
- Moreland School District
- Cambrian School District
- San Leandro Unified School District
- Oak Grove School District
- East Side Union High School District
- Fremont Unified School District
- City of Stockton

Opioid Settlements Funds

On July 21, 2021, a proposed settlement was announced to resolve lawsuits against three pharmaceutical distributors (McKesson, Americource, and Cardinal Health) and Janssen (Johnson & Johnson) ("Settlement Agreements"). Under the Settlement Agreements, the three large distributors and Janssen are required to pay up to \$5 billion to an abatement account fund ("Abatement Fund") for distribution to eligible counties and cities. While the City did not participate as a named party in the litigation, the City did qualify to receive annual payments from the Abatement Fund. On December 21, 2021, the City Council authorized the City Manager to execute the Settlement Agreements.

In December 2022, California Attorney General Rob Bonta signed on to new settlement agreements with Teva, Allergan, Walgreens, Walmart, and CVS ("New Settlements"). The terms and conditions of the New Settlements mirror those of the original Settlement Agreements. Eligible cities and counties stand to receive up to \$1.8 billion under the New Settlements, which is in addition to the (up to) \$2.2 billion California agencies are expected to receive under the original Settlement Agreement, and that the City is already participating in.

Under the New Settlements, the City would receive 0.067% of Abatement Funds for a weighted total of 0.0549723%. Assuming all 431 eligible counties and cities join the agreements, the City may receive up to \$845,000 over the course of 15 years.

Funds received through the Abatement Fund must be spent on eligible abatement activities and expenditures. In addition, at least 50% of the funds received each year must be used for the following high impact abatement activities:

1. The provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
2. Creating new or expanded Substance Use Disorder (SUD) treatment infrastructure;
3. Addressing the needs of communities of color and vulnerable populations that are disproportionately impacted by SUD;
4. Diversion of people from the justice system into treatment, including by providing training and resources to first responders and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or

5. Interventions to prevent drug addiction in vulnerable youth.

The services provided by Care Solace align with the following categories defined under the California State-Subdivision Agreements:

- High Impact Abatement Activity 3: Addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD. Opioid remediation activities specifically addressing the needs of those at risk of developing an SUD within communities of color, including racial and/or ethnic minorities, and vulnerable populations. Vulnerable populations include, but are not limited to, individuals with limited or no access to health care, individuals experiencing adversities related to socioeconomic status, gender, sexual orientation, and/or mental health conditions, unhoused individuals, pregnant and parenting individuals, and/or at-risk children and youth.
- High Impact Abatement Activity 4: Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction.

In addition to High Impact Activities noted above, the services provisioned under the Care Solace agreement align with the following allowable expenditures identified in the settlement agreements:

- Support centralized call centers that provide information and connections to appropriate services and supports for persons with Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder / Mental Health (SUD/MH) conditions.
- Purchase automated versions of Screening, Brief Intervention, and Referral to Treatment (SBIRT) services, and support ongoing costs of the technology.
- Expand warm-hand-off services to transition recovery.

As such, staff is recommending use of the opioid settlement funds, and approval of a related budget amendment, to cover the service costs in an amount not to exceed \$390,000 (\$130,000 annually) for the three-year agreement with Care Solace to provide the described social services and mental health care coordination services.

The attached agreement's terms and conditions have been agreed upon by both the City and Care Solace; however, the City would like to complete its engagement with SCUSD to confirm its interest in participating in the scope of service before finalizing the agreement for execution, pending Council approval of staff's recommendations. Unless modified otherwise as part of Council's direction/actions, the Services described in this report and in the draft agreement will be provided.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

Staff recommends using opioid settlement funds to cover the agreement with Care Solace, Inc., in an amount not to exceed \$390,000 for a term of three years. The opioid settlement funds are appropriated in the Expendable Trust Fund. As approved as part of the FY 2023/24 Budget Year-End Report on December 3, 2024, the opioid settlement funds appropriation was carried over totaling \$210,963. In the current fiscal year, an additional \$335,000 has been received by the City. The recommended action to appropriate the additional opioid funding received is detailed in the table below.

	Budget Amendment FY 2024/25		
	Current	Increase/ (Decrease)	Revised
<u>Expendable Trust Fund Revenue</u>			
Other Agencies Revenue	\$0	\$335,000	\$335,000
<u>Expenditure</u>			
Opioid Settlement Funds	\$210,963	\$335,000	\$545,963

Any funding related to exercising the City’s option to extend the Agreement will be subject to future budget appropriations.

COORDINATION

This report has been coordinated with the City Attorney’s Office and the Finance Department.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov.

RECOMMENDATION

1. Authorize the City Manager or designee to negotiate and execute an agreement with Care Solace, Inc. to provide coordination for mental health care and social services to residents and employees of the City of Santa Clara, for a three-year term in an amount not to exceed \$390,000, with the option to extend for two additional one-year periods, subject to budget appropriations, in a final form approved by the City Attorney;
2. Authorize the City Manager or designee to take any actions as necessary to implement and administer the agreement; and
3. Approve the FY 2024/25 budget amendment in the Expendable Trust Fund to recognize other agencies revenue in the amount of \$335,000 and increase the opioid settlement funds appropriation in the amount of \$335,000 (five affirmative Council votes required to appropriate additional revenue).

Prepared by: Christine Jung, Deputy City Manager
Reviewed by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. Proposed Agreement with Care Solace Inc. (DRAFT)
2. EAP Benefits Summary Flyer

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
CARE SOLACE, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Care Solace, Inc., a Delaware corporation (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Contractor’s Terms and Conditions

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and these Agreement Terms and Conditions, these Agreement Terms and Conditions shall govern and control (for the sake of clarity, these Agreement Terms and Conditions shall supersede Exhibit D Contractor's Terms and Conditions).

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on February 1, 2025 and terminate on January 31, 2028. The City reserves the right to exercise two (2) additional one-year options after the initial term for a total of five (5) years.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is three hundred ninety thousand dollars (\$390,000), subject to budget appropriations, which includes all payments that

may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor. In the event that Contractor determines, in its sole and absolute discretion, to cease to offer the Services to new clients and to discontinue support of the services for existing clients, Contractor may terminate this Agreement without cause by providing City with sixty (60) days' prior written notice, and such termination shall be subject to a prorated refund.
- B. Termination for Default. If either Party fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the other Party may terminate this Agreement immediately upon written notice to the non-performing Party.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties. Contractor shall retain ownership of its Proprietary Rights and Technology, as defined in Exhibit D hereto.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

The Parties agree that waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review,

acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at manager@santaclaraca.gov and
cjung@santaclaraca.gov

And to Contractor addressed as follows:

Care Solace Inc.
Attn: Chad Castruita
120 Birmingham Dr., Ste. 200
Cardiff, CA 92007
and by email at chad.castruita@caresolace.org

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

GLEN R. GOOGINS
City Attorney

JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

CARE SOLACE, INC.
a Delaware corporation

Dated: _____

By (Signature): _____

Name: Anita Ward

Title: Chief Growth Officer

Principal Place of Business Address: 120 Birmingham Dr., Ste. 200
Cardiff, CA 92007

Email Address: Anita.Ward@caresolce.org

Telephone: ()

Fax: ()

“CONTRACTOR”

EXHIBIT A SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

1. Project Scope

- a. Contractor will serve as a hub and coordinated point of entry to mental health and social services, supporting the entire City ecosystem including but not limited to City departments, first responders, crisis centers, social workers, courts/jails, and the school district(s).
- b. Contractor's services will be made available to all City residents and employees and Santa Clara Unified School District families and employees, subject to Santa Clara Unified School District's agreement and approval ("Eligible Users").
- c. Contractor will provide timely connections, through its three proprietary services - **Care Companion™(s), Care Match, and Providers** that includes a Warm Handoff® process as further described under Exhibit A – Section 3(a) Care Companions - to verified mental health providers and City and County of Santa Clara (County) social services, expand on existing programs, and bridge the gaps for needs that exceed the scope of those services.
- d. Contractor will ensure that all individuals receive equitable access to reliable, ethical, and high-quality mental health care, regardless of insurance coverage - private, cash, public, and no insurance.
- e. Contractor will ensure all services are confidential and are accessible 24 hours per day, 7 days per week, 365 days per year via phone or Internet with no required equipment or access speed.
- f. Contractor will ensure ongoing care coordination with all community organizations, including but not limited to nonprofit organizations, churches, and associations.
- g. Contractor will provision services to Eligible Users affected by opioid use disorder (OUD) or any co-occurring substances use disorder/mental health conditions.

2. Major Deliverables

- a. Contractor's three main proprietary services - **Care Companions, Care Match, and Providers** will amplify the City's current initiatives and services, while filling gaps and offering insights.

- b. **Care Companions** will provide care coordination for all Eligible Users.
- c. **Care Match** online portal Software will support self-guided care navigation and access to the Care Solace Provider network, serving all pathways of care.
 - i. Activate Contractor's **Provider Database** for Eligible Users to access mental health providers, and filter selections by language, ethnicity, age, specialization and more.
 - ii. Activate Social Services database for individuals to access social services in support of all the social determinants of health.
- d. Client Success Team ("Team") will ensure the delivery of services to Eligible Users. Team will provide data and impact reporting to the City of Santa Clara.
- e. Contractor will provide regular reports with data and insights.

3. Tasks That Support the Deliverables

- a. **Care Companions** will provide care through these tasks:
 - i. Assess the situation
 - ii. Find appropriate providers
 - iii. Secure an appointment
 - iv. Follow through on care
- b. **Care Match** anonymous search tool will manage services through these tasks:
 - i. Create and operate a Care Solace proprietary custom web link to Care Match for the City.
 - ii. With City's prior review and express written permission, co-brand with the City's logo.
 - iii. Make **Care Match** available to Eligible Users on any website or benefit platform for access to health care providers.
- c. **Data and Reporting** Regular data and performance reports will be furnished to the City, including but not limited to:
 - i. Monthly impact reports that include key performance indicators (KPIs) on total utilization, number of users, total communications, confirmed appointments, type of needs, anonymous searches, referrals from staff, insurance pathways utilized for services, and the primary

community-based mental health services with which people are connecting.

- ii. Additional data requests may be made by the City - such as data patterns, satisfaction with providers, feedback on Contractor's customer services - to assist with informing implementation plans, staff training, school programming and community outreach. All data contained in **Impact Reporting** is anonymized and does not contain personally identifiable information of individual users.
 - iii. Presentation of its reporting at City Council meetings, as requested by the City.
- d. **Providers** Contractor maintains high standards for verifying and including providers in its database. Contractor shall not be liable for the quality of care provided by providers and will ensure that the City likewise shall not be liable; such liability shall be with the provider as related to services between the Eligible User and the provider.

For an individual provider to be listed in the database, the person must be a licensed, master's level clinician.

1. Verification process includes confirmation of these criteria:

- a. Provider or facility possesses a current and active professional state license authorizing the practice of the type of services being provided.
- b. Professional state license is in good standing.
- c. Individual provider or facility does not appear on the current State or Federal Office of Inspector General's List of Excluded Individuals/Entities.
- d. Location, specialties, phone number, and accepted insurances are also confirmed. It is the responsibility of the Eligible User to verify that a suggested provider accepts their insurance before obtaining healthcare services directly from a selected provider.

EXHIBIT B
SCHEDULE OF FEES

The maximum compensation the City will pay the Contractor for all professional fees, costs, and expenses provided under this Agreement shall not exceed three hundred ninety thousand dollars (\$390,000). In no event shall the amount billed to the City by Contractor for services under this Agreement exceed one hundred thirty thousand dollars (\$130,000) annually.

Contractor will bill City on an annual basis for Services provided by Contractor on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice. The annual fee for the full scope of services detailed under Exhibit A shall be one hundred thirty thousand dollars (\$130,000).

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution

from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required

EXHIBIT D
CONTRACTOR'S TERMS AND CONDITIONS

1. Contractor's Terms and Conditions

- a. Contractor's Care Companions and social services coordinators are not licensed mental health or social services professionals and do not diagnose, assess or evaluate. No provider-patient relationship is formed by provision of services by a Care Companion. No professional, fiduciary, or other special legal relationship is formed by a Care Companion's or social services coordinator's provision of services. The Care Companions and social services coordinators are not a crisis response team.
- b. The City expressly understands and agrees that prior to providing the contact or other information to Care Solace of an Eligible User in need of mental health services as part of the Warm Handoff® process, the City employee making the Warm Handoff® must first obtain consent from the Eligible User to provide the Eligible User's contact or other information to Contractor.
- c. In instances which may involve a covered transaction under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Contractor will only provide the Services to an Eligible User after first obtaining written consent under HIPAA and written agreement to Care Solace's Terms and Conditions. Care Solace reserves the right to deny, and will deny, any Services to Eligible Users who do not provide such consent and agreement.
- d. Care Solace and the City each agree to comply with all data privacy laws and requirements and industry standards, state and federal, to which they are each subject, which may include, without limitation, the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506 (hereinafter "**COPPA**"), and the provisions of HIPAA.
- e. Care Solace and the City each agree that City personnel may have access to Protected Health Information (hereinafter "**PHI**") that is subject to the requirements of HIPAA (codified at 45 C.F.R. Parts 160, 162, and 164 and related regulations). In the event that: (i) the City is considered to be a HIPAA covered entity; (ii) Care Solace is considered to be a HIPAA business associate; and (iii) the City personnel are providing PHI to Care Solace, then Care Solace warrants that it will appropriately safeguard PHI (as that term is defined in 45 C.F.R. 160.103), and agrees that to the extent it applies, Care Solace will comply with the provisions of 45 C.F.R. 164 Subpart E regarding use and disclosure of PHI. Care Solace shall execute a Business Associate Agreement if requested by the City.
- f. The Parties agree that to the extent this Agreement is subject to any state or federal law provisions governing healthcare fraud and abuse, the Parties shall comply with applicable local, state, and federal statutes, rules, and

- regulations, which may include, but not be limited to, 42 U.S.C. § 1320a-7b(b) (the Anti- Kickback Statute), 42 U.S.C. § 1395nn (the Stark Law), and the California Physician Ownership and Referral Act of 1993, to the extent applicable. This Agreement shall be interpreted and construed at all times in a manner consistent with applicable laws and regulations governing the financial relationships among individuals and entities that provide or arrange for the provision of items or services that are reimbursable by governmental health care programs or other third-party payers.
- g. The Care Match custom web link will include a privacy policy and terms of use which will comply with applicable law, and shall include a waiver or hold harmless statement regarding claims against the City.
 - h. The City represents and warrants that any of City's other independent contractors that are provided with access to the Services or are otherwise responsible for transmitting PHI or other private information to Contractor are subject to the same warranties and requirements as the City pursuant to this Agreement.
 - i. Care Solace reserves the right to internally monitor the City's and City personnel's usage of the Care Match custom web link and Services.
 - j. Contractor will provide the City with access to the following non-personally identifiable information collected from Eligible Users: number of visitors, matches, and phone appointments. If the City desires to obtain personally identifiable information from Contractor related to a particular resident's or employee's use of the Services, the City shall obtain and deliver to Contractor a duly executed written authorization from the resident or employee, or their legal guardian if applicable, in a form that complies with applicable law.
 - k. Contractor shall ensure that: (i) all data and information provided by the City is stored on files that are separate from those of other Contractor customers, or (ii) all files containing data and information provided by the City are partitioned from the information and data provided by other customers sufficient to protect the security and privacy of such information and data.

2. Software-as-a-Service Terms:

- a. Contractor grants the City a non-exclusive, non-transferable, limited, revocable and royalty-free license to provide a hypertext reference link (hereinafter the "**Link**") to the initial, top-level display of the custom web link solely for the purpose of linking any website owned or controlled by the City to the custom web link.
- b. Use Restrictions. The City covenants and agrees that its use of the Services will be in a manner consistent with this Agreement and with all applicable laws and regulations, including trade secret, copyright, trademark, and export control laws. Without limiting the generality of the foregoing, the City will not,

- directly or indirectly, do any of the following: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of or included in the Services or any software, documentation or data related to the Services (hereinafter "**Software**"); modify, translate or create derivative works based on the Services or any Software; or copy (except for archival purposes), distribute, pledge, assign or otherwise transfer or encumber rights to the Services or any Software; use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
- c. The City and Eligible Users using the Services shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of their connections to the Internet. As part of the Services, Contractor shall implement reasonable security procedures consistent with prevailing industry standards to protect information provided by the City and Eligible Users from unauthorized access. The Parties agree that Contractor shall not, under any circumstances, be held responsible or liable for situations in which: (i) data or transmissions are accessed by third parties through illegal or illicit means, or (ii) the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Contractor at the time, provided Contractor complies with its obligations in this section.
- d. Unauthorized Access. Contractor will promptly report to the City any unauthorized access to data or information provided by the City upon discovery of such access by Contractor, and Contractor will use diligent efforts to promptly remedy any breach of security that permitted the unauthorized access to occur. In the event that Contractor was solely responsible for the breach and to the extent that Contractor has an obligation imposed by law or statute to notify any individuals whose information was provided to Contractor by the City, Contractor shall be solely responsible for any and all such notifications at its expense. In the event the City was solely responsible for the breach, the City shall reimburse Contractor for time and expenses incurred to assist the City with any required notifications to affected individuals. In the event that Contractor and the City are jointly responsible for the breach, the Parties will attempt to reach an informal resolution as to expenses and, if unable to do so, a dispute will be governed by the terms of the Agreement.
- e. Ownership of Proprietary Rights. Ownership of any and all rights, whether registered or unregistered, in and with respect to Contractor's patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property (hereinafter "**Proprietary Rights**") embodied in the custom web link, the Services, and

the computer hardware, software and other tangible equipment and intangible computer code necessary to deploy and serve the Services (hereinafter the "**Technology**") shall remain exclusively vested in and be the sole and exclusive property of Contractor and its licensors. In addition, the City hereby transfers and assigns to Contractor any rights the City may have to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by City personnel relating to the custom web link, the Services, or the Technology.

- f. Options for Infringement Claims. If any Party is enjoined from using the Technology, or if Contractor believes that the Technology may become the subject of a claim of intellectual property infringement, Contractor, at its own option and expense, may: (i) procure the right for the City to continue to use the Services; (ii) replace or modify the Technology so as to make it non-infringing; or (iii) terminate this Agreement, in which case Contractor shall provide a prorated refund to the City of any and all fees paid in advance for those Services not provided by Contractor. This section and the indemnification provisions in the Agreement set forth the entire liability of Contractor to the City for any infringement by the Technology or Services of any intellectual property right of any third party.

3. Representations and Warranties.

- a. The City represents and warrants, to the extent the City is aware, that: (a) any information it provides to Contractor does not and will not infringe, misappropriate, or otherwise violate any intellectual property right or right of privacy or publicity of any third party; and (b) the performance of its obligations as set forth in this Agreement and the use of the Services by the City and Eligible Users will not (i) violate any applicable laws or regulations, or (ii) cause a breach of any agreements with any third parties. In the event of any breach by the City of any of the foregoing representations and warranties set forth in this section, in addition to any other remedies available at law or in equity, Contractor will have the right to suspend immediately any Services if deemed reasonably necessary by Contractor to prevent any harm to Contractor and its business. Contractor will provide written notice of any breach of the foregoing representations and warranties to the City, and a reasonable time period to cure, if practicable, depending on the nature of the breach.
- b. Contractor represents and warrants that it will comply with all state and federal healthcare referral and anti-kickback statutes, and that it does not have an ownership interest in any of the treatment providers to whom it refers Eligible Users. In the event of any breach by Contractor of the foregoing representations and warranties set forth in this section, the City will provide written notice of the breach to Contractor, and a reasonable time period to cure, if practicable, depending on the nature of the breach.

- c. Except as expressly set forth herein, the Services are provided on an "as is" and "as available" basis, and without warranties of any kind either express or implied. Contractor hereby disclaims all warranties, express or implied. Contractor does not warrant that the services will be uninterrupted or error free or that defects will be corrected. Contractor does not offer a warranty or make any representation regarding the results or the use of the Services in terms of their correctness, accuracy, reliability, risk of injury to the City's or any resident or employee user's computer, network, market, or customer base or commercial advantage.
- d. Contractor represents and warrants that the Technology does not violate any third party's intellectual property rights. Contractor shall indemnify, defend, and hold harmless City against any and all claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from any alleged infringement of any patent, trademark, copyright, or trade secret by any aspect of the Technology.

4. **Mutual Exchange of Confidential Information.**

The Parties desire to establish terms governing the use and protection of certain confidential information one Party (hereinafter "**Owner**") may disclose to the other Party (hereinafter "**Recipient**"). For purposes of this Agreement, the term "Confidential Information" means (i) the terms and conditions of this Agreement, subject to a valid request under the applicable state's open records act (ii) non-public aspects of the custom web link and the operation thereof, the Technology, the Services, and Contractor's business and technical information and data, and (iii) the City's information or other data processed, stored or transmitted by, in or through the Services (hereinafter "**City Data**"). In addition, Confidential Information includes information which, although not related to the Services or this Agreement, is nevertheless disclosed hereunder and which is disclosed by an Owner or an affiliate to a Recipient in documentary or other tangible form bearing an appropriate label indicating that it is confidential or proprietary in nature, or which, if initially disclosed orally or visually is identified as confidential at the time of disclosure and a written summary hereof, also marked with such a label, is provided to Recipient within fifteen (15) days of the initial disclosure. Recipient may use Confidential Information of Owner only for the purposes of fulfilling the obligations contemplated in this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder only as reasonably required to perform its obligations under this Agreement and only to its employees who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that: (i) is in the possession or control of Recipient at the time of its disclosure hereunder; (ii) is, or becomes publicly known, through no wrongful act of Recipient; (iii) is received by

Recipient from a third party free to disclose it without obligation to Owner, (iv) is independently developed by a Party as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by Owner. The Recipient may disclose Confidential Information of Owner pursuant to the requirements of a governmental agency or by operation of law, provided that such Recipient gives Owner written notice thereof as soon as practicable to allow sufficient time for Owner to object to disclosure of such Confidential Information.

5. **General Skills and Knowledge**

Notwithstanding anything to the contrary in this Agreement, the City agrees that Contractor is not prohibited from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Contractor.

6. **Publicity and Branding.**

The City agrees that Contractor may (a) with City's prior review and express written permission, publicize the City's name, the fact of the custom web link, and the City's use of the Services; and (b) brand the custom web link with a "powered by Care Solace." or similar Care Solace legend and/or copyright notice.

Help When You Need It

Concern. The all-in-one employee mental health and emotional wellbeing solution for City of Santa Clara.

Available at no cost to: all regular employees except those represented by Unit 2 and contractors. Also, available to their spouse/domestic partner, household members and dependent children up to age 26.



Confidential Counseling

In-person | Telephone | Video | Text | Chat

Support from experienced, licensed counselors for help with things like:

- ✓ Anxiety
- ✓ Stress
- ✓ Grief and loss
- ✓ Substance use
- ✓ Depression
- ✓ Major life changes
- ✓ Relationships
- ✓ Emotional wellbeing

Your Benefits:

Up to **five (5) visits** per person, per issue per 12-month period.



Work-Life Resources and Referrals

Access **adult care** resources, **ID theft** services, **parenting and childcare** referrals, plus **financial** and **legal** consultations.

Included:

Financial. Up to two free 30-minute phone consultations per issue per year with a financial specialist.

Legal. Free 30-minute consultation per issue per year with a qualified attorney. 25% discount off normal hourly rates if you retain their services.



Coaching

Learn new skills, set goals, take action, and lower stress.

Your Benefits:

Parent Coaching. One 60-minute startup call and two 30-minute follow-up calls per year with experienced professionals.

Coaching. Four 30-minute phone sessions per 12-month period with certified coaches.



Guided Mindfulness

A full suite of live and on-demand mindfulness solutions to build and sustain healthy habits.

Your Benefits:

Full access to **eM Life mindfulness training** via Concern's digital platform.

Your company code
SantaClara

Getting Started Is Easy

Available 24/7. Call **800.344.4222** or visit **employees.concernhealth.com** and log in with your company code. Then click on "Get Services" to set up your confidential digital dashboard. (To request services for a child up to age 17, call Concern.)

Scan this QR code to check out our video for a brief introduction to Concern.





Agenda Report

25-1087

Agenda Date: 1/28/2025

REPORT TO CITY COUNCIL

SUBJECT

Approve Introduction of an Ordinance Amending Article IV (“Stadium Pilot Program”) of Chapter 5.05 (“Solicitors and Peddlers”) of the City Code to Make the Stadium Pilot Program Permanent

COUNCIL PILLAR

Deliver and Enhance High-Quality Efficient Services and Infrastructure
Enhance Community Engagement and Transparency

BACKGROUND

Senate Bill 946 (SB 946) became effective January 1, 2019, and prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks or other pedestrian pathways and prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety or welfare concerns. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946. Soon after the effective date of this State law, the Covid-19 pandemic essentially halted such vending activity.

With the post-pandemic return of in-person events at Levi’s Stadium in Fall 2021, there was a noticeable presence of unpermitted food and merchandise vendors within the immediate footprint of the stadium. The number of unpermitted food and merchandise vendors increased dramatically over 2022 within the stadium footprint on event days causing a myriad of risks to the vendors, their customers, disabled and other pedestrians, emergency responders, vehicular traffic, as well as pedicab traffic. Additionally, unsafe food preparation, storage and handling practices, inadequate waste disposal, use of propane tanks without security measures and hot greasy cook tops without safety clearances and devices can lead to unsafe and unsanitary conditions.

As written at the time, the City Code did not align with SB 946. Consequently, the City’s ability to address these health and safety concerns was constrained.

The City Council was provided with an overview of Senate Bills 946 and 972, available options to regulate the health and safety concerns associated with street vending on sidewalks and public right-of-way as well as policy options specific to the stadium footprint for consideration.

The City Council approved the introduction of an Ordinance amending Chapter 5.05 (Solicitors and Peddlers) and Section 9.05.165 (Activities and Conduct Prohibited in Parking Facilities Adjacent to the Stadium or Parking Facilities Used for Stadium Events) of the Santa Clara City Code to create a limited-term pilot project regulating vending on certain public sidewalks and pedestrian paths surrounding Levi’s Stadium on event days (“Pilot Program”). In addition, the City Council waived fees and taxes for all required City business licenses and permits, for qualified sidewalk vendors operating

at stadium events during the pilot program period on a first come first served basis in an amount not to exceed \$30,000. The Pilot Program was effective on September 21, 2023, and was considered repealed as of the sunset date of January 31, 2024.

The Police Department created educational flyers in English and Spanish to distribute to sidewalk vendors. An initial educational effort occurred at three events (August 25, 49ers vs Chargers; August 30, Beyonce concert; September 16, Ed Sheeran concert) prior to the Ordinance effective date of September 21, 2023. Police Department staff also attended a regional educational meeting to further assist vendors seeking to comply with the local Ordinance and other regulations. In addition, a process was developed between the Police and Finance Departments to capture the applications and associated fee waivers granted.

Given the review of the Pilot Program, the Council approved the readoption of an Ordinance with slight modifications to sunset at the end of February 2025, to allow for continued education, observation, and analysis. Having diligently observed, analyzed, and enforced vending within the confines of the Pilot Program, the Police Department requests to make permanent the enforcement of sidewalk vending around the Stadium area, with slight modification.

DISCUSSION

Over the past two years, the Police Department has conducted education and enforcement, as well as partnered with County of Santa Clara Department of Environmental Health (County) and California Alcoholic Beverage Control (ABC) agents as subject matter experts to be present on event days to curb illegal alcohol sales and consumption and assist with food health and safety compliance from vendors. While assistance from ABC and County staff has been beneficial, staffing resources from these outside agencies are not guaranteed and limited based on availability. Similarly, there have been select events where the Police Department's resources have limited the number of personnel dedicated to education and vendor enforcement from start to finish for each event; in these cases, enforcement may be implemented for a limited timeframe ahead of an event, or not at all.

Since implementation of the Pilot Program in September 2023, there have been 29 major events at Levi's Stadium. Staff has distributed multi-lingual (Spanish and English) educational flyers to vendors and identified "supply vans" so early intervention and education could take place before the vendors established fixed positions. Despite these efforts, staff have administered compliance admonishments, issued administrative citations to unpermitted vendors and made arrests over the pilot program for violations of the Ordinance. Subsequently, 6 merchandise vendors have successfully met the requirements necessary to secure business licenses and corresponding permits, one of which has been revoked for selling alcohol on two occasions. None of the ten food vendors that applied for the required food permits during the Pilot Program met the requirements. While the program experienced significant successes primarily related to ensuring that public sidewalks and roadways were free of vendors, and that pedestrians had clear pathways for ingress and egress, the volume of new individuals attempting to set-up to sell food/merchandise at each event, combined with the lack of business licenses and permits requires constant education and enforcement related to the Ordinance. Without regular attention and action, the health, safety and welfare concerns previously addressed with Council (e.g., inadequate waste disposal, propane and hot cook top dangers, alcohol sold without ABC permits and/or to underage individuals, unsafe food preparation and storage, etc.) would continue and, likely, escalate.

The staff recommendation is to approve an amended Ordinance as follows:

- 1) Remove the sunset date to make the Ordinance permanent (subject to modification by amendment)
- 2) Modify City Code Section 5.05.430 Time, Place or Manner restrictions as follows:
 - a. Add (b) (8) "East bound Old Glory Lane (from Old Ironsides Drive to Great America Parkway)" to the defined Stadium Area
 - b. Add (c) to read, "No sidewalk vendor shall exceed an operational space of 10' by 10'. All food, merchandise, equipment, and other accessories related to sidewalk vending must fit within the defined operational space."

The 10'x10' size limitation articulated in the proposed new subsection (c) to Section 5.05.430 is intended to address the concerns related to maintaining clear pathways for pedestrians, disabled persons, and emergency responders.

The Police Department will continue to foster long-term partnerships with ABC and County of Santa Clara Environmental Health Department to lead the alcohol and food sales related health, safety and welfare efforts.

It should be noted, staff does not recommend continuing to waive fees and taxes for all required City business licenses and permits for qualified sidewalk vendors.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There will continue to be Police Department and Finance Department staff time associated with responding to inquiries and processing new permit requirements for sidewalk vendors, however the most significant impact will be conducting enforcement on Levi's Stadium event days. On average, there have been 18 major events per year at Levi's Stadium since it opened in August 2014.

The excitement around the pending Super Bowl (one football game, February 2026) and FIFA World Cup (six soccer matches between June 13 - July 1, 2026) may create a need for sidewalk vendor enforcement during an extended period of time surrounding the actual event day. As a result, the 2026 staff expenses related to sidewalk vending enforcement around the Stadium are expected to be above average.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Waive first reading and approve introduction of an Ordinance amending Article IV (“Stadium Pilot Program”) of Chapter 5.05 (“Solicitors and Peddlers”) of the Santa Clara City Code to make the Pilot Program permanent as the “Stadium Area Sidewalk Vending” Ordinance

Reviewed by: Cory Morgan, Chief of Police

Approved by: Jovan Grogan, City Manager

ATTACHMENTS

1. RTC 24-1588 from the March 19, 2024 City Council meeting
2. Proposed Ordinance
3. Sidewalk Vendor Enforcement Area



Agenda Report

24-1588

Agenda Date: 3/19/2024

REPORT TO CITY COUNCIL

SUBJECT

Action to Approve Introduction of an Ordinance Readopting the Expired Sidewalk Vendor Stadium Pilot Program with a New Sunset Date and Slightly Expanded Footprint

COUNCIL PILLAR

Deliver and Enhance High-Quality Efficient Services and Infrastructure
Enhance Community Engagement and Transparency

BACKGROUND

SB 946 prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks or other pedestrian pathways and prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety or welfare concerns. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946.

