



# City of Santa Clara

## Meeting Agenda

### Call and Notice of Special Council Meeting Council and Authorities Concurrent Meeting

Tuesday, July 18, 2023

6:00 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>

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://santaclaraca.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](mailto: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.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <https://santaclaraca.legistar.com/Calendar.aspx>

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, CA 95050 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. For the final document, you may contact the Office of the City Clerk at (408) 615-2220 or [Clerk@santaclaraca.gov](mailto:Clerk@santaclaraca.gov).

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 Mayor calls for a Special Meeting of the City Council of the City of Santa Clara, to commence and convene on July 18, 2023, at 6:00 pm for a Special Council Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California and virtually to consider the following matter(s) and to potentially take action with respect to them.

**Special Council Meeting 6:00 PM | Regular Meeting - 7:00 PM**

**6:00 PM SPECIAL COUNCIL MEETING**

**Call to Order in the Council Chambers**

**Roll Call**

1. **23-757** [Receive Silicon Valley Power Quarterly Update](#)

**Recommendation:** Note and file the Silicon Valley Power Quarterly Update.

**7:00 PM COUNCIL REGULAR MEETING**

**Call to Order**

*Call to Order in the Council Chambers (Open to the Public)*

**Pledge of Allegiance and Statement of Values**

**CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS**

**SPECIAL ORDER OF BUSINESS**

- 2.A **23-898** [Recognition of Miss Santa Clara Kimberly Vernon](#)
- 2.B **23-863** [Proclaim Taylor Swift as Honorary Mayor and Name the City of Santa Clara to “Swiftie Clara” for Ceremonial Purposes Only During the Period of July 28, 2023 to July 29, 2023](#)

**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.]*

Meeting

**3.A 23-17** [Board, Commissions and Committee Minutes](#)

**Recommendation:** Note and file the Minutes of:  
Historical and Landmarks Commission - May 17, 2023  
Historical and Landmarks Commission - June 1, 2023  
Downtown Community Task Force - March 14, 2023  
Downtown Community Task Force - April 20, 2023

**3.B 23-844** [Action to Ratify Purchase Orders Greater than \\$250,000, with an Aggregate Amount of \\$3,389,254 for Finance Department Central Warehouse Purchases to Replenish Silicon Valley Power Inventory Funded by the Electric Operating Fund](#)

**Recommendation:**

1. Ratify the purchase order for Hitachi Energy USA, Inc for electric transformers in an amount not to exceed \$529,398, funded by the Electric Operating Fund and Electric Utility Capital Fund, subject to appropriation of funds.
2. Ratify the purchase order for Trayer Engineering Corp for electric switches in an amount not to exceed \$2,362,246, funded by the Electric Operating Fund and Electric Utility Capital Fund, subject to appropriation of funds.
3. Ratify the purchase order for Elster Solutions LLC for electric meters in an amount not to exceed \$497,610, funded by the Electric Operating Fund and Electric Utility Capital Fund, subject to appropriation of funds.

**3.C 23-690** [Action on an Agreement with Bellecci & Associates, Inc. for Design Professional Services for Creek Trail Pavement Maintenance and Rehabilitation Projects](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute an agreement with Bellecci & Associates, Inc. for Creek Trail Pavement Maintenance and Rehabilitation Projects in the amount not-to-exceed \$494,110 for design professional services required for the creek trail pavement maintenance and rehabilitation projects, in a final form approved by the City Attorney; and
  2. Authorize the City Manager to make minor, non-substantive modifications, including time extensions, to the agreement, if needed in a final form approved by the City Attorney.



**3.D 23-737** Action to Delegate Authority to the City Manager to Negotiate and Execute Amendments to Agreements for Design Professional Services for Silicon Valley Power's System Capacity Expansion Planning Including Development of a Twenty-Year Long-Term Strategy Plan for System Growth, Master Agreements for Plan Implementation Services, and Master Agreements for General Consulting Services

- Recommendation:**
1. Authorize the City Manager to negotiate and execute an amendment to the Agreement for Design Professional Services with Electrical Consultants, Inc (ECI Agreement) for additional services associated with the System Expansion Plan increasing the maximum compensation to \$1,500,000 and extending the term of the agreement until December 31, 2025, funded by the Electric Utility Capital Fund;
  2. Authorize the City Manager to negotiate and execute amendments to the following Agreements for Design Professional Services (Master Agreements) for Silicon Valley Power's System Expansion Plan with an additional aggregate maximum compensation of \$30 million for a new aggregate maximum compensation of \$80 million funded by the Electric Utility Capital Fund and allocated as SVP may require, subject to the appropriation of funds: (A) general consulting services with: (i) Advisian Worley Group; (ii) TRC Solutions, Inc.; (iii) Leidos Engineering LLC; (iv) Flynn Resource Consultants, Inc.; and (v) EN Engineering LLC; and (B) For plan implementation services with: (i) Burns & McDonnell Engineering Company, Inc. (formerly 1898 & Co.); (ii) TRC Solutions, Inc.; (iii) ECI; (iv) AECOM Technical Services, Inc.; and (v) Stantec Consulting Services Inc
  3. Authorize the City Manager to take any actions as necessary to implement and administer the ECI Agreement and Master Agreements and to negotiate and execute amendments to those agreements to (a) add or delete services consistent with their scope of services; (b) adjust future rates; and (c) extend their term of the agreement to complete projects initiated during the authorized term; and

4. All amendments included in this authorization shall be subject to the review and approval as to form by the City Attorney.

**3.E 23-136** [Action on Accepting a Grant Award from the EnerglIZE Commercial Vehicles Project to Fund Medium-Duty and Heavy-Duty \(MD/HD\) Zero-emission Vehicles \(ZEVs\) Charging Infrastructure at the City's Street Corporation Yard/Utility Yard at 1715 Martin Avenue](#)

- Recommendation:**
1. Accept EnerglIZE Project grant funds for an amount of \$177,487 (Energlize Grant) or such additional amount as may be awarded from the EnerglIZE Project to fund medium-duty and heavy-duty zero-emission vehicles charging infrastructure at the City's Street Corporation Yard/Utility Yard at 1715 Martin Avenue or other eligible locations with required matching funds from Greenhouse Gas Reduction Funds (Fund 191); and
  2. Authorize the City Manager, or designee, to negotiate and execute an agreement (Agreement) with CALSTART for the Energlize Grant and related documents, subject to the review and approval as to form by the City Attorney, and to take all actions necessary to administer and implement the Energlize Grant and Agreement.

**3.F 23-510** [Action on Authorizing the Use of City Electric Forces at Various Locations](#)

**Recommendation:** In accordance with Section 713 of the City Charter, the City Council hereby resolves as follows:

1. Determine the proposed action is exempt from CEQA pursuant to Sections 15302(c) (Class 2 - Replacement or Reconstruction) and 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations; and
2. Declare and determine that the public works located at 2300 Calle De Luna, 2920 Scott Boulevard, 2330 Monroe Street, and 3941 Stevens Creek Boulevard are better performed by the City with its own employees based on the information set forth in this Report to Council.

**3.G 23-764** [Action to Authorize the City Manager to Execute Agreements for Two HUD CDBG-funded Capital Improvement Projects: 1\) Santa Clara Methodist Retirement Foundation - Liberty Tower \(Elevator Upgrades\); and 2\) Rebuilding Together Silicon Valley \(Minor Home Repair Program\); \(Categorical Exemption per the California Environmental Quality Act \(CEQA\) section 15301 \(e\) \(1\), Existing Facilities\)](#)

**Recommendation:**

1. Authorize the City Manager to execute agreements with: 1) Santa Clara Methodist Retirement Foundation - Liberty Tower to fund up to \$750,000 for elevator upgrades and related work; 2) Rebuilding Together Silicon Valley, to fund up to \$100,000 for the administration of the City's Minor Home Repair program subject to the availability of Community Development Block Grant funds, on the terms presented, in final forms approved by the City Attorney.

**3.H 23-840** [Action on a Special Permit to Allow up to Four Two-day Community Festivals per Year for a Period of Two Years at 1375 Lafayette Street, S.E.S. Portuguese Hall of Santa Clara](#)

**Recommendation:**

1. Determine the proposed action is categorically exempt pursuant to CEQA Guidelines section 15304(e) (Class 4 - "Minor Alterations to Land"); and
2. Approve the request of a Special Permit for two years to allow up to four two-day community festivals per year at 1375 Lafayette Street, S.E.S Hall Portuguese Hall of Santa Clara

subject to conditions.

**3.I 23-795** [Action to Adopt Resolution to Rescind Stage 2 of the Water Shortage Contingency Plan, While Continuing to Implement State Water Resources Control Board \(SWRCB\) Water Use Restrictions](#)

**Recommendation:**

Adopt a Resolution Rescinding Stage 2 of the City's Water Shortage Contingency Plan While Continuing to Implement SWRCB Water Use Restrictions.

**3.J 23-873** [Action on Deleting an Electric Program Manager Position and Adding an Electric Division Manager Position at Silicon Valley Power and Related Budget Amendment](#)

**Recommendation:**

1. Approve the addition of one Electric Division Manager and deletion of one Electric Program Manager position in the Electric Utility Department funded by the Electric Utility Fund; and
2. Approve the following FY2023/24 budget amendment in the Electric Utility Fund to increase the Electric Department appropriation by \$38,000 and reduce the Unrestricted Ending Fund Balance by \$38,000 (**five affirmative Council votes required for the use of unused balances**).

## **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**

4.      **23-747**      [Action on a Rezone from PD - Planned Development to MH - Heavy Industrial for the Properties Located at 700 Mathew Street to Allow Reestablishment of Industrial Use for the Property for a Metal Fabrication and Spinning Business](#)

**Recommendation:**

1. Determine that the Project is categorically exempt under Section 15301 (Class 1 Existing Facilities) of the CEQA Guidelines;
2. Adopt a resolution approving the Rezone from Planned Development (PD) to Heavy Industrial (MH) for the property located at 700 Mathew Street, subject to conditions of approval.

5.      **23-824**      [Action on Appointments Related to a Charter Review Committee and Direction to Study Charter Amendment Alternatives Related to the Positions of Police Chief and City Clerk for Possible Placement on a March 2024 ballot.](#)

**Recommendation:** Alternative: Staff makes no recommendation

6.      **23-726**      [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](#)

**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.

7.      **23-913**      [Action on a Written Petition \(Council Policy 030\) Submitted by Councilmember Jain to Appropriate Funds to Support the Work of the Charter Review Committee as well as Strategic Policy Analysis, Voter Research, Community Engagement and Other Related Costs Associated with Election Activities and Potential Ballot Measures in 2024](#)

**Recommendation:** 1. Alternative 1: Provide direction, and approval of a FY 2023/24 budget amendment in the General Fund, if appropriate, to increase the City Clerk’s Office budget by \$72,000, increase the City Manager’s Office budget by \$358,355, and decrease the FY 2023/24 Budget Balancing Reserve by \$430,455 to support strategic policy analysis, voter research, community engagement (including support for the Charter Review Committee) as well as related costs for potential March and November 2024 ballot items. **(five affirmative Council votes required for the use of unused balances).**

**REPORTS OF MEMBERS AND SPECIAL COMMITTEES**

**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

- 23-922**      [Tentative Meeting Agenda Calendar \(TMAC\)](#)

**ADJOURNMENT**

**The next regular scheduled meeting is on Tuesday, August 22, 2023 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) <<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.





## Agenda Report

23-757

Agenda Date: 7/18/2023

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### REPORT TO COUNCIL

#### SUBJECT

Receive Silicon Valley Power Quarterly Update

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

Silicon Valley Power (SVP) is a recognized industry leader with a strong history and reputation of providing excellent customer service. The electric industry is rapidly changing and undergoing a fundamental transformation, shifting from a centralized resource grid toward an increasingly decentralized electrical grid with distributed renewable energy resources (e.g., wind, solar, hydrogen, and biogas), shifting variability in supply, and greater customer choice.

#### DISCUSSION

The report to be presented to Council will provide an update to Council on the status of the utility, current load and sales, growth plan status, recent accomplishments, and upcoming Council Actions for consideration.

#### 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 a governmental administrative activity that will not result in direct or indirect physical changes in the environment.

#### 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

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**RECOMMENDATION**

Note and file the Silicon Valley Power Quarterly Update.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jōvan Grogan, City Manager

**ATTACHMENT**

1. Silicon Valley Power Quarterly Update



City Council

**Item #1: Silicon Valley Power  
Quarterly Update**

**RTC 23-757**

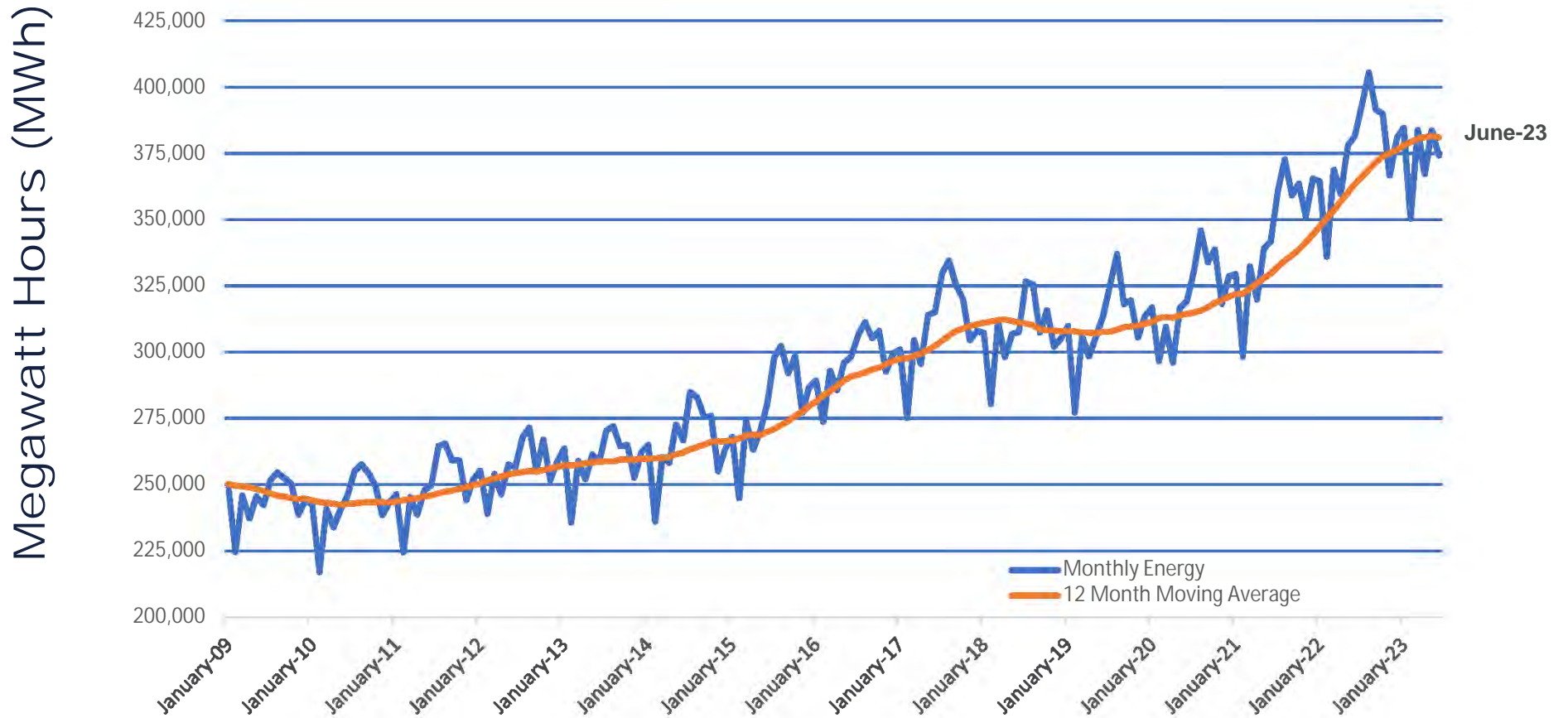
**July 18, 2023**



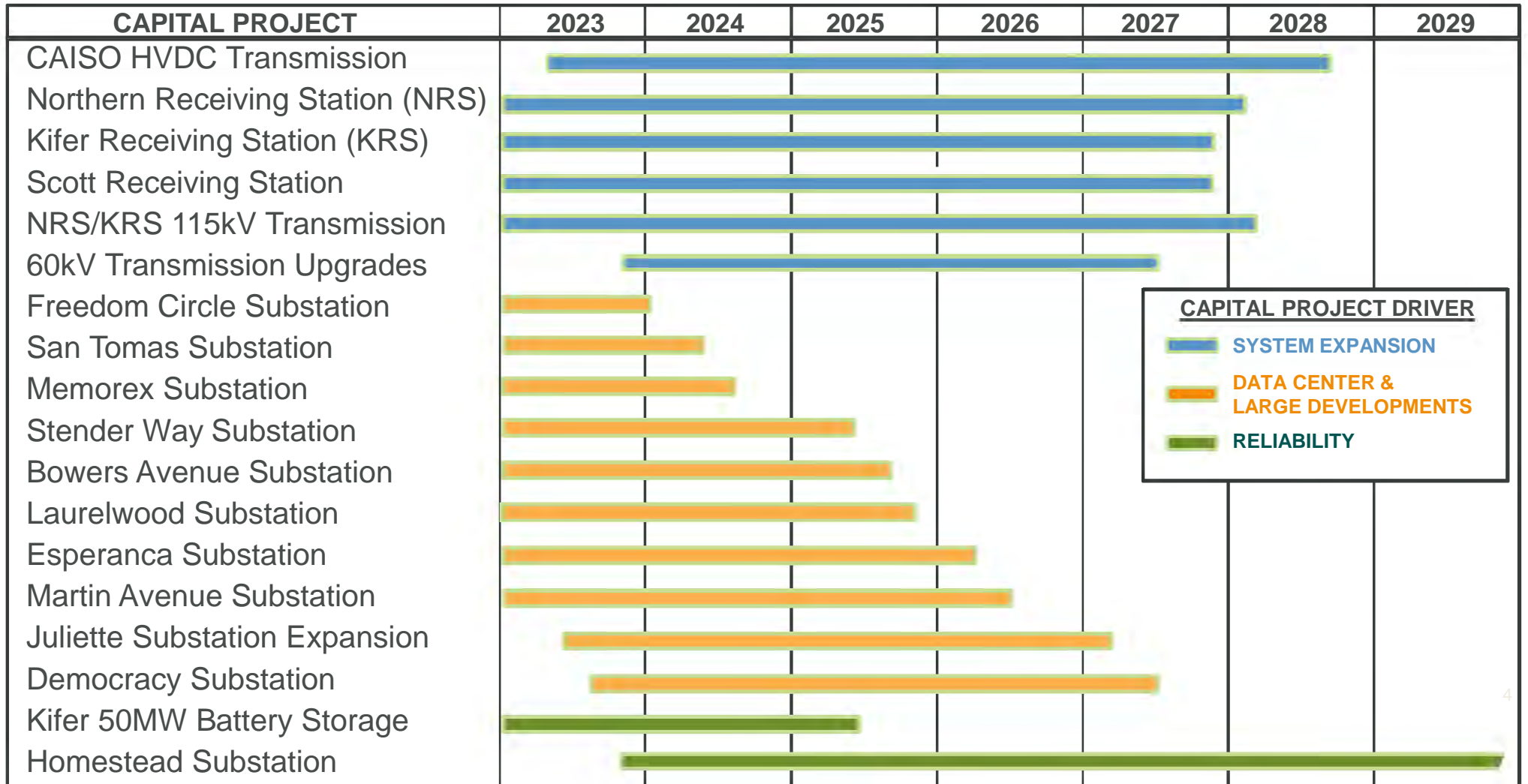
# Agenda

- Load Growth
- Capital Projects Update
- System Capacity Expansion Program
- BESS Update
- Electric Vehicle Update
- Solar Programs
- Upcoming Items

# SVP Historic Load Growth



# Electric Utility Capital Projects





# CAISO Transmission Line from PG&E Newark Station to SVP Northern Receiving Station

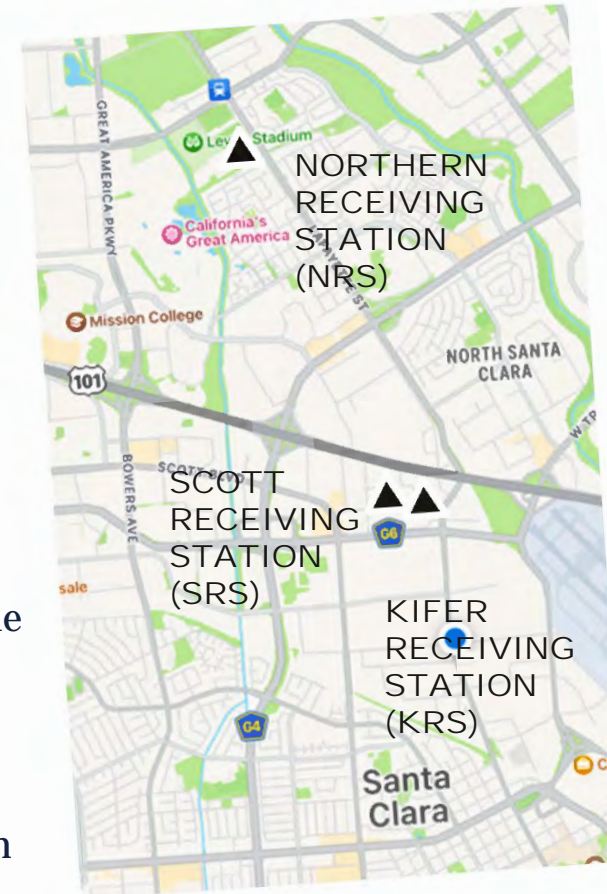
- Project scope:
  - Two High Voltage Direct Current (HVDC) Terminals,
  - $\pm 320$  kV HVDC underground and overhead transmission line between the terminals (preliminary preferred route is ~8 miles)
  - 230 kV interconnection at each station
- CAISO awarded to LS Power on March 7, 2023
- Target in-service date by mid 2028
- Coordination meetings with SVP currently underway





# SVP Receiving Station Upgrades

- Northern Receiving Station (NRS):
  - Relocation of two existing PG&E 115 kV overhead connections and CAISO meters, additional transformers, upgrade of existing main/transfer bus configurations, circuit breakers, disconnect switches and system protection improvements.
  - Stantec - 30% design is underway
  - Currently working on procurement for switches for Breaker 412 Mitigation
- Scott and Kifer Receiving Stations (SRS & KRS):
  - Full Rebuild - New 60kV/115kV Switchgear, control rooms, transformers, circuit breakers, disconnecting earthing switches, cable sealing, relocation of 60kV and 115kV transmission lines associated with each substation and removal of the existing substation at two sites.
  - TRC - 30% design is underway
  - Currently working on procurements for switchgear and control room enclosures

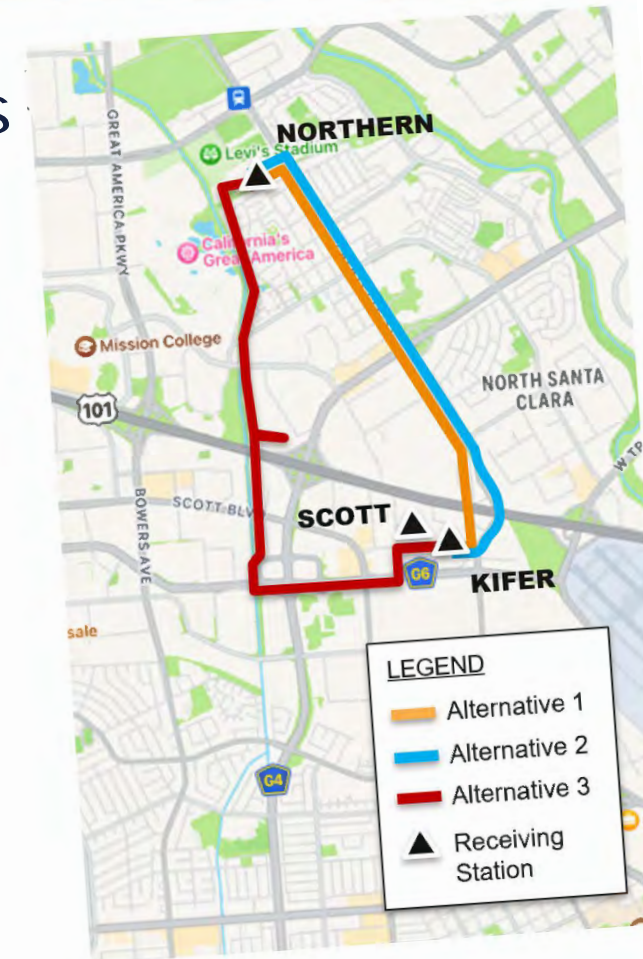






# 115kV Transmission Line Northern to Kifer Receiving Stations

- Project Scope: Construct a new 115kV transmission line between Northern Receiving Station and Kifer Receiving Station. The line will be designed to the higher 230 kV standards and energized at 115 kV.
- Electrical Consultants, Inc. was selected as the design consultant and a Route Analysis Report has been prepared.
- Verification of route feasibility will be performed by potholing for buried utilities prior to a final route recommendation.





# Transformer Procurement for SVP Receiving Stations

- Proposals received on May 2, 2023
- Proposals are currently under evaluation/best and final offer (BAFO) for recommended selection
- Base quantity of two 240kV and nine 115kV transformers
  - Optional quantity is being considered. SVP has option to purchase future quantity based on this selection.
- Request for award and purchasing approval will come to Council in Fall 2023
- Procurement Lead Time average of 20 months with potential of 40+ months



# Kifer Battery Energy Storage Project

## Size:

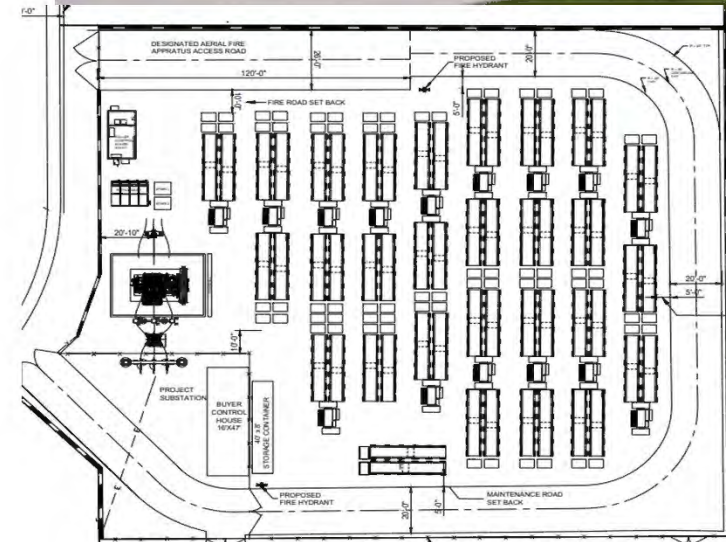
- Capacity up to 50MW/200MWh (4 hours daily)
  - Currently anticipating 45MW/180MWh of Guaranteed Capacity, with additional 5MW/20MWh of Excess Capacity
  - Tesla Megapack technology

## Estimated costs:

- \$4 million in Capital Costs
- \$7 M annually with 3.5% annual escalator for 20-year term

## Benefits:

- Increased local area capacity for system reliability and flexibility
- Serves peak load
- Increase use of renewable energy
- Ability to perform intraday energy arbitrage
- Qualifies for CAISO Resource Adequacy
- Enhanced Resiliency
  - May reduce load shedding events during high stressed conditions on the grid.