Direction from City Council on April 18, 2023, requested staff to “prepare a temporary ordinance amendment and permit process for stadium event days that would define areas where sidewalk vending should not occur due to health and/or safety concerns, within a to-be-determined stadium footprint.” The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for a pilot period of September 2023 to January 2024 to evaluate impacts.

On July 18, 2023, the City Council approved the introduction of an Ordinance amending Chapter 5.05 (Solicitors and Peddlers) and Section 9.05.165 (Activities and Conduct Prohibited in Parking Facilities Adjacent to the Stadium or Parking Facilities Used for Stadium Events) of the Santa Clara City Code to create a limited-term pilot project regulating vending on certain public sidewalks and pedestrian paths surrounding Levi’s Stadium on event days (“Program”). In addition, the City Council waived fees and taxes for all required City business licenses and permits, for qualified sidewalk vendors operating at stadium events during the pilot program period (September 21, 2023 through January 31, 2024) on a first come first serve basis in an amount not to exceed \$30,000.

A second reading of the Ordinance took place at the August 22, 2023 City Council meeting. In turn, the Ordinance became effective 30 days thereafter, on September 21, 2023. By its terms, the Program expired and was considered repealed as of the sunset date of January 31, 2024. Staff now requests a re-adoption of the ordinance to reinstate the Program to run during the 2024 non-NFL event season and August 2024 - February 2025 NFL season.

DISCUSSION

Given City Council action, the Police Department created educational flyers in English and Spanish

to distribute to sidewalk vendors. An initial educational effort occurred at three events (August 25, 49ers vs Chargers; August 30, Beyonce concert; September 16, Ed Sheeran concert) prior to the Ordinance effective date of September 21, 2023. Police Department staff also attended a regional educational meeting to further assist vendors seeking to comply with the local Ordinance and other regulations.

Meanwhile, a process was developed with coordinating forms between the Police and Finance Departments to capture the applications and associated fee waivers granted.

Enforcement of the pilot program began on September 21, 2023, at the first NFL regular-season game.

The initial educational efforts at the first three events appeared to be effective, as the number of vendors was markedly lower from September 21, 2023, through the remainder of most of the NFL's regular season.

Continual enforcement and education occurred throughout subsequent events, including seven (7) additional NFL regular-season games, and two (2) NFL post-season games. Police Department staffing challenges and corresponding public safety resource allocation priorities limited the number of dedicated personnel to enforcement and education. Deployment requirements often make it difficult to assign employees to vendor enforcement from start to finish for each event.

Staff support and expertise from the County of Santa Clara Department of Environmental Health (County) was requested during the development of the pilot program. County staff did conduct corresponding educational and enforcement action at three (3) NFL events. Their presence was extremely beneficial, with prompt compliance from vendors upon contact or upon seeing County staff insignias.

Additionally, the Police Department's grant with the California Alcoholic Beverage Control (ABC) allowed for an agent(s) to be present at seven (7) Levi's Stadium events resulting in multiple public relations contacts, 17 warnings, 35 citations and three (3) arrests related to underage or unlicensed alcohol sales. It should be noted, there is no guarantee the City will be a recipient of future ABC grants to maintain this level of effort to curb illegal alcohol sales and consumption.

Initially, the pilot program resulted in a significant reduction in vendors, specifically the larger vendors. By the December 25, 2023 event, staff observed a gradual rise in mobile food-vendor carts to pre-pilot program numbers. This poses greater difficulties in compliance and enforcement. While assistance from ABC and County staff was beneficial, it was limited based on their staffing resources and/or reimbursement challenges.

Based on the end-of-season rise in unpermitted vendors, staff was assigned from set-up to clean-up of each event to enforcement responsibilities. This occurred for both NFL post-season events and had a positive impact in reducing the number of unpermitted vendors. This dedicated resource allocation resulted in four (4) administrative citations being issued during each post-season event.

Over the course of the thirteen (13) major events at Levi's Stadium during the pilot program, staff collected data to evaluate program successes, failures, and possible improvements needed. The following is information accumulated throughout the pilot period:

- Delivered more than 600 multi-lingual (Spanish and English) educational flyers to vendors
- Provided 594 compliance admonishments to unpermitted vendors
- Issued eight (8) administrative citations to unpermitted vendors
- Two (2) arrests were made during a contact in which an unpermitted vendor struck an officer and an associate attempted to intervene during the arrest
- Two (2) merchandise vending permits were issued; one short-term vending permit without an associated fee, and a second permit with a \$26.50 fee that was not waived or refunded. Staff has since implemented procedures and training to mitigate this situation from occurring in the future
- Two (2) merchandise vendors applied but have not completed the permit process at the writing of this report
- Three (3) food vendors called to inquire about a permit, however no food vendors applied for a permit
- No vending permits were denied or revoked
- Identification of “supply vans” occurred so that early intervention and education could take place before the vendors established fixed positions

Overall, the program saw some successes, primarily related to ensuring that public sidewalks and roadways were free of vendors, and that pedestrians had clear pathways for ingress and egress. However, there is still significant work to be conducted to address permitting and associated business/permit fees, as well as health, safety and welfare concerns previously addressed with Council (e.g., inadequate waste disposal, propane and hot cook top dangers, alcohol sold without ABC permits and/or to underage individuals, unsafe food preparation and storage, etc.). While assistance from ABC and the County of Santa Clara Department of Environmental Health was beneficial, it was limited based on each entity’s own staffing and/or reimbursement challenges. Due to the timing of the pilot program implementation and demands during the NFL season, staff had limited resources to conduct comprehensive research of best practices at similar venues or implement community/stakeholder partnerships.

Given the review of the initial pilot program, the staff recommendation is to readopt the Program to continue through February 2025. Furthermore, staff recommends modification to adjust City Code Section 5.05.430 Time, Place or Manner restrictions (b) (7) to read “Old Glory Lane east and west of Great America Parkway.” Currently, the language omits the section of Old Glory Lane west of Great America Parkway. During staff review of the pilot program, this location was observed to also necessitate the same health, safety and welfare concerns on sidewalks and other pedestrian paths within the stadium footprint articulated to the City Council previously (Attachments 1 and 2) as there are a myriad of risks associated with sidewalk vending scattered among a large, high-density pedestrian group. Doing so presents a variety of risks to the vendors, their customers, disabled and other pedestrians, emergency responders, vehicular traffic, as well as pedi-cab traffic. Additionally, unsafe food preparation, storage and handling practices, inadequate waste disposal, use of propane tanks without security measures and hot greasy cook tops without safety clearances and devices can lead to unsafe and unsanitary conditions.

In doing so, staff will have the opportunity to implement adjustments to the communication and enforcement plan during the non-NFL event season and further test those practices during the 2024 NFL season. This will also allow staff to conduct more comprehensive benchmark review of

unpermitted vending impacts and responses at similar venues. The challenge remains for the ability to have a long-term partnership with ABC and the County of Santa Clara Environmental Health Department to lead the alcohol and food sales related health, safety and welfare efforts. Personnel and funding resources continue to prevent their presence at every Levi's Stadium event. Staff will continue to pursue solutions with both ABC and the County.

Should City Council agree to this extension of the pilot program, staff would return to Council in Spring 2025 with their recommendation on Ordinance amendments in the Levi's Stadium footprint and/or to expand the program to other areas of the City, including but not limited to City parks.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There will continue to be Police Department and Finance Department staff time associated with responding to inquiries and processing new permit requirements for sidewalk vendors, however the most significant impact will be conducting enforcement on Levi's Stadium event days. At this time, there are approximately 15 major events scheduled at Levi's Stadium from May 2024 through February 2025; additional event (s) may be added during this timeframe.

Staff recommends readoption of the expired program including maintaining the ability to waive fees and taxes for all required City business licenses and permits, for qualified sidewalk vendors operating at stadium events through the new sunset date on a first come first serve basis in an amount not to exceed \$30,000.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Waive first reading and approve introduction of an Ordinance amending Chapter 5.05 ("Solicitors and Peddlers") of the Santa Clara City Code to readopt the Street Vending Stadium Pilot Program, to run through February 28, 2025, and modifying Section 5.05.430 ("Time, place or manner restrictions") to include Old Glory Lane west of Great America Parkway

Reviewed by: Pat Nikolai, Chief of Police

Approved by: Jovan Grogan, City Manager

ATTACHMENTS

1. RTC 23-726 from the July 18, 2023 City Council meeting
2. RTC 23-1005 from the August 22, 2023 City Council meeting
3. Proposed Ordinance



Agenda Report

23-726

Agenda Date: 7/18/2023

REPORT TO COUNCIL

SUBJECT

Action to Approve Introduction of an Ordinance Amending the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days Including the Waiver of Certain Business and Permit Fees

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure
Enhance Community Engagement and Transparency

EXECUTIVE SUMMARY

SB 946 prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks or other pedestrian pathways and prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety or welfare concerns. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946. In accordance with Council direction at the April 18, 2023 meeting, staff presents a limited term pilot program ordinance regulating sidewalk vending on certain enumerated streets surrounding Levi's Stadium on event days.

BACKGROUND

During the past event season, the Police Department experienced a drastic increase in the number of unpermitted food and merchandise vendors within the immediate footprint of large-scale stadium events. This increase has caused several health and safety concerns which are outlined in this report.

As currently written, the City Code and regulations do not align with recently adopted State legislation related to sidewalk vending. Consequently, the City's ability to address these health and safety concerns is limited.

Council requested additional information on this topic, including policy options to amend regulations related to street vending. On April 18, 2023 the Police Department brought forth Report to Council #23-211 (Attachment 1) that detailed the current regulatory environment including the two pieces of recently adopted legislation that shape the options to regulate street vending on sidewalks as well as in the public right-of-way (SB 946 and SB 972, Attachments 2 and 3 respectively) as well as policy options for Council consideration to better position the City to address the concerns.

At this meeting, the Council voted unanimously to approve staff recommendation #1 to prepare a temporary ordinance amendment and permit process for stadium event days that would define areas

where sidewalk vending could not occur (the pilot program footprint) due to health and/or safety concerns.

DISCUSSION

As a result of the requirements under SB 946, the existing City Code provisions related to peddlers and solicitors were largely unenforceable as to such activity occurring on sidewalks and pedestrian paths. This was explained in detail in the City Attorney's Memorandum dated January 11, 2019 (included within Attachment 1). Under the proposed pilot program, certain enforcement mechanisms will again become available within the pilot program footprint, but enforcement options outside the pilot program footprint will remain severely limited.

In order to make the pilot program enforceable, to be in compliance with SB 946, and to encourage vendor participation in the program, staff is recommending amendments to two chapters of the Santa Clara City Code, as well as modifications to the permitting process and associated business/permit fees. Each of these amendments and operational adjustments are intended for the pilot period within the stadium operating areas only and will establish new time, place, and manner restrictions within the pilot project footprint that are directly related to objective health, safety and welfare concerns.

Direction from City Council on April 18, 2023, requests staff "prepare a temporary ordinance amendment and permit process for stadium event days that would define areas where sidewalk vending should not occur due to health and/or safety concerns, within a to-be-determined stadium footprint. The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for a pilot period of September 2023 to January 2024 to evaluate impacts. At that time, staff would return to the City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City such as City parks."

Based on previous Council direction, the intent of this report is to recommend the following:

- Amendments to various sections of the Santa Clara City Code (enforcement will remain paused in all other areas of the City in the manner in which it was recommended by the City Attorney's Office in 2019)
- A stadium footprint for Ordinance implementation
- Potential partnerships with stakeholders
- A preliminary enforcement plan
- Factors for Council consideration regarding future City-wide ordinance amendments

In addition, this report will discuss the following issues:

- A plan to modify the existing permitting process and update the required forms for

dissemination online

- The Police Department's communication plan to vendors ahead of implementation and at events during the pilot period
- Partnership with other enforcement agencies such as County of Santa Clara Consumer Protection Division and California Alcoholic Beverage Control (ABC)

Proposed Amendments to Chapter 5.05 and Section 9.05.165 of the City Code

Staff has prepared the proposed Ordinance amendments that regulate both stationary and roaming sidewalk vendors, including revisions of time, place, and manner provisions to the extent allowed by SB 946:

- Modify Chapter 9.05.165 (prohibited activities in parking facilities adjacent to the Stadium): subsection (m) is amended to indicate that the prohibition on peddling on the perimeter sidewalk of the stadium is subject to the terms and requirements of the pilot program
- Amend Chapter 5.05 (solicitors and peddlers) to add a new Article IV governing the pilot program, which includes the following:
 - Prohibition of sidewalk vending activity on specified segments of sidewalks/paths (the pilot program footprint) surrounding the Stadium for particular time periods on event days
 - Outside of the restricted hours, vending activity within the pilot program footprint shall be allowed, subject to certain regulatory requirements, such as:
 - Obtaining a permit from the City
 - Proof of health permits and food handler training for sale of food or beverage
 - Sale of alcoholic beverages is prohibited
 - Vendors shall not operate in such a manner as to impair disability access
 - New administrative penalties structure

Recommended Pilot Project Footprint

With due consideration given to the Stadium Traffic Management Operations Plan (TMOP), taken together with the Police Department's experience with vehicle traffic patterns at the Stadium, as well as event attendee tendencies to use light rail (Valley Transportation Authority/VTA, heavy rail (Caltrain), bicycle, pedicab, walk and/or other forms of transportation to Levi's Stadium, staff is recommending the following areas where sidewalk vending should not occur due to identified health and/or safety concerns:

- Tasman Drive (from Great America Parkway to Calle de Sol)
- Tasman Drive eastbound off-ramp to Star and Stripes Drive (often referred to as a slip-ramp)
- Tasman Drive stairways to Stars and Stripes Drive

- Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to Bill Walsh Way).
- San Tomas Aquino Creek Trail (from Great America Parkway to Agnew Road)
- Old Glory Lane east of Great America Parkway

The attached map (Attachment 4) details the recommended pilot program footprint.

In turn, the following areas have been identified as viable spaces for sidewalk vendors to conduct business on event days, subject to the regulatory requirements outlined in Chapter 5.05 of the City Code (with a modified permitting process in accordance with SB 946):

- Tasman Drive west of Great America Parkway and east of Calle de Sol
- Great America Parkway north of Bunker Hill Lane and south of Patrick Henry Drive
- Old Glory Lane west of Great America Parkway
- Old Ironsides Drive

See the section titled Community Stakeholder/Partnerships for added details about a coordinated approach to vendor communication and conflict, rules and regulations, booth/stall assignment and manage risks within these dedicated areas.

Health, Safety and Welfare Concerns

Based upon the Police Department's experience with vending occurring around the Stadium on event days, the Department has determined that the restrictions set forth above are necessitated by the following health, safety and welfare concerns:

- Creating traffic congestion by customer queues extending into driving lanes, as well as disrupting bicycle and pedicab traffic
- Vending carts and customer queues restrict the ability of other pedestrians and disabled persons to pass on the sidewalk
- Inadequate waste disposal, causing potential pollution as well as increased tripping/slipping dangers in the context of a large, highly dense, pedestrian group
- Location of sidewalk vending carts and the associated queues are not incorporated into the traffic management and operations plan
- Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group
- Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices
- Intoxicated attendees causing fights connected with massive groups traveling through narrow pathways

- Merchandise sales of unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group
- Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes
- Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

City-wide there are also concerns about labor / employment law violations and vulnerable populations being subject to street crimes. These concerns have and will continue to be raised with partner agencies (e.g., County of Santa Clara Consumer Protection Division) concurrent with the implementation of the pilot program if approved.

According to the proposed Ordinance, sidewalk vendors would not be permitted in the pilot project footprint from the time Tasman Drive is closed to the public (generally 1:30 a.m. on event day) through 2-hours following the conclusion of the event to be consistent with other event-specific needs or one full calendar day whichever is less.

Modified Permitting Process and Proposed City Fee and Business Tax Waivers

The Police Department has several responsibilities related to the oversight of businesses regulated by City, State and Federal laws such as inspections, permits, annual renewals, investigating complaints against the businesses to ensure full compliance with the appropriate laws and regulations. As it relates to activity on Levi’s Stadium event days the regulated businesses include taxicab drivers, pedicabs, solicitors and peddlers, mobile food trucks, etc.

Each regulated business type has different requirements. Currently, a solicitor/peddler permit encompasses mobile food trucks, ice cream trucks, push carts, solicitors, peddlers, etc. Due to SB 946’s carve-out of non-motorized sidewalk vending from other types of peddler businesses, a new application will need to be drafted to take into consideration the guidelines set forth by the legislature including limitations on the personal information that may be collected. Compliance with generally applicable state laws is still required, as is compliance with the requirements of other applicable state and local agencies (such as the County Health Department).

In addition, under SB 946 basic City fees can still be required. The Adopted 2023/24 Municipal Fee Schedule rates for such fees applicable to sidewalk vendors are as follows:

Description of Fee, Rate or Charge	Adopted 2023/24 Fee
Fingerprinting LiveScan rolling service fee (one-time)	\$66
City of Santa Clara Business License Tax	\$45 per employee
Solicitor/Peddler company application	\$349, plus LiveScan fees
Solicitor/Peddler employee application	\$149, inclusive of LiveScan fee
Solicitor/Peddler company or employee renewal	\$149

Based on the FY 23/24 fees, and how such requirements have been applied in the past, the following examples are intended to illustrate the potential costs:

Initial Process	Sole Proprietor	Company with Employee(s)
Permit Application	\$349	\$349 for the company, plus \$149 per employee
LiveScan fingerprinting	\$66	\$66 for the owner
Business License Tax	\$45	\$45 for the owner, plus \$45 per employee
TOTAL	\$460	\$460, plus \$194 per employee
Renewal Process	Sole Proprietor	Company with Employee(s)
Application Renewal	\$149	\$149 for the company, plus \$149 per employee
Business License Tax	\$45	\$45 for the owner, plus \$45 per employee
TOTAL	\$194	\$194, plus \$194 per employee

*The above charges do not include any third-party fees or costs (e.g., insurance, Health Department permit etc.) that are required to obtain a City of Santa Clara Solicitor/Peddler permit

For the purposes of the pilot program, staff recommends requiring all vendors that desire to operate at Stadium events to obtain applicable licenses and permits, including LiveScan background checks. However, in order to encourage regulatory compliance, staff also recommends taking the step of waiving all City solicitor/peddler fees and taxes for such vendors during the pilot program period operating solely within the pilot program footprint.

To make the City general fund whole, Stadium Authority Staff plans to allocate \$30,000 of Stadium Authority funds support this initiative. If approved, the City will waive certain solicitor/peddler fees and taxes on a first come first service basis until the \$30,000 has been expended. Vendors would still be responsible for any third-party fees or costs (e.g., insurance, Health Department permit etc.) that are required to obtain a City of Santa Clara Solicitor/Peddler permit; it is not the intent of this proposal to waive or subsidize any third-party fees or costs. Vendors wishing to operate on City-wide sidewalk locations outside the pilot program footprint will still be required to pay all permitting fees and charges.

Program Implementation

A number of actions will be required in order to implement the pilot program. Key program elements include (1) a communications plan, (2) an internal enforcement plan, (3) coordination with other enforcement agencies, (4) exploration of community partnerships, and (5) information gathering and reporting. Each of these key elements are described in more detail, below.

1. Communications Plan

Following Council action, the staff will disseminate information regarding the pending changes on the following existing resources:

- City and Police Department website
- Police Department social media platforms (e.g., Facebook, GovDelivery, Instagram, Nextdoor,

Twitter)

- Written notice to existing sidewalk vendors with valid permits

In the early phase of program implementation, staff will also create and distribute flyers in multiple languages to educate and engage sidewalk vendors on program requirements.

Similarly, staff will coordinate with Levi's Stadium to create and post signage in multiple languages to be posted onsite according to the approved pilot program footprint.

2. Enforcement Plan

Levi's Stadium has a Code of Conduct and an extensive security plan with an escalating scale of enforcement (e.g., guest services, private security, law enforcement) for Code of Conduct violations to ensure all guests enjoy a positive event day experience. Private security, the Santa Clara Police Department and its local, State and Federal law enforcement personnel assist with implementation of this layered security plan.

While the Police Department will be responsible for enforcement of violations of the amended Code sections, staff anticipates the sidewalk vendor management program will help mitigate many of the anticipated challenges. A progressive enforcement model will be employed, including a community-oriented approach to the initial guidelines, education and violation admonishments, followed by enforcement for non-compliance or recurring violations.

For vending violations within Stadium parking lots, the existing Levi's Stadium Code of Conduct and associated Code sections within Chapter 9, are currently enforceable.

Staff recommends a similar progressive approach to conducting enforcement under this pilot project in the parking lots. In this case, it is recommended the approach be as follows:

- Private security (Levi's Stadium) for violations on Stadium property or Stadium parking lots
- Non-sworn personnel/Code Enforcement)
- Law Enforcement (sworn peace officer personnel)

This approach is also designed with an emphasis on initial education and violation admonishments, followed by progressive enforcement for non-compliance or recurring violations. The approach is intended to efficiently utilize staffing resources, as well as mitigate potential tension that may arise from enforcement contacts with vendors. Instead, private security and non-sworn personnel will explain the City Code, and issue warnings for violations with an opportunity to correct the violation by relocating to an area outside of the prohibited locations. Continued non-compliance could result in an administrative citation being issued.

Doing so will increase expenses, at least in the short term, associated with creating a "team" to educate sidewalk vendors on the regulations and handle enforcement. The Santa Clara Stadium Taxpayer Protection and Economic Progress Act, commonly referred to as Measure J, requires all costs related to stadium operations to be reimbursed to the City. Sidewalk vending enforcement costs in the pilot program area would be subject to repayment under Measure J.

The new statute was expressly designed by the State Legislature to decriminalize sidewalk vending.

A violation of the pilot program ordinance is punishable only by a prescribed administrative fine penalty structure or permit revocation. Additionally, the new law requires local jurisdictions to offer an ability-to-pay determination to individuals who are issued a violation. The administrative fines for violation of the pilot program (such as vending in a prohibited area) are as follows:

- one hundred dollars (\$100) for a first violation
- two hundred dollars (\$200) for a second violation within one year of the first violation
- five hundred dollars (\$500) for each additional violation within one year of the first violation
- a local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

The violation of failing to obtain a permit is punishable by stricter penalties as follows:

- two hundred fifty dollars (\$250) for a first violation
- five hundred dollars (\$500) for a second violation within one year of the first violation
- one thousand dollars (\$1,000) for each additional violation within one year of the first violation

3. Partnership with County of Santa Clara Health Department and California Alcoholic Beverage Control (ABC)

Staff feels that a key element to program success will be the engagement of other interested, law and safety enforcement agencies to assist with the effort. The two main agencies of interest are the ABC and the Santa Clara County Health Department.

ABC has enforcement authority for alcohol sales apart from SB 946. On occasion, ABC representatives will attend a stadium event to issue warnings and/or citations to anyone illegally selling alcohol or setting up a bar for alcohol sales.

Meanwhile, the Police Department will again reach out for collaboration with the County of Santa Clara for health permit and food safety enforcement. The County has much more substantial powers than the City and is not limited by SB 946. In recent years, however, County personnel resources have prevented their ability to have a presence at every Levi's Stadium event.

Community/Stakeholder Partnerships

Leading up to and during the pilot program period, staff will also explore other possible partnerships with interested stakeholders. ManCo and neighborhood interests are key of course, but efforts will also be directed at the vendors themselves.

Recent changes in State law have enhanced the entrepreneurial spirit associated with any sidewalk vendors. As a result, partnering with our business-persons utilizing stadium events as part of their business model will be important. One example of this would be to explore the creation of an umbrella or cooperative structure within each of the approved sidewalk vending areas to bring people together with a shared goal while combating health and safety concerns to mitigate risks (e.g., ADA compliance, food-related illnesses, vendor relationships, injuries to people, damage to property, employment and labor law risks, etc.). This community-oriented approach, similar to how some farmer's markets are operated, would bring together individuals who want to efficiently sell their

products and be part of the decision-making process in doing so. This umbrella organization could also serve as the point of contact for adjacent properties and brick and mortar businesses.

Establishment of such an entity and its charter members will take some time. As a result, staff is recommending the sidewalk vendor management be implemented as Phase 2 of this overall process.

Information Gathering and Reporting

Throughout the program, staff will be observing and gathering relevant information in order to assist staff and the Council to evaluate program successes, failures, and possible improvements. Types of information to be gathered and reported out at the end of the process shall include, at a minimum, the following:

- Number of vending permits issued and fee waivers issued
- Number of vending permits denied or revoked
- Number of written warnings and citations issued as well as the administrative fines collected
- Expenses to implement the permit program and conduct enforcement of the regulations
- Proposed changes to the pilot project footprint, City Code, and other regulations as a result of the pilot program experiences
- Discussion of potential costs associated with a longer-term program

Next Steps

Pending Council approval of the staff recommendation, a second reading of the Ordinance will take place at the August 22, 2023 Council meeting. If the ordinance is adopted on August 22, 2023, it will become effective with initial enforcement efforts commencing upon the effectiveness of the ordinance 30 days thereafter. Doing so, allows for communications and permitting compliance efforts during the pre-season NFL games with the program going “live” as early in the regular season as possible.

The pilot program will continue through January 2024. Staff intends to report to the Council on the progress of the program, and to provide a full report at the conclusion of the program (estimated Spring 2024). At that time, staff may offer further Ordinance amendments to modify or extend the program with respect to Stadium events, and/or to expand the program into other areas of the City, including but not limited to, City parks.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There will be Police Department and Community Development staff time associated with implementing and enforcing new permit requirements for sidewalk vendors, establishing a sidewalk vendor management program and developing a communication plan to vendors ahead of implementation and at events during the pilot period. The most significant impact from a staffing perspective will be conducting enforcement on Levi’s Stadium event days. At this time, there are approximately 8 major events scheduled at Levi’s Stadium during the pilot program; additional event (s) may be added through January 2024.

The staff recommendation includes requesting up to \$30,000 in Stadium Authority funds to support the permitting initiative. This should make the City general fund whole with respect to any waived fee or tax amounts. This funding proposal will be administered by the Stadium Authority Executive Director out of existing Stadium Authority funds. If a Stadium Authority appropriation is required, a budget amendment will be brought back to the Stadium Authority for its consideration and approval at the next scheduled Stadium Authority meeting.

The Stadium Manager has advised that Stadium will enforce vending regulations on Stadium grounds and parking lots. As such the Stadium Manager will be handling signage, and the corresponding costs on Stadium grounds and parking lot and will produce signs for public right-of-way (ROW) as appropriate.

COORDINATION

This report was coordinated with the Community Development Department, Parks and Recreation Department, Police Department, City Attorney's Office, and City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

Concurrent with the adoption of this Ordinance, Stadium Manager plans to implement a companion program on Stadium grounds and in stadium parking lots. City staff and Stadium Manager will coordinate efforts to communicate with vendors about the implementation of the new stadium rules and the boundaries of the pilot program on City ROW.

RECOMMENDATION

1. Waive first reading and approve introduction of an ordinance amending Chapter 5.05 (Solicitors and Peddlers) and Section 9.05.165 (Activities and Conduct Prohibited in Parking Facilities Adjacent to the Stadium or Parking Facilities Used for Stadium Events) of the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days Pursuant to SB 946; and,
2. Waive fees and taxes for all required City business licenses and permits, for qualified sidewalk vendors operating at stadium events during the pilot program period (September 21, 2023 through January 31, 2024) on a first come first serve basis in an amount not to exceed \$30,000; and authorize the City Manager to develop administrative guidelines to implement the fee waiver program.

Reviewed by: Pat Nikolai, Chief of Police

Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. Report to Council 23-211 from the April 18, 2023 City Council meeting, with attachments

2. Senate Bill 946
3. Senate Bill 972
4. Proposed Ordinance
5. Pilot Program Map



Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.



Senate Bill No. 972

CHAPTER 489

An act to amend Sections 113818, 113831, and 113868 of, and to add Chapter 11.7 (commencing with Section 114368) to Part 7 of Division 104 of, the Health and Safety Code, relating to retail food.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 972, Gonzalez. California Retail Food Code.

(1) Existing law, the California Retail Food Code (the code), establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and requires local health agencies to enforce these provisions. Existing law, for purposes of the code, defines a “cottage food operation” as an enterprise that has no more than a specified amount in gross annual sales, is operated by a cottage food operator, and has no more than 1 full-time employee within the registered or permitted area of a private home where the food products are prepared and packaged. Existing law provides for the regulation of microenterprise home kitchen operations and limits those operations to not serving more than 30 individual meals per day and not more than 60 individual meals per week and to no more than \$50,000 in verifiable gross annual sales, as adjusted for inflation. Existing law authorizes the local enforcement agency to decrease the limit on the number of individual meals prepared based on the food preparation capacity of the operation.

This bill would authorize a cottage food operation or microenterprise home kitchen operation to serve as a commissary or mobile support unit for up to 2 compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile food operation and the storage and cleaning of the compact mobile food operation. The bill would authorize nonpotentially hazardous foods prepared in a cottage food operation to be served from a compact mobile food operation. The bill would define “compact mobile food operation” as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. The bill would require compact food operations to conduct only limited food preparation.

(2) The code defines “limited food preparation” as food preparation that is restricted to specified activities, including dispensing or portioning of

nonpotentially hazardous food, slicing and chopping of food on a heated cooking surface during the cooking process, and holding, portioning, and dispensing foods that are prepared at a satellite food service or catering operation.

This bill would include in the definition of “limited food preparation” dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing, slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility, hot and cold holding of food previously prepared at an approved permanent food facility, and reheating of food that has been previously prepared at an approved permanent food facility and held at the approved temperatures.

(3) The code defines “mobile food facility” and regulates what types of food may be provided at a mobile food facility. The code requires mobile food facilities to meet specified health and safety standards, including access to warewashing sinks, restrooms, and handwashing facilities and required quantities of potable water.

This bill would require a compact mobile food operation to meet the applicable requirements of mobile food facilities, except as specified. The bill would exempt a compact mobile food operation that has 25 square feet or less of display area and sells only prepackaged, nonpotentially hazardous foods or whole uncooked produce from the code, except as specified. The bill would authorize a compact mobile food operation to display or sell food outdoors, if certain conditions are met, including, among other things, overhead protection provided above all food display areas. The bill would require a compact mobile food operation that engages in the preparation of raw meat, raw poultry, or raw fish to meet additional specified requirements. The bill would authorize the enforcement agency to preapprove a standard plan for a standardized or mass-produced facility intended to serve as a compact mobile food operation and would authorize a compact mobile food operation to use that standardized or mass-produced facility after a final inspection, but without submitting plans for the individual unit. The bill would authorize the enforcement agency to collect a fee for the final inspection.

(4) Existing law requires commissaries and other approved facilities servicing mobile support units, mobile food facilities, and vending machines to meet specified standards.

This bill would authorize an enforcement agency to approve a facility with nonconforming structural conditions if those conditions do not pose a public health hazard. The bill would also require an enforcement agency to approve the storage of a compact mobile food facility in a permitted permanent food facility if, after initial inspection, the agency determines that the compact mobile food facility is protected from contamination. The bill would authorize the enforcement agency to charge a fee to administer these provisions.