Located on Raymond Street next to DVR Powerplant and new Kifer Receiving Station



# Kifer Battery Energy Storage Project

## Status:

- ~~PPA and Lease near completion (execution in August)~~
- Final MND posted to City website
  - Draft Resolution near final, currently drafting RTC to request Council adoption (August)
- Interconnection Agreement near completion (requesting Council approval in August)
- Utility Location Survey and Topo Survey Completed

## Next Steps:

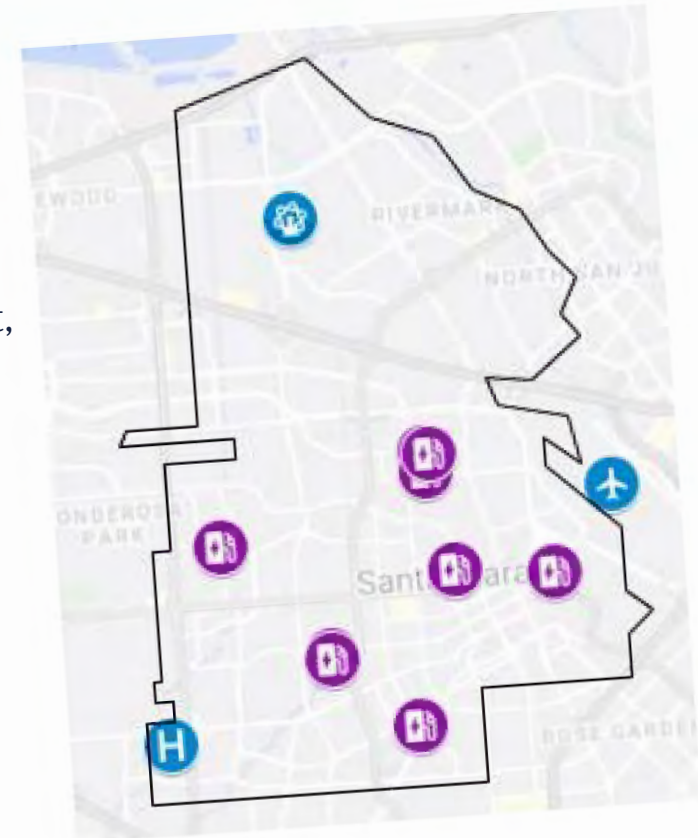
- ~~Upon execution of contracts~~
  - Ameresco to begin design and place order for equipment
    - Battery and Balance of Plant Equipment order anticipated in Oct/Nov 2023
  - Environmental Assessment for Permit Request
- Demo to begin in Q4 2023
- CAISO Phase II Interconnection Study Report to be published 1/31/2024
  - PG&E to complete Affected System Study
- Project construction to begin in Summer 2024
- Equipment to be delivered in Fall 2024
- COD anticipated summer 2025





# Chargers and Grants

- Phase 2 Installations Complete – commissioning through June
  - Fleet (39 ports) - Police Dept, Utility Yard, Parks Service Center
  - Public (10 ports) - Central Park Tennis Courts, Henry Schmidt, Machado Park (July/August)
- Awarded (~\$360,000)
  - EnergIIZE Med-heavy-duty EV fleet charging
  - Energy Efficiency and Conservation Block Grant (EECBG)
- Applied - Charging and Fueling Infrastructure (CFI) (\$2M)





# New Initiatives

- Employee Workplace EV Charging Pilot
- Electric Vehicle-to-Building Integration
- Direct-Install EV charging 4 schools (SCUSD)
- EV Charging Public Access Expansion (parking lot leasing)
- Silicon Valley Hopper Support– refueling options for ZEV community ride-hail vehicles





# Solar Focus

- **Commercial & Multi-Family Solar Program**
  - June 6, 2023, City Council Approved creation of a commercial solar rebate program in the Public Benefits Expenditure Plan
  - Staff is in the process of creating a program, expected launch January 2024
- **Community Solar Survey Highlights – 171 Responses**
  - Strong support of those surveyed support a community solar program – 75%
  - Willingness to pay a small premium to lock in energy bill over time – 84%
  - Right financial model will be crucial for program adoption
- **Community Solar Next Steps**
  - No in-house solar expertise, will need to contract
  - Request for Proposal for Feasibility Study and Business plan





# Upcoming Items

- Next 6 months highlights
  - Switchgear Procurement for KRS/SRS/NRS
  - Bond Financing of 4 CIP Transmission Projects ~ October/November to align with procurement of materials
  - Completion of solicitations and master agreements for critical services supporting existing infrastructure (power plants, substations, transmission and distribution.)
  - Integrated Resources Plan (IRP)
  - Many additional items.....





City Council

**Item #1: Silicon Valley Power  
Quarterly Update**

**RTC 23-757**

**July 18, 2023**





## Agenda Report

23-898

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Recognition of Miss Santa Clara Kimberly Vernon

#### BACKGROUND

Kimberly Vernon of Santa Clara was crowned Miss Santa Clara in February 2023. Most recently, she represented Santa Clara at Miss California. She was ranked as the Miss California Top 12 State finalist and was the recipient of the Lynn Blackburn Spirit of Miss California Award for Women's Health and Fitness. In addition, Kimberly has also coached the Color Guard team at Santa Clara High School. She was also with the Santa Clara Vanguard Drum and Bugle Corps as part of numerous award-winning ensembles: from the 2013 Open Class Champion, the 2017 George Zingali Best Color Guard Award, the 2017 DCI Silver Medal, and the 2018 DCI World Championship. Her social impact initiative is "Arts for All," where she advocates for accessible arts programming for everyone but specifically for youth and the community. In the past year, she has participated at many Citywide events in support of the Santa Clara community.

#### DISCUSSION

At the July 18, 2023 City Council meeting, the Mayor will present a Commendation to Miss Santa Clara Kimberly Vernon for her accomplishments and commitment to the serving the Santa Clara community.

#### 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, Mayor and Council Offices

Approved by: Jövan D. Grogan, City Manager, City Manager's Office



## Agenda Report

23-863

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Proclaim Taylor Swift as Honorary Mayor and Name the City of Santa Clara to “Swiftie Clara” for Ceremonial Purposes Only During the Period of July 28, 2023 to July 29, 2023

#### BACKGROUND

The internationally recognized and beloved artist, Taylor Swift, will be performing in Santa Clara on July 28 and 29, 2023, as part of the Eras Tour at Levi's Stadium. Santa Clara has been honored to host Taylor Swift on six occasions over three tours at Levi's ® Stadium, beginning with “The 1989 World Tour” in 2015, followed by “The Reputation Stadium Tour” in 2018, and “The Eras Tour” in 2023.

Discover Santa Clara,® the official Destination Marketing Organization (DMO) along with Taylor Swift fans have shared ideas and interest with the City for the opportunity to commemorate the tour, which benefits the City of Santa Clara and showcases the City's support for the arts and entertainment.

The Taylor Swift Eras tour has garnered unanimous critical acclaim, praising its exceptional concept, production, and Taylor Swift's remarkable musicianship, and versatility as an entertainer. Notably, the demand for tickets has reached unprecedented heights, with Taylor Swift's loyal fan base, known as the “Swifties,” eagerly awaiting her arrival.

Several other cities hosting the Eras Tour have taken the initiative to celebrate in ceremonial ways, creating a truly unforgettable experience for fans and visitors alike. Below are examples of other cities and formal actions to commemorate the Eras Tour:

- Glendale, AZ - The city was renamed to “Swift City”
- Arlington, TX - The city renamed a street to “Taylor Swift Way” right outside of AT&T Stadium
- Tampa, FL - The city was renamed “Swiftsborough,” as it lies within Hillsborough County
- Houston, TX - The NRG Stadium was renamed “NRG Stadium (Taylor's version)”
- Nashville, TE - Proclaimed “Taylor's Swift's Homecoming Weekend”
- Foxborough, MA - Governor Maura Healey wrote an official citation to welcome Swift, calling it “a “Governor's Citation (Maura's Version)”
- East Rutherford, NJ - Governor Phil Murphy declared the “Taylor Swift Ham, Egg, and Cheese” as the official State Sandwich of New Jersey
- Pittsburgh, PA - the city was ceremonially renamed “Swiftsburgh”

By designating a period in Santa Clara to honor the Taylor Swift Eras Tour, we aim to celebrate and recognize her significant contributions to the music industry and demonstrate the City's support for this exceptional artist. The City of Santa Clara will proclaim Taylor Swift as honorary Mayor and

welcome “Swifties” to the “City of Swiftie Clara” from Friday, July 28, 2023 to Saturday, July 29, 2023.

**DISCUSSION**

At the July 18, 2023 City Council meeting, the City Council will proclaim Taylor Swift as Honorary Mayor and name the City of Santa Clara to “Swiftie Clara” for ceremonial purposes only during the period of July 28, 2023 to July 29, 2023.

**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.

**COORDINATION**

This report was coordinated with the City Manager’s Office and City Attorney’s Office.

**PUBLIC CONTACT**

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Reviewed by: Maria Le, Assistant to the City Manager, Mayor and Council Office

Approved by: Jōvan D. Grogan, City Manager

*City of Santa Clara*  
**Proclamation**

- WHEREAS,** American singer-songwriter Taylor Swift has had a tremendous cultural impact since her debut self-titled album in 2006; and
- WHEREAS,** Taylor Swift has achieved enormous success with ten studio albums and three re-recorded albums, of over 250 million certified units sold worldwide, twelve Grammy awards, and forty American Music Awards; and
- WHEREAS,** Among many other accolades and accomplishments too numerous to list, Taylor Swift has achieved nine number one hits, forty top ten hits, and one hundred ninety entries on the Billboard Hot 100 List, and is the most streamed female artist on Spotify; and
- WHEREAS,** Well-known for her philanthropic efforts, Taylor Swift has donated millions of dollars to help victims of natural disasters as well as providing millions in funding for musical education at numerous institutions; and
- WHEREAS,** The City of Santa Clara has been honored to host Taylor Swift on six occasions over three tours at Levi's ® Stadium, beginning with "The 1989 World Tour" in 2015, followed by "The Reputation Stadium Tour" in 2018, and "The Eras Tour" in 2023; and
- WHEREAS,** Taylor Swift's incredible and passionate fan base of "Swifties" have been, and are, welcomed with gratitude by and to the City of Santa Clara; and
- WHEREAS,** During the period July 28-29, 2023, the City of Santa Clara is proud to welcome Taylor Swift and Swifties from all over the world to celebrate The Eras Tour,

**NOW, THEREFORE, I, LISA M. GILLMOR,** by virtue of the authority vested in me as Mayor, and on behalf of the Santa Clara City Council, do hereby proclaim Taylor Swift as honorary Mayor for the period of Friday, July 28, 2023 to Saturday July 29, 2023, and the name of the City shall be changed for ceremonial purposes only to the:

**SWIFTIE CLARA**

To celebrate the positive local impact to the Santa Clara community, as well as the impact regionally, of Taylor Swift's music, tours, and extraordinary fanbase.

Given under my hand and the Seal of the City of Santa Clara, California, this 18<sup>th</sup> of July.

**LISA M. GILLMOR**  
**MAYOR**  
City of Santa Clara





# City of Santa Clara

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

## Agenda Report

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23-17

Agenda Date: 7/18/2023

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### REPORT TO COUNCIL

#### SUBJECT

Board, Commissions and Committee Minutes

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### RECOMMENDATION

Note and file the Minutes of:

Historical and Landmarks Commission - May 17, 2023

Historical and Landmarks Commission - June 1, 2023

Downtown Community Task Force - March 14, 2023

Downtown Community Task Force - April 20, 2023



# City of Santa Clara

## Meeting Minutes

### Historical & Landmarks Commission

05/17/2023

6:00 PM

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

#### Special Meeting

TO WHOM IT MAY CONCERN:

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 undersigned calls for a Special Meeting of the Historical and Landmarks Commission of the City of Santa Clara, to commence and convene on May 17, 2023 at 6:00 pm for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

The City of Santa Clara is conducting the Historical and Landmarks Commission meeting in a hybrid manner (in-person and methods for the public to participate remotely)

- Via Zoom:
  - o <https://santaclaraca.zoom.us/j/97233262035> or
  - o Phone: 1 (669) 900-6833
  - o Webinar ID: 972 3326 2035

Public Comments prior to meeting may be submitted via email to [PlanningPublicComment@santaclaraca.gov](mailto:PlanningPublicComment@santaclaraca.gov) no later than noon on the day of the meeting. Clearly indicate the project address, meeting body, and meeting date in the email.



**PUBLIC PARTICIPATION IN ZOOM WEBINAR:**

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- 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, you may leave the meeting.

**CALL TO ORDER AND ROLL CALL**

**Chair Leung** called the meeting to order at 6:04 p.m.

- Present** 5 - Commissioner Amy Kirby, Chair Patricia Leung, Commissioner Kathleen Romano, Commissioner Ed Stocks, and Vice Chair Ana Vargas-Smith
- Absent** 1 - Commissioner Michael Celso

**A motion was made by Commissioner Vargas-Smith, seconded by Commissioner Romano, to excuse Commissioner Celso.**

- Aye:** 5 - Commissioner Kirby, Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Absent:** 1 - Commissioner Celso

**CONSENT CALENDAR**

Item 1.C was moved to GENERAL BUSINESS.

**CONSENT CALENDAR**

**A motion was made by Commissioner Vargas-Smith, seconded by Commissioner Romano, to approve item 1.A and 1.B. Item 1.C was moved to GENERAL BUSINESS.**

- Aye:** 5 - Commissioner Kirby, Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 1 - Commissioner Celso

- 1.A [23-643](#) Historical and Landmarks Commission Minutes of February 2, 2023
- 1.B [23-644](#) Action on Draft Certified Local Government (CLG) 2021-2022 Annual Report
- 1.C [23-357](#) Consideration of a Mills Act Contract and Major Significant Property Alteration Permit at 1365 Main Street.

Public Speakers:

**Jonathon Evans**

**A motion was made by Commissioner Romano, seconded by Commissioner Vargas-Smith, to recommend approval to the Planning Commission with a request to the Chief Building Official to allow the applicant to keep the southside windows intact per the Historic Building Code and to modify the 10 Year Plan to move the foundation work to year one. The motion carried by the following vote:**

**Aye:** 5 - Commissioner Kirby, Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 1 - Commissioner Celso

## **PUBLIC PRESENTATIONS**

### **GENERAL BUSINESS**

2. [23-642](#) Consideration of a Major Significant Property Alteration Permit for Additions and Renovations to a Historic Property Located at 4120 Bassett Street (CEQA: Categorical Exemption, 15301(e)(2) - Existing Facilities and 15331- Historical Resource Restoration / Rehabilitation)

**A motion was made by Commissioner Romano, seconded by Commissioner Vargas-Smith, to recommend approval to the Planning Commission.**

**Aye:** 5 - Commissioner Kirby, Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 1 - Commissioner Celso

3. [23-645](#) Consideration of a proposed new attached Accessory Dwelling Unit (ADU) and modification of attic space into living space at 611 Hilmar Street that is located within 200 feet of a Historic Resource.

Public Speakers:

**Matt Dougherty**

**Bea Riley**

**Timi Okai**

**Larry Gatson**

**Mark Kelsey**

**Christoph Van Hover**

**Mark Kolbeck**

**A motion was made by Commissioner Romano, seconded by Commissioner Vargas-Smith, to recommend approval to the Development Review Hearing Officer with a recommendation to the homeowner to modify the front facade to the original design in conformance with existing codes and to consider listing the residence on the HRI with a Mills Act.**

**Aye:** 4 - Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Nay:** 1 - Commissioner Kirby

**Excused:** 1 - Commissioner Celso

4. [23-656](#) Consideration of a proposed new attached Accessory Dwelling Unit (ADU) at 1860 Market Street that is located within 200 feet of a Historic Resource continued from the November 3, 2023 and February 2, 2023 Historical and Landmarks Commission meetings

**A motion was made by Commissioner Romano, seconded by Commissioner Kirby, to recommend approval to the Planning Commission.**

**Aye:** 5 - Commissioner Kirby, Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 1 - Commissioner Celso

5. [23-646](#) Action to Authorize Staff to Solicit Vendor Quotes for a State of California Department of Parks and Recreation (DPR) for the Downtown Post Office and Authorize the Expenditure of Historical and Landmarks Commission (HLC) Funds

**A motion was made by Commissioner Vargas-Smith, seconded by Commissioner Romano, to approve.**

**Aye:** 5 - Commissioner Kirby, Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 1 - Commissioner Celso

**STAFF REPORT**

- 1. Berryessa Adobe Maintenance

**COMMISSIONERS REPORT**

- 1. Subcommittee Reporting - 20 minutes

- 2. Board/Committee

Lead/Alternate

Santa Clara Arts and Historic Consortium

Leung / Romano

Historic Preservation Society of Santa Clara

Vargas-Smith / Leung

Old Quad Residents Association

Leung / Romano

Development Review Hearing

Romano / Vargas-Smith

BART/ High Speed Rail/ VTA BRT Committee

Vargas-Smith/ Vacant

Zoning Ordinance Update

Romano / Vacant

El Camino Real Specific Plan Community Advisory Committee

Leung

Downtown Precise Plan

Vargas

**ADJOURNMENT**

**A motion was made that this meeting be Adjourned at 10:33 p.m..  
The motion carried by a unanimous vote.**

The next regular scheduled meeting is Thursday, June 1, 2023 at 6 p.m.

**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.

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

## Meeting Minutes

### Historical & Landmarks Commission

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06/01/2023

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 the Historical and Landmarks Commission meeting in a hybrid manner (in-person and methods for the public to participate remotely)

• Via Zoom:

o <https://santaclaraca.zoom.us/j/97233262035> or

o Phone: 1 (669) 900-6833

Webinar ID: 972 3326 2035

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- 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, you may leave the meeting.

**CALL TO ORDER AND ROLL CALL**

**Chair Leung** called the meeting to order at 6:01 p.m.

**Present** 4 - Chair Patricia Leung, Commissioner Kathleen Romano, Commissioner Ed Stocks, and Vice Chair Ana Vargas-Smith

**Absent** 2 - Commissioner Michael Celso , and Commissioner Amy Kirby

**A motion was made by Commissioner Romano, seconded by Commissioner Vargas-Smith, to excuse Commissioners Kirby and Celso.**

**Aye:** 4 - Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Absent:** 2 - Commissioner Celso, and Commissioner Kirby

### **CONSENT CALENDAR**

Item 1 was moved to GENERAL BUSINESS.

1. [23-512](#) Consideration of Historic Resource Inventory Property Designation and a Historical Preservation Agreement (Mills Act Contract) for 1053 Lexington Street

**A motion was made by Commissioner Stocks, seconded by Commissioner Romano, to recommend approval to the City Council with an update the 10 Year Plan to include language that any repairs to the exterior will be done with like materials and in a comparable style that maintains its character-defining features, to modify Year 4 to foundation inspection, and for a "1935" bronze plaque.**

**Aye:** 4 - Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 2 - Commissioner Celso, and Commissioner Kirby

### **PUBLIC PRESENTATIONS**

#### **GENERAL BUSINESS**

2. [23-647](#) Consideration of the 950 Monroe Street Mixed-Use Project

This item was not considered due to lack of quorum and will be heard at a future HLC meeting.

**Not considered**

#### **STAFF REPORT**

1. Berryessa Adobe Maintenance

#### **TRAINING AND TRAVEL REQUESTS**

**COMMISSIONERS REPORT**

1. Subcommittee Reporting - 20 minutes

2. Board/Committee

Lead/Alternate

Santa Clara Arts and Historic Consortium

Leung / Romano

Historic Preservation Society of Santa Clara

Vargas-Smith / Leung

Old Quad Residents Association

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BART/ High Speed Rail/ VTA BRT Committee

Vargas-Smith/ Vacant

Zoning Ordinance Update

Romano / Vacant

El Camino Real Specific Plan Community Advisory Committee

Leung

Downtown Precise Plan

Vargas

Commissioner Travel and Training Requests

**A motion was made by Commissioner Romano, seconded by Commissioner Stocks, to retroactively approve a Commission budget expenditure for Commissioner Vargas-Smith to attend the California Preservation Foundation conference in San Francisco.**

**Aye:** 4 - Chair Leung, Commissioner Romano, Commissioner Stocks, and Vice Chair Vargas-Smith

**Excused:** 2 - Commissioner Celso, and Commissioner Kirby

**ADJOURNMENT**

The meeting was adjourned at 6:30 p.m.

**A motion to adjourn the meeting was made by Commissioner Romano, seconded by Commissioner Vargas-Smith.**

**MEETING DISCLOSURES**



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# City of Santa Clara

## Meeting Minutes

### Downtown Community Task Force

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03/14/2023

6:00 PM

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

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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 undersigned calls for a Special Meeting of the Downtown Community Task Force (DCTF) of the City of Santa Clara, to commence and convene on March 14, 2023, at 6:00 pm for a Special Meeting to be 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 Downtown Community Task Force in a hybrid manner, in-person and a method for the public to participate remotely:

Via Zoom:

<https://santaclaraca.zoom.us/j/86040125752>

Webinar ID: 860 4012 5752

By Phone: 1-669-444-9171

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.

Public Comments prior to meeting may be submitted via email to [PlanningPublicComment@SantaClaraCA.gov](mailto:PlanningPublicComment@SantaClaraCA.gov) no later than noon on the day of the meeting; (Comments received after 12:00 PM on the day of the meeting will be made part of the public record but will not be read out loud during the meeting) and also before and during the meeting via eComment. Clearly indicate the project address, meeting body, and meeting date in the email.

Agendas, Staff Reports and associated documents for Planning Commission items may be viewed on the City’s website at <https://santaclara.legistar.com/Calendar.aspx>

**CALL TO ORDER AND ROLL CALL**

The DCTF Chair, Adam Thompson called the meeting to order at 6:05 p.m.

- Present** 8 - Adam Thompson, Dan Ondrasek, Rob Mayer, Debra von Huene, Ana Vargas-Smith , Butch Coyne, Atisha Varshney, and Chan Thai
- Absent** 1 - Mathew Reed

**A motion was made by Member Coyne to excuse Member Reed from the beginning of the meeting. The motion was seconded by Member Mayer. Member Reed joined the meeting at 8:21 pm.**

**Aye:** 8 - Thompson, Ondrasek, Mayer, von Huene, Vargas-Smith, Coyne, Varshney, and Thai

**Absent:** 1 - Reed

**CONSENT CALENDAR**

**A motion was made by Vice Chair Ondrasek and seconded by Member Varshney to approve the consent calendar.**

**Aye:** 8 - Thompson, Ondrasek, Mayer, von Huene, Vargas-Smith, Coyne, Varshney, and Thai

**Excused:** 1 - Reed

- 1.a [23-319](#) Downtown Community Task Force (DCTF) Meeting Minutes of the January 19, 2023 Meeting

**Recommendation:** Approve the DCTF Meeting Minutes of the January 19, 2023 Meeting.

- 1.b [23-320](#) Downtown Community Task Force (DCTF) Meeting Minutes of the February 6, 2023 Meeting

**Recommendation:** Approve the DCTF Meeting Minutes of the February 6, 2023 Meeting.

- 1.c [23-324](#) Downtown Community Task Force (DCTF) Meeting Minutes of the November 18, 2021 Meeting

**Recommendation:** Approve the DCTF Meeting Minutes of the November 18, 2021 Meeting.

- 1.d [23-339](#) Downtown Community Task Force (DCTF) Meeting Minutes of the February 16, 2023 Meeting

**Recommendation:** Approve the DCTF Meeting Minutes of the February 16, 2023 Meeting.

## **GENERAL BUSINESS**

2. Santa Clara Downtown Civic Center Relocation Study: Introduction and Case Studies presentation by the Consultant team

The DCTF was asked by the consultant what aspects of the case studies resonated with them and what did not. The following are the comments made by the DCTF:

-Distinction of funding sources, developer involvement, subsidies included, government funding.

-Cities adjacent to a college/university is important

-Would like to know if the public investment spurred private investment.

In Sandusky, OH the City Manager

there said that it did. We should study this City and Winter Garden, FL.

-What City had a catalyst that we have. e.g. some have a library and we do not.

-SCU is already bringing in a number of people throughout the year who attend performances.

-We have a college town component, how do we get them to Downtown.

-The goal is foot traffic, number of people that would be brought to the area and the typical financial impact of office use.

Following DCTF discussion, the following members of the public spoke on the item:

-Mary Grizzle, is this conclusion set in stone? There seems to already be a negative opinion

-Jonathon Evans, set appropriate expectations, it is hard to tell if it was the city hall that had the impact.

What did City hall contribute, property tax revenue?

-Donna West, take into consideration the opportunity, how do you get private investment?

3. Review and Discuss the Bonus Provisions for Community Benefits, Table 5-1 in the Downtown Precise Plan

Members Thompson and Mayer provided an overview of Oakland's Specific Plan Community Benefit Program and how that could apply to this Downtown Precise Plan community benefits program. Oakland listed benefits based on importance. The DCTF then discussed items to consider for the Precise Plan including: maintenance of art special paving; ability of a developer to change or eliminate a benefit in the future; size the ask to the size of the project; COA's should include a level of maintenance that is required; include a more creative affordable housing benefit; subsidized rent for commercial, and ensure it stays that way; shared parking; publicly accessible open spaces.

4. DCTF Member Varshney will share some case studies where developers have invested in placemaking and good architecture.

Continued to the April 20, 2023 DCTF meeting.

**Continued**

### **PUBLIC PRESENTATIONS**

There was one public speaker, Jonathon Evans, who commented that community benefits that last in perpetuity are good. Also that the Climate Action Plan covers sustainable building, no need to have extra layers of certifications.