(5) The code requires a food facility to have a valid permit to be open for business and authorizes the local enforcement agency to charge a fee for the permit or registration or related services.

This bill would authorize the local enforcement agency to reduce the fee for the permit, registration, or related service for an applicant seeking approval of a compact mobile food operation or related operations.

(6) Under existing law, violation of the code is a misdemeanor, unless otherwise specified.

This bill would make violations of the code by an operator or employee of a compact mobile food facility or a sidewalk vendor punishable only by an administrative fine. Additionally, by making changes to the definition of various crimes and by adding new crimes under the code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 113818 of the Health and Safety Code is amended to read:

113818. (a) "Limited food preparation" means food preparation that is restricted to one or more of the following:

(1) Heating, frying, baking, roasting, popping, shaving of ice, blending, steaming or boiling of hot dogs, or assembly of nonprepackaged food.

(2) Dispensing and portioning of nonpotentially hazardous food or dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing.

(3) Holding, portioning, and dispensing of any foods that are prepared for satellite food service by the onsite permanent food facility or prepackaged by another approved source.

(4) Holding, portioning, and dispensing of any foods that are prepared by a catering operation.

(5) Slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility or slicing and chopping of food on a heated cooking surface during the cooking process.

(6) Cooking and seasoning to order.

(7) Juicing or preparing beverages that are for immediate service, in response to an individual consumer order, that do not contain frozen milk products.

(8) Hot and cold holding of food that has been prepared at an approved permanent food facility.

(9) Reheating of food that has been previously prepared at an approved permanent food facility and held at temperatures required by this chapter.

(b) “Limited food preparation” does not include any of the following:

(1) Slicing and chopping potentially hazardous food, other than produce, unless it is on the heated cooking surface.

(2) Thawing.

(3) Cooling of cooked, potentially hazardous food.

(4) Grinding raw ingredients or potentially hazardous food.

(5) Washing of foods.

(6) Cooking of potentially hazardous foods for later use.

(7) Handling, manufacturing, freezing, processing, or packaging of milk, milk products, or products resembling milk products subject to licensing under Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

SEC. 2. Section 113831 of the Health and Safety Code is amended to read:

113831. (a) “Mobile food facility” means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. “Mobile food facility” does not include a “transporter” used to transport packaged food from a food facility, or other approved source to the consumer.

(b) “Single operating site mobile food facilities” means at least one, but not more than four, unenclosed mobile food facilities, and their auxiliary units, that operate adjacent to each other at a single location.

(c) “Compact mobile food operation” means a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

SEC. 3. Section 113868 of the Health and Safety Code is amended to read:

113868. “Portable” means equipment that is capable of being lifted and moved or has utility connections that are designed to be disconnected or of sufficient length to permit the unit to be moved for cleaning, and does not exceed 100 pounds (46 kg) in weight or is otherwise designed to be mobile.

SEC. 4. Chapter 11.7 (commencing with Section 114368) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.7. COMPACT MOBILE FOOD OPERATION

114368. A compact mobile food operation, as defined in subdivision (c) of Section 113831, shall meet the applicable requirements of Chapter 10 (commencing with Section 114294), except as provided in this chapter.

114368.1. (a) Any compact mobile food operation with 25 square feet or less of display area from which only prepackaged nonpotentially hazardous food and whole uncooked produce is sold is exempt from the requirements of this part, except that the facility shall comply with all of the following:

(1) Sections 113980, 114047, 114049, 114390, 114393, 114397, and 114399.

(2) Chapter 1 (commencing with Section 113700).

(3) Chapter 2 (commencing with Section 113728).

(b) (1) A local enforcement agency may inspect a compact mobile food operation that is exempt, as specified in subdivision (a), during the facility's hours of operation and other reasonable times on the basis of a consumer complaint or just cause.

(2) For the purposes of determining compliance with this chapter, a compact mobile food operation that is not exempt as specified in subdivision (a) is subject to permitting and routine inspections or inspections on the basis of a consumer complaint or just cause.

(c) The local enforcement agency may recover the costs of investigation and enforcement of this section, subject to any limitations in this part on fines issuable to compact mobile food operations.

114368.2. (a) Compact mobile food operations shall conduct only limited food preparation, as defined in Section 113818. Notwithstanding any other provision of this part, a compact mobile food operation, as defined in subdivision (c) of Section 113831, may display or sell food outdoors, if all of the following conditions are satisfied:

(1) Overhead protection are provided above all food display areas.

(2) Food items from the outdoor display are stored consistent with this chapter at all times other than during business hours.

(3) Outdoor displays comply with Section 113980 and have been approved by the enforcement agency if the compact mobile food operation is required to obtain a permit.

(b) A compact mobile food operation shall not sell food other than nonpotentially hazardous prepackaged food or whole produce, or conduct any food preparation, unless it meets the applicable operational requirements of this chapter, including applicable requirements for integral equipment, handwashing, and restroom access.

(c) Equipment that is required to be integral to a compact mobile food operation shall either be permanently attached to the primary unit or securely fastened to the primary unit by means that would prevent unintentional removal. Equipment may be considered integral despite being portable or otherwise removable for cleaning, maintenance, or as part of its regular function.

(d) A compact mobile food operation operating from an individual shall not conduct any food preparation or sell foods other than nonpotentially hazardous prepackaged food or whole produce.

114368.3 (a) (1) A permitted cottage food operation or microenterprise home kitchen operation may serve as a commissary or mobile support unit for up to two compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile

food operation and the storage and cleaning of the compact mobile food operation.

(2) Transactions at a compact mobile food operation operated by a cottage food operator shall constitute “direct sales” for the purposes of paragraph (4) of subdivision (b) of Section 113758.

(3) Transactions at up to two compact mobile food operations operated by a cottage food operator shall not count toward the annual gross sales restrictions in Section 113758 applicable to cottage food operations if the governing body has authorized this action.

(4) Nonpotentially hazardous foods prepared in a cottage food operation may be served from a compact mobile food operation.

(5) Food prepared in a microenterprise home kitchen operation may be served from a compact mobile food operation operated by the microenterprise home kitchen operation permitholder.

(6) The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 do not apply to the sale of nonpotentially hazardous food or produce for up to two compact mobile food operations operated by the microenterprise home kitchen operation if the governing body has authorized this action.

(7) With the authorization of the governing body and if the enforcement agency determines that the operation does not pose a public health hazard, a permitted microenterprise home kitchen operation may serve as a commissary for up to two compact mobile food operations. The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 apply unless the governing body sets a higher meal and income limitation.

(8) The governing body of a local jurisdiction that permits microenterprise home kitchen operations pursuant to Section 114367, may set the meal and income limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 at a higher level than provided in those paragraphs for microenterprise home kitchen operations that operate in conjunction with a compact mobile food operation. Notwithstanding this subdivision, the levels in effect, by statute or ordinance, as of January 1, 2023, shall remain in effect until changed by the local jurisdiction.

(b) (1) Existing permanent food facilities may be permitted to support the operations and storage of compact mobile food operations pursuant to the requirements of this section.

(2) Notwithstanding any other provision of this part, upon an evaluation verifying that a permanent food facility satisfies subdivisions (a) to (f), inclusive, of Section 114326, an enforcement agency shall approve the use of a permitted permanent food facility to satisfy the requirements of Section 114295 for a compact mobile food operation.

(3) Notwithstanding any other provision of this part, upon an evaluation verifying that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination, an enforcement agency shall approve the storage of a compact mobile food operation in a permitted permanent food facility.

(4) Except when a determination is made by the enforcement agency that any nonconforming structural conditions pose a public health hazard, the enforcement agency may approve a facility to support operations of a compact mobile food operation.

(5) Plan submission shall not be required for an existing permanent food facility to support the operations of a compact mobile food operation when a determination is made by the local enforcement agency that the current operation and structural facilities of the permanent food facility can successfully provide the necessary functions of a commissary for a compact mobile food operation.

(6) An approved permanent food facility that will be used for cooling of food for a compact mobile food operation shall be approved by the enforcement agency for cooling.

(c) (1) Unless prohibited by local ordinance, an enforcement agency may allow the use of a private home for the storage of a compact mobile food operation if it determines, after an evaluation, that storage in the private home would not pose a public health hazard and that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination.

(2) No more than two compact mobile food operations may be stored in a private home unless the enforcement agency finds that storage of more than two compact mobile food operations in a private home would not pose a public health hazard.

(3) The storage area within the home shall be designated and clearly identified upon approval and shall not be relocated without the review and approval of the local enforcement agency.

(4) Prepackaged nonpotentially hazardous food, whole fruits, and whole vegetables may be stored in the home prior to sale or preparation of that food in a compact mobile food operation.

(5) Food prepared in a private home shall not be used or offered for sale on a compact mobile food operation, unless it is a permitted cottage food operation or microenterprise home kitchen operation pursuant to subdivision (a). Violation of this paragraph may result in suspension or revocation of the permit to operate the compact mobile food operation.

(6) For purposes of determining compliance with this subdivision, a local enforcement agency may access, for inspection purposes, a private home where a compact mobile food operation is stored only if the representative has, on the basis of a consumer complaint, reason to suspect that the home is being used for food preparation, food storage, or unauthorized storage of utensils or other food facility equipment in violation of this subdivision.

(d) At the end of the operating day, potentially hazardous food that is prepared on or served from a compact mobile food operation shall be destroyed in a manner approved by the enforcement agency.

(e) For the purposes of this chapter, an endorsement by the local enforcement agency shall be a documented and recorded approval of compliance with applicable sections. An endorsement may include an inspection or evaluation, but shall not require a registration or permit.

(f) The enforcement agency may collect a fee for any permit, endorsement, inspection, or evaluation issued or conducted pursuant to this chapter in an amount that does not exceed the reasonable administrative costs of the enforcement agency.

114368.4. (a) Except as provided in subdivision (b), a compact mobile food operation that is approved for limited food preparation that prepares raw meat, raw poultry, or raw fish is subject to warewashing and handwashing facility requirements as outlined in Chapter 10 (commencing with Section 114294).

(b) (1) A compact mobile food operation may satisfy the requirements of Sections 114313 and 114314 by demonstrating access to a permitted auxiliary conveyance containing the necessary handwashing and warewashing sinks when operating at a site-specific location. The auxiliary conveyance may be operated by the same or a different permit holder. An enforcement agency may permit an auxiliary conveyance to serve multiple compact mobile food operations operating in close proximity to the auxiliary conveyance, as determined by the enforcement agency.

(2) If an auxiliary conveyance is not operated by the permit holder of the compact mobile food operation, the operator of the auxiliary conveyance shall obtain a permit from the enforcement agency to operate the auxiliary conveyance and service compact mobile food operations.

(3) The permit application for an auxiliary conveyance not operated by a compact mobile food operation shall include a site plan and shall be submitted to the enforcement agency at least two weeks prior to the operation of any food facility in conjunction with the auxiliary conveyance.

(4) The site plan for an auxiliary conveyance not operated by a compact mobile food operator shall show the proposed location and storage of the auxiliary conveyance, the proposed locations of any food facilities that will utilize the auxiliary conveyance, restrooms, refuse containers, potable water supply faucets, waste water disposal facilities, and all shared warewashing and handwashing facilities.

(c) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall do one of the following:

(1) Provide a three-compartment sink as described in subdivision (a) of Section 114313.

(2) Provide at least one two-compartment sink that complies with subdivision (e) of Section 114099.3.

(3) Provide a one-compartment sink with at least one integral metal drainboard, an adequate supply of spare preparation and serving utensils to replace those that become soiled or contaminated, and warewashing facilities that comply with subdivision (a) of Section 114313 in reasonable proximity to, and readily accessible for use by, food employees at all times.

(4) Maintain an adequate supply of spare preparation and serving utensils on the compact mobile food operation to ensure that utensils used for potentially hazardous foods are replaced with clean and sanitized utensils every four hours or as needed to replace those that become soiled or

contaminated. A compact mobile food operation that complies with this paragraph is not required to provide a warewashing sink.

(d) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall provide an integral handwashing sink with at least five gallons of potable water to operate with a potable water tank with a capacity of at least five gallons for handwashing.

(e) An enforcement agency may permit a compact mobile food operation to operate with an integral water tank smaller than specified under subdivision (c) or (d) of Section 114217 if the enforcement agency finds that the compact mobile food operation is operating in an area and manner that would allow for replenishment of the water supply as needed during operations.

(f) A compact mobile food operation shall submit, to the enforcement agency, written operating procedures that include the process of filling potable water tanks if it will operate with a water tank with a capacity of less than five gallons specified in subdivisions (c) and (d) of Section 114217.

(g) A compact mobile food operation that does not prepare raw meat, raw poultry, or raw fish is exempt from any provision of this part requiring it be equipped with a water heater or otherwise be supplied with warm water.

114368.5. (a) Upon receipt of complete, easily readable plans drawn to scale, and specifications satisfactory to the enforcement agency, an enforcement agency may preapprove a standard plan for a standardized or mass-produced individual unit intended to serve as a compact mobile food operation.

(b) A person proposing to operate a compact mobile food operation who has acquired an individual unit for which the construction of the compact mobile food operation has been built to approved plans shall not be required to submit plans for the individual unit, but instead shall be subject to a final inspection of the compact mobile food operation to ensure that the individual unit and proposed method of operation conform to the standard plans preapproved pursuant to subdivision (a). The permit application for a compact mobile food operation utilizing a preapproved individual unit shall include a certification that the applicant has not substantially altered the individual units from the plans preapproved pursuant to subdivision (a). The enforcement agency may collect a fee in the final inspection in an amount that does not exceed the reasonable administrative costs to the enforcement agency.

(c) The repair of equipment or integral fixtures on a compact mobile food operation or the replacement of equipment and fixtures on a compact mobile food operation with substantially similar equipment or fixtures is not a remodel, and the repair or replacement of equipment or fixtures does not require the submission of plans to an enforcement agency.

(d) A local governing body may waive or reduce a fee for the permit, registration, or related services for an applicant seeking approval of a compact mobile food operation or related operations.

(e) All new and replacement food-related and utensil-related equipment for a compact mobile food operation shall be certified or classified for sanitation by an American National Standards Institute accredited certification program, or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards. In the absence of an applicable certified sanitation standard, food-related and utensil-related equipment shall be evaluated for approval by the enforcement agency.

(f) All new and replacement electrical appliances for a compact mobile food operation shall meet applicable Underwriters Laboratories standards for electrical equipment as determined by an American National Standards Institute accredited certification program or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards.

114368.6. A compact mobile food operation is exempt from Section 113947.1 if the operator and any individual who is involved in the preparation, storage, or service of food for the compact mobile food operation has obtained a food handler card that meets the requirements of Section 113948.

114368.7. A compact mobile food operation is exempt from the requirements of Section 114315 if the compact mobile food operation operates with multiple employees or operators and the compact mobile food operation may remain operable by a single individual so that employees or operators may alternate use of a restroom.

114368.8. (a) Notwithstanding subdivision (a) of Section 114395, a violation of this part by an operator or employee of a compact mobile food operation is punishable only by an administrative fine.

(b) A violation of any provision of this part or regulation adopted pursuant to this part by an operator or employee of a compact mobile food operation or a sidewalk vendor shall not be punishable as an infraction or misdemeanor, and an operator or employee of a compact mobile food operation or a sidewalk vendor alleged to have violated any of those provisions is not subject to arrest except when independent grounds for that arrest exist under law.

(c) Except as provided in paragraph (d), each offense by an operator or employee of a compact mobile food operation or a sidewalk vendor may only be punished by a fine consistent with the following:

(1) A notice of violation detailing the violation, including the applicable provision of this part or regulation adopted pursuant to this part.

(2) An administrative fine not exceeding one hundred dollars (\$100) for a second violation within one year of the first violation.

(3) An administrative fine not exceeding two hundred dollars (\$200) for a third violation within one year of the first violation.

(4) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

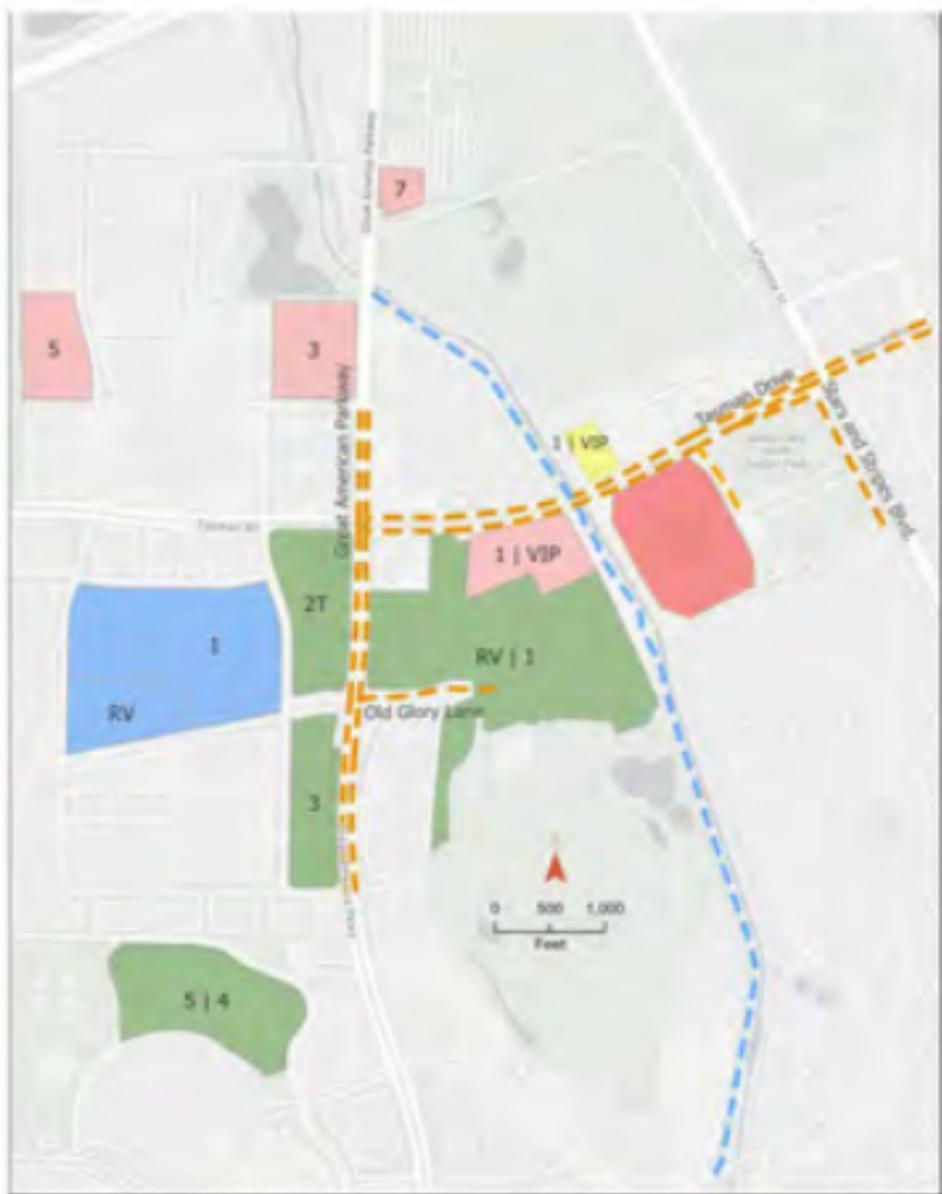
(d) If a compact mobile food operation is required to obtain a permit from the enforcement agency, operating without a permit may be punishable by a fine not to exceed three times the cost of the permit in lieu of the administrative fines referenced in subdivision (c). An enforcement agency shall not issue any fines in excess of the amounts allowable pursuant to subdivision (c) prior to January 1, 2024.

(e) (1) When assessing an administrative fine for a first-time offense, pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The enforcement agency shall provide the person with notice of their right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the enforcement agency shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this section.

(3) The enforcement agency may waive the administrative fine or may offer an alternative disposition.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA”

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies’ ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi’s Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

WHEREAS, the City Council deems it to be in the best interests of the City to create a

limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (m) of Section 9.05.165 (entitled "Activities and conduct prohibited in parking facilities adjacent to the Stadium or parking facilities used for Stadium events") of Chapter 9.05 (entitled "In General") of Title 9 (entitled "Public Peace, Morals, and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(m) No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise, or solicit employment, business or contributions of money or other property, within any portion of the parking areas, including the perimeter sidewalk of the facility except as set forth in Article IV of Chapter 5.05."

SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"Article IV. Stadium Pilot Program

- 5.05.400 Definitions
- 5.05.410 Purpose
- 5.05.420 Permit Required
- 5.05.430 Time, Place, or Manner Restrictions
- 5.05.440 Health, Safety, or Welfare Concerns
- 5.05.450 Enforcement

5.05.400 Definitions.

- (a) "Event Days" means days on which events are held at the Stadium which

necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the

following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant failed to request renewal prior to expiration of the permit

(3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or

roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

(1) Tasman Drive (from Great America Parkway to Calle de Sol)

(2) Tasman Drive eastbound off-ramp to Star and Stripes Drive

(3) Tasman Drive stairways to Stars and Stripes Drive

(4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)

(5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to Bill Walsh Way)

(6) San Tomas Aquino Creek Trail (from Great America Parkway to Agnew Road)

(7) Old Glory Lane east of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

(1) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency

responders, vehicular traffic, and pedi-cab traffic

(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on Event Days

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(6) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(9) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

(10) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

- (1) One hundred dollars (\$100) for a first violation
- (2) Two hundred dollars (\$200) for a second violation within one year of the first violation
- (3) Five hundred dollars (\$500) for each additional violation within one year of the first violation
- (4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

- (1) Two hundred fifty dollars (\$250) for a first violation
- (2) Five hundred dollars (\$500) for a second violation within one year of the first violation
- (3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor’s right to request an ability-to-pay determination pursuant to SB 946.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this 18th day of July, 2023, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

ORDINANCE NO. 2062

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA”

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies’ ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi’s Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

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WHEREAS, the City Council deems it to be in the best interests of the City to create a limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (m) of Section 9.05.165 (entitled "Activities and conduct prohibited in parking facilities adjacent to the Stadium or parking facilities used for Stadium events") of Chapter 9.05 (entitled "In General") of Title 9 (entitled "Public Peace, Morals, and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(m) No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise, or solicit employment, business or contributions of money or other property, within any portion of the parking areas, including the perimeter sidewalk of the facility except as set forth in Article IV of Chapter 5.05."

SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"Article IV. Stadium Pilot Program

5.05.400 Definitions
5.05.410 Purpose
5.05.420 Permit Required
5.05.430 Time, Place, or Manner Restrictions
5.05.440 Health, Safety, or Welfare Concerns
5.05.450 Enforcement

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5.05.400 Definitions.

(a) “Event Days” means days on which events are held at the Stadium which necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant failed to request renewal prior to expiration of the permit
- (3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

- (1) Tasman Drive (from Great America Parkway to Calle de Sol)
- (2) Tasman Drive eastbound off-ramp to Star and Stripes Drive
- (3) Tasman Drive stairways to Stars and Stripes Drive
- (4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- (5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to

Bill Walsh Way)

- (6) San Tomas Aquino Creek Trail (from Great America Parkway to

Agnew Road)

- (7) Old Glory Lane east of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

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(1) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency responders, vehicular traffic, and pedi-cab traffic

(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on EventDays

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(6) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(9) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

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(10) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

- (1) One hundred dollars (\$100) for a first violation
- (2) Two hundred dollars (\$200) for a second violation within one year of the first violation
- (3) Five hundred dollars (\$500) for each additional violation within one year of the first violation
- (4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

- (1) Two hundred fifty dollars (\$250) for a first violation
- (2) Five hundred dollars (\$500) for a second violation within one year of the first violation
- (3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor’s right to request an ability-to-pay determination pursuant to SB 946.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18TH day of July, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None



Agenda Report

23-211

Agenda Date: 4/18/2023

REPORT TO COUNCIL

SUBJECT

Action on Policy Options to Amend Regulations Related to Street Vending Activities in the City of Santa Clara

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure
Enhance Community Engagement and Transparency

BACKGROUND

Mr. Gibbins, owner of The Hot Dog Dude, operates a sidewalk vending business on the 5000 block of Stars and Stripes Drive near Levi's Stadium. Mr. Gibbins has attended Council meetings on multiple occasions to express concerns regarding the sidewalk vending that is occurring during events at Levi's Stadium. From his perspective, it appears that there are several unpermitted vendors conducting business on event days. It is also his belief that a lack of permitting enforcement is having a negative financial impact to his business and he has requested assistance from the City.

During the past event season, the Police Department experienced a drastic increase in the number of unpermitted food and merchandise vendors within the immediate footprint of large-scale stadium events. This increase has caused several health and safety concerns which are outlined below.

As currently written, the City Code and regulations do not align with recently adopted State legislation related to sidewalk vending. Consequently, the City's ability to address these health and safety concerns or the issues raised by Mr. Gibbins is constrained.

The purpose of this report is to provide the City Council with an overview of the current regulatory environment including the two pieces of recently adopted legislation that shape the options to regulate street vending on sidewalks as well as in the public right-of-way. In addition, this report provides policy options for the Council to consider that will, hopefully, better position the City to address the concerns raised by Mr. Gibbins as well as the health and safety concerns that have been identified by staff.

DISCUSSION

Definition of Sidewalk Vending

Pursuant to Senate Bill 946, a "sidewalk vendor" is defined as a person who sells food or merchandise on a public sidewalk or other pedestrian path with a non-motorized conveyance (e.g., pushcart, stand, display, pedal driven cart, wagon, showcase, rack, etc.). A sidewalk vendor can be either roaming or stationary.

Recent Legislation - Senate Bill 946

On September 17, 2018, the Governor approved Senate Bill 946 (Attachment 1) referred to as the

“Safe Sidewalk Vending Act”, which imposes restrictions on the manner in which a local agency may regulate and enforce sidewalk vending within its jurisdiction by ordinance (these restrictions are commonly referred to as “time, place and manner” restrictions). This new law went into effect on January 1, 2019 and addresses sidewalk vending in four contexts: (1) generally, (2) in parks, (3) within the vicinity of farmers’ markets and swap meets, and (4) within temporary special permit areas.

The City Attorney’s Office issued a memo on January 11, 2019 to the Chief of Police and Director of Parks and Recreation addressing SB 946 and its impact on various portions of the City Code (Attachment 2). With the passage of SB 946, certain noted portions of the City’s existing Code became unenforceable or require modifications to reflect the intent of SB 946, including:

- Chapter 5.05 regulates door-to-door and place-to-place peddling and solicitation. The City Code makes a distinction between sales for immediate delivery (peddling) and for future delivery (solicitation), but SB 946 does not. Under Article I, peddlers and solicitors must obtain a permit for “peddling activities.” To obtain a permit, vendors are required to submit an application with personal identifying information, criminal history, fingerprints, County health inspections, pay fees and wear City-issued identification. In addition, Article II regulates solicitation from vehicles and mobile units, including but not limited to prohibiting selling or peddling of any articles at any place on any public street, sidewalk, right-of-way, public park or other public space for a period of time exceeding ten minutes within any two-hour period or within 500 feet of a school property.
- Chapter 12.05 restricts a person from obstructing sidewalks from the free passage of pedestrians, including doing so by annoying or molesting persons passing by. It does not provide any exception for those selling, or attempting to sell, food or merchandise.
- Title 9 prohibits individuals from bringing into “any portion of the parking areas” around the Stadium, and “perimeter sidewalk,” any food, goods or merchandise “for the purposes of sale or barter”.
- In addition, the City Code contains sections addressing enforcement, including the discretion to prosecute violation of code with civil, criminal or administrative penalties (§§ 1.05.070, 5.100.010), which are specifically preempted by SB 946.

Prior to the adoption of SB 946, local agencies (including cities and County Health Departments) could confiscate a vendor cart if health violations were committed, had prosecutorial discretion to enforce by issuing administrative or misdemeanor citations and could revoke a vendor permit after four (4) repeat offenses.

Under SB 946, criminal penalties are prohibited and administrative fines are limited pursuant to an “ability to pay” determination that reduces fines to 20% of the full fine if the violator earns less than 125% of the federal poverty line or receives certain means-tested government benefits. While a regulatory agency retains the right to revoke a permit under SB 946, a violator may be offered community service in lieu of the payment of fines and local agencies can either waive fines or make offers of alternative disposition.

A regulatory agency cannot require:

1. A vendor to operate within specific parts of the public right-of-way.
2. A vendor to obtain consent or approval from any non-governmental entity or individual before

he/she can sell food or merchandise.

3. A vendor to operate only in designated neighborhoods or areas. Stationary vendors can be prohibited in exclusively residential zones; or
4. Restrict the total number of vendors permitted to operate with a local jurisdiction.

The only exceptions to these restrictions are if there are “directly-related, objective health, safety or welfare concerns”. If these exceptions exist, local agencies may adopt requirements regulating time, place and manner restrictions including, but not limited to:

- Limitations on the hours of operation (so long as they are not unduly restrictive)
- Requirements to maintain sanitary conditions
- Requirements necessary to ensure compliance with the federal Americans with Disabilities Act and other disability access standards
- Requirements to obtain a permit for sidewalk vending and a valid business license
- Requirements to possess a valid California Department of Tax and Fee Administration seller’s permit
- Requirements for mitigation for littering or dumping
- Requirements for compliance with other generally applicable laws
- Requirements to submit certain information on his or her operations
- Prohibition of stationary sidewalk vendors in areas zoned for only residential uses

SB 946 separately addresses regulation of sidewalk vending in parks owned or operated by a local authority. Local authorities cannot prohibit a vendor from selling food or merchandise in a park; except when there is a signed concession agreement that provides exclusive rights for the sale of food or merchandise. In this case, stationary vendors can be prohibited. In addition to the exceptions related to health and safety, local authorities may also impose restrictions necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities as well as restrictions necessary to prevent undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of the park.

With respect to sidewalk vending at Farmer’s Markets and/or Swap Meets, a local authority may prohibit vendors in areas located within the immediate vicinity of a permitted certified farmers’ market or a permitted swap meet.

The final area affected by SB 946 relates to “temporary special permit areas”. A temporary special permit is a “permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area”. This includes but is not limited to: 1) an encroachment permit; 2) a special event permit; or 3) a temporary event permit for purposes including but not limited to filming, parades or outdoor concerts. In this instance, a local authority may restrict vendors in the immediate vicinity of an area designated for a temporary special permit for the duration of the temporary permit.

Recent Legislation - Senate Bill 972

On January 1, 2023, Senate Bill 972 also went into effect (Attachment 3). SB 972 amends the California Retail Food Code to allow for non-potentially hazardous foods prepared in a cottage food operation to be served from a mobile food facility (such as a cart, wagon, rack, or other non-motorized conveyance). The code requires that these facilities meet certain health and safety standards. Mobile food operation with less than 25 square feet of display area or that sell only

prepackaged, non-potentially hazardous foods or whole uncooked food are exempt. Moreover, this legislation requires that local agencies establish pre-approved standard plans for facilities intended to serve as compact mobile food operation. Plans for individual units are not be required. Facilities with non-conforming structural conditions would be approved if those conditions do not pose a public health hazard. While facilities require a valid permit, this bill reduces the fees that can be collected, and violations can only be punishable by administrative fine.

Like the provisions in SB 946, fines are subject to the “ability to pay” determination and can be reduced or waived. If eligible for a reduction, the fine collected cannot exceed 20% of the full cost of the administrative fine. While the California Constitution requires the state to reimburse local agencies for certain costs mandated by the State, this bill eliminates the requirement for reimbursement.

Health and Safety Concerns

In addition to the need to align to State law, staff has identified a number of health and safety concerns associated with vendors on sidewalks, public right-of-way, in City parks, and on private property (e.g., parking lots) that should also be addressed. These concerns include:

- Unsafe food preparation and handling practices
- Inadequate waste disposal
- Traffic congestion
- Encroachment of public spaces and restricted access to sidewalks and public right of way
- Vulnerable populations subjected to street crimes
- Labor / employment law violations

The area around Levi’s Stadium is particularly sensitive given the number and size of major events, the impact to surrounding neighborhoods and the inherent opportunities to attract a large volume of vendors. Additional concerns include:

- Location of sidewalk vendors not incorporated into the City’s emergency evacuation plan or traffic management plan
- Propane tanks that could endanger the public if ignited in highly populated areas
- Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices
- Massive groups congregating, particularly near gates, bridges, parking lots, crosswalks, sidewalks, etc.

- Lines causing people to interrupt ADA paths and pedestrian, bicyclist and pedicab traffic
- Intoxicated attendees causing fights connected with massive groups traveling through narrow pathways
- Sizeable amounts of cash being exchanged and the potential for crime
- Sanitary issues, including but not limited to garbage, access to water for hand washing, etc.
- Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares)
- Alcohol being sold without Alcoholic Beverage Control permits
- Concerns of legitimate employment practices

Policy Options

The concerns expressed by Mr. Gibbins are indicative of a larger policy discussion regarding the City's interest in regulating street vending. As noted above, there are a variety of health and safety concerns that should be considered - especially in the area around Levi Stadium. Moreover, the State legislation has resulted in a City Code regulatory environment that is not enforceable as currently written, and therefore, requires modification.

To that end, staff is seeking policy direction from the Council on three (3) possible alternatives:

1. Prepare a temporary ordinance amendment and permit process for stadium event days that would define areas where sidewalk vending could not occur due to health and/or safety concerns, within a to-be-determined stadium footprint. The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for a pilot period of August 2023 to January 2024 to evaluate impacts. At that time, the Police Department would return to the City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City such as City parks.

Pros: Addresses health and safety concerns along sidewalks and public right of way as well as in parking lots surrounding the Stadium. May provide greater disbursement of sidewalk vendors within the defined footprint. Defines area for ease of enforcement and establishes a safety perimeter to ensure access in the event of evacuation or other safety measures. Complies with SB 946.

Cons: Does not address sidewalk vending in other parts of the City including City parks.

2. Direct staff to develop an Ordinance amendment to address sidewalk vending City-wide to align City Code with current sidewalk vending legislation. In this scenario, vending would be regulated and enforced throughout all areas of the City.

Pros: Allows for a comprehensive approach to the health and safety issues related to sidewalk

vending across the City.

Cons: Given the complexity of a citywide approach, it is unlikely that a comprehensive amendment can be completed prior to the 2023 concert and NFL season. Implementation will have a significant impact on City Department workloads, especially the Police and Parks and Recreation Departments.

3. Direct staff to eliminate all unenforceable City Code sections related to sidewalk vending (and include minor modifications to enforceable provisions of the code as necessary), but generally defer to State law on the matter, without any meaningful local controls.

Pros: Complies with SB 946 and 972.

Cons: Does not address health and safety concerns or address Mr. Gibbins' concerns related to the lack of enforcement of unpermitted vendors and negative financial impact.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact related to this report. Depending on the option selected by Council, there will be costs associated with the design and implementation of a permitting process, enforcement, on-going communication with vendors, etc. Staff will return with those estimated costs based on the Council's direction on a preferred option.

COORDINATION

This report was coordinated with the Parks and Recreation Department, Police Department, City Attorney's Office, and City Manager's Office

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Direct staff to proceed with Option #1 (pilot program in the area of Levi's Stadium from August 2023 through January 2024, with the Police Department returning to City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City, such as City parks).

Reviewed by: Pat Nikolai, Chief of Police

Approved by: Office of the City Manager

ATTACHMENTS

1. Senate Bill 946
2. City Attorney's Memorandum dated January 11, 2019
3. Senate Bill 972
4. City Code Section 3.40
5. City Code Section 5.05
6. City Code Section 8.10
7. City Code Section 12.05
8. City Code Title 9



Date: January 11, 2019

To: Chief of Police
Director of Parks & Recreation

From: John Belisle, Deputy City Attorney

Subject: SB 946 Sidewalk Vendors

Question Presented

What effect does the legislature's passage of SB 946 have on the enforcement of City Code sections regarding sidewalks and public rights of way, including in Chapters 8.10, 5.05, and 3.40?

Short Answer

SB 946 both (a) restricts the time, place and manner of regulations targeting individuals who sell food or merchandise on public sidewalks in and in parks, and (b) decriminalizes all violations, which has the following consequences:

1. Select sections of City Code must be revised, including sections restricting the time, place and manner of peddler/solicitor's activities on public rights-of-way and in parks, and those sections authorizing criminal enforcement and amounts of fines (See chart below).
2. The Police Department can no longer cite sidewalk vendors under Chapter 5.05 for infractions and misdemeanors. The City's enforcement is limited to administrative penalties.
3. The City must seek dismissal of all pending applicable criminal prosecutions, if any are pending.

Background

a. Description of the New Law

SB 946 decriminalizes and establishes requirements for local agencies to regulate sidewalk vendors. The general legislative intent is to "to promote entrepreneurship and support immigrant and low-income communities," and to respond to federal procedures for enforcing immigration laws against those convicted of a crime. A sidewalk vendor is defined as a person who "sells food or merchandise" upon a "public sidewalk or other pedestrian path," by "non-motorized conveyance or from their person," including while "roaming" and/or "stationary." It was chaptered on September 17, 2018, and is codified as Government Code sections 51036 – 51039.

Under Section 51038, a city cannot:

- 1) Specify where within a public right of way a vendor can operate, unless it is related to health, safety or welfare ("HSW") concerns. ((b)(1))
- 2) Prohibit a vendor from operating within a city park, unless the vendor is stationary and the city has granted an exclusive permit to a concessionaire. ((b)(2)(A).) But, the city can regulate time, place and manner of sales, if the regulations are related to HSW, the use and enjoyment of the park, and/or to prevent undue concentration of commercial activity. ((b)(2)(B).)
- 3) Require a vendor to obtain consent or approval from a nongovernmental entity (i.e., nearby restaurant) before the vendor operates. ((b)(3).)

- 4) Restrict vendors from operating in certain neighborhoods, except if restricting is related to HSW. ((b)(4)(A).) But, for neighborhoods zoned as exclusively residential, cities can prohibit stationary vendors from operating. ((b)(4)(B).)
- 5) Limit the number of vendors in the city, unless related to HSW. ((b)(5).)

Subject to the foregoing prohibitions, a city can:

- 1) Enact local laws related to objective HSW concerns that regulate time, place and manner, including requirements for sanitation, permitting, compliance with government (incl. health) inspections, licensing and taxation. (§ 51038(c).)
- 2) Restrict vendors from operating in immediate vicinity of: (§ 51038(d)
 - a. Permitted certified farmers' markets.
 - b. Permitted swap meets.
 - c. Public areas designated for "temporary special permits." (including for parades, outdoor concerts).

In regulating sidewalk vendors, objective concerns of HSW cannot include "perceived community animus or economic competition." (§ 51038(e).) Moreover, the law does not affect the applicability of the California Retail Food Code (Health & Saf. Code § 113700, et seq.), which addresses food safety and inspections, including for mobile food facilities and farmers markets. (§ 51037.)

SB 946 broadly decriminalizes sidewalk vending, prohibits cities from punishing violations of related local ordinances as criminal infractions or misdemeanors, and reduces enforcement power. (§ 51039.) A person cannot be arrested, penalties are restricted to administrative fines, and the statute specifies fine amounts and maximums. A person's ability to pay must be considered "when assessing an administrative fine." ((f)(1).) Furthermore, a person's failure to pay an administrative fee cannot be punished by a criminal charge, nor can they be assessed any further "fines, fees, assessments, or any other financial conditions" beyond permit rescission. ((a)(2);(c).)

The new statute is retroactive for previous offenses. Individuals cited for previous violations of local ordinances affected by SB 946 "shall" have their pending charges dismissed, and prosecutions that have reached judgment may be petitioned for dismissal as well. (§ 51039(e)&(g).)

b. Santa Clara City Code

In different places, the City Code directly regulates the same type of activity targeted by SB 946:

- Chapter 5.05 ("Solicitors and Peddlers") regulates door-to-door and place-to-place peddling and solicitation. The City Code makes a distinction between sales for immediate delivery (peddling) and for future delivery (solicitation), but SB 946 does not. Under City Code, Peddlers are individuals who "sells and makes immediate delivery or offers for sale...any goods, ware, merchandise or thing in the possession of the seller, at any place in the City other than at a fixed place of business." (§ 5.05.010(j).) Peddling is defined to include "traveling" and "selling or vending...on any street, sidewalk, right-of-way, park or other public place," including by mobile units (which includes a "trailer, push cart, wagon, bicycle, dray, conveyance or structure on wheels"). ((h),(k).) Because SB 946 does not distinguish between the time of delivery of the good for sale, it may apply to solicitors as defined by City Code: "any person who goes from place to place in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offers property of any nature for future delivery." ((p).)

- Under Article I, and subject to exceptions, peddlers and solicitors must obtain a permit from the Police Department for “peddling activities.” (§ 5.05.020.)
 - Applicants are required to submit an application signed under penalty of perjury with biographical details, a description of their peddling, and a statement about their criminal history, in addition to submitting fingerprints and paying fees for a background investigation. (§ 5.05.040.)
 - The Application requires a social security number from the applicant, and also reserves the right to deny applications if information is omitted.
 - The terms of the permit require inter alia County health inspections and proof thereof for mobile units; operating hours between 10:00 a.m. and one-half hour after sunset, except if by “licensed catering vehicles” selling food at/near industrial establishments; wearing identification; and upon request, that the peddler providing his or her name, organizational information, and a copy of their signature. (§5.05.170.)

- Article II regulates solicitation from vehicles and mobile units.
 - Solicitors are prohibited “while standing in any portion of the public right-of-way, including ... sidewalks and driveways, to solicit, or attempt to solicit... business ...from any person traveling in a vehicle along a public right-of-way.” (§ 5.05.210(a).) It also prohibits solicitation to and from vehicles when the buyer or seller is in a public right-of-way. ((b), (c).)
 - Mobile unit peddlers (incl. pushcarts and wagons) are prohibited from:
 - Standing or stopping “for peddling purposes, at any place on any public street, sidewalk, right-of-way, public park or other public place, for a total period of time exceeding ten minutes within any two-hour period” or “stopping” for a sale on any public right-of-way within 500 feet of a school property. (§ 5.05.230.)
 - Stopping to peddle within 200 feet of another mobile unit. (§ 5.05.240.)
 - Peddling from an unapproved location, which is restricted as: (§ 5.05.260(a).)
 - Peddling is permitted only for the street-side of a sidewalk. ((3).)
 - Sidewalks must be a minimum width of 8 feet, with 3 feet for passage of pedestrian traffic. ((4).)
 - The dimensions of the mobile unit cannot exceed 8-feet high by 5-feet wide by 6-feet long, and must be parked to minimize use of the sidewalk and not obstruct it. ((5), (7).)
 - Peddlers cannot have more than their approved mobile unit, single stool and 33-gallon maximum trash container. ((6).)
 - Peddlers must carry general liability insurance. ((8).)
 - Permits will not be issued for specific locations, including: (§ 5.05.270.)
 - Immediately adjacent to residentially zoned property. (a)
 - Within 20-feet of a restricted parking/loading space. (b)
 - Within 20-feet of the entrance to any building, merchandise display, or crosswalk. ((c) – (e).)
 - Where it impedes traffic or is dangerous. ((f) – (h).)
 - Selling or peddling any articles, or to station any stand or cart for sale of any article or thing, in any park or adjacent public park, unless they are an approved concessionaire. (§ 5.05.280.)

- Chapter 8.10 (“Food and Food Establishments”) regulates the sale of food, food establishments and restaurants, and requires individuals selling food to be permitted, to follow State and local health laws and regulations, and to submit to inspections. (§§ 8.10.020 – 8.10.130.) Food establishments are places where food is “kept, held, sold, prepared or compounded or offered for sale for human consumption,” “not a public eating or drinking establishment,” including grocery stores, fruit and vegetable stands, and markets or “other premises” where meat is kept, stored, handled, or offered for sale. (§ 8.10.010(b).) Restaurants are places, including “sandwich stands” and cafes, where “food or drink is prepared on the premises for sale or distribution elsewhere. (*Id.*, at (c).) The City’s Health Officer, or duly-authorized representative are “authorized and directed to seize and destroy or denature any tainted, diseased, decayed or partially decayed or unwholesome meat, fish, shell fish, fowl, fruits, vegetables or other unwholesome food found within the city.” (§ 8.10.110.)
- Chapter 3.40 (Business Tax) requires operators of businesses to pay taxes to the City. It requires that “parade vendors” (\$15 per parade), “itinerant merchants” (\$225 per 190 days), and peddlers (§ 113) each pay a business tax to the City.

The City Code also indirectly regulates sidewalks in parts that may be useful for further enforcing the health, welfare and safety thereon:

- Chapter 12.05 restricts a person from obstructing sidewalks from the free passage of pedestrians, including doing so by annoying or molesting persons passing by. (§ 12.05.010.) It does not provide any exception for those selling, or attempting to sell, food or merchandise.
- Title 9 (“Public Peace, Morals and Welfare”) prohibits individuals from bringing into “any portion of the parking areas” around the Stadium, and “perimeter sidewalk,” any food, goods or merchandise “for the purposes of sale or barter.” (§ 9.05.165 (m).)

Lastly, the City Code contains sections addressing enforcement, including the discretion to prosecute violation of code with civil, criminal or administrative penalties (§§ 1.05.070, 5.100.010), which are specifically preempted by SB 946.

c. Permit practices and procedures

The Permits Unit of the Police Department manages all permitting for peddler activity, including receiving applications, granting or denying permits, and maintaining information with the HDL business license software. The Permits Unit does not maintain any internal written guidelines for its decision-making regarding granting and denying applications, and endeavors to only strictly follow and enforce the language of the City Code.

Analysis

SB 946 allows cities to require permits for sidewalk vending and to also restrict the time, place and manner (“TPM”) of sidewalk vending, if it is done for objective health, safety and welfare (“HSW”) reasons, or to address other specific concerns in parks and residential neighborhoods. Many of the restrictions in the Santa Clara City Code have an apparent relationship to HSW, such as to prevent obstruction of traffic. Thus, SB 946’s new requirements and restrictions facially preempt only select sections of the City Code dealing with the permitting of peddlers and solicitors where restrictions do not have an obvious and justifiable reason, such as HSW. The restrictions that do not have legally-justifiable reasons will be subject to legal challenge when the new law takes effect on January 1, 2019.

Furthermore, sections of City Code regarding enforcement of code and prosecution of code violators are entirely preempted by SB 946's decriminalization of sidewalk vending.

City Code		Enforceability Under SB 946	Limitations Under SB 946	Action/Revisions Required for Code or Policies
§	Description			
5.05.020	Peddlers & Solicitors must be permitted	Enforceable	City cannot restrict specific locations unless for HSW	No action required
5.05.040	Required information for permit	Enforceable <i>in part</i>	Cannot require SSN	None for Code; Remove SSN field from SCPD Application
5.05.210	Solicitors cannot stand in public right-of-way and solicit to vehicles traveling on streets	Enforceable	City cannot restrict specific locations unless for HSW	No action required
5.05.230 (a)(1)	Mobile Unit Peddler (MUP) cannot stand or stop for "peddling purposes" in public right-of-way ... for longer than total 10-mins within 2-hr period	<i>Likely Enforceable IF for HSW</i>	City cannot restrict specific locations unless for HSW	Articulate reasoning
5.05.230 (a)(1)	MUP cannot stand or stop for "peddling purposes" in public right of way ... <u>park</u> for longer than total 10-mins within 2-hr period	<i>Likely Enforceable IF for HSW</i>	City cannot prohibit roaming vendors within parks, but may restrict if for HSW reasons or <i>use/enjoyment of park or to prevent undue concent. of comm. activity</i>	Articulate reasoning
5.05.230 (a)(2)	MUP cannot stand or stop for "peddling purposes" with 500-ft of <u>school</u> property	<i>Likely Enforceable IF for HSW</i>	City cannot restrict specific locations unless for HSW	Articulate reasoning
5.05.240	MUP cannot stop to peddle with 200-ft of other stopped MUP	<u>Not</u> Enforceable, unless for HSW	City cannot restrict specific locations unless for HSW	Articulate reasoning; Revise to remove or to narrow restriction

City Code		Enforceability Under SB 946	Limitations Under SB 946	Action/Revisions Required for Code or Policies
§	Description			
5.05.260	Permit locations and conditions			
(a)(2)	"issued only for a specific approved location which is stated on the permit."	<u>Not</u> Enforceable, unless for HSW	City cannot restrict specific locations unless for HSW, or to restrict stationary vendors from neighborhoods exclusively zoned as residential	Articulate reasoning; Revise to remove or to narrow restriction
(a)(3)	Only for street side of sidewalk portion	<i>Likely Enforceable IF for HSW</i>	City can restrict TPM of permits for HSW	Articulate reasoning
(a)(4)	Only for sidewalks of 8-ft width with 3-ft of passage for peds	<i>Likely Enforceable IF for HSW</i>	City can restrict TPM of permits for HSW	Articulate reasoning

(a)(5)	MUP/temp structure dimensions are less than 4'Hx5'Wx6'L	<i>Likely Enforceable IF for HSW</i>	City can restrict TPM of permits for HSW	Articulate reasoning
(a)(6)	Limited to (i) 1 approved MUP/temp structure, (ii) 1 stool, and (iii) 1 garage can	<i>Likely Enforceable IF for HSW</i>	City can restrict TPM of permits for HSW	Articulate reasoning
5.05.270	Prohibited Locations			
(a)	Immediately adjacent to residentially zoned property	<u>Not</u> Enforceable, unless for HSW	City "shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except" for HSW, or to restrict "stationary" vendors from neighborhoods exclusively zoned as residential	Articulate reasoning; Revise to remove or to narrow restriction
(b)	Within 20-ft of no-parking zone, handicapped parking space or driveway	<i>Likely Enforceable IF for HSW</i>	City can restrict TPM of permits for HSW	Articulate reasoning
(c)	Within 20-ft of entrance to buildings	<u>Not</u> Enforceable, unless for HSW	City "shall not restrict sidewalk vendors to operate only in a designated ... area, except" for HSW, or to restrict "stationary" vendors from neighborhoods exclusively zoned as residential	Articulate reasoning; Revise to remove or to narrow restriction (e.g. types of buildings)
(d)	Within 20-ft of merchandise display window	<u>Not</u> Enforceable	City "shall not restrict sidewalk vendors to operate only in a designated ...area, except" for HSW; "economic competition does <u>not</u> constitute" HSW reason	Revise to remove or to narrow restriction
(e)	Within 20-ft of crosswalk	<i>Likely Enforceable IF for HSW</i>	City can restrict TPM of permits for HSW	Articulate reasoning
(f) – (h)	Impedes traffic or is hazardous	Enforceable	City can restrict TPM of permits for HSW	No action required
5.05.280	Peddling is prohibited in parks and adjacent parking unless as an approved concessionaire	<u>Not</u> enforceable	City cannot prohibit vendors within parks, unless for HSW reasons or use/enjoyment of park or to prevent undue concent. of comm. activity; <i>or if the peddler is stationary and the city has already granted an exclusive concessionaire permit</i>	Revise to remove or to narrow restriction distance

City Code		Enforceability Under SB 946	Limitations Under SB 946	Action/Revisions Required for Code or Policies
§	Description			
1.05.070	City has discretion to criminally prosecute <u>any</u> violations of Code; recover costs of enforcement	Not Enforceable	Sidewalk vendors cannot be criminally cited	Specify penalties in amended ordinance Gov. Code § 51039
3.40.330	Peddlers are subject to City Business Tax	Enforceable	No specific restrictions on local taxations	No action required
8.10.020 - .130	Food Safety sections, including the right to seize/destroy tainted foods (§ 8.10.110)	Enforceable	None	No action required
12.05.010	Sidewalks: Individuals are prohibited from obstructing free passage of pedestrians on sidewalk	<u>Not</u> Enforceable	City cannot restrict specific locations unless for HSW	Articulate reasons; Revise to narrow and provide exception for sidewalk vendors/peddlers
12.05.040	Obstructing sidewalk without prior permission deemed guilty of infractions and \$500 fine	<u>Not</u> Enforceable	Sidewalk vendors cannot be criminally cited for unpermitted vending	Revise and narrow: sidewalk vendors are subject only to specific administrative penalties IAW Gov. Code § 51039
9.05.165(m)	Stadium: prohibits individuals from bringing food and merchandise for sale onto parking areas and "perimeter" sidewalk	<u>Not</u> Enforceable	City "shall not restrict sidewalk vendors to operate only in a designated ...area, except" for HSW; "economic competition does <u>not</u> constitute" HSW reason	Articulate reasons; Revise to remove or to narrow restriction

cc: City Manager's Office

Chapter 3.40 BUSINESS TAX

Sections:

- 3.40.010 Purpose.**
- 3.40.020 Effect on other fees and charges.**
- 3.40.030 Chapter controlling.**
- 3.40.040 Definitions.**
- 3.40.050 Imposition of tax.**
- 3.40.060 Business tax certificate required.**
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- 3.40.110 Penalty for delinquent or nonpayment.**
- 3.40.120 Exemptions from tax.**
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- 3.40.480 Procedure.**
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- 3.40.500 Handbill distribution.**

3.40.010 Purpose.

This chapter is enacted to raise revenue for municipal purposes and not for the purpose of regulation. The payment of a business tax required by this chapter, and its acceptance by the City, and the issuance of a business tax certificate to any person shall not entitle the holder thereof to carry on any business unless he or she has complied with all of the requirements of the City Code and all other applicable laws, nor to carry on any business in any building, on any premises, or in any location designated in such business tax certificate in the event that such building, premises or location is situated in a zone or locality in which the conduct of such business is in violation of any law. (Ord. 1923 § 1, 4-8-14).

3.40.020 Effect on other fees and charges.

Persons required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any other charge, fee, or tax as may be imposed by the City for the privilege of doing business within the city, or for the cost of regulating a business, and

such persons shall remain subject to the regulatory provisions of all other ordinances, codes, and resolutions of the City, including but not exclusive to regulations for zoning, building, fire, and safety. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.101).

3.40.030 Chapter controlling.

To the extent that the provisions of this chapter are inconsistent with the provisions of any other chapter of the City Code or parts thereof, the provisions of this chapter shall be deemed controlling. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.102).

3.40.040 Definitions.

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

- (a) "Business tax certificate" means the document issued as a result of a completed tax affidavit and taxes paid.
- (b) "Business" means all and every kind of profession, vocation, trade or activity, whether or not carried on for profit or gain.
- (c) "Business community" means any and all areas of the City not zoned as residential.
- (d) "Director" means the Director of Finance or his or her designee.
- (e) "Employee" means any or all persons engaged in the operation or activity of any business, whether as owner, a corporate officer, a partner, agent, manager, solicitor or any and all persons employed or working in such business either full time, part-time, permanent or temporary.
- (f) "Fiscal year" means an accounting period of twelve (12) months commencing upon the payment of a business tax and every twelve (12)-month period thereafter.
- (g) "Handbill distributor" means one who distributes any commercial advertising, booklet, card, circular, dodger, newspaper, pamphlet, sample specimen, sheet or other printed or written notices, advertising any art, article, business, commodity, entertainment, meeting, merchandise, person, service, skill or thing offered, sold, or rendered for hire, reward, price, trade or profit.
- (h) "Itinerant merchant" means any person, or employee, who engages in a business in the city by selling or offering for sale articles, goods, merchandise or wares of value, for period of not more than one hundred ninety (190) consecutive days and who, for the purpose of carrying on such business, hires, leases or occupies any room, building or structure on any real property on or adjoining any

street or public place in the city. Such person shall not be relieved from the provisions of this section by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or, by reason of conducting such business in connection with or as a part of any local business or in the name of any local dealer, trader, merchant or auctioneer.

(i) "Number of employees" means the number of persons employed in the business as anticipated, or the number of employees including owner(s) at time of renewal.

(j) "Parade vendor" means any person, or employee, who engages in the business of selling or offering for sale and immediate delivery any goods, merchandise, thing or wares in the possession of the vendor, at or along the route of any parade or procession operating pursuant to a permit from the City Council.

(k) "Person" means all domestic and foreign corporations, limited liability company, firms, associations, syndicates, joint stock corporations, partnerships of every kind, clubs or common law trusts, societies and individuals engaged in any business in the city other than as an employee.

(l) "Public market" means any business location where:

(1) A public market operator rents space to public market vendors and such space is not open to members of the general public more than three days in any seven-day period starting on Sunday except in the month of December, when no time restrictions shall apply; and

(2) Any new, used, or antique goods, clothing or other personal property or food items are offered or displayed for sale or exchange, and either:

(A) A fee is charged to the public market vendors for the privilege of offering or displaying such goods for sale or exchange to members of the general public admitted to the event or location, and/or

(B) A fee is charged to prospective buyers or where a membership or other card is required for admission to the event or location where such goods are offered or displayed for sale or exchange by public market vendors to members of the general public admitted to the event or location.

(m) "Public market operator" means any individual, partnership, corporation, business association, or other person or entity that sponsors, controls, manages, operates, or otherwise conducts a public market.

(n) "Public market vendor" means any individual, partnership, corporation, business association, or other person or entity that sells, exchanges, displays, or offers for sale or exchange any new, used, or antique goods, clothing, personal property or food items, or services at a public market. (Ord. 1923 § 2, 4-8-14).

3.40.050 Imposition of tax.

The City does hereby tax, as provided in this chapter, each and every kind of business transacted, conducted, exhibited or carried on in the city, at the rates named and prescribed in this chapter. If more than one business shares a business location, each business is required to apply and pay the prescribed tax. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.104).

3.40.060 Business tax certificate required.

It shall be unlawful for any person to transact or carry on any business in the city without first having paid the business tax to the City and having obtained a valid business tax certificate or renewal, in compliance with all applicable provisions of the City Code. (Ord. 1923 § 3, 4-8-14).

3.40.061 Business tax certificate application.

(a) Any person applying for a tax certificate shall make application upon a form provided by the Director, which form shall provide such information as may be required to show compliance with all City, State and Federal laws, and as may be necessary to determine ownership, the nature of the business, occupancy requirements, location, and the classification and amount of tax due.

(b) All applicants shall pay a tax computed on the number of employees or the fixed amount as provided in this chapter upon submitting the application.

(c) When necessary, the Director or designee shall refer an application or a notice of changed or new addresses to the appropriate City officers or staff for determination as to whether the proposed business activity and the premises in which it is to be conducted comply with applicable laws and ordinances. In the event it is determined that the proposed activity may not be maintained in compliance with the law, the Director or designee shall so inform the applicant and no new or renewed tax certificate may issue.

(d) Failure of the City to approve, deny, or act upon the application within one hundred eighty (180) days shall be deemed a denial of the application. (Ord. 1923 § 4, 4-8-14).

3.40.062 Appeal process.

An appeal from denial of issuance of a business tax certificate may be made under the procedures set forth in Chapter [2.115](#) SCCC. (Ord. 1923 § 5, 4-8-14; Ord. 2007 § 3, 11-19-19).

3.40.070 Business location.

Business tax fees are based on the actual physical location of the business within the jurisdictional limits of the City of Santa Clara. A mail stop, post office box or other such mail address is not considered a valid business location for the purpose of fire and safety inspection. All business not physically located within the jurisdictional limits of the City of Santa Clara are considered out-of-town and must pay taxes as established for out-of-town businesses regardless of whether they have a mailing address in the City of Santa Clara. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.106).

3.40.080 Branch establishments.

A separate business certificate must be obtained for each branch establishment or location of the business. When any person conducts, at one location, businesses classified separately by this chapter, such person shall pay the higher of the taxes. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.107).

3.40.090 Notice not required by City.

The Director of Finance is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send notice or bill shall not affect the validity of any tax or penalty due. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.108).

3.40.100 When annual tax due and payable.

The annual business tax imposed under the provision of this chapter shall be due and payable at the time of commencement of business activity or upon occupying space in the business community and such certificate shall expire twelve (12) months after the date of application. The tax for the renewal of such certificate shall be due and payable upon expiration of the prior certificate. No tax paid herein shall be refundable. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.109).

3.40.110 Penalty for delinquent or nonpayment.

The penalty for noncompliance shall be:

- (a) Any person who fails to apply for a tax certificate and fails to pay the tax as determined on or within thirty (30) days after opening, engaging in business, or occupying space in the business community, shall be subject to a penalty of one hundred percent (100%) of the tax due.
- (b) Every annual tax which is not received and paid within a period of thirty (30) days after the tax became due is hereby declared to be delinquent, and a penalty of one hundred percent (100%) of the tax will be added to the tax due.
- (c) Whenever a check is submitted in payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn for any reason, the taxpayer shall be

liable to pay a nonsufficient funds charge, the correct tax amount due, and a penalty.

(d) If any person fails to pay the annual renewal tax within ninety (90) days after the tax becomes due, his or her business tax certificate is considered revoked. The City is not required to send a notice of revocation for the revocation to be valid. Following revocation, the person must reapply for a new business tax certificate, pursuant to SCCC [3.40.061](#), and pay all associated penalties. Failure to reapply for a new business tax certificate shall constitute a violation, pursuant to SCCC [3.40.270](#). (Ord. 1721 § 2, 10-27-98; Ord. 1923 §§ 6, 7, 4-8-14. Formerly § 15-1.110).

3.40.120 Exemptions from tax.

No tax prescribed in this chapter shall be deemed or construed to apply to any of the following persons who are exempt from payment thereof upon submission of proof of exemption:

(a) Charitable and Nonprofit Organizations. Any church, school, charitable, benevolent or social organizations having exempt status under Federal tax law.

(b) Conflict With Federal and State Law. Any person conducting any business exempt by virtue of the Constitution, or applicable statutes of the United States or of the State of California from the payment to municipal corporations of such taxes as are herein prescribed.

(c) Disabled Veterans. Disabled veterans exemption pursuant to the requirements of Section [16001](#) or [16001.5](#) of the California Business and Professions Code.

(d) Employees. No person who is an employee shall be required to pay a tax for doing any part of the work of such business for which a tax certificate has been issued.

(e) Interstate Commerce. Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any tax provided for in this chapter upon the ground that such tax casts a burden upon his/her right to engage in commerce with foreign nations or among the several states or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file an affidavit or a declaration under penalty of perjury with the Director of Finance describing the interstate or other character of his/her business which entitled him to such exemption.

(f) Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or the State of California for payment of such taxes as are herein prescribed. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.111).

3.40.130 Reserved.

(Ord. 1923 § 8, 4-8-14).

3.40.140 Business tax constitutes debt to City – Collection of unpaid taxes.

The amount of any tax imposed by this chapter shall be deemed a debt to the City. Any person carrying on any business covered in this chapter without having lawfully paid a tax to the City to do so shall be liable to a civil action in the name of the City in any court of competent jurisdiction for the amount of the required tax, penalties, and court costs. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.113).