### **STAFF REPORT**

Staff Liaison, Lesley Xavier, provided an update on the project schedule. And the DCTF confirmed that the letter for the 950 Monroe Street project should be sent to Historical and Landmarks Commission, Planning Commission, and City Council.

5. Status of the Project schedule (Downtown Precise Plan, Form Based Code, Environmental Impact Report)

6. Confirmation on sending the DCTF letter on the 950 Monroe Street Development Project to all hearing bodies for the project.

### **ADJOURNMENT**

**A motion was made by Vice Chair Ondrasek, and seconded by Member Thai to adjourn the meeting at 10:03 p.m..**

**The next regular scheduled meeting is Thursday, April 20, 2023 at 6 p.m.**

**Aye:** 9 - Thompson, Ondrasek, Mayer, von Huene, Vargas-Smith, Reed, Coyne, Varshney, and Thai

**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.

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

## Meeting Minutes

### Downtown Community Task Force

04/20/2023

6:00 PM

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

The City of Santa Clara is conducting the Downtown Community Task Force meeting in a hybrid manner, in-person and a method for the public to participate remotely:

Via Zoom:

<https://santaclaraca.zoom.us/j/91975789377>

Meeting ID: 919 7578 9377 or

By Phone: 1(669) 900-6833

#### **CALL TO ORDER AND ROLL CALL**

The DCTF Chair, Adam Thompson called the meeting to order at 6:00 p.m.

**Present** 6 - Adam Thompson, Dan Ondrasek, Debra von Huene, Ana Vargas-Smith , Butch Coyne, and Chan Thai

**Absent** 3 - Rob Mayer, Mathew Reed, and Atisha Varshney

**A motion was made by Vice Chair Ondrasek to excuse Members Varshney, Reed, and Mayer from the meeting. The motion was seconded by Member von Huene.**

**Aye:** 6 - Thompson, Ondrasek, von Huene, Vargas-Smith, Coyne, and Thai

**Absent:** 3 - Mayer, Reed, and Varshney

#### **CONSENT CALENDAR**

There were no items.

#### **GENERAL BUSINESS**

1. Update on Lease Agreements for the City Owned Property within the Downtown.

Assistant City Manager Manuel Pineda provide an update on Lease Agreements for the City Owned Property, Commerce Plaza and Peddlers Plaza, within the Downtown stating that the two leases will be expiring on May 31, 2024 and December 30, 2023, respectively. The City intends to extend the Peddlers Plaza lease to May 31, 2024 consistent with that of Commerce Plaza expiration.

2. Presentation by WRT on City Hall Relocation Study Site Criteria and Comparison

The City's consultant, WRT, provided information in a presentation on the City Hall Relocation Study task for Site Criteria and Comparison of locations in Downtown for which City Hall could relocate. The DCTF discussed the item and determined that the "Central Green South" (Block D and F) location would be the best locations in order to achieve the vision of the Precise Plan.

Public Comment:

- Skip Pearson, moving City Hall would cost a lot, can we reuse the Commerce Plaza building with possible ground floor retail. Downtown Campbell's success is based on the addition of a parking garage. City Hall should be moved as the land that is currently on has a lot of wasted space that could be used for affordable housing.
- Mary Grizzle, Sonoma should not be included in the study as Sonoma did not build anything.
- Jonathon Evans, the community wants an active commercial space. Any City Hall Downtown should have the first floor dedicated to commercial uses. It is not clear to me that moving City Hall Downtown would bring what the community wants.
- Donna West, Santa Clara is a City of what is possible. We want accurate case studies that detail the financial impact of moving City Hall Downtown. Replace the cities of Sonoma and Watsonville in the case studies.
- Patricia Leung, SVP rent comes out of their budget, a new City Hall would come out of the General Fund. Would rather see more services provided to citizens that relocating City Hall. It is unclear to me why we need to swap cities for the case studies.
- Connie, replace the cities of Sonoma and Watsonville in the case studies.

3. DCTF Member Varshney will share some case studies where developers have invested in placemaking and good architecture. Continued from the March 14, 2023 Downtown Community Task Force meeting.

Continued to the May 18, 2023 Downtown Community Task Force meeting.

4. [23-547](#) Review of the Standard, Section 6.3.k - Architecturally Significant Historical Sites, in the Downtown Form Based Code.

**Recommendation:** There is no staff recommendation.

Staff Liaison, Lesley Xavier, provided portions of the text of the HT - Historic Combining Districts zoning district from the City's Zoning Code for the DCTF to consider including in the Form Based Code for Downtown. The DCTF discussed the item and thought that more aspects of the HT District should be included.

Public Comment:

- Patricia Leung provided information about the post office in Downtown, it was designed by an architect in the Treasury Department, includes New Deal artwork and is eligible for the National Register of Historical Places. We need to do what we can to protect this building and register it.

## **PUBLIC PRESENTATIONS**

There were no public presentations.

## **STAFF REPORT**

Staff Liaison, Lesley Xavier, provided an update on the project schedule and confirmed that the Environmental Impact Report would start circulation in May for 45 days. Responses to DCTF Questions and Clarifications of the Form Based Code were distributed to the DCTF members for their review.

Update on the Response to DCTF Questions and Clarifications of the Form Based Code

Status of the Project Schedule (Downtown Precise Plan, Form Based Code, Environmental Impact Report)

## **ADJOURNMENT**

**A motion was made by Vice Chair Ondrasek, and seconded by Member von Huene to adjourn the meeting at 9:01 p.m..**

**The next regular scheduled meeting is Thursday, May 18, 2023 at 6 p.m.**

**Aye:** 6 - Thompson, Ondrasek, von Huene, Vargas-Smith, Coyne, and Thai

**Excused:** 3 - Mayer, Reed, and Varshney

**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.

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Agenda Report

23-844

Agenda Date: 7/18/2023

**REPORT TO COUNCIL**

**SUBJECT**

Action to Ratify Purchase Orders Greater than \$250,000, with an Aggregate Amount of \$3,389,254 for Finance Department Central Warehouse Purchases to Replenish Silicon Valley Power Inventory Funded by the Electric Operating Fund

**COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

**BACKGROUND**

The City’s Purchasing Division, which resides in the City’s Finance Department, maintains a “centralized purchasing system” responsible for all purchasing and contracting activities for supplies, materials, equipment, and general and professional services. Additionally, the Division manages a central warehouse, with over 3,000 inventory items, that provides support to both Silicon Valley Power (SVP) and the Water & Sewer Utilities Department.

**DISCUSSION**

In Fall 2022, changes to the Procurement Code were brought to the City Council to bring best practices across the City for various procurement processes. One of the key aspects addressed by the new Code was to bring clarity surrounding the requirement of City Council’s approval for the purchase of products and materials, for which the former Code was unclear of when these purchases were required to go to the City Council for approval. The new Code introduced a consistent process for goods and services, aligned procurement thresholds to best practice, and raised the City Manager authorization to \$250,000 for all procurements (goods, materials, and services).

As part of the Code transition, and in the preparation of closing out fiscal year 2022/23, Purchasing identified several procurements for the Central Warehouse that did not adhere to the new Code. These included the purchase of electric transformers, switches and electric meters as part of the regular warehouse operations of ensuring adequate inventory was available for utility crews to carry out their work. In light of this, staff is seeking City Council ratification of the following purchases:

**Table 1**

PO No.	Vendor	Items	Total PO Amount (including tax)
28037	Hitachi Energy USA Inc.	Transformers	\$529,398
28252	Trayer Engineering Corp	Switches	\$2,362,246
28289	Elster Solutions LLC	Electric Meters	\$497,610
		<b>Total</b>	<b>\$3,389,254</b>

While each procurement met the previous Code's competitive purchase process (which considered low bid and lead time), these procurements were not presented to City Council prior to execution. The Purchasing Manager has implemented additional controls within PeopleSoft, the City's financial management system, and training for staff to ensure that purchases exceeding the \$250,000 threshold are duly approved by the City Council and consistent with the new Code.

### **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 as the proposed services are administrative activities that will not result in either a direct or indirect physical change in the environment.

### **FISCAL IMPACT**

Funding for the purchase orders for electric transformers, switches and electric meters is budgeted in the Electric Operating Fund or for specific capital projects in the Electric Utility Capital Fund where applicable. Funding for future years is subject to the appropriation of funds.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office, Electric, and Water & Sewer Utilities 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](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

1. Ratify the purchase order for Hitachi Energy USA, Inc for electric transformers in an amount not to exceed \$529,398, funded by the Electric Operating Fund and Electric Utility Capital Fund, subject to appropriation of funds.
2. Ratify the purchase order for Trayer Engineering Corp for electric switches in an amount not to exceed \$2,362,246, funded by the Electric Operating Fund and Electric Utility Capital Fund, subject to appropriation of funds.
3. Ratify the purchase order for Elster Solutions LLC for electric meters in an amount not to exceed \$497,610, funded by the Electric Operating Fund and Electric Utility Capital Fund, subject to appropriation of funds.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Jovan D. Grogan, City Manager

### **ATTACHMENTS**

1. PO 28037 with Hitachi Energy USA Inc.
2. PO 28252 with Trayer Engineering Corp
3. PO 28289 with Elster Solutions LLC



# City of Santa Clara

The Center of What's Possible

## Purchase Order

<b>Purchase Order</b> 0000028037	<b>Date</b> 11-03-2022	<b>Revision</b>
<b>Payment Terms</b> 30 Days	<b>Freight Terms</b> FOB Prepaid	<b>Ship Via</b> Common Carrier
<b>Buyer</b> Chris Blandford	<b>Phone</b> 408/615-2042	<b>Currency</b> USD

City of Santa Clara  
Purchasing - City Hall  
1500 Warburton Ave.  
Santa Clara CA 95050-3796  
United States

**Ship To:** S25  
City of Santa Clara  
Electric - Utilities Yard  
1705 Martin Avenue  
Santa Clara CA 95050  
United States

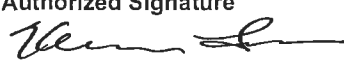
**Supplier:** 0000017044  
HITACHI ENERGY USA INC.  
901 MAIN CAMPUS DR  
RALEIGH NC 27606  
United States

**Attention:** Not Specified

**Bill To:**  
City of Santa Clara  
Finance - Accounts Payable  
1500 Warburton Ave.  
Santa Clara CA 95050-3796  
408-615-2369

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
1 - 1	87082T-TRANSFORMER, PAD, 75 KVA, 120/208V, 12KV, 3PH, DF, LOOP. PER CSC STD. EQUIPMENT SPEC. #71 REVISION #11. PLEASE PROVIDE 24 HRS ADVANCE NOTICE BEFORE DELIVERY (408) 615-2045. LOAD FOR FORKLIFT SIDE UNLOADING.	6.00	EA	24,305.00	145,830.00	05/13/2024
2 - 1	87108T-TRANSFORMER, PAD, 112 KVA, 480/277V, 12KV, 3 PH, DF, LOOP. PER CSC STD. EQUIP. SPEC. #71 REV. #11. PLEASE PROVIDE 24 HRS NOTICE BEFORE DELIVERY (408) 615-2045. LOAD FOR FORKLIFT SIDE UNLOADING.	6.00	EA	26,675.00	160,050.00	05/13/2024
3 - 1	87105T-TRANSFORMER, PAD, 225 KVA, 120/208V, 12KV, 3PH, DF, LOOP. PER CSC STD. EQUIP SPEC. #71 REVISION #11. PLEASE PROVIDE 24 HRS ADVANCE NOTICE BEFORE DELIVERY 408-615-2045. LOAD FOR FORKLIFT SIDE UNLOADING/	6.00	EA	29,875.00	179,250.00	05/13/2024

The complete contract shall consist of this Purchase Order, including the City's Standard Terms and Conditions and any addendum attached thereto, which can be found at <https://santaclaraca.gov/CSCTermsAndConditions>, plus all of the applicable attachments incorporated hereto or by reference herein. In the event of a conflict between the terms and conditions of this Purchase Order and the terms and conditions in any other attachment incorporated hereto or by reference herein, the terms and conditions of this Purchase Order shall control. Supplier agrees to comply with Executive Order N-6-22 (EO) issued on March 4, 2022 sanctions on materials and services from Russia.