3.40.150 Transferability – Changes to affidavit.

A certificate issued pursuant to this chapter shall not be transferable. When a certificate has been issued authorizing a specifically named person to transact and carry on a specific type of business at a specific location, the business shall, upon application in writing, and the payment of the prescribed fee, have such certificate records amended to include any change of name, type of business, or address. Any business for which such a change must be made shall pay a fee as fixed by resolution of the City Council for the handling and processing of such change. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.114).

3.40.160 Issuance of business tax certificate.

All certificates issued under the provisions of this chapter shall be issued by the Director of Finance or authorized employees and shall state the name of the business, the location of the business, the mailing address, the type of business being conducted at the listed location, the amount of the tax paid, the expiration date of the certificate and additional information that may be required. A business tax certificate will be issued upon the determination by the Director and any other necessary City departments that the business tax has been paid and that the business tax certificate affidavit information is accurate, that the business applicant is operating legally pursuant to all applicable Federal, State and local laws, and there are no business operations that endanger the public. (Ord. 1923 § 9, 4-8-14).

3.40.170 Duplicate tax certificate.

A duplicate business tax certificate may be issued by the Director of Finance to replace a previously issued certificate that has been lost or destroyed upon the owner filing a written request attesting to such fact, and paying a fee as fixed by the resolution of City Council for handling and processing of such request. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.116).

3.40.180 Business tax certificate record.

The Director of Finance shall maintain a “public business tax certificate record,” which shall contain the name of the business, the location of the business, the type of business and the time period for which the certificate is issued. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.117).

3.40.190 Confidential documents.

Except as provided for under Section 6254 of the Public Records Act, the affidavit, statements and any other documents required by this chapter to be filed, shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof, shall not become known except to:

- (a) The persons charged with administration of this chapter;
- (b) City employees for the sole purpose of administering or enforcing any provisions of this article;
- (c) Federal or State officials, or to a grand jury or court of law, upon subpoena. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.118).

3.40.200 Display of certificate.

Every person to whom a certificate is issued, shall keep the same conspicuously posted in or about the place where the business is located or conducted. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.119).

3.40.210 Administrative rules and regulations.

The Director of Finance may make rules and regulations not inconsistent with the provisions of this Code for the purpose of administering the provisions of this chapter. The Director of Finance shall further have the power to compromise any claims as to the amount of any tax due and paid. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.120).

3.40.220 Affidavit to be submitted where business tax based on number of employees – Information required.

Upon making application for the first certificate to be issued under this chapter where the amount of the tax is measured by the number of employees, the applicant shall furnish to the Director of Finance, for guidance in ascertaining the amount of such tax, a signed affidavit under penalty of perjury, upon a form provided by the Director of Finance, setting forth such information as may be necessary to determine the amount of the tax. The amount of the tax is determined by the number of persons engaged in the business at the time of application. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.121).

3.40.230 Renewal generally – Affidavit and information required.

In all cases, the applicant for renewal of a certificate shall submit to the Director of Finance, for guidance in ascertaining the amount of the tax to be paid by the applicant, a written affidavit under penalty of perjury upon a form provided by the Director of Finance, setting forth such information concerning the applicant's business as may be required by the Director of Finance to ascertain the amount of tax to be paid by such applicant pursuant to the provision of this chapter. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.122).

3.40.240 Statements not conclusive.

No statement set forth in any affidavit required by this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable under this chapter. Such affidavit and each of the several items therein contained shall be subject to review and verification by the Director of Finance, or authorized employees of the City. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.123).

3.40.250 Extensions of time for filing sworn declarations.

The Director of Finance shall have the power, for good cause shown, to extend the time for filing any sworn statement required under this chapter and in such case to waive any penalty that would otherwise have accrued. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.124).

3.40.260 Director of Finance duties.

The Director of Finance shall make diligent effort to discover all persons conducting any business in the city for which a certificate is required by the provisions of this chapter. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.125).

3.40.270 Violations.

The issuance of a certificate under this chapter shall not entitle the person(s) to engage in any business which for any reason is in violation of any law or provision of this Code.

(a) Separate Violation. The conducting of business in the city or occupying space in the business community, without first having procured a business tax certificate from the City to do so, or without complying with any and all regulations of such business contained in this chapter shall be a separate violation hereof for each and every day that such business is so carried on.

(b) Violations. Pursuant to SCCC [1.05.070](#), the City, in its prosecutorial discretion, may enforce violation(s) of the provisions of this chapter as a criminal, civil, and/or administrative action. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.126).

3.40.280 City Attorney's duties.

The Director of Finance may at any time request the City Attorney to bring a civil suit in the name of the City for the recovery of any tax from any person who conducts a business without procuring the certificate required by this chapter, or not paying the prescribed tax, and the recovery of such tax and penalties due thereon. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.127).

3.40.290 Enforcement.

The Director of Finance is hereby directed to enforce each and all of the provisions of this chapter, and the Chief of Police shall render such assistance in the enforcement hereof as may from time to

time be required by the Director of Finance. The Director of Finance, in the exercise of the duties imposed hereunder, and acting through deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

The Director of Finance, all duly authorized assistants and any police officers shall have the following powers:

(a) To enter free of charge, and at any reasonable time during business hours, any place of business required to be certified herein, and demand an exhibition of its certificate. Any person to whom a certificate is issued shall exhibit the same on demand.

(b) To issue citations for any violations of this chapter. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.128).

3.40.300 Effect of annexation.

All existing businesses brought under the jurisdiction of the City by annexation procedures shall conform to the provisions of this chapter within thirty (30) days of the effective date of such annexation. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.129).

3.40.310 General schedule for person having fixed place of business within City.

Every person having a fixed place of business within the city and who engages in any business not listed in SCCC [3.40.330](#) shall pay a tax based on the number of employees as defined and set forth in this chapter, according to the following rate schedules:

SCHEDULE NO. 100 –
COMMERCIAL EMPLOYEE(S)

1	\$ 15.00
2 – 5	30.00
6 – 10	70.00
11 – 15	90.00
16 – 20	115.00
21 – 25	175.00
26 – 30	225.00
31 – 40	280.00
41 – 55	330.00

SCHEDULE NO. 100 –
COMMERCIAL EMPLOYEE(S)

56 – 75	380.00
76 – 100	460.00
101+	500.00

SCHEDULE NO. 200 –
PROFESSIONAL EMPLOYEE(S)

1	\$ 15.00
2 – 3	30.00
4 – 6	70.00
7 – 10	90.00
11 – 20	115.00
21 – 25	175.00
26 – 35	225.00
36 – 40	280.00
41 – 45	330.00
46 – 50	380.00
51 – 55	460.00
56+	500.00

SCHEDULE NO. 300 –
MANUFACTURING EMPLOYEE(S)

1 – 3	\$ 15.00
4 – 20	45.00
21 – 30	65.00
31 – 50	100.00
51 – 75	135.00
76 – 100	175.00
101 – 125	225.00
126 – 175	280.00

SCHEDULE NO. 300 –
MANUFACTURING EMPLOYEE(S)

176 – 225	330.00
226 – 300	380.00
301 – 400	460.00
401+	500.00

(Ord. 1721 § 2, 10-27-98. Formerly § 15-1.130).

3.40.320 Application of fees schedule in SCCC 3.40.310 to certain business within City.

Unless such business is otherwise specifically taxed by other provisions of this chapter, every business in the city shall pay a tax according to the following classification and rate schedule:

(a) Commercial. Any person engaged in the business of offering for sale or selling to the public at wholesale or retail any materials, commodities, goods, wares or merchandise shall pay a tax according to Schedule 100; or

(b) Professional and Semiprofessional Services. Any person engaged in the business of offering professional or semiprofessional services, as that term is ordinarily and commonly used and understood, and shall include those professions requiring governmental certification or a professional degree, but not limited to the practice or profession of: accounting, administrative support, advertising, analyst, appraiser, architectural services, auditing, chiropractic, consultant (all fields), dentistry, drafting, education, engineering (all fields), finance, law, medicine, mortician, optometry, physical therapist, property management, real estate (broker and agent), research and development, taxidermist, technical support, veterinary and writers shall pay a tax according to Schedule 200; or

(c) Manufacturing. Any person engaged in the business of making any article, device, good, or item from raw material, to be sold for wholesale shall pay a business tax according to Schedule 300; or

(d) Any person engaged in any other business and businesses herein not defined, including but not limited to those identified as home occupations by Chapter [18.100](#) SCCC, shall pay a tax according to Schedule No. 100. (Ord. 1721 § 2, 10-27-98; Ord. 1923 § 10, 4-8-14. Formerly § 15-1.131).

3.40.330 Business subject to fixed tax.

Any person carrying on or rendering any service as described in this section shall pay a tax in accordance with the following schedule, and shall be exempt from the tax set forth in SCCC [3.40.310](#):

Ambulance service plus \$15.00 per ambulance used in such service	\$ 45.00
Carnival, per day	150.00
Carnival concession, ride, sideshow, per each, per day	15.00
Christmas tree sales (as defined in SCCC 5.15.030)	150.00
Circus, per day	150.00
Circus concession, ride, sideshow, per each, per day	15.00
Detective agency	150.00
Entertainment permit Class I	
First year	263.00
Annual renewal	210.00
Entertainment permit Class II	
First year	90.00
Annual renewal	75.00
Entertainment permit Class III	
First year	413.00
Annual renewal	360.00
Escort service (personal)	150.00
Escort service (funeral)	150.00
Fortuneteller, (as defined in SCCC 5.45.010)	15.00
Intracity bus service and public transportation	150.00
Itinerant merchant (maximum 190 days)	225.00
Parade vendor (per parade)	15.00
Pawnbroker (as defined in SCCC 5.30.020)	150.00

Peddler (as defined in SCCC 5.05.010)	113.00
Promotional show, per day	150.00
Promotional show concession, ride, or sideshow, per each, per day	15.00
Pumpkin sales lots (as defined in SCCC 5.15.030)	150.00
Seasonal item sales lot (as defined in SCCC 5.15.030)	150.00
Secondhand dealer (as defined in SCCC 5.30.020)	150.00
Solicitor (as defined in SCCC 5.05.010)	113.00
State-licensed contractors	45.00
Taxicab, per vehicle	15.00
Taxicab stand	90.00

(Ord. 1721 § 2, 10-27-98. Formerly § 15-1.132).

3.40.340 Business without a fixed place of business in city.

Unless such business is otherwise specifically taxed by other provisions of this chapter, every person who does not have a fixed place of business in the city, but who is engaged in a business within the city, shall pay a tax of forty-five dollars (\$45.00) a year, payable in advance. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.133).

3.40.350 Rental units.

(a) Every person engaged in the business of renting rooms, apartments, single-family houses, or other accommodations for dwelling, sleeping or lodging purposes, in the city shall pay the following tax:

(1) Three dollars (\$3.00) per annum for each rental unit;

(2) Provided, however, that no tax shall be payable under this section, unless the person engaged in such business operates three or more rental units in the city.

(b) As used in this section, unit means a room or suite of two or more rooms (including, but not limited to single-family houses) designed for or used as separate accommodations for dwelling, sleeping or

lodging purposes by a person living alone or two or more persons living together. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.134).

3.40.360 Rental unit – Surcharge.

(a) It is contemplated that the City Council will from time to time adjust the amount of the surcharge fee by resolution to cover the changing cost of the mediation services involved with these businesses and to insure that the surcharge fee amount prorated to the rental units shall not exceed the cost of the program services made available.

(b) Any and all fees collected pursuant to this section are dedicated to and shall be used exclusively to pay the costs of the above services rendered in response to needs generated by the subject type of rental businesses.

(c) Those businesses covered under Chapter [3.25](#) SCCC, and paying the business tax under SCCC [3.40.310](#), Schedule No. 100, are exempt from paying the rental unit surcharge. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.135).

3.40.370 Vehicles used for commercial purposes.

Every person not having a fixed place of business within the city, who engages in any business in the city by means of a regular and established route or delivery system shall pay a tax of twenty-three (\$23.00) per vehicle, per year. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.136).

3.40.380 Public markets.

(a) Each public market operator shall pay a tax and obtain a tax certificate from the Director of Finance. Without any reduction for any payment for a tax due or collected from any public market vendor, every public market operator also shall obtain a master certificate in lieu of an individual revenue certificate for each public market vendor who operates a business concession on the premises of a public market. Each public market operator shall collect a tax from each of its public market vendors and each public market vendor shall pay such tax to the respective public market operator in the amount of seventy-five cents (\$0.75) per space for each space rented to each public market vendor for each day the public market is open to members of the public for business. This tax, measured by such space rentals, shall be paid to the Director of Finance by the public market operator on a monthly basis, notwithstanding any other provisions of this chapter, and in addition to any other tax that each public market vendor may have paid at any other location in the city.

(b) Except as provided in subsection (a) of this section, every person who engages in any business, whether upon a cost, rental, commission basis, or other form of compensation as a concession, or upon rented floor space in or upon the premises of any person covered under any provision of this

section, shall be required to pay a tax and obtain a separate and independent tax certificate pursuant to the appropriate provisions of this chapter and shall be subject to all provisions of this chapter.

(c) The tax payable by any public market vendor to any public market operator shall be paid by the public market operator to the City by the fifteenth (15th) day of the calendar month following the month during which the tax occurred, notwithstanding any other provisions of this section. Any such tax not paid as set forth above shall be delinquent and a penalty of one hundred percent (100%) will be added to the tax and charged to the public market operator responsible for payment.

(d) If the public market operator is an entity or organization that is otherwise exempted from the payment of the tax under this chapter, such public market operator shall be required, notwithstanding any other provisions of this chapter, to collect the tax from each public market vendor to whom the public market operator rents space and is obligated to pay the tax as set forth above. Each public market operator may collect tax from the public market vendors but failure to do so shall not relieve the public market operator of any obligations for payment.

(e) At the City's request, each public market operator shall provide written lists of all public market vendors who operated a business concession and the dates, the number of spaces and the number of days each public market vendor rented space at its public market.

(f) No public market vendor tax shall be paid by or collected from any public market vendor for participating in any display, fair, or other event held on or in City-leased or City-owned facilities. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.137).

3.40.390 Vending operator – Persons exempt.

Any person engaged in the business of a vending operator shall pay a tax of seventy-nine dollars (\$79.00) per year.

The provisions of this section shall not apply to any newspaper publishing business which makes use of such machines in the distribution of newspapers. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.138).

3.40.400 Automatic amusement games, devices or coin-operated machines.

Any person who owns, keeps or maintains, or allows to be kept or maintained, in any building or place in the city owned, leased, managed or controlled by such person, any automatic amusement game for the purpose of permitting the same to be played or operated shall pay the following tax:

- (a) Automatic amusement games including, but not limited to pinball machines, video display games, electronic amusement devices, and peep show devices, per machine, per year \$60.00
- (b) Juke boxes, per machine, per year \$30.00
- (c) Billiard and pool tables \$ 8.00
Maximum \$80.00
- (d) Bowling or tenpin lanes (non-coin-operated), per lane, per year \$ 8.00
Maximum \$80.00

Nothing in this chapter shall be construed to permit the operation, keeping, maintaining or use of any gambling device or any apparatus or device, the use, possession, operation or control of which is prohibited by the laws of the State. (Ord. 1721 § 2, 10-27-98; Ord. 1923 § 11, 4-8-14. Formerly § 15-1.139).

3.40.410 Shooting galleries, golf ranges and similar type businesses.

Every person engaged in the business of operating a shooting gallery, trampoline, skating rink, miniature golf range, pitch and putt course, golf driving range, baseball batting range, or any similar place of business shall pay an annual tax according to rate Schedule 200 of SCCC [3.40.310](#). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.140).

3.40.420 Theaters.

Every person engaged in the business of operating a live or motion picture theater shall pay a tax based on the following rate schedule:

(a) Theaters having zero to five hundred (500) seats shall pay, per year \$23.00

(b) Theaters having five hundred one (501) to one thousand (1,000) seats shall pay, per year	\$30.00
(c) Theaters having one thousand one (1,001) or more seats shall pay, per year	\$45.00

(Ord. 1721 § 2, 10-27-98. Formerly § 15-1.141).

3.40.430 Entertainment definitions.

The words and terms used for issuance of an entertainment tax certificate shall have the following meanings unless the context clearly indicates otherwise:

(a) "Class I entertainment" means any act, play, review, pantomime, scene, song, dance act, song and dance act, poetry recitation, fashion or style show conducted or participated in by any professional entertainer in or upon any premises to which the public is admitted.

(b) "Class II entertainment" means any act, play, review, pantomime, scene, song, dance act, song and dance act, poetry recitation, fashion or style show conducted or participated in by a nonprofessional person or persons in or upon any premises to which the public is admitted.

(c) "Class III entertainment" means the act of any person while visible to any customer, in any public place, unclothed or in such attire, costume or clothing as to expose to any person any portion of the body having a different pigmentation than the remainder of the body or any part of the pubic region or the anal region or crease of the buttocks of any such person.

(d) "Entertainment" does not mean or include:

(1) Mechanical music alone; or

(2) Dancing participated in only by customers; however, this subsection does not exempt exhibition dancing by a person or persons receiving compensation for such exhibition dancing.

(e) "Professional entertainer" means a person or persons who engages for livelihood or gain in the presentation of entertainment. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.142).

3.40.440 Entertainment tax certificate.

(a) No person shall conduct, permit or assist in conducting or permitting any entertainment as defined in [SCCC 3.40.430\(a\)](#), to be shown, staged, exhibited or produced in any premises to which the public

is admitted as, or as part of, a business unless and until a Class I entertainment tax certificate has been obtained from the Director of Finance.

(b) No person shall conduct, permit or assist in conducting or permitting any entertainment as defined in SCCC [3.40.430\(b\)](#), to be shown, staged, exhibited or produced in or upon any premises to which the public is admitted as, or as a part of, a business unless and until a Class II entertainment tax certificate has been obtained from the Director of Finance.

(c) No person shall conduct, permit or assist in conducting or permitting any entertainment as defined in SCCC [3.40.430\(c\)](#), to be shown, staged, exhibited or produced in or upon any premises to which the public is admitted as, or as a part of, a business unless and until a Class III entertainment tax certificate has been obtained from the Director of Finance. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.143).

3.40.450 Class I entertainment tax.

(a) The first year Class I entertainment tax shall be two hundred and sixty-three dollars (\$263.00).

(b) The annual renewal tax for Class I entertainment shall be two hundred and ten dollars (\$210.00).

(c) Where the applicant has a valid business tax certificate pursuant to SCCC [3.40.310](#) for the same location covering the same period of time, the amount of business tax paid shall be deducted from the first year Class I entertainment tax of two hundred and sixty-three dollars (\$263.00) due. If the Class I entertainment tax is not paid within thirty (30) days of notification, the amount due shall be subject to a penalty of one hundred percent (100%). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.144).

3.40.460 Class II entertainment tax.

(a) The first year Class II entertainment tax shall be ninety dollars (\$90.00).

(b) The annual renewal tax for Class II entertainment shall be seventy-five dollars (\$75.00).

(c) Where the applicant has a valid business tax certificate pursuant to SCCC [3.40.310](#) for the same location covering the same period of time, the amount of business tax paid shall be deducted from the first year Class II entertainment of ninety dollars (\$90.00) due. If the Class II entertainment tax is not paid within thirty (30) days of notification, the amount due shall be subject to a penalty of one hundred percent (100%). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.145).

3.40.470 Class III entertainment tax.

(a) The first year Class III entertainment tax shall be four hundred and thirteen dollars (\$413.00).

(b) The annual renewal tax for Class III entertainment shall be three hundred and sixty dollars (\$360.00). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.146).

3.40.480 Procedure.

No Class III entertainment certificate shall be obtained from or issued by the Director of Finance unless and until approval from the City Council has been issued in accordance with Chapter [5.60](#) SCCC. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.147).

3.40.490 Transferability.

An entertainment certificate issued pursuant to this chapter shall not be transferable from person to person or location to location. (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.148).

3.40.500 Handbill distribution.

The business tax imposed for handbill distribution by a business without a fixed location in the city is set forth in SCCC [3.40.340](#). Where handbill distribution is by the owner of the business advertised with a fixed location in the city, the business tax is set forth in SCCC [3.40.310](#) or [3.40.330](#). If the business holds an active business tax certificate and requests to distribute handbills, a change in the type of business shall be made according to SCCC [3.40.150](#). (Ord. 1721 § 2, 10-27-98. Formerly § 15-1.149).

The Santa Clara City Code is current through Ordinance 2056, and legislation passed through November 15, 2022.

Disclaimer: The City Clerk's Office has the official version of the Santa Clara City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Chapter 5.05 SOLICITORS AND PEDDLERS

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Article I. General Provisions

5.05.005 Purpose.

The purpose of this chapter is to protect against criminal activity, including fraud and burglary, minimize the unwelcome disturbance of citizens and the disruption of privacy, avoid traffic congestion and accidents, and to otherwise preserve the public health, safety and welfare by regulating and controlling door-to-door and place-to-place solicitors and peddlers. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06).

5.05.010 Definitions.

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) "Approved location" means a site designated by the Chief of Police as an approved site from which a peddler, operating from a mobile unit, may sell his or her products.

(b) "Business" means and includes any type of product, good, service, performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

(c) "Charitable" means and includes the words patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural or fraternal, either actual or purported.

(d) "Chief of Police" means the elected Chief of the Santa Clara Police Department, or his/her duly authorized agents and representatives.

(e) "Contributions" means and includes the words alms, money, subscription, property or any donations under the guise of a loan or money or property.

(f) "Employee" means any person who works for or on behalf of the business operator.

(g) "Employment" shall mean and include services, industry or labor performed by a person for wages or other compensation or under any contract of hire, written or oral, express or implied.

(h) "Mobile unit" means any vehicle, truck, trailer, push cart, wagon, bicycle, dray, conveyance or structure on wheels, not firmly fixed to a permanent foundation, which is not required to have a license to operate issued by the California Department of Motor Vehicles.

(i) "Motor vehicle" means any automobile, truck, trailer or other conveyance requiring a license issued by the California Department of Motor Vehicles.

(j) "Peddler" means any person who sells and makes immediate delivery or offers for sale and immediate delivery any goods, wares, merchandise, or thing in the possession of the seller, at any place in the City other than at a fixed place of business.

(k) "Peddling" means traveling by foot, motor vehicle, mobile unit or any other type of vehicle, from place to place, and selling or vending any goods, wares, merchandise, products, or any other thing on any private property, or on any street, sidewalk, right-of-way, park or other public place. Peddling also means selling or vending any goods, wares, merchandise, products or any other thing from an approved location on any private property or on any street, sidewalk, right-of-way, park or other place.

(l) "Peddling activities" means the business of peddling; or the business of supplying, providing, or selling goods, wares, merchandise, products, or any other thing on consignment to be peddled by another person; or the business of supplying, providing, or renting mobile units or motor vehicles for use by another person in peddling.

(m) "Permittee" means the holder of a business permit.

(n) "Person" means a natural person or any firm, corporation, association, club, society or other organization.

(o) "Solicit" means and includes any request, offer, enticement, or action which announces the availability of a person for employment or availability to provide services for compensation, the sale of goods, or a request for money or other property; or any request, offer, enticement or action which seeks to purchase or secure employment or goods, or to solicit a contribution of money or other property. As defined herein, a solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place.

(p) "Solicitor" means any person who goes from place to place in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offers property of any nature for future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes from place to place to request contribution of funds or anything of value, or sell goods or services for political, charitable, religious, or other noncommercial purposes.

(q) "Solicitation" includes all activities ordinarily performed by a solicitor. A solicitation is deemed complete when made, whether or not an employment relationship is created, a transaction completed, or an exchange of money or other property takes place. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-1).

5.05.020 Permit requirements and exemptions.

It shall be unlawful for any person to engage in solicitation or peddling activities within the City without first obtaining a permit issued by the Chief of Police; provided, however, that the following are exempt from the provisions of this section:

- (a) Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made.
- (b) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation.
- (c) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable person.
- (d) Employees for wholesale houses or firms who sell to retail dealers for resale or sell to manufacturers for manufacturing purposes or to bidders for public works or supplies.
- (e) Newspaper employees delivering newspapers by subscription.
- (f) Any City-run or City-sponsored or sanctioned program. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-2).

5.05.030 Responsibility of supplier – Goods to be peddled.

Any person who supplies independent contractors or employees with goods, merchandise or wares to be sold by means of soliciting or peddling within the city shall make known in writing, to said person, the requirements of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-3).

5.05.040 Permit application.

Every person or business intending to engage in the business of soliciting or peddling shall file an application for a permit with the Chief of Police. The application shall be signed under penalty of perjury and contain the following information:

- (a) Name, physical description, residential address and telephone number of the applicant.
- (b) The date of birth and driver's license or other identification number of the applicant.
- (c) The type of goods, merchandise, wares or services offered for sale.
- (d) The method of solicitation, order taking or peddling.

- (e) The name, address and telephone number of the company, sponsor or individual for which the orders are to be secured.
- (f) The method of delivering the order.
- (g) The hours of the peddling or solicitation.
- (h) A statement as to whether or not the applicant has been convicted of any criminal offense, other than minor traffic violations. For any such offense, the nature of the offense, the date and place of conviction and the penalty imposed must be provided. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-4).

5.05.050 Fingerprints required.

In addition to the information required in SCCC [5.05.040](#), at the time of filing an applicant shall be fingerprinted with a record of such filed in the Police Department bureau of identification. The Chief of Police shall cause an investigation to be made of the statements in the application and of the background of the applicant. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-5).

5.05.060 Background investigation fees.

At the time the application is filed with the Department, the applicant shall pay a fee to cover the cost to the City of investigating the facts stated therein and processing and providing the identification card required in SCCC [5.05.080](#). The fee shall be established by resolution of the City Council and shall apply to each individual solicitor or peddler. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-6).

5.05.070 Application review and permit issuance.

- (a) Upon receipt of an application, the Chief of Police, or designee, shall review the application as deemed necessary to ensure the protection of the public health, safety and general welfare.
- (b) Within a reasonable time after receipt of the application, the Chief of Police shall endorse his/her approval on the application if the Chief determines that there is no ground for denial of the permit, as set forth in SCCC [5.05.090](#). Applicant shall be directed to pay a business tax as required in SCCC [5.05.130](#). (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § [5.05.080](#) (prior code § 7-8)).

5.05.080 Identification and photograph required.

Upon approval of permit application by the Chief of Police, the solicitor or peddler will be issued an identification card with photograph. Such identification issued shall be kept in the applicant's immediate possession at all times when engaged in the business of soliciting or peddling. Such individual shall present the identification card for examination upon demand by a City official enforcing

the provisions of this Code. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § [5.05.070](#) (prior code § 7-7)).

5.05.090 Denial of permit.

(a) Upon the Chief of Police's review of the application, the Chief of Police may refuse to issue a permit to the applicant under this chapter for any of the following reasons:

- (1) The investigation reveals that the applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application;
- (2) The applicant has been convicted of a misdemeanor/felony involving a sex offense, trafficking in controlled substances, kidnapping, or any violent acts against persons and/or children;
- (3) The applicant has been convicted of a misdemeanor/felony involving an offense against private property interests, such conviction being entered within the five years preceding the date of application. Such property offenses include, but are not limited to, larceny, false pretense, fraud, grand theft and embezzlement;
- (4) The applicant has been denied a permit under this chapter within the immediate past year, unless the applicant can and does show to the satisfaction of the Chief of Police that the reasons for such earlier denial no longer exist;
- (5) The applicant has failed to pay the application fee.

(b) The Chief of Police's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his/her application is disapproved and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form, or at the applicant's last known address. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-9).

5.05.100 Appeal from denial of permit.

The decision of the Chief of Police to deny, revoke or suspend a permit may be appealed under the procedures set forth in Chapter [2.115](#) SCCC. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06; Ord. 2007 § 4, 11-19-19. Formerly § 7-10).

5.05.110 Permit expiration.

The expiration of all permits issued under the provisions of this article shall coincide with the business tax certificate, unless an earlier expiration date is noted on the permit. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-11).

5.05.120 Transfer prohibited.

It shall be unlawful for any person other than the permittee to use or wear any permit or badge issued under the provisions of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-12).

5.05.130 Business tax certificate required.

Each and every person or persons engaged in the business of soliciting or peddling shall be subject to business tax as stated in SCCC [3.40.330](#). The business tax certificate shall be issued if the Director of Finance finds:

(a) Approval to solicit or peddle has been granted by the Chief of Police; and

(b) The required tax therefor has been paid to the Director of Finance. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-13).

5.05.140 Persons claiming tax exemption.

Any solicitor or peddler who claims to be entitled to an exemption from the payment of any tax provided for under SCCC [3.40.120](#) shall inform the Chief of Police and provide him with information as to the individuals who will solicit and when the solicitation will be performed. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § 7-14).

5.05.150 Application to persons requiring a certificate under other provisions of this chapter.

Any person maintaining a fixed place of business in the City; provided, that a tax is specifically required under Chapter [3.40](#) SCCC, shall not be required to pay any additional tax under the provisions of this chapter but shall be required to obtain the necessary peddler's or solicitor's permit and photo identification pursuant to SCCC [5.05.080](#) for each employee so engaged according to the provisions of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § [5.05.160](#) (prior code § 7-16)).

5.05.160 Application to certain persons not maintaining a fixed location within the city.

Every person not previously mentioned in this chapter and not maintaining a fixed place of business in the City but who regularly renders personal or other services or products either by appointment, calls, referral or otherwise from place to place or in the City shall be classified as a peddler and subject to the peddler provisions of this chapter. (Ord. 1718 § 2, 10-27-98; Ord. 1811 § 1, 10-10-06. Formerly § [5.05.170](#) (prior code § 7-17)).

5.05.170 Conditions of permit – Operating regulations.

Each permit issued by the Chief of Police pursuant to this chapter shall be subject to the terms and conditions set forth in this chapter, as well as any other conditions specifically set forth in the permit.

The provisions of this chapter shall constitute operating regulations. It shall be unlawful for any person to engage in solicitation or peddling in violation of these provisions.

(a) All motor and mobile units operated by the permittee shall be inspected and certified by the Santa Clara County Health Department annually. (Per Health and Safety Code Section [113700](#).)

(b) All motor and mobile units operated by the permittee must have a current Health Department certificate, a current Department of Motor Vehicle registration sticker (if needed) and current vehicle insurance.

(c) All solicitation and peddling upon any private place, or any street, sidewalk, right-of-way, park or other public place in the City shall not occur between one-half hour after sunset and 10:00 A.M. of the following day, except this provision shall not apply to the sale of food items by licensed catering vehicles to employees of industrial establishments at or adjacent to such establishments, or to workers or employees at any construction job site.

(d) Each person who is engaged in solicitation or peddling shall, at all times while so engaged, wear in plain sight on his or her person an identification (ID) card, provided by the Chief of Police, containing such information, including a suitable photograph, as the Chief of Police may determine appropriate.

(e) Every peddler, upon the request of any public safety officer or official of the City, shall sign the peddler's name for comparison with the signature upon the license or card or the signature upon the license application.

(f) Every peddler who solicits orders for future delivery shall, if requested by the customer, provide a receipt plainly stating the quantity of each article or commodity ordered, the price to be paid therefor, the total amount ordered and the amount to be paid on or after delivery.

(g) Every peddler shall, if requested by the customer, provide his/her name, business address and telephone number and the name, business address and telephone number of the person, organization, or entity on whose behalf solicitation is being made. (Ord. 1811 § 1, 10-10-06).

5.05.180 Noise restrictions.

(a) No solicitor or peddler shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device for the production of sound between one-half hour after sunset and 10:00 A.M. of the following day.

(b) No solicitor or peddler shall use, play or cause to be used or played an amplifier, loudspeaker, or any other instrument or device for the production of sound in such a manner as to create a

disturbance of the peace.

(c) No motor vehicle-based solicitor or peddler or mobile peddler shall use, play or employ any amplifier, loudspeaker, or any other instrument or device for the production of sound when the motor vehicle or mobile unit from which the solicitor or peddler is operating is stationary upon any private place, or any street, sidewalk, right-of-way, park or other public place. (Ord. 1811 § 1, 10-10-06).

5.05.190 Observance of “No Solicitors” or “No Peddlers” signs.

It is unlawful for any solicitor or peddler, whether licensed or unlicensed, to perform or attempt to perform the acts described in this chapter by ringing the doorbell or knocking at the door or otherwise calling attention to the person’s presence of or at any residence whereon a sign bearing the words “No Solicitors,” “No Peddlers” or words of similar import is painted or affixed so as to be exposed to public view, and no solicitor or peddler shall perform or attempt to perform any of the acts described in any building, structure or place of business whereon or wherein a sign bearing the words “No Solicitors,” “No Peddlers” or words of similar import is painted or affixed so as to be exposed to public view. (Ord. 1811 § 1, 10-10-06).

Article II. Solicitation of Employment, Business or Contribution of Money or Other Property from Vehicles and Motor Vehicle-Based and Mobile Unit Peddlers

5.05.210 Prohibition of solicitation in public right-of-way or public parking lots.

(a) It is unlawful for any person, while standing in any portion of the public right-of-way, including but not limited to public streets, highways, sidewalks and driveways, to solicit, or attempt to solicit, employment, business or contributions of money or other property from any person traveling in a vehicle along a public right-of-way, including but not limited to public streets, highways or driveways.

(b) It is unlawful for any person, while the occupant of any vehicle, to solicit, or attempt to solicit, employment, business or contributions of money or other property from a person who is within the public right-of-way, including but not limited to a public street, highway, sidewalk or driveway.

(c) It is unlawful for any person to solicit, or attempt to solicit, employment, business or contributions of money or other property from any occupant of a vehicle, or from any person getting into or out of a vehicle within any parking lot or structure open to the public, where such parking lot is posted with a sign prohibiting such activity. (Ord. 1686 § 2, 4-9-96; Ord. 1811 § 1, 10-10-06. Formerly § [5.05.220](#)).

5.05.220 Prohibition of solicitation in unauthorized locations within commercial parking areas.

(a) It is unlawful for any person to solicit or attempt to solicit employment, business or contributions of money or other property from a location within a commercial parking area other than an area within or served by such parking area which is authorized by the property owner (or the property owner’s

authorized representative) for such solicitations. This section shall not apply to a solicitation to perform employment or business for the owner or lawful tenants of the subject premises.

(b) For purposes of this section, “commercial parking area” shall mean privately owned property which is designed or used primarily for the parking of vehicles and which adjoins one or more commercial establishments.

(c) This section shall only apply to commercial parking areas where all of the following occur:

(1) The owner (or person in lawful possession) of the commercial parking area establishes a written policy which provides area(s) for the lawful solicitation of employment, business, or contributions of money or other property in locations which are accessible to the public and do not interfere with the normal business operations of the commercial premises;

(2) A copy of said policy is submitted to the City Manager (or his/her designee) to be maintained in City files, including a copy to be maintained at the City Police Department; and

(3) The owner (or person in lawful possession) of the commercial parking area has caused a notice to be posted in a conspicuous place at each entrance to such commercial parking area. Said notice shall not be less than eighteen (18) by twenty-four (24) inches in size with lettering not less than one inch in height, and the notice shall not exceed, in total area, six square feet. The notice shall read substantially as follows:

It is a misdemeanor to engage in the solicitation of employment, business or contributions of money or other property in areas of this commercial parking lot which are not approved for such activity by the property owner.

(Ord. 1686 § 2, 4-9-96; Ord. 1811 § 1, 10-10-06. Formerly § [5.05.230](#)).

5.05.230 Parking restrictions – Motor vehicle-based and mobile unit peddlers.

(a) It is unlawful for any motor vehicle-based or mobile unit peddler to:

(1) Remain standing or stopped, for peddling purposes, at any place on any public street, sidewalk, right-of-way, public park or other public place, for a total period of time exceeding ten minutes within any two-hour period; or

(2) Make any stop, for the purpose of making any sale upon any public street, sidewalk, right-of-way, public park, or other public place, within five hundred (500) feet, measured along the traveled way of any public street or streets, of any school property.

(b) It is unlawful for any motor vehicle-based or mobile unit peddler to peddle from any motor vehicle or mobile unit upon any public street except from or at the side of such motor vehicle, which is nearest to the curb of such street. (Ord. 1811 § 1, 10-10-06).

5.05.240 Congestion restriction for motor vehicle-based and mobile unit peddlers.

It is unlawful for any motor vehicle-based or mobile unit peddler to stop to peddle from a motor vehicle or mobile unit within two hundred (200) feet of another motor vehicle-based or mobile unit peddler that has already stopped to peddle. (Ord. 1811 § 1, 10-10-06).

5.05.250 Inspections of motor vehicle-based and mobile units.

(a) All motor vehicle-based or mobile units, except bicycles, operated by the business operator shall be inspected and certified annually by the Santa Clara County Health Department.

(b) The business operator shall present each motor vehicle-based or mobile unit for inspection and certification annually by the Chief of Police.

(c) The exterior of the motor vehicle-based and mobile units shall be clean and in good repair, and not have any peeling, dents, rust, scratches or missing components which are discernible at a distance of five feet or more from the motor vehicle. (Ord. 1811 § 1, 10-10-06).

5.05.260 Approved location permit terms and conditions.

(a) It is unlawful for a person to peddle from, at, or in conjunction with, a mobile unit or temporary structure except at the approved location. An approved location permit to peddle may be issued by the Chief of Police, subject to the following terms and conditions:

- (1) The person requesting an approved location permit at all times holds a current, valid business permit.
- (2) Permits shall be issued only for a specific approved location which is stated on the permit.
- (3) Permits shall be issued only for the street side of the sidewalk portion of a public street.
- (4) Permits shall be issued only for sidewalks with an overall minimum of eight feet where there is at least three feet of unobstructed sidewalk area for pedestrian traffic.
- (5) The mobile unit or temporary structure shall not exceed four feet high, five feet wide, and six feet long. Any mobile unit or temporary structure shall be parked in such a way as to use as little of the sidewalk as possible.

(6) No person shall use or have any movable or permanent stand, table, chair, ice chest or other ice container, equipment or device at any approved location other than the permitted mobile unit or temporary structure, one stool for his or her own use, and one trash/garbage container of no more than thirty-three (33) gallon capacity.

(7) No person shall block the movement of pedestrians along the sidewalk with a permitted mobile unit or temporary structure, stool, or trash/garbage container.

(8) Each approved location peddler, at his or her sole cost and expense, and during the entire term of his or her permit or any renewal thereof, shall obtain and maintain in full force and effect a commercial general liability insurance policy or other such policy as the office of the risk manager shall require with minimum policy limits to be set by the risk manager; issued by an admitted insurer or insurers as defined by the California Insurance Code; and providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the business permit, without thirty (30) days' written notice to the City prior to the effective date of such cancellation or reduction in coverage.

(b) The Chief of Police shall make approved location permits subject to such other terms and conditions, as the Chief deems necessary, to promote vehicular traffic safety and convenience and pedestrian safety and convenience.

(c) Permits issued under this section shall not be sold, assigned or transferred, and shall cover only the permittee to whom the permit is issued. A permittee may not move from the approved location without permission of the permits unit.

(d) If more than one application is received at the same time for the same location not currently assigned, assignment of the location shall be determined by lot. The drawing shall be made by someone other than the Chief and witnessed by another department employee. (Ord. 1811 § 1, 10-10-06).

5.05.270 Limitations on approved locations.

Approved location permits shall not be issued when any of the following conditions exist:

(a) The location is immediately adjacent to residentially zoned property.

(b) The location is within twenty (20) feet of any no-parking zone, red zone, fire hydrant, bus zone (marked or unmarked), passenger loading zone, loading zone, handicapped parking zone or driveway.

(c) The location is within twenty (20) feet of an entrance to any building.

- (d) The location is within twenty (20) feet of any merchandise display window.
- (e) The location is within twenty (20) feet of any marked or unmarked crosswalk.
- (f) The location impedes a free running right turn lane on an inside corner island, traffic lane, bike lane or any area where a vehicle cannot stop or park legally.
- (g) The location is wholly or partly within the right-of-way of a freeway or expressway, including any on-ramp, off-ramp, or roadway shoulder that lies within the right-of-way of a freeway or expressway.
- (h) The location is considered hazardous due to unusual volume, accident history or restricted visibility, or similar reasons. (Ord. 1811 § 1, 10-10-06).

5.05.280 Solicitation and peddling in parks prohibited.

It is unlawful for any person in any public park, including any adjacent parking area, to:

- (a) Expose, offer for sale or peddle any article or thing, nor station or place any stand, cart, or vehicle for the transportation, sale or display of any article or thing, or offer or provide any service for fee or compensation, or to solicit the future provision of any service for fee or compensation except any approved concessionaire acting by and under the authority of the director of parks and recreation;
- (b) Announce, advertise or call public attention in any way to any article or service for sale or hire, including paste, glue, tack or otherwise post any sign, placard, advertisement or inscription;
- (c) Solicit or attempt to solicit employment, business or contributions of money or other property from any other person in the park or within an adjacent public right-of-way. (Ord. 1811 § 1, 10-10-06).

Article III. Operating Regulations and Permit Conditions for Ice Cream Trucks

5.05.300 Definitions.

- (a) "Ice cream truck" means any motor vehicle requiring a license from the California Department of Motor Vehicles, which is used to peddle, sell, or vend at retail prepackaged frozen dairy or water-based food products; or soft-serve or hand-dipped frozen dairy or water-based products; or prepackaged snack foods, bottled water and nonalcoholic beverages.
- (b) "Ice cream truck business" means the business of peddling, selling or vending at retail, from a truck that travels from place to place on the streets within the city, prepackaged frozen dairy or water-based food products; or soft-serve or hand-dipped frozen dairy or water-based products; or prepackaged snack foods, bottled water and nonalcoholic beverages. (Ord. 1811 § 1, 10-10-06).

5.05.310 Permit required.

(a) It is unlawful for a person to maintain, manage, operate, conduct, control or own an ice cream truck business operating within the City unless the business is maintained and operated in strict compliance with a valid business permit.

(b) It is unlawful for a person, other than the business operator, to drive or ride on an ice cream truck that is in operation without having first obtained an ice cream business employee permit from the Chief of Police. A business permittee is deemed to have an employee permit for the purposes of driving or riding in the permittee's ice cream trucks. (Ord. 1811 § 1, 10-10-06).

5.05.320 Conditions of permit.

Each ice cream truck business permit issued by the Chief of Police shall be subject to the terms and conditions set forth in this chapter, as well as any other conditions specifically set forth in the permit. (Ord. 1811 § 1, 10-10-06).

5.05.330 Operating regulations.

It is unlawful for any person to violate the operating regulations set forth in this section in addition to the regulations set forth elsewhere in this chapter.

(a) Only prepackaged food items, soft-serve or hand-dipped frozen dairy products, bottled water, or nonalcoholic beverages may be offered for sale or sold.

(b) Sales from an ice cream truck shall be limited to the hours of 10:00 A.M. to one half-hour after sunset.

(c) Sales from ice cream trucks shall be limited to streets that have thirty (30) mile per hour speed limits or less.

(d) An ice cream truck shall not park for a period exceeding ten minutes at any one place.

(e) No sales shall be made while an ice cream truck is parked within seventy-five (75) feet of any intersection with any public street or streets, as measured along the traveled way.

(f) No person shall stop to vend from an ice cream truck within two hundred (200) feet of another ice cream truck that has already stopped to vend.

(g) The standard warning flashers shall be in operation immediately upon the truck stopping to vend and cease operation as the truck begins to move after vending. (Ord. 1811 § 1, 10-10-06).

5.05.340 Noise restrictions.

(a) No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck when the ice cream truck is stationary, after 7:00 P.M. or one half-hour after sunset, whichever occurs first, or in such a manner as to create a disturbance of the peace.

(b) The Chief of Police may set reasonable restrictions on the type and use of any amplifier, loudspeaker, or any other instrument or device for the production of sound employed on an ice cream truck in order to prevent a disturbance of the peace. (Ord. 1811 § 1, 10-10-06).

5.05.350 Restriction on riders.

No one other than one driver and one additional person shall be allowed to ride in or on an ice cream truck that is in operation. The driver and the additional person may be the business operator or an employee of the business operator. In no event shall more than two persons ride in or on the truck while the truck is in operation. (Ord. 1811 § 1, 10-10-06).

5.05.360 Vehicle inspections – Certification.

(a) It is unlawful for a business operator to operate an ice cream truck that does not have a current, valid Health Department certificate, a current Department of Motor Vehicles registration sticker and current vehicle insurance. All ice cream trucks operated by the business operator shall be inspected and certified by the Santa Clara County Health Department annually. (Per Health and Safety Code Section [113700](#).)

(b) The business operator shall present each ice cream truck for inspection and certification by the Chief of Police or designee annually. For trucks which pass inspection, the Chief of Police or designee shall affix a suitable inspection sticker on each certified truck, identifying the truck as having successfully passed vehicle inspection.

(c) The business operator shall maintain each ice cream truck being operated in such condition that:

- (1) All doors, windows, the hood and the trunk shall open and close securely;
- (2) The inside of the ice cream truck shall be clean and free of litter and trash;
- (3) There is a trash receptacle that shall be made accessible to the public when sales occur in which patrons can place package wrappers and trash;
- (4) The exterior of the ice cream truck shall be clean and in good repair, and not have any peeling, dents, rust, scratches or missing components, which are discernible at a distance of five

feet or more from the truck;

(5) Advertising decals and price lists shall be placed only on the vending side of ice cream trucks.

(d) The business operator shall have and maintain in clean operating condition on each ice cream truck the following safety equipment:

(1) Signs painted or mounted on the front and rear of each truck using black four-inch-tall letters on a yellow background with a black one-inch border around each sign. The sign on the front and rear of each vehicle shall read "CHILDREN CROSSING" and be eight inches high by forty-eight (48) inches wide. An additional sign or signs shall be painted or mounted on the rear of each truck above the first sign and shall read "Warning," using the same size letter and paint requirements.

(2) Standard warning flashers.

(3) Any other safety equipment required by the California Vehicle Code. (Ord. 1811 § 1, 10-10-06).

The Santa Clara City Code is current through Ordinance 2056, and legislation passed through November 15, 2022.

Disclaimer: The City Clerk's Office has the official version of the Santa Clara City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://santaclaraca.gov/>

City Telephone: (408) 615-2220

[Code Publishing Company](#)

Chapter 8.10

FOOD AND FOOD ESTABLISHMENTS

Sections:

8.10.010 Definitions.

8.10.020 Permit – Required – Exceptions.

8.10.030 Permit – Application – Examination of premises – Issuance and transferability renewal.

8.10.040 Permit – Fee.

8.10.050 Permit – Denial for failure to meet certain specifications.

8.10.060 Permit – Suspension or revocation for refusal to comply with State or local regulations.

8.10.070 Operation of business after suspension or revocation, etc., of permit prohibited.

8.10.080 Notification of City Health Officer upon sale or discontinuance of business.

8.10.090 Sanitary rules and regulations to be made by City Health Officer.

8.10.100 Presence of certain persons on business premises prima facie evidence of intent of business owner to sell food.

8.10.110 Duty of Health Officer to seize adulterated, etc., food.

8.10.120 Inspection required prior to sale of meat.

8.10.130 Sale of certain food products prohibited unless manufactured or prepared in accordance with State law.

Stat. Ref.: Sanitation of restaurants, see H. & S.C.A. §§ 28540 – 28584; sanitation requirements in food processing establishments, see H. & S.C.A. §§ 28280 – 28299; fruit containers, see H. & S.C.A §§ 28310 – 28322; bakeries, see H. & S.C.A §§ 28190 – 28216 (California Bakery Sanitation Law).

8.10.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) "Food" shall include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof.

(b) "Food establishment" shall mean and include any public or private market, shop, store, delicatessen, candy factory, storehouse, warehouse, cold storage plant or other plant or other place not a public eating or drinking establishment in or about which any food, foodstuffs or provisions are kept, held, sold, prepared or compounded or offered for sale for human consumption. Such establishments will specifically include but shall not be restricted to grocery stores and warehouses, candy and confectioners' plants or stores, bakeries, bottling works, food and condiment packers, fruit and vegetable stands, markets or other premises where meat or meat food products, sausage, fish, dressed poultry, rabbit or game are kept, stored, handled, manufactured or offered for sale, ice stations and all food processing or cannery plants of any type.

(c) "Restaurant" shall mean any coffee shop, cafeteria, short order cafe, luncheonette, tavern, bar, sandwich stand, soda fountain, public school lunch room or cafeteria, labor and construction camp kitchens and dining rooms, public boardinghouse, club and any other eating or drinking establishment which sells or offers for sale food to the public, as well as kitchens, box lunch establishment, catering services, barbecue pits in which food or drink is prepared on the premises for sale or distribution elsewhere. Such term shall also include all cafeterias or restaurants serving commercial establishments as part of the organization and serving the public, whether as employees or visitors.

(d) "Utensils" shall include kitchenware, tableware, glassware, cutlery, containers, machinery, implements, receptacles used in processing, storage, distribution or serving of food or drink. (Ord. 942, Art. 1. Formerly § 12-1).

8.10.020 Permit – Required – Exceptions.

It shall be unlawful for any person to operate or conduct a restaurant or food establishment or to sell, offer for sale, distribute or have in possession for sale or distribution any food or drink intended for human consumption in the City unless such person shall possess a permit to do so from the Health Officer and has paid therefor the permit fee required to be paid by SCCC [8.10.040](#).

No permit shall be required of any food processing, cannery or other food establishment licensed by the State Department of Health, by the Bureau of Meat Inspection of the State Department of Agriculture or by the Meat Inspection Division of the United States Department of Agriculture. (Ord. 942, Art. 2 § 1. Formerly § 12-2).

8.10.030 Permit – Application – Examination of premises – Issuance and transferability renewal.

Application for the permit required in the preceding section shall be made in writing to the Health Officer. The Health Officer shall, upon receipt of such application, make or cause to be made an examination of the premises for which such permit is requested. If, upon examination, the Health Officer, his/her assistant or his/her duly authorized representative shall find such premises and the equipment therein to be in accordance with the laws of the State, the requirements of this chapter and the rules and regulations of the Health Officer of the City, the Health Officer shall issue a revocable permit for the conduct of such business. Such permit shall be issued annually for the calendar year and shall not be transferable. Renewal of permits shall be applied for and acted upon in the same manner. (Ord. 942, Art. 2 § 2. Formerly § 12-3).

8.10.040 Permit – Fee.

The permit fee for conducting a restaurant or food establishment shall be as established by Council resolution from time to time. (Ord. 942, Art. 2 § 3. Formerly § 12-4).

8.10.050 Permit – Denial for failure to meet certain specifications.

The City Health Officer is hereby empowered to deny or withhold a permit for which an application has been made if, in his/her judgment, the building, premises, equipment, apparatus or reasonable facilities for the establishing, maintaining, conducting or operating the business or institution for which a permit is requested are insufficient, unfit or incapable of being used, maintained or established to comply with this chapter or any other ordinances of the City or the rules and regulations of the City Health Officer or laws of the State. (Ord. 942, Art. 2 § 4. Formerly § 12-5).

8.10.060 Permit – Suspension or revocation for refusal to comply with State or local regulations.

The Health Officer of the City may suspend or revoke any permit authorized by this chapter whenever he finds that the holder of such a permit fails or refuses to comply with the laws of the State, this chapter or any rules and regulations of the City Health Officer. (Ord. 942, Art. 2 § 5. Formerly § 12-6).

8.10.070 Operation of business after suspension or revocation, etc., of permit prohibited.

If any permit issued pursuant to this chapter shall be denied, suspended or revoked by the Health Officer, it shall be unlawful during the period of such denial, revocation or suspension for any person to sell or traffic in any food or drink products in the City at such establishment. (Ord. 942, Art. 2 § 4. Formerly § 12-7).

8.10.080 Notification of City Health Officer upon sale or discontinuance of business.

Every person who shall sell, exchange, give away, abandon or discontinue any restaurant or food establishment within the city and every person who shall purchase or otherwise acquire any such restaurant or food establishment within the city shall immediately notify the Health Officer, his/her assistant or his/her duly authorized representative as to the fact thereof. (Ord. 942, Art. 2 § 6. Formerly § 12-8).

8.10.090 Sanitary rules and regulations to be made by City Health Officer.

The City Health Officer is hereby authorized to make such additional rules and regulations as may be necessary to secure the proper sanitation of all restaurants or food establishments and for the proper and orderly administration of this chapter. (Ord. 942, Art. 2 § 7. Formerly § 12-9).

8.10.100 Presence of certain persons on business premises prima facie evidence of intent of business owner to sell food.

The presence in or about any place of business of any person dealing in food or in or about any vehicle used by any such person for the delivery of any food shall be prima facie evidence of intent on the part of such person to sell the same and of the fact that he is holding or offering the same for sale. (Ord. 942. Formerly § 12-10).

8.10.110 Duty of Health Officer to seize adulterated, etc., food.

The Health Officer, his/her assistant and his/her duly authorized representative are hereby authorized and directed to seize and destroy or denature any tainted, diseased, decayed or partially decayed or unwholesome meat, fish, shell fish, fowl, fruits, vegetables or other unwholesome food found within the city. (Ord. 942. Formerly § 12-11).

Stat. Ref.: For State law as to Pure Foods Act, see H. & S.C.A. §§ 26500 to 26599.

8.10.120 Inspection required prior to sale of meat.

It shall be unlawful for any person or agent or employee of any person to sell, offer for sale, distribute or have in possession for sale or distribution in the City the flesh of any cattle, horse, sheep, lamb, swine or goat unless the same bears on each primal part thereof the "Inspected and Passed" stamp of an establishment operating under Federal or State inspection or approved municipal inspection. (Ord. 942. Formerly § 12-12).

Stat. Ref.: For State law as to meat and meat inspection generally, see Ag. C.A. §§ 18751 to 18755.

8.10.130 Sale of certain food products prohibited unless manufactured or prepared in accordance with State law.

It shall be unlawful for any person or agent or employee of any person to sell, offer for sale, distribute or have in possession for sale or distribution in the City any sausage or other meat food product

unless the same has been manufactured or prepared in accordance with the laws of the State. (Ord. 942. Formerly § 12-13).

The Santa Clara City Code is current through Ordinance 2056, and legislation passed through November 15, 2022.

Disclaimer: The City Clerk's Office has the official version of the Santa Clara City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Chapter 12.05 OBSTRUCTIONS, LOITERING AND MISCELLANY

Sections:

12.05.010 Obstructing vehicles or pedestrians prohibited generally.

12.05.020 Loitering, standing or obstructing entrance of church, hall, theater, etc., prohibited.

12.05.030 Prohibition of unauthorized presence in posted parking lots of a closed commercial business.

12.05.040 Obstructing the public right-of-way prohibited.

12.05.050 Steam, interurban or electrically driven railway trains, etc.

12.05.060 Hours of operation of public parks.

12.05.070 Bicycles or motorcycles, etc. – Prohibited on sidewalks or in public parks.

12.05.010 Obstructing vehicles or pedestrians prohibited generally.

It shall be unlawful for any person to loiter, stand or sit in or upon any public highway, street, alley, sidewalk or crosswalk in the City so as to in any manner hinder or obstruct the free passage thereon of persons or vehicles passing along the same or so as to in any manner annoy or molest persons passing along the same. (Ord. 460 § 1. Formerly § 25-1).

12.05.020 Loitering, standing or obstructing entrance of church, hall, theater, etc., prohibited.

It shall be unlawful for any person to loiter, stand or sit in or at the entrance of any church, hall, theater or other place of public assemblage in the City so as to in any manner obstruct such entrance. (Ord. 460. Formerly § 25-2).

12.05.030 Prohibition of unauthorized presence in posted parking lots of a closed commercial business.

(a) Except as provided herein, it shall be unlawful for any person or vehicle to be present in a parking lot (or in an area of a parking lot designated as prohibited to unauthorized presence) that has been posted with a sign(s) prohibiting unauthorized presence.

(b) In situations where presence in the entire parking lot is not prohibited, as when a location has multiple businesses and some businesses may remain open, physical barricades and signs shall be placed to designate the area(s) in which there is to be no vehicle parking or human presence during the prohibited hours.

(c) The hours of prohibited presence shall be posted along with the signs prohibiting the unauthorized presence. In certain circumstances, the prohibitory text and hours of prohibition shall be painted on or affixed to the barricades designating the closed area(s).

(d) When barricades are used, the text shall be in letters no less than one inch in height. When signs are used, they shall be at least one foot by one foot and the text shall be in letters no less than one inch in height. The sign(s) and/or barricades shall read substantially in either of the following two ways:

WARNING

Unauthorized presence in
parking lot after business is closed
violates SCCC [12.05.030](#)
_____ P.M. to _____ A.M.

or,

WARNING

Unauthorized presence in
parking lot after business is
closed, or in designated areas,
violates SCCC [12.05.030](#)
_____ P.M. to _____ A.M.

(e) Violations of this section are a misdemeanor as provided in SCCC [1.05.070](#). (Ord. 1407, 9-8-80; Ord. 1469 § 2, 4-12-83; Ord. 1616 § 1, 8-7-90. Formerly § 25-2.1).

12.05.040 Obstructing the public right-of-way prohibited.

Any person who, without prior written permission from the City, shall maintain, place, cause or permit to be placed upon, in, across, under, or over the public right-of-way (as used herein "public right-of-way" shall mean the paved roadway, curb, gutter, park strip, sidewalk, and any other portion of the publicly owned real property up to the private property line) of the City any obstruction and who, after being notified by the City to remove the same, shall permit any such obstruction to remain upon, across, under or over the public right-of-way for twenty-four (24) hours after such notice, shall be deemed guilty of an infraction punishable by a fine of not more than five hundred dollars (\$500.00). (Ord. 6; Ord. 1358 § 1, 6-28-77. Formerly § 25-6).

12.05.050 Steam, interurban or electrically driven railway trains, etc.

It shall be unlawful for any person in charge of any steam, interurban or electrically driven railway train or similar vehicles on rails to operate the same in such manner as to prevent the use of any street for the purpose of travel for a period of time longer than five minutes. The provisions of this section shall not apply to the operation of "through" freight trains when continuously operated without stopping through the City and when such freight trains consist of a series of freight cars, the overall length of which trains make it impractical to prevent the blocking of a street for such period of time. The provisions of this section shall apply to all "switching" operations of trains in the City. (Ord. 680. Formerly § 25-8).

12.05.060 Hours of operation of public parks.

(a) The public parks in the City shall be open daily to the public between the hours of 6:00 A.M. to one-half hour after sunset (dusk), except:

(1) Where there is posted conspicuously a sign limiting the hours when such facility is open to the public; and

(2) Until 10:00 P.M. if and when the facility is lighted.

(b) Any such public park or portion thereof may be declared closed to the public by the Director of Parks and Recreation at any time and for any interval of time, either temporarily or at regular or stated intervals, as is deemed necessary in carrying out the duties and responsibilities of the various divisions of the Parks and Recreation Department as set forth in Chapter [2.100](#) SCCC. The Director of Parks and Recreation is hereby authorized to promulgate rules and regulations to effectuate the purposes of this section.

(c) Every person other than City personnel conducting City business therein, who occupies or is present in any public park in the City during the hours in which the park is not open to the public, shall be deemed guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars (\$250.00). (Ord. 1953 § 1, 4-5-16; Ord. 1371 § 1, 1-10-78. Formerly § 25-8.1).

12.05.070 Bicycles or motorcycles, etc. – Prohibited on sidewalks or in public parks.

It shall be unlawful for any person to ride or drive any bicycle, motorcycle or other motor vehicle upon any sidewalk or in any public park in the City. (Ord. 302 § 1. Formerly § 25-9).

Cross reference – Bicycles generally, Chapter [10.35](#) SCCC.

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Title 9 PUBLIC PEACE, MORALS AND WELFARE

Chapters:

- 9.05 In General**
- 9.10 Regulation of Noise and Vibration**
- 9.15 Regulation of the Distribution of Certain Advertising Material Including Handbills**
- 9.20 Restrictions on Certain Commercial Drug Paraphernalia Activities**
- 9.25 News Racks**
- 9.30 Trespassing**
- 9.35 Regulation of Use of Parks by Large Groups**
- 9.40 Regulation of Self-Service Display of Tobacco Products**
- 9.45 Enforcement of Title**
- 9.50 *Repealed***
- 9.55 Prohibition Against Discrimination**
- 9.60 Food and Building Service Worker Retention**
- 9.65 Hotel Service Worker Retention**
- 9.70 COVID-19 Worker Recall Protections**

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Action on Policy Options to Amend Regulations Related to Street Vending Activities in the City of Santa Clara

Item #9 - Report to Council 23-211
April 18, 2023

1



History

- Existing City Codes (Ch 3, 5, 8) prohibit roaming or stationary unpermitted businesses
- SB 946 (January 2019) decriminalized sidewalk vending and imposed restrictions on manners in which enforcement could occur
- January 2019 the City Attorney’s Office authored a Memorandum to the Police and Parks and Recreation Departments addressing SB 946
- Late-2022 through early-2023, Mr. Gibbins spoke to City Council regarding permit enforcement of sidewalk vendors around Levi’s Stadium on event days; City staff met with Mr. Gibbins
- At the January 31, 2023 City Council meeting, the Council directed staff to provide an update at a future meeting regarding Mr. Gibbins’ concerns, including the Police Department’s constraints on permit enforcement

2



Overview of SB946

- Specific scope: Food/merchandise sold from a non-motorized stand/cart upon public sidewalk or other pedestrian path
- No public sidewalk limitations *except* to address obj. health, safety, welfare (HSW) concerns
- Other allowable regulations differ depending on location and circumstance
- Generally cannot limit total number of vendors in the City
- Generally, time/place/manner restrictions are allowed, but must be based on HSW
- No criminal penalties, administrative citations only, per a set fine schedule. "Ability to pay" determination process must be created, with statutory ability to reduce fine by up to 80%.