Authorized Signature  








# City of Santa Clara

The Center of What's Possible

## Purchase Order

<b>Purchase Order</b> 0000028252	<b>Date</b> 01-27-2023	<b>Revision</b>
<b>Payment Terms</b> 30 Days	<b>Freight Terms</b> FOB Prepaid	<b>Ship Via</b> Common Carrier
<b>Buyer</b> Chris Blandford	<b>Phone</b> 408/615-2042	<b>Currency</b> USD

City of Santa Clara  
Purchasing - City Hall  
1500 Warburton Ave.  
Santa Clara CA 95050-3796  
United States

**Ship To:** S25  
City of Santa Clara  
Electric - Utilities Yard  
1705 Martin Avenue  
Santa Clara CA 95050  
United States

**Attention:** Not Specified

**Supplier:** 0000003910  
TRAYER ENGINEERING CORP  
1569 ALVARADO ST  
SAN LEANDRO CA 94577  
United States

**Bill To:**  
City of Santa Clara  
Finance - Accounts Payable  
1500 Warburton Ave.  
Santa Clara CA 95050-3796  
408-615-2369

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
1 - 1	89164-SWITCH, PADMOUNT, LIQUID-INSULATED, VACUUM, 15KV, 3PH, 125KV BIL PHASE-TO-PHASE AND PHASE-TO-GROUND, 95KV BIL ACROSS OPEN CONTACTS (WITH VISIBLE DISCONNECT CLOSED), 5-WAY, 5-WAY SWITCHED, ALL WAYS TERMINATING IN 600 AMPS AND HAVING VISIBLE DISCONNE	35.00	EA	61,849.00	2,164,715.00	10/01/2023

**Sub Total** 2,164,715.00  
**Tax Total SCC (9.13%)** 197,530.24  
**Total PO Amount** 2,362,245.24

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Authorized Signature



# City of Santa Clara

The Center of What's Possible

## Purchase Order

Page: 1  
Dispatch Via Print

<b>Purchase Order</b> 0000028289	<b>Date</b> 02-06-2023	<b>Revision</b>
<b>Payment Terms</b> 30 Days	<b>Freight Terms</b> FOB Prepaid	<b>Ship Via</b> Common Carrier
<b>Buyer</b> Chris Blandford	<b>Phone</b> 408/615-2042	<b>Currency</b> USD

City of Santa Clara  
Purchasing - City Hall  
1500 Warburton Ave.  
Santa Clara CA 95050-3796  
United States

**Ship To:** S25  
City of Santa Clara  
Electric - Utilities Yard  
1705 Martin Avenue  
Santa Clara CA 95050  
United States

**Attention:** Not Specified

**Supplier:** 0000018770  
ELSTER SOLUTIONS LLC  
208 S ROGERS LN  
RALEIGH NC 27610  
United States

**Bill To:**  
City of Santa Clara  
Finance - Accounts Payable  
1500 Warburton Ave.  
Santa Clara CA 95050-3796  
408-615-2369

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
1 - 1	96646-METER, SOCKET, 5 TERMINAL WITH 5TH TERMINAL IN 9 O'CLOCK POSITION, 120 VOLT, 3 WIRE, 1 PHASE, ELSTER REXU #ZH5W1A00004	3000.00	EA	152.00	456,000.00	02/28/2024

<b>Sub Total</b>	456,000.00
<b>Tax Total SCC (9.13%)</b>	41,610.00
<b>Total PO Amount</b>	497,610.00

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Authorized Signature



## Agenda Report

23-690

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on an Agreement with Bellecci & Associates, Inc. for Design Professional Services for Creek Trail Pavement Maintenance and Rehabilitation Projects

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

The City's creek trail network includes portions of paved trails along Guadalupe River and San Tomas Aquino Creek. These paved trails were originally constructed in phases beginning in the 2000s through 2016. In 2019, the City completed a pavement condition study for the City's creek trail network to assess the existing pavement conditions and to plan future pavement preservation and rehabilitation improvements. The study included the off-street routes adjacent to the creeks but did not cover the on-street routes since those pavement sections are maintained as part of the street system. Additionally, in 2019 the Council adopted the Bicycle Master Plan Update which included a policy to develop a trail pavement management plan and request funding through the capital improvement budget process to perform necessary pavement maintenance.

In order to prepare creek trail pavement maintenance and rehabilitation construction contracts for design and public bidding, the City needs to retain a consultant to provide engineering design services.

#### DISCUSSION

A formal selection process was utilized to solicit proposals from consultants to provide the necessary design professional services. In March 2023, a competitive Request for Proposals (RFP) was published on the City's e-procurement platform. The City received proposals from six firms: ActiveWayz Engineering, Inc., Bellecci & Associates, Inc., CSG Consultants, Inc., Ruggeri-Jensen-Azar, Sandis Civil Engineers Surveyors Planners, and Wilsey Ham, Inc.

A proposal review panel consisting of staff from the Design, Field Services, and Streets divisions of the Department of Public Works evaluated each proposal against the criteria set forth in the RFP, including responsiveness to the RFP, qualifications of the firm, qualifications and availability of key staff, project approach, and project schedule. Based on the panel's evaluation, staff recommends awarding the agreement to Bellecci & Associates, Inc. (Bellecci). Bellecci submitted the best proposal, demonstrated a strong project understanding, and provided a project approach that would maximize efficiency of the design services provided towards the pavement maintenance and rehabilitation goals. Bellecci also has a track record of successfully performing similar services for various public agencies.

The proposed agreement (Attachment 1) includes a negotiated scope of services and fees based upon the understanding of the work to be performed. The scope of services generally includes project management, preliminary engineering, CEQA evaluation and agency permitting, construction documents, bidding support, construction support, and project close-out.

City staff split the maintenance and rehabilitation needs into phases to enable implementation as sequential projects over time based upon funding. The first phase (Phase 1) plans to address the paved portions of Guadalupe River Trail between the River Oaks Bridge and Thamien Park, and San Tomas Aquino Creek Trail between SR 237 and Tasman Drive. The second phase (Phase 2) plans to address San Tomas Aquino Creek Trail between Tasman Drive and Scott Boulevard. The third phase (Phase 3) plans to address San Tomas Aquino Creek Trail between Scott Boulevard and Homestead Road. A location map showing these limits is included as Attachment 2.

Based on initial estimates and approved budgets, the Annual Creek Trail Rehabilitation project is forecasted to have adequate funding for construction of Phase 1. The current budget does not have adequate funding for the construction of Phase 2 and 3. As a result, the design scope for Phases 2 and 3 in the proposed agreement with Bellecci are listed as optional services. This allows flexibility for the City in moving forward with these phases based on available funding in future capital budgets. Pending available budgets, the subsequent phases and project limits may be subject to refinement during the design phase. Any scope changes resulting in an increase to design costs would be brought forward for Council consideration.

Staff recommends entering into the Agreement for Design Professional Services with Bellecci and Associates, Inc. for Creek Trail Pavement Maintenance and Rehabilitation Projects. Approval of this agreement will provide design professional services necessary to develop the design and construction documents to maintain the City's creek trail pavement infrastructure. The Agreement includes prevailing wage requirements.

### **ENVIRONMENTAL REVIEW**

This action is for design professional services and the action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") Guidelines section 15378 as the action being considered does not commit the City to undertake the project and future discretionary approvals are required by the City to approve the project for construction. The agreement includes environmental review services for the pavement maintenance considered, and the consultant will evaluate the proposed work in accordance CEQA as part of the design and approval process.

### **FISCAL IMPACT**

The proposed agreement is for a total not to exceed amount of \$494,110, consisting of \$449,190 for basic services and \$44,920 for additional services. Of the basic services amount, \$227,123 is apportioned for Phase 1, \$134,732 for Phase 2, and \$87,335 for Phase 3. Funding may be reallocated from phase to phase. Funding for the design services agreement is available in the Streets and Highways Fund Capital Improvement Program budget in the Annual Creek Trail Rehabilitation Program project.

### **COORDINATION**

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

**PUBLIC CONTACT**

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**RECOMMENDATION**

1. Approve and authorize the City Manager to execute an agreement with Bellecci & Associates, Inc. for Creek Trail Pavement Maintenance and Rehabilitation Projects in the amount not-to-exceed \$494,110 for design professional services required for the creek trail pavement maintenance and rehabilitation projects, in a final form approved by the City Attorney; and
2. Authorize the City Manager to make minor, non-substantive modifications, including time extensions, to the agreement, if needed in a final form approved by the City Attorney.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Jōvan D. Grogan, City Manager

**ATTACHMENTS**

1. Agreement
2. Location Map

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
BELLECCI & ASSOCIATES, INC.  
FOR  
CREEK TRAIL PAVEMENT MAINTENANCE AND REHABILITATION PROJECTS**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Bellecci & Associates, Inc., a California 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 design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. 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,
- D. 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 – Labor Compliance Addendum (if applicable)

Exhibit E – Milestone Schedule (Summary of Key Tasks)

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**

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 the date this Agreement is signed by both Parties and terminate on December 31, 2028. Services may commence upon City issuing a written notice to proceed.

Services for the Phase 2 and Phase 3 projects, as described in Exhibit A and Exhibit B, are optional services and shall not commence until City issues a written notice to proceed for each of the Phase 2 and Phase 3 projects.

## **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.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Contractor shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

## **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 four hundred ninety four thousand one hundred ten dollars (\$494,110) 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.
- 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**

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, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Contractor, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

**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**

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: Department of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [engineering@santaclaraca.gov](mailto:engineering@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

Bellecci & Associates, Inc.  
Attention: Daniel Leary  
7077 Koll Center Parkway, Ste. 210  
Pleasanton, CA 94566  
and by e-mail at [dleary@bellecci.com](mailto:dleary@bellecci.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 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.

**CONTINUED ON PAGE 9**

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

\_\_\_\_\_  
JÖVAN D. GROGAN  
City Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**BELLECCI & ASSOCIATES, INC.**  
a California corporation

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Principal Place of  
Business Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

“CONTRACTOR”



## EXHIBIT A SCOPE OF SERVICES

### I. GENERAL

#### Description of Projects and Objective

CITY desires to engage CONSULTANT to provide engineering design services for developing bid documents (plans, specifications, and engineer's estimate - PS&E) for public works bidding of Creek Trail Pavement Maintenance and Rehabilitation Projects.

This Agreement provides for services for three (3) creek trail pavement maintenance and rehabilitation projects as follows:

- Phase 1: Guadalupe River Trail (River Oaks Bridge to Thamien Park), and San Tomas Aquino Creek Trail (SR 237 to Tasman Dr)
- Phase 2 (Optional): San Tomas Aquino Creek Trail (Tasman Dr to Scott Blvd)
- Phase 3 (Optional): San Tomas Aquino Creek Trail (Scott Boulevard to Homestead Road)

The projects shall be prosecuted and administered in the following sequence: Design delivery for the Phase 1 Project, then subsequently design delivery for the Phase 2 Project, then subsequently design delivery for the Phase 3 Project. Certain services, as specifically described in the Description of Services, will be completed upfront as part of the services provided for the Phase 1 project but will address the needs of the subsequent Phase 2 and Phase 3 projects.

The basic scope of services shall include design services for Phase 1. Design services for Phase 2 and Phase 3 shall be optional. CONSULTANT shall not begin services for the Phase 2 or Phase 3 project until CONSULTANT receives written confirmation from the City allowing CONSULTANT to proceed.

The above referenced three (3) construction projects may be referred to singularly or plurally as "Phase", "Package", or "Project" throughout this Agreement and shall be interpreted as having the same meaning and intent.

## **Project Team**

CONSULTANT shall provide the services described herein through a project team, comprised of CONSULTANT and subconsultants as identified as follows:

- David J Powers & Associates: CEQA Services
- H.T Harvey & Associates: Ecology & Resource Agency Permitting
- 360 Aerial Surveying: Aerial Topographic Survey Mapping

Any changes to the project team through the course of the services shall be approved in writing by CITY.

## **Baseline Solution**

The following documents were prepared by CITY and attached to the Request for Proposals and are incorporated herein to this Agreement by reference:

- Attachment H, Trail Segment Listing
- Attachment I1, Trail Segment Package Map
- Attachment I2, Trail Segment Section ID Map

The above documents provide for the presumed locations, construction costs, and pavement treatments for the projects and are based upon information derived from CITY's pavement management system, Streetsaver. These documents and information contained therein are considered preliminary and draft.

The Project segments and their respective treatments to be maintained under the project(s) will be further refined and determined through the course of Services dependent upon engineering and cost estimates provided by the Consultant to ensure the project(s) remain within desired budgets and schedules.

Throughout the course of Services, if the estimated construction cost of the project(s) or package(s) appears to be above or below the available budgets, then the project(s) or package(s) may be modified as needed at the discretion of the City. The City reserves the right to add, delete, or modify the trail segments to be designed throughout the course of Services based upon City's needs.

The City's anticipated budgets for the project(s) is as follows:

- Phase 1: \$575,000
- Phase 2: \$675,000
- Phase 3: \$485,000

The construction document packages and the list of segments with assumed pavement treatments listed above to be maintained and rehabilitated a baseline solution provided in this Scope of Services as a guideline to develop the Scope of

Services and Schedule of Fees for the project.

Deviations from the baseline solution that results in the need to prepare other than the three (3) construction document phases, or segments other than listed in the draft list of segments, or pavement treatments significantly different than originally assumed, changes to the Scope of Services and Schedule of Fees shall be addressed by CITY and CONSULTANT prior to commencing to the Construction Documents Task. Changes to the Scope of Services and Schedule of Fees will be permitted only in writing by an Amendment to the Agreement or an Additional Services Authorization, as determined by CITY.

City reserves the right to revise the limits of each phase and construction work contemplated in each phase from the Baseline Solution, including the Scope of Services and Schedule of Fees allocated to each phase. Such revisions shall be documented in writing between CITY and CONSULTANT as Additional Service Authorization(s).

## **II. RESPONSIBILITIES OF CITY**

CITY will provide the following information and support regarding the project as-available and applicable:

- Record drawings (as-available)
- CITY's Standard Details, Specifications, Benchmark, and Design Criteria.
- Storm Drain (SD), Sanitary Sewer (SS), Electric, Fiber, Water and Recycled Water Block Book Maps (as-available).
- Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, and aerial photographic tiles.
- Payment of permit application fees, if required.

## **III. DESCRIPTION OF SERVICES**

The Basic Scope of Services includes all professional services required to prepare construction bid documents (plans, specifications, and engineer's estimate) for the Phase 1 project.