3



Challenges

- The current City Code does not align with recently adopted legislation
- The City has identified numerous health, safety and welfare concerns associated with the operation of sidewalk vendors without time, place and manner restrictions
- SB 946 details multiple constraints by location
 - General
 - Parks
 - Farmer's Markets and/or Swap Meets
 - Temporary Special Permit Areas
- Even with permissible restrictions enacted, repercussions for a violation will be inconsequential

4



Health and Safety Concerns

- Numerous health, safety, & welfare concerns exist with unregulated vendors on sidewalks, public right of ways, in City parks, and on private property (e.g., parking lots), including:
 - Encroachment of public spaces and concerns of sidewalk access and public right of way
 - Impediment to pedestrian, bicycle, pedicab, and vehicular traffic, in particular during egress at large events
 - Unsafe food preparation, maintenance, and handling practices
 - Inadequate waste disposal
 - Vulnerable population subject to street crimes
 - Labor / employment law violations

5



6



Levi's Stadium Area - Additional Concerns

- Location of sidewalk vendors not incorporated into emergency evacuation or traffic management plan
- Propane tanks, causing explosive concerns if ignited in highly populated area
- Hot, greasy cooktops without structures for safety clearances and required fire extinguishing devices
- Massive groups congregating, particularly near gates, bridges, parking lots, crosswalks, sidewalks, etc.
- Lines causing people to interrupt ADA paths and pedestrian, bicyclist and pedicab traffic
- Intoxicated attendees causing fights connected with massive groups traveling through narrow paths
- Sizeable amounts of cash being exchanged and potential for crime
- Sanitary issues, including but not limited to garbage, access to water for hand cleaning, etc.
- Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares)
- Alcohol being sold without Alcoholic Beverage Control permits
- Concerns of legitimate employment practices

7



Policy Options

#1 – Prepare a temporary ordinance amendment and permit process for stadium event days that would **define areas where sidewalk vending could not occur** due to health and/or safety concerns, within a to-be-determined stadium footprint. The Ordinance would also contain provisions to prohibit vending in parking lots associated with the stadium event. The temporary Ordinance would be established for a **pilot period of August 2023 to January 2024** to evaluate impacts. At that time, the Police Department would return to the City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City such as City parks.

8



Policy Options (continued)

#2 - Direct staff to develop an Ordinance amendment to **address sidewalk vending City-wide to align City Code with current sidewalk vending legislation.** In this scenario, vending would be regulated and enforced throughout all areas of the City.

#3 - Direct staff to **eliminate all unenforceable City Code sections related to sidewalk vending (and include minor modifications to enforceable provisions of the code as necessary), but generally defer to State law on the matter, without any meaningful local controls.**

9



Recommendation

Direct staff to proceed with Option #1:

Proceed with a pilot program in the area of Levi's Stadium from August 2023 through January 2024, with the Police Department returning to City Council with recommendations for implementation for the 2024 concert and NFL seasons, as well as how the Ordinance may need to be amended to apply in other areas of the City, such as City parks.

10

April 18, 2023
Item # 9



POST MEETING MATERIAL



POST MEETING MATERIAL



Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.



Senate Bill No. 972

CHAPTER 489

An act to amend Sections 113818, 113831, and 113868 of, and to add Chapter 11.7 (commencing with Section 114368) to Part 7 of Division 104 of, the Health and Safety Code, relating to retail food.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 972, Gonzalez. California Retail Food Code.

(1) Existing law, the California Retail Food Code (the code), establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and requires local health agencies to enforce these provisions. Existing law, for purposes of the code, defines a “cottage food operation” as an enterprise that has no more than a specified amount in gross annual sales, is operated by a cottage food operator, and has no more than 1 full-time employee within the registered or permitted area of a private home where the food products are prepared and packaged. Existing law provides for the regulation of microenterprise home kitchen operations and limits those operations to not serving more than 30 individual meals per day and not more than 60 individual meals per week and to no more than \$50,000 in verifiable gross annual sales, as adjusted for inflation. Existing law authorizes the local enforcement agency to decrease the limit on the number of individual meals prepared based on the food preparation capacity of the operation.

This bill would authorize a cottage food operation or microenterprise home kitchen operation to serve as a commissary or mobile support unit for up to 2 compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile food operation and the storage and cleaning of the compact mobile food operation. The bill would authorize nonpotentially hazardous foods prepared in a cottage food operation to be served from a compact mobile food operation. The bill would define “compact mobile food operation” as a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance. The bill would require compact food operations to conduct only limited food preparation.

(2) The code defines “limited food preparation” as food preparation that is restricted to specified activities, including dispensing or portioning of

nonpotentially hazardous food, slicing and chopping of food on a heated cooking surface during the cooking process, and holding, portioning, and dispensing foods that are prepared at a satellite food service or catering operation.

This bill would include in the definition of “limited food preparation” dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing, slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility, hot and cold holding of food previously prepared at an approved permanent food facility, and reheating of food that has been previously prepared at an approved permanent food facility and held at the approved temperatures.

(3) The code defines “mobile food facility” and regulates what types of food may be provided at a mobile food facility. The code requires mobile food facilities to meet specified health and safety standards, including access to warewashing sinks, restrooms, and handwashing facilities and required quantities of potable water.

This bill would require a compact mobile food operation to meet the applicable requirements of mobile food facilities, except as specified. The bill would exempt a compact mobile food operation that has 25 square feet or less of display area and sells only prepackaged, nonpotentially hazardous foods or whole uncooked produce from the code, except as specified. The bill would authorize a compact mobile food operation to display or sell food outdoors, if certain conditions are met, including, among other things, overhead protection provided above all food display areas. The bill would require a compact mobile food operation that engages in the preparation of raw meat, raw poultry, or raw fish to meet additional specified requirements. The bill would authorize the enforcement agency to preapprove a standard plan for a standardized or mass-produced facility intended to serve as a compact mobile food operation and would authorize a compact mobile food operation to use that standardized or mass-produced facility after a final inspection, but without submitting plans for the individual unit. The bill would authorize the enforcement agency to collect a fee for the final inspection.

(4) Existing law requires commissaries and other approved facilities servicing mobile support units, mobile food facilities, and vending machines to meet specified standards.

This bill would authorize an enforcement agency to approve a facility with nonconforming structural conditions if those conditions do not pose a public health hazard. The bill would also require an enforcement agency to approve the storage of a compact mobile food facility in a permitted permanent food facility if, after initial inspection, the agency determines that the compact mobile food facility is protected from contamination. The bill would authorize the enforcement agency to charge a fee to administer these provisions.

(5) The code requires a food facility to have a valid permit to be open for business and authorizes the local enforcement agency to charge a fee for the permit or registration or related services.

This bill would authorize the local enforcement agency to reduce the fee for the permit, registration, or related service for an applicant seeking approval of a compact mobile food operation or related operations.

(6) Under existing law, violation of the code is a misdemeanor, unless otherwise specified.

This bill would make violations of the code by an operator or employee of a compact mobile food facility or a sidewalk vendor punishable only by an administrative fine. Additionally, by making changes to the definition of various crimes and by adding new crimes under the code, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 113818 of the Health and Safety Code is amended to read:

113818. (a) "Limited food preparation" means food preparation that is restricted to one or more of the following:

(1) Heating, frying, baking, roasting, popping, shaving of ice, blending, steaming or boiling of hot dogs, or assembly of nonprepackaged food.

(2) Dispensing and portioning of nonpotentially hazardous food or dispensing and portioning for immediate service to a customer of food that has been temperature controlled until immediately prior to portioning or dispensing.

(3) Holding, portioning, and dispensing of any foods that are prepared for satellite food service by the onsite permanent food facility or prepackaged by another approved source.

(4) Holding, portioning, and dispensing of any foods that are prepared by a catering operation.

(5) Slicing and chopping of nonpotentially hazardous food or produce that has been washed at an approved facility or slicing and chopping of food on a heated cooking surface during the cooking process.

(6) Cooking and seasoning to order.

(7) Juicing or preparing beverages that are for immediate service, in response to an individual consumer order, that do not contain frozen milk products.

(8) Hot and cold holding of food that has been prepared at an approved permanent food facility.

(9) Reheating of food that has been previously prepared at an approved permanent food facility and held at temperatures required by this chapter.

(b) “Limited food preparation” does not include any of the following:

(1) Slicing and chopping potentially hazardous food, other than produce, unless it is on the heated cooking surface.

(2) Thawing.

(3) Cooling of cooked, potentially hazardous food.

(4) Grinding raw ingredients or potentially hazardous food.

(5) Washing of foods.

(6) Cooking of potentially hazardous foods for later use.

(7) Handling, manufacturing, freezing, processing, or packaging of milk, milk products, or products resembling milk products subject to licensing under Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

SEC. 2. Section 113831 of the Health and Safety Code is amended to read:

113831. (a) “Mobile food facility” means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. “Mobile food facility” does not include a “transporter” used to transport packaged food from a food facility, or other approved source to the consumer.

(b) “Single operating site mobile food facilities” means at least one, but not more than four, unenclosed mobile food facilities, and their auxiliary units, that operate adjacent to each other at a single location.

(c) “Compact mobile food operation” means a mobile food facility that operates from an individual or from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance.

SEC. 3. Section 113868 of the Health and Safety Code is amended to read:

113868. “Portable” means equipment that is capable of being lifted and moved or has utility connections that are designed to be disconnected or of sufficient length to permit the unit to be moved for cleaning, and does not exceed 100 pounds (46 kg) in weight or is otherwise designed to be mobile.

SEC. 4. Chapter 11.7 (commencing with Section 114368) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.7. COMPACT MOBILE FOOD OPERATION

114368. A compact mobile food operation, as defined in subdivision (c) of Section 113831, shall meet the applicable requirements of Chapter 10 (commencing with Section 114294), except as provided in this chapter.

114368.1. (a) Any compact mobile food operation with 25 square feet or less of display area from which only prepackaged nonpotentially hazardous food and whole uncooked produce is sold is exempt from the requirements of this part, except that the facility shall comply with all of the following:

(1) Sections 113980, 114047, 114049, 114390, 114393, 114397, and 114399.

(2) Chapter 1 (commencing with Section 113700).

(3) Chapter 2 (commencing with Section 113728).

(b) (1) A local enforcement agency may inspect a compact mobile food operation that is exempt, as specified in subdivision (a), during the facility's hours of operation and other reasonable times on the basis of a consumer complaint or just cause.

(2) For the purposes of determining compliance with this chapter, a compact mobile food operation that is not exempt as specified in subdivision (a) is subject to permitting and routine inspections or inspections on the basis of a consumer complaint or just cause.

(c) The local enforcement agency may recover the costs of investigation and enforcement of this section, subject to any limitations in this part on fines issuable to compact mobile food operations.

114368.2. (a) Compact mobile food operations shall conduct only limited food preparation, as defined in Section 113818. Notwithstanding any other provision of this part, a compact mobile food operation, as defined in subdivision (c) of Section 113831, may display or sell food outdoors, if all of the following conditions are satisfied:

(1) Overhead protection are provided above all food display areas.

(2) Food items from the outdoor display are stored consistent with this chapter at all times other than during business hours.

(3) Outdoor displays comply with Section 113980 and have been approved by the enforcement agency if the compact mobile food operation is required to obtain a permit.

(b) A compact mobile food operation shall not sell food other than nonpotentially hazardous prepackaged food or whole produce, or conduct any food preparation, unless it meets the applicable operational requirements of this chapter, including applicable requirements for integral equipment, handwashing, and restroom access.

(c) Equipment that is required to be integral to a compact mobile food operation shall either be permanently attached to the primary unit or securely fastened to the primary unit by means that would prevent unintentional removal. Equipment may be considered integral despite being portable or otherwise removable for cleaning, maintenance, or as part of its regular function.

(d) A compact mobile food operation operating from an individual shall not conduct any food preparation or sell foods other than nonpotentially hazardous prepackaged food or whole produce.

114368.3 (a) (1) A permitted cottage food operation or microenterprise home kitchen operation may serve as a commissary or mobile support unit for up to two compact mobile food operations if the cottage food operation or microenterprise home kitchen operation permit includes an endorsement from the local enforcement agency that the cottage food operation or microenterprise home kitchen operation is capable of supporting the preparation and storage of the food being sold from the compact mobile

food operation and the storage and cleaning of the compact mobile food operation.

(2) Transactions at a compact mobile food operation operated by a cottage food operator shall constitute “direct sales” for the purposes of paragraph (4) of subdivision (b) of Section 113758.

(3) Transactions at up to two compact mobile food operations operated by a cottage food operator shall not count toward the annual gross sales restrictions in Section 113758 applicable to cottage food operations if the governing body has authorized this action.

(4) Nonpotentially hazardous foods prepared in a cottage food operation may be served from a compact mobile food operation.

(5) Food prepared in a microenterprise home kitchen operation may be served from a compact mobile food operation operated by the microenterprise home kitchen operation permitholder.

(6) The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 do not apply to the sale of nonpotentially hazardous food or produce for up to two compact mobile food operations operated by the microenterprise home kitchen operation if the governing body has authorized this action.

(7) With the authorization of the governing body and if the enforcement agency determines that the operation does not pose a public health hazard, a permitted microenterprise home kitchen operation may serve as a commissary for up to two compact mobile food operations. The meal and gross annual sales limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 apply unless the governing body sets a higher meal and income limitation.

(8) The governing body of a local jurisdiction that permits microenterprise home kitchen operations pursuant to Section 114367, may set the meal and income limitations in paragraphs (7) and (8) of subdivision (a) of Section 113825 at a higher level than provided in those paragraphs for microenterprise home kitchen operations that operate in conjunction with a compact mobile food operation. Notwithstanding this subdivision, the levels in effect, by statute or ordinance, as of January 1, 2023, shall remain in effect until changed by the local jurisdiction.

(b) (1) Existing permanent food facilities may be permitted to support the operations and storage of compact mobile food operations pursuant to the requirements of this section.

(2) Notwithstanding any other provision of this part, upon an evaluation verifying that a permanent food facility satisfies subdivisions (a) to (f), inclusive, of Section 114326, an enforcement agency shall approve the use of a permitted permanent food facility to satisfy the requirements of Section 114295 for a compact mobile food operation.

(3) Notwithstanding any other provision of this part, upon an evaluation verifying that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination, an enforcement agency shall approve the storage of a compact mobile food operation in a permitted permanent food facility.

(4) Except when a determination is made by the enforcement agency that any nonconforming structural conditions pose a public health hazard, the enforcement agency may approve a facility to support operations of a compact mobile food operation.

(5) Plan submission shall not be required for an existing permanent food facility to support the operations of a compact mobile food operation when a determination is made by the local enforcement agency that the current operation and structural facilities of the permanent food facility can successfully provide the necessary functions of a commissary for a compact mobile food operation.

(6) An approved permanent food facility that will be used for cooling of food for a compact mobile food operation shall be approved by the enforcement agency for cooling.

(c) (1) Unless prohibited by local ordinance, an enforcement agency may allow the use of a private home for the storage of a compact mobile food operation if it determines, after an evaluation, that storage in the private home would not pose a public health hazard and that the compact mobile food operation will be stored in a manner that protects the compact mobile food operation from contamination.

(2) No more than two compact mobile food operations may be stored in a private home unless the enforcement agency finds that storage of more than two compact mobile food operations in a private home would not pose a public health hazard.

(3) The storage area within the home shall be designated and clearly identified upon approval and shall not be relocated without the review and approval of the local enforcement agency.

(4) Prepackaged nonpotentially hazardous food, whole fruits, and whole vegetables may be stored in the home prior to sale or preparation of that food in a compact mobile food operation.

(5) Food prepared in a private home shall not be used or offered for sale on a compact mobile food operation, unless it is a permitted cottage food operation or microenterprise home kitchen operation pursuant to subdivision (a). Violation of this paragraph may result in suspension or revocation of the permit to operate the compact mobile food operation.

(6) For purposes of determining compliance with this subdivision, a local enforcement agency may access, for inspection purposes, a private home where a compact mobile food operation is stored only if the representative has, on the basis of a consumer complaint, reason to suspect that the home is being used for food preparation, food storage, or unauthorized storage of utensils or other food facility equipment in violation of this subdivision.

(d) At the end of the operating day, potentially hazardous food that is prepared on or served from a compact mobile food operation shall be destroyed in a manner approved by the enforcement agency.

(e) For the purposes of this chapter, an endorsement by the local enforcement agency shall be a documented and recorded approval of compliance with applicable sections. An endorsement may include an inspection or evaluation, but shall not require a registration or permit.

(f) The enforcement agency may collect a fee for any permit, endorsement, inspection, or evaluation issued or conducted pursuant to this chapter in an amount that does not exceed the reasonable administrative costs of the enforcement agency.

114368.4. (a) Except as provided in subdivision (b), a compact mobile food operation that is approved for limited food preparation that prepares raw meat, raw poultry, or raw fish is subject to warewashing and handwashing facility requirements as outlined in Chapter 10 (commencing with Section 114294).

(b) (1) A compact mobile food operation may satisfy the requirements of Sections 114313 and 114314 by demonstrating access to a permitted auxiliary conveyance containing the necessary handwashing and warewashing sinks when operating at a site-specific location. The auxiliary conveyance may be operated by the same or a different permit holder. An enforcement agency may permit an auxiliary conveyance to serve multiple compact mobile food operations operating in close proximity to the auxiliary conveyance, as determined by the enforcement agency.

(2) If an auxiliary conveyance is not operated by the permit holder of the compact mobile food operation, the operator of the auxiliary conveyance shall obtain a permit from the enforcement agency to operate the auxiliary conveyance and service compact mobile food operations.

(3) The permit application for an auxiliary conveyance not operated by a compact mobile food operation shall include a site plan and shall be submitted to the enforcement agency at least two weeks prior to the operation of any food facility in conjunction with the auxiliary conveyance.

(4) The site plan for an auxiliary conveyance not operated by a compact mobile food operator shall show the proposed location and storage of the auxiliary conveyance, the proposed locations of any food facilities that will utilize the auxiliary conveyance, restrooms, refuse containers, potable water supply faucets, waste water disposal facilities, and all shared warewashing and handwashing facilities.

(c) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall do one of the following:

(1) Provide a three-compartment sink as described in subdivision (a) of Section 114313.

(2) Provide at least one two-compartment sink that complies with subdivision (e) of Section 114099.3.

(3) Provide a one-compartment sink with at least one integral metal drainboard, an adequate supply of spare preparation and serving utensils to replace those that become soiled or contaminated, and warewashing facilities that comply with subdivision (a) of Section 114313 in reasonable proximity to, and readily accessible for use by, food employees at all times.

(4) Maintain an adequate supply of spare preparation and serving utensils on the compact mobile food operation to ensure that utensils used for potentially hazardous foods are replaced with clean and sanitized utensils every four hours or as needed to replace those that become soiled or

contaminated. A compact mobile food operation that complies with this paragraph is not required to provide a warewashing sink.

(d) A compact mobile food operation that is approved for limited food preparation that does not prepare raw meat, raw poultry, or raw fish shall provide an integral handwashing sink with at least five gallons of potable water to operate with a potable water tank with a capacity of at least five gallons for handwashing.

(e) An enforcement agency may permit a compact mobile food operation to operate with an integral water tank smaller than specified under subdivision (c) or (d) of Section 114217 if the enforcement agency finds that the compact mobile food operation is operating in an area and manner that would allow for replenishment of the water supply as needed during operations.

(f) A compact mobile food operation shall submit, to the enforcement agency, written operating procedures that include the process of filling potable water tanks if it will operate with a water tank with a capacity of less than five gallons specified in subdivisions (c) and (d) of Section 114217.

(g) A compact mobile food operation that does not prepare raw meat, raw poultry, or raw fish is exempt from any provision of this part requiring it be equipped with a water heater or otherwise be supplied with warm water.

114368.5. (a) Upon receipt of complete, easily readable plans drawn to scale, and specifications satisfactory to the enforcement agency, an enforcement agency may preapprove a standard plan for a standardized or mass-produced individual unit intended to serve as a compact mobile food operation.

(b) A person proposing to operate a compact mobile food operation who has acquired an individual unit for which the construction of the compact mobile food operation has been built to approved plans shall not be required to submit plans for the individual unit, but instead shall be subject to a final inspection of the compact mobile food operation to ensure that the individual unit and proposed method of operation conform to the standard plans preapproved pursuant to subdivision (a). The permit application for a compact mobile food operation utilizing a preapproved individual unit shall include a certification that the applicant has not substantially altered the individual units from the plans preapproved pursuant to subdivision (a). The enforcement agency may collect a fee in the final inspection in an amount that does not exceed the reasonable administrative costs to the enforcement agency.

(c) The repair of equipment or integral fixtures on a compact mobile food operation or the replacement of equipment and fixtures on a compact mobile food operation with substantially similar equipment or fixtures is not a remodel, and the repair or replacement of equipment or fixtures does not require the submission of plans to an enforcement agency.

(d) A local governing body may waive or reduce a fee for the permit, registration, or related services for an applicant seeking approval of a compact mobile food operation or related operations.

(e) All new and replacement food-related and utensil-related equipment for a compact mobile food operation shall be certified or classified for sanitation by an American National Standards Institute accredited certification program, or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards. In the absence of an applicable certified sanitation standard, food-related and utensil-related equipment shall be evaluated for approval by the enforcement agency.

(f) All new and replacement electrical appliances for a compact mobile food operation shall meet applicable Underwriters Laboratories standards for electrical equipment as determined by an American National Standards Institute accredited certification program or a certification program accredited by another accreditation body recognized by the enforcement agency as providing substantially similar food safety and operational standards.

114368.6. A compact mobile food operation is exempt from Section 113947.1 if the operator and any individual who is involved in the preparation, storage, or service of food for the compact mobile food operation has obtained a food handler card that meets the requirements of Section 113948.

114368.7. A compact mobile food operation is exempt from the requirements of Section 114315 if the compact mobile food operation operates with multiple employees or operators and the compact mobile food operation may remain operable by a single individual so that employees or operators may alternate use of a restroom.

114368.8. (a) Notwithstanding subdivision (a) of Section 114395, a violation of this part by an operator or employee of a compact mobile food operation is punishable only by an administrative fine.

(b) A violation of any provision of this part or regulation adopted pursuant to this part by an operator or employee of a compact mobile food operation or a sidewalk vendor shall not be punishable as an infraction or misdemeanor, and an operator or employee of a compact mobile food operation or a sidewalk vendor alleged to have violated any of those provisions is not subject to arrest except when independent grounds for that arrest exist under law.

(c) Except as provided in paragraph (d), each offense by an operator or employee of a compact mobile food operation or a sidewalk vendor may only be punished by a fine consistent with the following:

(1) A notice of violation detailing the violation, including the applicable provision of this part or regulation adopted pursuant to this part.

(2) An administrative fine not exceeding one hundred dollars (\$100) for a second violation within one year of the first violation.

(3) An administrative fine not exceeding two hundred dollars (\$200) for a third violation within one year of the first violation.

(4) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(d) If a compact mobile food operation is required to obtain a permit from the enforcement agency, operating without a permit may be punishable by a fine not to exceed three times the cost of the permit in lieu of the administrative fines referenced in subdivision (c). An enforcement agency shall not issue any fines in excess of the amounts allowable pursuant to subdivision (c) prior to January 1, 2024.

(e) (1) When assessing an administrative fine for a first-time offense, pursuant to this section, the hearing officer shall take into consideration the person's ability to pay the fine. The enforcement agency shall provide the person with notice of their right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632 of the Government Code, the enforcement agency shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to this section.

(3) The enforcement agency may waive the administrative fine or may offer an alternative disposition.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Agenda Report

23-1005

Agenda Date: 8/22/2023

REPORT TO COUNCIL

SUBJECT

Action to Adopt Ordinance No. 2062 Amending the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days

BACKGROUND

At the July 18, 2023 Council meeting, proposed Ordinance No. 2062 was passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, a summary of proposed Ordinance No. 2062 was published to the Santa Clara Weekly on August 9, 2023, and copies were posted in three public places.

DISCUSSION

SB 946 prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks or other pedestrian pathways and prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety or welfare concerns. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946. The new state law was explained in detail at the April 18, 2023 Council meeting.

During the past event season, the Police Department experienced a drastic increase in the number of unpermitted food and merchandise vendors within the immediate footprint of large-scale stadium events. This increase has caused several health and safety concerns. As currently written, the City Code and regulations do not align with SB 946 and, consequently, the City's ability to address these health and safety concerns would be limited without first updating the City Code.

Following Council's direction at the April 18th meeting, staff prepared ordinance amendments outlining a pilot project prohibiting sidewalk vending on certain enumerated streets surrounding Levi's Stadium on event days. These ordinance amendments were introduced and passed on July 18th.

Council inquired at the July 18th meeting whether the City would include insurance requirements in its permit application, and what similar requirements other cities had. Cities vary on this requirement throughout the state; San Jose and Oakland both require peddlers to obtain commercial general liability insurance policies, while San Francisco and Los Angeles do not. At this time, the City Manager and Police Department do plan to continue to include the insurance requirement for peddlers in the permit application for the pilot project.

Council has already taken action to waive fees and taxes for all required City business licenses and permits for qualified sidewalk vendors operating at stadium events during the pilot program period

(September 21, 2023 through January 31, 2024) on a first come first serve basis in an amount not to exceed \$30,000. Council has also authorized the City Manager to develop administrative guidelines to implement this fee waiver program.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There will be Police Department and Community Development staff time associated with implementing and enforcing new permit requirements for sidewalk vendors, establishing a sidewalk vendor management program and developing a communication plan to vendors ahead of implementation and at events during the pilot period. The most significant impact from a staffing perspective will be conducting enforcement on Levi's Stadium event days. At this time, there are approximately 8 major events scheduled at Levi's Stadium during the pilot program; additional event (s) may be added through January 2024.

Up to \$30,000 in Stadium Authority funds will be used to support the permitting initiative. This should make the City general fund whole with respect to any waived fee or tax amounts. This funding proposal will be administered by the Stadium Authority Executive Director out of existing Stadium Authority funds. If a Stadium Authority appropriation is required, a budget amendment will be brought back to the Stadium Authority for its consideration and approval at the next scheduled Stadium Authority meeting.

The Stadium Manager has advised that Stadium will enforce vending regulations on Stadium grounds and parking lots. As such, the Stadium Manager will be handling signage, and the corresponding costs on Stadium grounds and parking lot and will produce signs for public right-of-way (ROW) as appropriate.

COORDINATION

This report was coordinated with the Community Development Department, Police Department, City Attorney's Office, and City Manager's Office.

PUBLIC CONTACT

A summary of proposed Ordinance No. 2062 was published to the Santa Clara Weekly on August 9, 2023, and copies were posted in three public places and made available for public inspection at the City Clerk's Office.

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Waive Second Reading and Adopt Ordinance No. 2062 Amending Chapter 5.05 (Solicitors and Peddlers) and Section 9.05.165 (Activities and Conduct Prohibited in Parking Facilities Adjacent to the Stadium or Parking Facilities Used for Stadium Events) of the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days Pursuant to SB 946

Reviewed by: Pat Nikolai, Chief of Police

Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. Ordinance No. 2062 (Intro)

ORDINANCE NO. 2062

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA”

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies’ ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi’s Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

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WHEREAS, the City Council deems it to be in the best interests of the City to create a limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (m) of Section 9.05.165 (entitled "Activities and conduct prohibited in parking facilities adjacent to the Stadium or parking facilities used for Stadium events") of Chapter 9.05 (entitled "In General") of Title 9 (entitled "Public Peace, Morals, and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(m) No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise, or solicit employment, business or contributions of money or other property, within any portion of the parking areas, including the perimeter sidewalk of the facility except as set forth in Article IV of Chapter 5.05."

SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"Article IV. Stadium Pilot Program

- 5.05.400 Definitions
- 5.05.410 Purpose
- 5.05.420 Permit Required
- 5.05.430 Time, Place, or Manner Restrictions
- 5.05.440 Health, Safety, or Welfare Concerns
- 5.05.450 Enforcement

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5.05.400 Definitions.

(a) “Event Days” means days on which events are held at the Stadium which necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant failed to request renewal prior to expiration of the permit
- (3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

- (1) Tasman Drive (from Great America Parkway to Calle de Sol)
- (2) Tasman Drive eastbound off-ramp to Star and Stripes Drive
- (3) Tasman Drive stairways to Stars and Stripes Drive
- (4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- (5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to

Bill Walsh Way)

- (6) San Tomas Aquino Creek Trail (from Great America Parkway to

Agnew Road)

- (7) Old Glory Lane east of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

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(1) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency responders, vehicular traffic, and pedi-cab traffic

(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on EventDays

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(6) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(9) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

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(10) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

- (1) One hundred dollars (\$100) for a first violation
- (2) Two hundred dollars (\$200) for a second violation within one year of the first violation
- (3) Five hundred dollars (\$500) for each additional violation within one year of the first violation
- (4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

- (1) Two hundred fifty dollars (\$250) for a first violation
- (2) Five hundred dollars (\$500) for a second violation within one year of the first violation
- (3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor’s right to request an ability-to-pay determination pursuant to SB 946.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18TH day of July, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA

CLARA this 22ND day of August, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	Jain
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

ORDINANCE NO. 2062

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA”

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies’ ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi’s Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

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WHEREAS, the City Council deems it to be in the best interests of the City to create a limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (m) of Section 9.05.165 (entitled "Activities and conduct prohibited in parking facilities adjacent to the Stadium or parking facilities used for Stadium events") of Chapter 9.05 (entitled "In General") of Title 9 (entitled "Public Peace, Morals, and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(m) No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise, or solicit employment, business or contributions of money or other property, within any portion of the parking areas, including the perimeter sidewalk of the facility except as set forth in Article IV of Chapter 5.05."

SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"Article IV. Stadium Pilot Program

- 5.05.400 Definitions
- 5.05.410 Purpose
- 5.05.420 Permit Required
- 5.05.430 Time, Place, or Manner Restrictions
- 5.05.440 Health, Safety, or Welfare Concerns
- 5.05.450 Enforcement

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5.05.400 Definitions.