Optional Service (Phase 2): Based on the outcome of Phase 1, the City shall consider whether or not to move forward with Phase 2. Phase 2 shall include all professional services required to prepare construction bid documents (plans, specifications, and engineer's estimate) for the San Tomas Aquino Creek Trail (Tasman Dr to Scott Blvd) project.

Optional Service (Phase 3): Based on the outcome of Phase 1 and Phase 2, the City shall consider whether or not to move forward with Phase 3. Phase 3 shall include all professional services required to prepare construction bid documents

(plans, specifications, and engineer's estimate) for the San Tomas Aquino Creek Trail (Scott Boulevard to Homestead Road) project.

Hereinafter the term "project" may refer to either the Phase 1 project, Phase 2 project, or Phase 3 project, whichever project is underway and applicable at the time services are performed.

## **1. TASK 1: PROJECT MANAGEMENT AND COORDINATION**

CONSULTANT shall:

- 1.1 Manage its team and overall project activities consistent with the direction from CITY in order to meet the project schedule and budget.
- 1.2 Coordinate with CITY, design team members, consultants, utility companies, other government agencies, and other affected parties as required throughout the duration of the project as well as the Quality Assurance/Quality Control (QA/QC) activities for project deliverables.
- 1.3 Prepare, monitor, and update progress schedule in MS Project format beginning at the kickoff meeting and ending at contract award for the last construction phase. Schedule shall show significant milestones for the project. CONSULTANT shall notify CITY if there are delays or potential delays in phase of the project. In such cases, CONSULTANT shall make up the schedule in subsequent phases of the project or provide information to CITY substantiating a request for time extension (which may not be approved). The schedule shall be maintained at all times and shall be updated each time progress and milestones are achieved and/or changed.
- 1.4 Meetings: Meetings shall be budgeted for and invoiced under each respective Task or activity requiring a meeting and not as project management. Preparation for meetings shall be considered as included in the Task or activity for which the meeting is involved. A kick-off meeting shall be conducted with designated CITY staff prior to beginning work to review anticipated Tasks and schedule, review available information and needs, and address outstanding questions regarding the project moving forward raised by CITY or CONSULTANT.
- 1.5 Stakeholder Coordination: CONSULTANT shall coordinate with project stakeholders as needed to inform each stakeholder of the project work and incorporate necessary accommodations into the construction documents. Anticipated stakeholders include, but are not limited to:
  - Valley Water
  - Santa Clara Bicycle and Pedestrian Committee (BPAC)

- 1.6 Provide monthly progress reports.
- 1.7 Conduct QC reviews in accordance with its QA Program guidelines. CONSULTANT shall provide a copy of its QA Program guidelines and shall provide a QC report at the end of each Task. Time spent for QA-QC reviews for specific deliverables shall be budgeted and billed under each respective task requiring QA-QC review and not as Project Management.
- 1.8 Invoicing and Contract Administration: CONSULTANT administrative staff time spent preparing invoices for Services complete shall be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed. Additionally, addressing administrative issues regarding the professional services agreement, such as preparing additional services requests or budget modifications, shall also be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed.
- 1.9 Only the designated Project Manager or approved delegates performing project management duties shall charge time to Task 1 Project Management. CONSULTANT's technical staff working on other tasks for the project shall not charge to the project management task. Additionally, if the Project Manager is performing technical work related to other tasks, time spent on those tasks shall be charged to the task and not to project management.
- 1.10 The Project Management task shall be considered active upon written Notice to Proceed and end upon completion of award of construction contract under Task 5 Bid Support Assistance. Thereafter, services provided consistent with the above provisions shall be billed to subsequent tasks, e.g. Task 6 Construction Support or Task 7 Record Drawings and Project Close-Out, whichever may be applicable at the time services are provided.

Deliverables:

1. Progress schedule in MS Project format (submitted electronically as an 11" x 17" pdf file and in native MS Project format).
2. QA Program guidelines and QC reports for each Task (in pdf file).
3. Meeting agendas, preparation materials, and meeting minutes for each project meeting (in pdf file), including kick-off meeting minutes.
4. Monthly progress reports and invoices (in pdf file).

## **2. TASK 2: PRELIMINARY ENGINEERING AND EVALUATION (35% DESIGN)**

### **2.1. Data Collection & Field Review**

CONSULTANT shall collect as-built record drawing information for the trail segments as necessary for subsequent project design. CONSULTANT shall review the information provided by CITY to verify completeness and identify missing information that is necessary for design. For information that is required for non-CITY maintained facilities, CONSULTANT shall contact the appropriate owner to obtain information, as needed.

CONSULTANT shall perform a field review of the trail segments proposed for maintenance and rehabilitation to evaluate and document existing conditions and shall prepare field notes for pavement condition, existing obstructions, and visible utility conflicts that will be identified and incorporated. Items to be reviewed include pavement condition, visible surface utility information, conditions, physical obstructions, and constructability.

CONSULTANT shall review existing ADA survey reports for the trail and determine if elements identified for correction should be incorporated into the project based upon the pavement maintenance treatment involved. Detailed design of the ADA features identified in the report and within the footprint of the project will be prepared by CONSULTANT in a subsequent task.

### **2.2. Utility Information**

CITY maintains a list of known utility operators in CITY. CONSULTANT shall prepare a Notice of Intent to Construct (NOI) on CITY's standard NOI form and submit it to the known utility operators in order to gather records for existing utilities for each segment. Location map exhibits will be required to be submitted as part of the NOI. CONSULTANT shall provide CITY a draft copy of the NOI prior to sending it to the utility, maintain log of NOI sent and received, and provide CITY all information received from the NOI. The purpose of the collection of utility information is to identify ownership of surface features that will be impacted by the work, and also to identify if there are any high-risk utilities within the project limits that may be impacted by the work.

### **2.3. Treatment Selection, Preliminary Cost Estimating, Confirmation of Project Packaging**

Based upon existing conditions, data collected, and field review, CONSULTANT shall propose recommended treatments for each trail segment identified for the project and prepare preliminary cost estimates. As part of this task, CONSULTANT shall also evaluate and recommend alternatives for treatment for CITY's consideration, such as recommending treatments with a

lower initial cost but shorter service life versus treatments at a higher initial cost but with a longer service life.

The preliminary estimate shall account for major work items that contribute to the cost. The purpose of the preliminary cost estimates is to ensure the project remains within budget and whether or not trail segments need to be added or removed from the project to remain within the established project budget. Based upon the cost estimates, the trail segments list shall be finalized at this stage.

The field assessment described in Task 2.1 above and this task herein shall be performed upfront for both the Phase 1 and Phase 2 project segments under the Initial Term.

CONSULTANT shall document the findings under this Task as a Preliminary plan with proposed pavement rehabilitation sections and recommendation notes, along with a construction cost estimate, for CITY's review and approval. CONSULTANT shall meet with CITY to review the results of the memorandum and anticipate up to two (2) rounds of CITY comments and revisions to the memorandum provided that the CONSULTANT incorporates the comments and revisions as appropriate for each round of revision.

The preliminary plan, recommendation notes, typical section and construction cost estimate is for documenting the final trail segment list, estimated costs, treatments, and construction document packaging for subsequent Tasks.

#### **2.4. Base Mapping (35% Design)**

Upon finalization of the trail segments list, CONSULTANT shall prepare base mapping for the project plans. Base maps shall only be prepared upon finalization of the trail segment treatment list to ensure maps are not prepared for segments that will not be included in the project.

CONSULTANT shall prepare base maps for use in exhibits and contract drawings. It is assumed that the trail limits (edge of pavement, shoulders, conform slopes and surface features) will need to be delineated through topographic survey and that such features cannot be accurately or completely displayed for plans purposes based upon GIS information. The scope of work includes an aerial topography survey prepared by a photogrammetrist. The aerial topographic survey will be prepared at the beginning of the project, and will include the limits of the three phases of the work. Work related to topographic surveying is described under the Topographic Survey task.

CITY will provide geographic information system (GIS) data to CONSULTANT. The GIS data is limited to street centerlines, edge of pavement, land parcels,

City storm drains, City water lines, City sanitary sewer lines, and aerial photographic tiles. It is noted that the GIS data is approximate.

Base maps shall be prepared in AutoCAD format and these drawings will be used for subsequent design and construction document preparation. CITY's preferred base drawing format is 22" x 34" sized sheets at a legible scale. Regardless of the number of sheets and sizes of sheets, all base maps required for the Project shall be considered as included in the Basic Scope of Services. Requests for Additional Services related to the size and number of sheets required to bid the project will not be considered.

At a minimum, the 35% design plans shall include, but not limited to, existing utilities, right-of-way lines, existing improvements such as sidewalk, curb, and gutter, roadway, curb ramps, existing traffic equipment/signals, including existing roadway delineation markings and striping.

## **2.5. Topographic Survey**

CONSULTANT shall be fully responsible to coordinate, obtain, and pay fees for encroachment permit(s) needed from Valley Water to conduct topographic surveys.

CONSULTANT shall perform topographic survey to support the design of the pavement maintenance and rehabilitation work. It is anticipated that the topographic survey will include, at minimum, the following features:

- Edges and centerline of pavement, at intervals determined necessary by CONSULTANT
- Edges of gravel shoulders, where applicable
- Adequate slope points and ground features to determine adjacent surfaces, including creek & levee slopes
- Major surface features (e.g. bollards, signs, utilities, etc.)
- Changes in pavement types (e.g. asphalt pavement to concrete pavement)
- Pavement delineation

CONSULTANT shall set horizontal and vertical control based on City's horizontal control survey. The elevation will be based on City's benchmarks. Phase 1 and Phase 2 will include two days of supplemental field surveying, while Phase 3 will include one day of field surveying as an optional service. The timing of the field surveying will be determined by the engineer during design, and will occur after the completion of the aerial topographic survey.

### Deliverables:



1. Notice of Intent to Construct (NOI) forms, tracking log, and information received
2. Base Maps (PDF)
3. Field Survey Data
4. Preliminary Engineering Plan and Construction Cost Estimate for Phase 1 and Phase 2 (as a single complete PDF)

### **3. TASK 3: CEQA ANALYSIS & AGENCY PERMITTING**

#### **3.1. CEQA Analysis**

It is anticipated that the project will be exempt from CEQA pursuant to Section 15301 of the State CEQA Guidelines. Section 15301, Existing Facilities, applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. Section 15301 provides several examples of projects that this exemption category is applicable, including existing streets, sidewalks, gutters, bicycle and pedestrian trails, and pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes.

CONSULTANT shall evaluate the work proposed under the project for conformance to CEQA guidelines and prepare a memorandum justifying and documenting the project's qualification as exempt. As shown on CONSULTANT's Cost Proposal dated May 18, 2023 and incorporated herein by reference, the scope of work includes an environmental consultant with a budget allowance to prepare a Categorical Exemption for the three phases of the project as part of one document under the Phase 1 services.

If CONSULTANT's evaluation does not support an exempt finding, preparation of additional environmental clearance work shall be considered by CITY under Additional Services.

#### **3.2. Agency Permitting**

CONSULTANT shall be responsible for obtaining required permits necessary to bid and construct the project. CITY will pay permit fees per Section II., Responsibilities of City, of this Scope of Services. CONSULTANT shall provide each permitting agency with a project description including the appropriate project plans along with the permitting applications and necessary supporting documentation. CONSULTANT shall submit the permitting package to CITY for signature and CONSULTANT shall submit to the permitting agencies.

It is noted that both the Guadalupe River Trail and San Tomas Aquino Creek Trail are on Valley Water land and operated by CITY under Joint Use Agreements. Coordinating and gaining approval of the pavement maintenance

and rehabilitation work by Valley Water is a key requirement for the project. CONSULTANT shall be lead and ensure Valley Water's approval for the work. CONSULTANT will prepare a separate application for each Phase of the work. The design of the pavement rehabilitation will be adjusted to minimize impacts to Valley Water jurisdiction which will cause additional permitting.

CONSULTANT shall respond in writing to questions and comments raised by the permitting agencies. Copies of comments and/or questions received and draft responses shall be submitted to CITY for approval prior to submittal to the agencies. Final permit requirements shall be incorporated into the project's contract documents.

The following is a list of potential permits that may be required for the project. If additional permits are required or if additional agencies are identified other than those on the list below, they shall be considered included as part of the Basic Scope of Services and not as Additional Services.

- Santa Clara Valley Water District (SCVWD): Phases 1, 2, and 3
- State of California Department of Transportation (Caltrans): Phase 1
- San Francisco Public Utility Commission (Hetch-Hetchy): Phase 2
- County of Santa Clara: Phase 3

The following permits are explicitly assumed as not being required for the project or included in the Basic Scope of Services. Should these permits become required, subsequent to the site reconnaissance survey described below, services related to securing these permits will be considered as an Optional Task, as described in Task 8 Optional Tasks:

- State of California Department of Fish and Wildlife (CADFW)
- US Army Corps of Engineer (ACOE)
- Regional Water Quality Control Board (RWQCB)

Permits shall be submitted at the appropriate time in accordance within the project schedule to ensure permits are issued and final to be incorporated into the construction documents prior to bid.

#### Site Reconnaissance Survey:

During the preliminary design of Phase 1, the biological consultant for the design team, HT Harvey, will review all three phases of the project, in coordination with the consultant pavement engineers. The CONSULTANT team will recommend pavement rehabilitation options that will minimize permitting from CADFW and ACOE. Reconnaissance survey and mapping of top-of-bank along selected segments of San Tomas Aquino Creek Trail: this survey would focus on areas where the trail dips below top of bank, and where project activities would be performed. A wetlands ecologist would map the top

of bank in those areas to determine whether/where work would be performed below top of bank and prepare a map and brief memo (with photos) describing findings.