(a) “Event Days” means days on which events are held at the Stadium which necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant failed to request renewal prior to expiration of the permit
- (3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

- (1) Tasman Drive (from Great America Parkway to Calle de Sol)
- (2) Tasman Drive eastbound off-ramp to Star and Stripes Drive
- (3) Tasman Drive stairways to Stars and Stripes Drive
- (4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- (5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to

Bill Walsh Way)

- (6) San Tomas Aquino Creek Trail (from Great America Parkway to

Agnew Road)

- (7) Old Glory Lane east of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

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(1) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency responders, vehicular traffic, and pedi-cab traffic

(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on EventDays

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(6) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(9) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

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(10) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

(1) One hundred dollars (\$100) for a first violation

(2) Two hundred dollars (\$200) for a second violation within one year of the first violation

(3) Five hundred dollars (\$500) for each additional violation within one year of the first violation

(4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

(1) Two hundred fifty dollars (\$250) for a first violation

(2) Five hundred dollars (\$500) for a second violation within one year of the first violation

(3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor’s right to request an ability-to-pay determination pursuant to SB 946.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18TH day of July, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS
AND PEDDLERS) OF “THE CODE OF THE CITY OF SANTA
CLARA, CALIFORNIA”**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Ordinance No. 2062 establishing a street vending pilot program (“Program’) upon certain public sidewalks and pedestrian paths surrounding Levi’s Stadium, was adopted on August 22, 2023;

WHEREAS, the Program was implemented to run during the 2023 football season;

WHEREAS, during the course of the Program, it was discovered that the portion of Old Glory Lane west of Great America Parkway – which provides pedestrian access to several Stadium parking lots – was not included in the original scope of the Program, but does experience the health, safety, or welfare concerns set forth in SCCC 5.05.440;

WHEREAS, the Program included an initial sunset date of January 31, 2024, and was to be considered repealed if not extended prior to January 31, 2024;

WHEREAS, the Program was not extended prior to January 31, 2024;

WHEREAS, ensuring the health, safety and welfare of Stadium patrons in their ingress and egress routes from the facility is extremely important, and continuing the Program, with adjustments, is necessary to achieve this goal;

WHEREAS, the City deems it prudent to implement adjustments to the communication and enforcement plan during the non-NFL event season and further test those practices during the 2024 NFL season, and to conduct a more comprehensive benchmark review of unpermitted vending impacts and responses at similar venues, and to continue to pursue enforcement options with partners at the Bureau of Alcoholic Beverage Control and the

County of Santa Clara Environmental Health Department; and

WHEREAS, for these reasons, the City Council deems it to be in the best interests of the City to readopt the expired Program, extending the Program for approximately one additional year to February 28, 2025, and modifying the time, place, manner restrictions in the Program to include that portion of Old Glory Lane west of Great America Parkway.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Article IV (entitled “Stadium Pilot Project”) of Chapter 5.05 (entitled “Solicitors and Peddlers”) of Title 5 (entitled “Business Licenses and Regulations”) of “The Code of the City of Santa Clara, California” is re-adopted as follows:

“Article IV. Stadium Pilot Program

5.05.400 Definitions

5.05.410 Purpose

5.05.420 Permit Required

5.05.430 Time, Place, or Manner Restrictions

5.05.440 Health, Safety, or Welfare Concerns

5.05.450 Enforcement

5.05.400 Definitions.

(a) “Event Days” means days on which events are held at the Stadium which necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot

program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi's Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on February 28, 2025, and shall be considered repealed on that date, unless this Section is amended on or before February 28, 2025, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant failed to request renewal prior to expiration of the permit

(3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

- (1) Tasman Drive (from Great America Parkway to Calle de Sol)
- (2) Tasman Drive eastbound off-ramp to Star and Stripes Drive
- (3) Tasman Drive stairways to Stars and Stripes Drive
- (4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- (5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to Bill Walsh Way)
- (6) San Tomas Aquino Creek Trail (from Great America Parkway to Agnew Road)
- (7) Old Glory Lane east and west of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

(a) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency responders, vehicular traffic, and pedi-cab traffic

(b) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on Event Days

(c) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(d) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(e) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(f) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(g) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(h) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(i) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

(j) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

(1) One hundred dollars (\$100) for a first violation

(2) Two hundred dollars (\$200) for a second violation within one year of the first violation

(3) Five hundred dollars (\$500) for each additional violation within one year of the first violation

(4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

(1) Two hundred fifty dollars (\$250) for a first violation

(2) Five hundred dollars (\$500) for a second violation within one year of the first violation

(3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor's right to request an ability-to-pay determination pursuant to SB 946."

SECTION 2: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 4: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2024, by the following vote:

AYES: COUNCILORS:
NOES: COUNCILORS:
ABSENT: COUNCILORS:
ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING ARTICLE IV (“STADIUM PILOT PROGRAM”) OF CHAPTER 5.05 (SOLICITORS AND PEDDLERS) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA”

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies’ ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 required that any time, place, and/or manner restrictions that were placed on sidewalk vendors be supported by objective health, safety, and welfare concerns. Furthermore, SB 946 limited the types of personal information that could be collected in the permitting process, and limited the enforcement activity that a public agency could conduct;

WHEREAS, in response to a marked increase in sidewalk vending in the areas surrounding Levi’s Stadium on event days, and the noticeable safety-related concerns arising from this increased activity, the City adopted Ordinance No. 2062 establishing a street vending pilot program upon the most affected public sidewalks and pedestrian paths surrounding Levi’s Stadium in accordance with the requirements of SB 946;

WHEREAS, the Program was implemented to run during the 2023 football season, and was re-adopted to run through the 2024 non-NFL event season and football season;

WHEREAS, during the 2023 football season, it was discovered that the portion of Old Glory Lane west of Great America Parkway – which provides pedestrian access to several Stadium parking lots – was not included in the original scope of the pilot program, but did experience the health, safety, or welfare concerns set forth in SCCC 5.05.440, and the

concerns were ongoing. Accordingly, the Ordinance was amended to extend the sunset date to February 28, 2025 (to allow for further observation during the 2024 season) and to include the described portion of Old Glory Lane;

WHEREAS, during the 2024 football season, further analysis of the health, safety, and welfare concerns along Old Glory Lane was conducted, and it was determined that such concerns were primarily experienced in the east bound lanes, west of Great America Parkway. The west bound lanes of Old Glory Lane, west of Great America Parkway, were open to permitted vendors and posed no health, safety, and welfare concerns;

WHEREAS, after observing and analyzing sidewalk vending operations during two football seasons and one non-NFL event season, the City has determined that the restrictions set forth in this Ordinance should be made permanent, subject only to further amendment of this Ordinance by Council action, as they are directly related to observed and experienced health, safety, and welfare concerns in the areas listed. These concerns are extremely serious and will not be mitigated without continued enforcement; and

WHEREAS, for these reasons, the City Council deems it to be in the best interests of the City permanently codify the Stadium Pilot Program as the “Stadium Area Sidewalk Vending” Ordinance, Article IV of Chapter 5.05 of the City Code, and modify the time, place, manner restrictions as stated.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Article IV (previously entitled “Stadium Pilot Program,” now entitled “Stadium Area Sidewalk Vending”) of Chapter 5.05 (entitled “Solicitors and Peddlers”) of Title 5 (entitled “Business Licenses and Regulations”) of “The Code of the City of Santa

Clara, California” is amended as follows:

“Article IV. Stadium Area Sidewalk Vending

5.05.400 Definitions

5.05.410 Purpose

5.05.420 Permit Required

5.05.430 Time, Place, or Manner Restrictions

5.05.440 Health, Safety, or Welfare Concerns

5.05.450 Enforcement

5.05.400 Definitions.

(a) “Event Days” means days on which events are held at the Stadium which necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting an Ordinance regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department, which shall be in accordance with Senate Bill 946

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application

(3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

(1) The applicant failed to submit all required information or fees

(2) The applicant failed to request renewal prior to expiration of the permit

(3) The applicant falsified information on the application, concealed a material fact, or otherwise committed any fraud in the application

(4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(5) Four or more violations, as set forth in Section 5.05.450

(g) A permit may be revoked by the Chief of Police or designee under any of the circumstances set forth in subsection (f) above

(h) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(i) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Area on Event Days during the hours of street or trail closures.

(b) The Stadium Area shall be defined as the following:

(1) Tasman Drive (from Great America Parkway to Calle de Sol)

(2) Tasman Drive eastbound off-ramp to Star and Stripes Drive

(3) Tasman Drive stairways to Stars and Stripes Drive

(4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)

(5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to Bill Walsh Way)

(6) San Tomas Aquino Creek Trail (from Great America Parkway to Agnew Road)

(7) Old Glory Lane east of Great America Parkway

(8) East bound Old Glory Lane (from Old Ironsides Drive to Great America Parkway)

(c) No sidewalk vendor shall exceed an operational space of 10' by 10'. All food, merchandise, equipment, and other accessories related to sidewalk vending must fit within the defined operational space.

5.05.440 Health, Safety, or Welfare Concerns

The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430, and support the restrictions set forth therein:

(a) Sidewalk Vending in the Stadium Area on Event Days and the associated customer queues scattered within a large, high-density, pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency responders, vehicular traffic, and pedi-cab traffic

(b) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on Event Days

(c) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(d) Sidewalk Vending and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(e) Unsafe and unsanitary food preparation, storage, and handling practices, including lack of hand washing facilities

(f) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(g) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(h) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(i) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

(j) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

(1) One hundred dollars (\$100) for a first violation

(2) Two hundred dollars (\$200) for a second violation within one year of the first violation

(3) Five hundred dollars (\$500) for each additional violation within one year of the first violation

(4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

(1) Two hundred fifty dollars (\$250) for a first violation

(2) Five hundred dollars (\$500) for a second violation within one year of the first violation

(3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor's right to request an ability-to-pay determination pursuant to SB 946."

SECTION 2: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any

prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 4: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2024, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

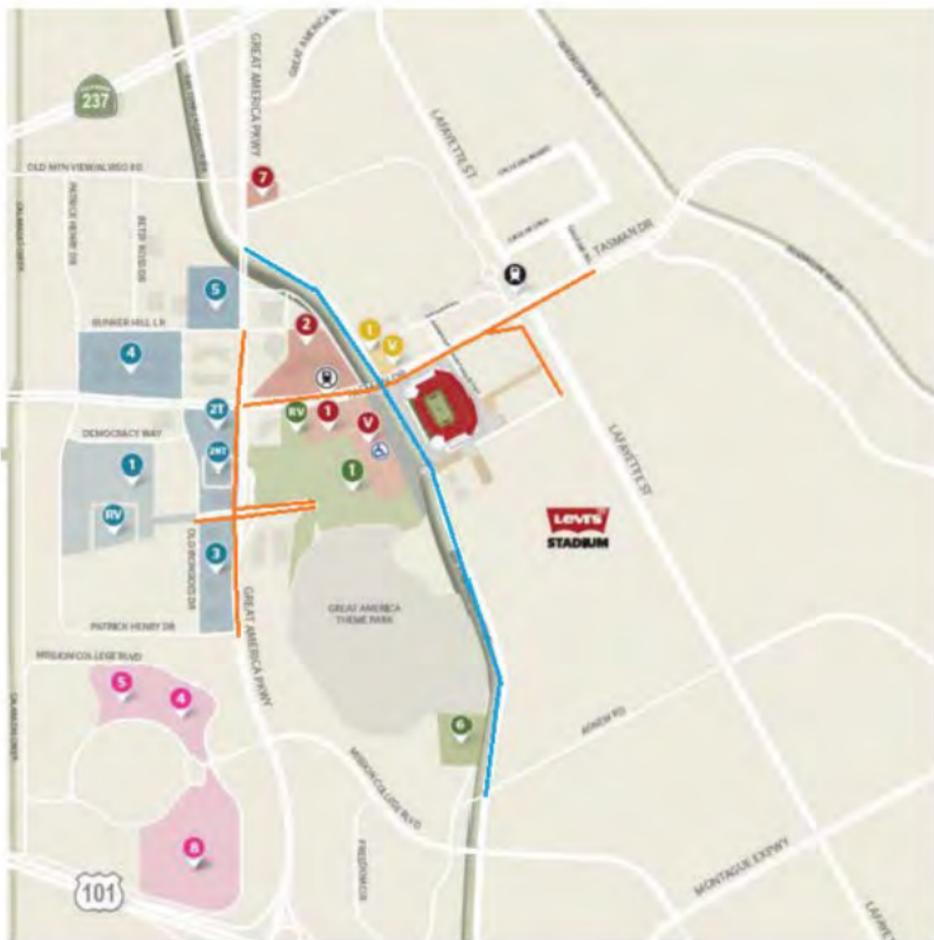
ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None





Agenda Report

25-1237

Agenda Date: 1/28/2025

REPORT TO CITY COUNCIL

SUBJECT

Action on Award of Purchase Order to Braun Northwest for a Mobile Incident Command Vehicle and Approval of Related Budget Amendments

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The Santa Clara Police Department (SCPD) has a variety of equipment, vehicles, and personnel to deploy for both planned activities that require heightened security (e.g., events at Levi's Stadium, large-scale community events, etc.) and unplanned events (e.g., major accidents, mental health emergencies, barricaded suspects, hostage situations, terrorist threats, natural disasters, etc.)

To effectively respond to these events, SCPD deploys vehicles for specific needs, including the Mobile Incident Command Vehicle (MIC), Crisis Negotiation Team Vehicle (CNT), Armored Rescue Vehicle (ARV), and Crime Scene Investigation Team Vehicle (CSI). Each vehicle is uniquely equipped to support its designated function, carrying critical specialized equipment and supplies.

This report focuses on two vehicles critical to SCPD's operations, as shown in the photo below. The MIC (Vehicle #2565) is on the left, and the CNT (Vehicle #1808) is on the right.



Both vehicles have exceeded their intended lifespans, and one vehicle was originally designed for a purpose unrelated to law enforcement. The MIC has been in service for over 23 years and has exceeded the average lifespan of 20 years. As a result, the Police Department is seeking to replace the MIC with an updated vehicle. The CNT was acquired under unique circumstances, and no

dedicated funding exists to support its replacement. An alternative vehicle has been identified to replace the CNT.

Recognizing the need for modernized resources, SCPD has initiated a transition to two new vehicles:

1. Special Response Team Van (SRTV): A Ford E450 was purchased in March 2024 for \$88,492, utilizing COP 22 grant funds. The SRTV is strictly intended to store and transport specialized equipment for critical incidents and replaces the aging CNT (Vehicle #1808).
2. New Mobile Incident Command Vehicle (MIC): SCPD proposes replacing the outdated MIC (Vehicle #2565) with a modern Mobile Incident Command Vehicle. It will be utilized by the Special Response Team (which is comprised of the Special Weapons and Tactics Team and the Crisis Negotiation Team) as a mobile command center. It will provide high visibility on-scene command and control functions, leveraging satellite and internet access, interoperable radios, video capabilities, and data processing tools to enhance situational awareness and decision-making.

Replacing these vehicles aligns with SCPD's goal of supporting emergency response capabilities, particularly in preparation for major upcoming events, including Super Bowl LX and the six Federation Internationale de Football Association (FIFA) World Cup 2026 events.

The City's Fleet Management Division supports this request to retire vehicles #2565 and #1808 and replace them with cleaner, purpose-built vehicles with manufacturer support. These replacements will not increase the City's overall fleet size.

DISCUSSION

The recommendation to purchase a replacement MIC is made pursuant to City Code Section 2.105.270(c) which states that the City may, without observing formal bidding requirements, contract with a vendor under a contract awarded using preestablished cooperative purchasing agreements, when such agreement resulted from a competitive bid process that meets or exceeds the City's competitive bid process.

Staff is recommending purchasing the replacement MIC from Braun Northwest under the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing agreement. H-GAC is a government agency that provides a cooperative purchasing program as part of its service to other government agencies. In June 2023, H-GAC conducted a Request for Proposals (RFP) for ambulances, EMS vehicles, and special service vehicles. Through this RFP process, multiple vendors were awarded a contract including Braun Northwest.

Staff has reviewed the pricing and determined that Braun Northwest's price is fair and reasonable. In addition, Braun Northwest will be able to deliver the MIC within the delivery time required by the Police Department once the City issues the purchase order.

The specifications of the replacement MIC qualify it as "Military Equipment" under the provisions of Assembly Bill 481 (AB 481). Since the acquisition of the MIC is not identified in prior AB 481 Annual Reports and the anticipated delivery timeline is 10-12 months, the acquisition will be incorporated into the next AB 481 Annual Report, which will be presented to the public and the City Council in Spring 2025 in accordance with Government Code Section 7072(a)(6).

Staff is requesting authorization to issue a purchase order to Braun Northwest for the replacement

MIC based on project scope and resource needs totaling an estimated \$586,213, with a 10% contingency of \$58,621, for a not-to-exceed amount of \$644,834.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

The MIC replacement cost is estimated at \$586,213, and with a 10% contingency of \$58,621, the total not-to-exceed cost is \$644,834. This vehicle is proposed to be funded by a variety of funding sources including COP 21 (\$45,000) and COP 22 (\$110,000) funding in the Police Operating Grant Trust Fund. Additionally, the Vehicle Replacement Fund has available replacement funding of \$292,917. To fund the final portion of this project, staff recommends transferring available funding from the Police Department’s General Fund operating budget (\$196,917) to the Vehicle Replacement Fund. The related budget actions are detailed in the budget amendment table below.

	Budget Amendment FY 2024/25		
	Current	Increase/ (Decrease)	Revised
<u>General Fund Expenditure</u>			
Police Department	\$92,566,296	(\$196,917)	\$92,369,379
<u>Transfers To</u>			
Vehicle Replacement Fund	\$0	\$196,917	\$196,917
<u>Vehicle Replacement Fund Transfers From</u>			
General Fund	\$0	\$196,917	\$196,917
<u>Expenditures</u>			
Capital Outlay	\$6,050,398	\$489,834	\$6,540,232
<u>Fund Balance</u>			
Unrestricted Ending Fund Balance	\$4,665,756	(\$292,917)	\$4,372,839

Measure J Compliance

The Stadium Authority will be charged a daily rental rate for the use of this MIC vehicle at stadium events. Similarly, the cost of having this vehicle available for the 2026 major events (in the form of a rental fee) is currently under negotiation with the Bay Area Host Committee.

COORDINATION

This report was coordinated with the Finance, Public Works (Fleet Division) and City Attorney’s

Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Authorize the City Manager or designee to execute a purchase order with Braun Northwest, through the H-GAC cooperative purchase agreement, for the purchase of a Mobile Incident Command vehicle based on project scope and resource needs of totaling an estimated \$586,213 inclusive of taxes and applicable fees, in a final form approved by the City Attorney;
2. Authorize the City Manager or designee to execute change orders for a not-to-exceed contingency amount of \$58,621 (10% of total) for a not -to-exceed amount of \$644,834 to cover unanticipated costs such as minor configuration changes, subject to the appropriation of funds and in a final form approved by the City Attorney; and
3. Approve the following FY 2024/25 budget amendments:
 - a. In the General Fund, decrease the Police Department operating budget in the amount of \$196,917 and establish a transfer to the Vehicle Replacement Fund in the amount of \$196,917 (majority affirmative Council votes required); and
 - b. In the Vehicle Replacement Fund, recognize the transfer from the General Fund in the amount of \$196,917, increase the Capital Outlay appropriation in the amount of \$489,834, and decrease the unrestricted ending fund balance in the amount of \$292,917 (five affirmative Council votes required to recognize additional revenue and for the use of unused balances).

Reviewed by: Cory Morgan, Police Chief

Approved by: Jovan Grogan, City Manager



Agenda Report

25-1250

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Note and File the Silicon Valley Power Bi-Annual Update

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City of Santa Clara's Electric Department, Silicon Valley Power (SVP), is a recognized industry leader with a strong history and reputation of providing excellent customer service. SVP staff have been presenting quarterly or bi-annual reports to City Council for approximately five years. The purpose of the report is to update the City Council and community on recent activities and accomplishments and to prepare for upcoming decisions.

DISCUSSION

This report presented to the City Council provides an update on SVP and includes the following items:

- Background and Growth Plan Update and System Limitations
- Update on System Expansion Projects
- Update on Technology Projects
- Six months look-ahead

ENVIRONMENTAL REVIEW

There is no discretionary action being considered under this Report to Council; therefore, there is no "project" within the meaning of the California Environmental Quality Act ("CEQA") and no further environmental review is required pursuant to section 15060(c) of Title 14 of the California Code of Regulations.

FISCAL IMPACT

There is no fiscal impact associated with this update. Implementation of certain elements will require funding which will be requested through the normal budget process.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website

and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file the Silicon Valley Power Bi-Annual Update.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



Agenda Report

25-1222

Agenda Date: 1/28/2025

REPORT TO COUNCIL

SUBJECT

Action on Recommendation from Governance & Ethics Committee on City Council District Communication Options to be Memorialized in New Council Policy 054 - City Council District Communications

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

City Hall News started as a monthly digital publication featuring City news, initiatives, events, and a message from the City Manager. In 2021, District Councilmembers expressed an interest in sending regular communications to their District constituents. To that end, the publication was rebranded to include a message from the Mayor instead of the City Manager, and Councilmembers were given the option of including a message with the same City Hall News monthly content. On any given month, if a Councilmember submitted a City Hall News message, that message was included in the digital publication for that month.

City Hall News is sent via the GovDelivery platform to approximately 50,000 eNews subscribers each month and is archived on the City website where it is viewable in both Flipbook and PDF formats. Currently, each version of City Hall News with Councilmember messages are also promoted on the City's social media channels.

The Governance and Ethics Committee took up the issue of possible modifications to how the citywide digital newsletter is prepared and circulated, along with the possibility for separate District representative communications, as part of its 2024 Work Plan. This item presents their recommendation on these topics for full Council consideration in the form of new City Council Policy 054.

DISCUSSION

The Governance and Ethics Committee included the topic of District Communication options as part of its 2024 work plan. Through the review of the City's current communication options, staff presented options for consideration (Attachment 1) to the Governance and Ethics Committee meeting on December 2, 2024.

In summary, staff proposed an option to decouple City Hall News from the Mayor and City Councilmember messages to the community and alternatively to provide each City Councilmember the option to send messages to subscribers in their respective districts. As part of the options presented, the Mayor, as the ceremonial head of the City, would continue to utilize the citywide distribution list to send the Mayor's message to the community. To manage workload, staff provided

guidelines on frequency, length, and timing of messages. After review and discussion, the Governance and Ethics Committee provided direction to staff to consider the alternative options and bring forth the options to the full City Council for consideration. The Governance and Ethics Committee recommended the following:

1. City Hall News would continue to be issued as the City's monthly newsletter. The Mayor and City Councilmembers would have the option to submit a monthly message which would be linked following the City news content section.
2. To establish Councilmember subscription lists, the City would begin by using the existing list with roughly 50,000 subscribers. Subscribers would need to unsubscribe to no longer receive the specific Mayor or district news.
3. City Councilmembers have the option to send separate, additional communications to their respective District subscribers. Such messages would also be sent using the citywide subscriber list and, again, include an option to unsubscribe. As Councilmembers develop their own content, best practices should be adhered to. Please refer to the Guidelines for Council Communications Using City Platforms attachment (Attachment 1).
4. Councilmember messages would not be limited on length of message, images submitted, and frequency.
5. A disclaimer would be added to the Councilmember messages that their views do not necessarily represent the official views of the City.
6. City staff would continue to revisit the process and workload. If necessary, staff would return to the Committee if any modifications were needed.

Based on the Governance and Ethics Committee's recommendation, staff has developed the proposed Council Policy 054 titled Council District Communications (Attachment 3) which outlines the following process for implementing the Mayor and District communication options.

Monthly Messages in City Newsletter

1. City Councilmembers submit content to staff by the third week of the month or by deadlines established by staff.
2. Staff will review the content and format it in a template.
3. Staff's review will be limited to typographical/grammar corrections and compliance with the Guidelines for Council Communications Using City Platforms.
4. The Councilmember's communication will be included as a link in the monthly City Newsletter.

Separate City Councilmember Messages

City Councilmembers shall also have the option to send direct messages to constituents more frequently than monthly as follows:

1. City Councilmembers submit content to staff with an indication of their desired publication date; the proposed publication date should be no sooner than three (3) business days after the submittal date.
2. Staff will review content and format it in a template.
3. Staff's review will be limited to typographical/grammar corrections and compliance with the Guidelines for Council Communications Using City Platforms.
4. If workload creates negative impacts to staff, the City Manager will go back to Council with recommended adjustments.

District eSubscriber Lists

The City utilizes an eNews subscription service to send email notifications to currently over 50,000 subscribers. Each District subscriber list will be comprised of the subscribers on the Citywide distribution list. Subscribers will have the option to unsubscribe or remain on the subscriber list, as indicated by the "unsubscribe" hyperlink in the footer of each District message.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact other than staff time.

COORDINATION

This report was coordinated by the City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Approve Committee's Recommendation; or
2. Amend Recommendation and reconsider distribution list approach. Best practice for good customer service would be having each Councilmember grow their own subscriber lists organically rather than automatically sending Councilmember messages to all 50,000 subscribers. That approach may frustrate subscribers and lead them to unsubscribe to City Hall News and all messaging. If Council chooses this alternative recommendation, staff would help promote subscribing to each councilmember message on the City's communication channels.

RECOMMENDATION

Adopt a resolution approving Council Policy 054 (“City Councilmember District Communications”) based on the recommendation from the Governance and Ethics Committee, with amendments if any, provided by the City Council.

Reviewed by: Janine De la Vega, Public Information Officer, City Manager’s Office

Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. RTC 24-772 Report to the Government and Ethics Committee 12/2/24
2. Guidelines for Council Communication Using City Platforms
3. Policy 054 Council District Communications
4. Draft Resolution



Agenda Report

24-772

Agenda Date: 12/2/2024

REPORT TO GOVERNANCE AND ETHICS COMMITTEE

SUBJECT

Discussion and Direction on District Communication Options

BACKGROUND

City Hall News started in 2019 as a monthly digital publication featuring City news, initiatives, events, and a message from the City Manager. In 2021, City Councilmembers expressed an interest in sending regular communications to their District constituents. To that end, the publication was rebranded to include a message from the Mayor instead of the City Manager, and Councilmembers were given the option of including a message with the same City Hall News monthly content. On any given month, if the Councilmember submitted a City Hall News message, the digital publication was made available to the public during that month.

City Hall News is distributed via the GovDelivery platform to approximately 50,000 eNews subscribers each month and is archived on the City website where it is viewable in both Flipbook and PDF formats. Currently, each version of City Hall News with councilmember messages are also promoted on the City's social media channels.

DISCUSSION

As background, the Governance and Ethics Committee included the topic of District Communication options as part of their 2024 work plan. Through the review of our current communication options, staff proposes decoupling City Hall News from Mayor and District Councilmember messages to the community, and provide each District Councilmember the ability to send newsletters to subscribers in their districts. The Mayor, as the ceremonial head of the City, would continue to utilize the citywide distribution list to send her/his message to the community.

Mayor and Council Distribution Lists

The City uses GovDelivery as its email distribution platform. Staff is proposing to develop distribution lists for each council district on the City's eNews platform. Since the Mayor is not assigned a district and is considered the ceremonial head of the City, she/he would be able to send her message citywide which is already the current practice Councilmembers will be able to communicate directly with their District news subscribers. This will allow councilmembers to provide specific information about their district that is relevant to those who live in that district.

Newsletter Guidelines

To manage workload due to citywide communication efforts, city staff proposes the following for Mayor and Council:

- Submit a message up to 500-700 words
- Submit up to three to five images
- Message sent to eNews subscribers on a monthly basis
- Content submissions due the second the week of each month

Content and images should be sent via email to the Communications Team. After staff review, the messages will be formatted in Gov Delivery and sent out to the distribution lists.

The City Communications team will promote the eNews subscription lists via social media and other City publications. Prior to implementation, City Communications will promote to the public that they can subscribe to the District distribution lists via social media and City publications.

By decoupling City Hall News from Council District newsletters, City Halls News would stand on its own as the official source of monthly news for the City. Communications staff would launch a campaign to rebrand City Hall News to generate more subscribers and unveil a new look.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no fiscal impact associated with the approval of the recommendation other than staff time.

COORDINATION

This report was coordinated by the City Manager’s Office

PUBLIC CONTACT

Public contact was made by posting the Committee agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Provide Direction on District Communication Options Recommendations by the Governance and Ethics Committee and Forward for Consideration and Approval by the City Council.

Reviewed by: Janine De la Vega, Director of Communications/PIO, City Manager’s Office

Approved by: Jovan Grogan, City Manager

GUIDELINES FOR COUNCIL COMMUNICATIONS USING CITY PLATFORMS
(Do's and Don'ts for Messaging)

1. If you submit photos as part of your message, make sure you have consent from the people featured in the photos to the use of their image in any proposed communication. If consent is verbal, make a contemporaneous written record of such consent.
2. Send your content and images together in a Word Document.
3. Be mindful of your audience and use communication as-needed rather than overloading them with information they already receive in City's monthly newsletter.
4. District messages should not be used for campaign or political purposes.
5. The City will add a disclaimer to all Council communications substantially as follows:
"Any opinion or position expressed in this message represent the individual opinion or position of the individual Councilmember, and not the opinion or position of the City."
6. Examples of appropriate content:
 - Upcoming City organized events in your district
 - New businesses in your district opening
 - Events you attended
 - Experience had with community member
 - FB Live event you are hosting on your own social media channel
 - Date(s) for upcoming City Council actions of particular interest, including a brief (neutral) description of the nature of such action.
7. Examples of inappropriate content:
 - How you intend to vote on pending quasi-judicial decisions.
 - Calls for action to oppose actions already taken by Council
 - Calls for support or opposition to a candidacy (including your own), ballot measure, or other policy outside the jurisdiction of the City
 - Statements critical of other elected officials, City staff or in any manner contrary to City Ethics and Behavior policies.
8. These Guidelines should also be considered by Councilmembers as guidance for their communications relating to City business on their personal devices/platforms.



COUNCIL DISTRICT COMMUNICATIONS

PURPOSE

The purpose of this policy is to outline the procedures for the City Council to provide communications to constituents in their districts using the City's email distribution platform.

POLICY

The City provides the option for the City Councilmember to send messages to email subscribers on the City's email distribution platform.

PROCEDURE

There are two methods for City Councilmembers to communicate to their constituents using the City's email distribution platform.

1. City Councilmembers may choose to include a message in the monthly City Newsletter sent to the citywide email distribution list. Their respective messages will be included as a link in the newsletter.
2. City Councilmembers may choose to send additional separate communications to email subscribers. The messages would be sent to the citywide subscriber list and include an option to unsubscribe. As City Councilmembers develop their own content, best practices should be adhered to, as stated in the Guidelines for Council Communications attachment.

Monthly Message in City Newsletter

1. City Councilmembers submit content to staff by the third week of the month or by deadlines established by staff.
2. Staff will review the content and format it in a template.
3. Staff's review will be limited to typographical/grammar corrections and compliance with the Guidelines for Council Communications.
4. The Councilmember's communication will be included as a link in the monthly City Newsletter.

Separate City Councilmember Messages

City Councilmembers shall also have the option to send direct messages to constituents more frequently than monthly as follows:

1. City Councilmembers submit content to staff with an indication of their desired publication date; the proposed publication date should be no sooner than three (3) business days after the submittal date.
2. Staff will review content and format it in a template.



COUNCIL DISTRICT COMMUNICATIONS

3. Staff's review will be limited to typographical/grammar corrections and compliance with the Guidelines for Council Communications.
4. If workload creates negative impacts to staff, the City Manager will go back to Council with recommended adjustments.

District Subscriber Lists

The City utilizes an eNews subscription service to send email notifications to over 50,000 subscribers. Each District subscriber list will be comprised of the subscribers on the Citywide distribution list. Subscribers will have the option to unsubscribe or remain on the subscriber list, as indicated by the "unsubscribe" hyperlink in the footer of each District message.

Guidelines for Council Communications

The attached Guidelines for Council Communications are intended to apply to both communications submitted for the City's monthly newsletter, and for direct City Councilmember communications. City staff may update the Guidelines from time to time without Council approval in order to be consistent with best practices and legal requirements. Any updates to the Guidelines will be distributed to the City Council.

Attachments:

1. Report to the Government and Ethics Committee 12/2/24
2. Guidelines for Council Communications
3. Policy 054 Council District Communications

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
ESTABLISHING COUNCIL POLICY 054 COUNCIL DISTRICT
COMMUNICATIONS TO OUTLINE THE PROCEDURE FOR THE
CITY COUNCIL TO PROVIDE COMMUNICATIONS TO
CONSTITUENTS IN THEIR DISTRICTS USING THE CITY’S EMAIL
DISTRIBUTION PLATFORM.**

WHEREAS, the Governance and Ethics Committee took up the issue of expanding communication options for City Councilmembers as part of its 2024 Work Plan,

WHEREAS, the City is represented by six districts and the Mayor and each Councilmember have indicated an interest to send communications to their constituents, and

WHEREAS, a formal policy is needed to establish guidelines and process for City Councilmember Communications and its distribution to constituents.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That Council Policy 054 “Council District Communications” attached here as Attachment 1, is hereby approved and adopted.
2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2025, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST: _____
 NORA PIMENTEL, MMC
 ASSISTANT CITY CLERK
 CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Council Policy and Procedure - 054 Council District Communications