Deliverables:

1. CEQA Memorandum
2. Permit application packages with necessary supporting documentation.
3. Final permits.

**4. TASK 4: CONSTRUCTION DOCUMENTS (65%, 95%, 100%, and FINAL BID SET SUBMITTALS)**

Upon CITY's approval of the Preliminary Engineering Plans and Construction Cost Estimate in Task 2 that defines the treatment approach and construction document packaging for the project, CONSULTANT shall prepare biddable and constructible construction contract documents. The subtasks outlined below shall be required for each construction package to be prepared as identified in the preliminary engineering memorandum. Phase 3 of the pavement rehabilitation will be approximately 50% mill and fill, and 50% slurry seal.

If changes in the Scope of Services or Schedule of Fees under this Task are required due to changes in the baseline solution identified during Task 2, changes shall be proposed by CONSULTANT and approved in writing by CITY prior to commencement of this Task.

Under each submittal, Consultant shall evaluate the project for requirements under the State General Construction Permit, and the RWQCB Municipal Regional Permit (MRP) and provide necessary services to ensure the project is compliant and incorporate requirements into the project bid documents. This includes determination of project type and risk level if necessary, and analysis and requirements under provision C.3. The anticipated method of storm water treatment, if required, is to sheet flow the asphalt trail drainage onto the adjacent vegetated area per the MRP, to be considered a self-treating facility. In areas which require stormwater treatment, the sheetflow will be achieved by regrading the trail, as part of the pavement rehabilitation, to drain onto the existing vegetated area..

The PROJECT does not contemplate, nor include, evaluation or replacement of trail amenities such as benches, trail heads, fencing, scenic overlooks, interpretive signs, or other similar architectural features. However, CONSULTANT shall evaluate the surfacing at trail heads (e.g. brick pavers) for condition and smooth surfacing and include replacement if warranted.

**4.1. 65% Construction Documents Package**

CONSULTANT shall perform engineering and design activities to develop a 65% level of completion construction documents. The 65% submittal shall be considered as a complete package necessary to bid the PROJECT, and subsequent submittals shall provide opportunities to further refine the contract documents.

#### 4.1.1. Construction Documents

The 65% construction documents submittal shall follow the guidelines of the most current City Design Criteria and Standard Details and shall include Plans, Specifications, Engineer's Cost Estimate, and Probable Project Construction Schedule, in accordance with the following:

4.1.1.1. The Plans shall be complete and show property lines, existing high-risk utilities, and major construction features.

4.1.1.2. CITY's preferred plan format is 22" x 34" sized sheets at a legible scale.

4.1.1.3. Specifications shall include Technical Specifications or Special Provisions required to construct the project. CITY will prepare the "upfront" contract specifications, i.e. Divisions 0 and 1 specifications of CITY's boilerplate. CONSULTANT shall provide information required for CITY to complete the boilerplate. This information includes:

- Description of work
- Type of Contractor's License required
- Schedule of Bid Prices
- Requirements for Contractor's Statement of Qualifications (e.g. experience requirements for previous construction contracts and contract values).
- Recommendations for appropriate Liquidated Damages
- Identification of changes to the CITY's boilerplate that are required

4.1.1.4. CONSULTANT shall be familiar with CITY's standard specifications and provide Technical Specifications or Special Provisions such that they supplement, and do not conflict with, and are not redundant with the standard specifications. Consultant to provide support to the City for changes to the CITY's boilerplate or deviations from the standard specifications shall be addressed by incorporating appropriate information into the project

Technical Specifications or Special Provisions. Examples of design related items to be reviewed and edited by the Consultant include working days, traffic control, and construction surveying.

4.1.1.5. CITY BPAC Review: Per the CITY's complete streets policy, the project is required to undergo a review by the CITY's Bicycle and Pedestrian Advisory Committee (BPAC). CONSULTANT shall attend the BPAC meeting in which the project is reviewed, and address recommendations made by BPAC. It is assumed that this BPAC review will be completed at the 65% level, and that the 65% plans will be of sufficient quality and completeness to facilitate BPAC review.

4.1.1.6. The Engineer's Cost Estimate shall be an itemized list of bid items and shall be accurate and prepared based upon current construction pricing and escalated to time of bid using engineering judgement. CONSULTANT shall review recent bids, to develop an accurate cost estimate.

4.1.1.7. The probable construction schedule will be used to establish the construction contract duration (e.g. number of working days) in the project specifications. The construction schedule does not need to be detailed, but it should contain enough information to accurately determine the contract duration.

4.1.1.8. CONSULTANT shall conduct a quality control (QC) review of the submittal in accordance with CONSULTANT's Quality Assurance/Quality Control (QA/QC) program.

#### 4.1.2. Response to Comments

4.1.2.1. CITY will circulate the submittal package of the documents in PDF format to internal CITY departments for review and comments. CONSULTANT shall be responsible for submitting the package to external stakeholders if required. CONSULTANT shall prepare written responses to all written comments received. Redlined drawings in PDF shall be returned with CONSULTANT's response on the redlined drawings.

4.1.2.2. CONSULTANT shall be responsible for resolving comments from each commenter and shall identify to CITY

comments that cannot be resolved. CONSULTANT shall conduct a 65% comments review meeting with CITY to discuss comments on the submittal package, to identify significant design issues, and gain concurrence as to how the submittal shall be revised as appropriate to incorporate CITY's comments. The review meeting will be held at CITY or via MS Teams as determined by the City.

Deliverables:

1. 65% Design Submittal Package (Plans, Specifications, Engineer's cost estimate, and project construction schedule).
2. Written response to comments.
3. 65% review meeting agenda and meeting minutes.

**4.2. 95% Construction Documents Package**

CONSULTANT shall perform engineering and design activities to develop a 95% level of completion construction documents that include updated Plans, Specifications, Engineer's Cost Estimate, Probable Project Construction Schedule, in accordance with the following:

4.2.1. Construction Documents:

4.2.1.1. The 95% submittal package shall incorporate comments received from CITY on the 65% submittal package. The submittal shall include a written response to CITY comments including a description of how the comments were/were not incorporated into the submittal package. Redlined drawings shall be returned with CONSULTANTS response on the redlined drawings.

4.2.1.2. CONSULTANT shall conduct a quality control (QC) review of the submittal in accordance with CONSULTANT's Quality Assurance/Quality Control (QA/QC) program.

4.2.1.3. CONSULTANT shall submit the 95% plans to affected utility owners for their use and information.

4.2.2. Response to Comments

4.2.2.1. CITY will circulate the submittal package to internal CITY departments for comments. CONSULTANT shall be responsible for submitting the package to external stakeholders if required. CONSULTANT shall prepare

written responses to comments received. Redlined drawings shall be returned with CONSULTANTS response on the redlined drawings. CONSULTANT shall be responsible for resolving comments from each commenter and shall identify to CITY comments that cannot be resolved. CONSULTANT shall conduct a 95% comments review meeting with CITY to discuss comments on the submittal package and gain concurrence as to how the submittal shall be revised as appropriate to incorporate CITY's comments. The review meeting will be held at CITY.

Deliverables:

1. 95% Design Submittal Package (Plans, Specifications, Engineer's cost estimate, and project bid and construction schedule), submitted electronically as PDF.
2. Written response to CITY comments on the 95% design submittal.
3. 95% review meeting agenda and meeting minutes.

**4.3. 100% Construction Documents Package**

CONSULTANT shall finalize the Plans, Specifications, Engineer's cost estimate, and construction schedule based on the 95% review comments from CITY. All outstanding comments and issues from previous submittals shall be incorporated into the 100% construction document package. The 100% Construction documents shall be considered as complete.

The 100% construction package shall include final Plans, Specifications, Engineer's Cost Estimate, and Probable Project Construction Schedule, in accordance with the following:

- 4.3.1. The 100% construction package shall incorporate comments received from CITY on the 95% submittal package. The submittal shall include a written response to CITY comments including a description of how the comments were/were not incorporated into the submittal package. Redlined drawings shall be returned with CONSULTANTS response on the redlined drawings.
- 4.3.2. CONSULTANT shall conduct a quality control (QC) review of the submittal in accordance with CONSULTANT's Quality Assurance/Quality Control (QA/QC) program.
- 4.3.3. PEER Review: Peer review shall have been accomplished by this

stage, with the statement and signature on the cover sheet. The professional shall sign, date and seal the following Certification of Peer Review on a letterhead document with the transmittal of the final plans and specifications:

“The undersigned hereby certifies that a professional peer review of these plans and the required designs was conducted by me, a professional engineer with expertise and experience in the appropriate fields of engineering equal to or greater than the Engineer of Record, and that appropriate corrections have been made.”

4.3.4. Based on previous projects of agencies near the CITY, prepare a list of potential bidders for the project.

4.3.5. Response to Comments

CITY will circulate the submittal package to internal CITY departments for comments. CONSULTANT shall be responsible for submitting the package to external stakeholders if required. CONSULTANT shall prepare written responses to all comments received. Redlined drawings shall be returned with CONSULTANTS response on the redlined drawings. CONSULTANT shall be responsible for resolving comments from each commenter and shall identify to CITY comments that cannot be resolved. CONSULTANT shall conduct a 100% comments review meeting with CITY to discuss comments on the submittal package and gain concurrence as to how the submittal shall be revised as appropriate to incorporate CITY’s comments. The review meeting will be held at CITY.

Deliverables:

1. 100% Design Submittal Package (Plans, Specifications, Engineer’s cost estimate, and project bid and construction schedule).
2. Written response to CITY comments on the 100% design submittal.
3. 100% review meeting agenda and meeting minutes.
4. List of potential bidders in MS Excel format and shall include the company’s name, email address, contact number, and address of business.



#### **4.4. Final Bid Set Documents**

The submittal shall be considered as a limited submittal to formalize and sign the Final Bid Set documents, and resolution of minor issues remaining from the 100% Design Submittal package.

The final submittal shall consist of final Plans and Specifications, signed, stamped and dated by CONSULTANT in responsible charge for their preparation and be considered ready to bid. The final submittal shall be ready for CITY staff approval signatures.

##### Deliverables:

1. Stamped, signed, and dated Final Plans for CITY signature (two original hard copies and electronic files in AutoCAD and PDF formats).
2. Stamped, signed, and dated Final Specifications and supporting documents meeting CITY's requirements for bidding purposes (two original hard copies and electronic files in MS Word and .PDF formats).
3. Final Engineer's cost estimate (two hard copies and electronic files in MS Excel and .PDF formats).
4. Final construction schedule (two hard copies and electronic files in MS Project and .PDF formats).

#### **5. TASK 5: BID SUPPORT ASSISTANCE**

Upon written request by CITY, CONSULTANT shall provide the following services up to the budget allowance for bid support:

- 5.1 Provide clarifications and assistance during the bidding phase to satisfactorily answer questions from prospective bidders, if requested by CITY. CITY to reproduce and distribute Contract Documents, maintain a planholder's list and log of bidder's questions and responses.
- 5.2 Attend Pre-Bid Meeting, if required by Project. CONSULTANT shall coordinate with CITY to prepare agenda and meeting minutes.
- 5.3 Prepare Addenda to Construction Documents, if needed. CITY to reproduce and distribute all addenda.
- 5.4 Assist CITY in evaluating bids and preparation of recommendation letter to award the contract, if needed.

- 5.5 If addenda are issued, prepare a conformed set of documents that incorporated addenda into the documents.

Deliverables:

1. Written clarifications and response to prospective bidders, if needed
2. Addenda to the Bid Documents, if needed.
3. Written recommendation for award of contract, if needed.
4. Conformed construction documents, if needed.

## **6. TASK 6: CONSTRUCTION SUPPORT**

THE CITY's construction management team will have primary responsibility for construction management and inspection. Upon written request by CITY, CONSULTANT shall provide the following services up to the budget allowance for construction support:

- 6.1 Attend Pre-Construction Meeting upon request by CITY and respond to pre-construction meeting questions.
- 6.2 Review and approve shop drawings and submittals, including mix designs. Assuming four rounds of reviews and comments for each submittal.
- 6.3 Review Contractor's request for information (RFI's) and furnish additional drawings and/or specifications for supplementing, clarifying, and/or correcting purposes.
- 6.4 Attend meetings and site visits when necessary as determined and requested by CITY. Meetings and site visits shall be coordinated whenever possible.
- 6.5 Assist CITY with the review of construction, and other activities, as requested.
- 6.6 Prepare, review, and recommend approval of design related change orders, as requested.

Deliverables:

Listed below are services which will be performed within the construction support services budget allowance:

1. Shop drawing and submittal comments.
2. RFI responses.
3. Site visit memoranda, as required. Limited to 4 visits plus punch-list walk-thru.
4. Drawings and specifications for supplementing, clarifying, and/or correcting the contract documents and for design related change orders.
5. Change orders, as required.

## **7. TASK 7: RECORD DRAWINGS AND PROJECT CLOSE-OUT**

CONSULTANT shall:

- 7.1 Upon request by CITY, in accordance with Bid Documents, CONSULTANT shall assist CITY in determining if the Project is ready for the stage of completion requested by the Contractor (Substantial and Final Completion). As part of the allowance for construction support services, the City may request Consultant to attend the Final Walkthrough to provide input to final "punch list" and help determine if the work is ready for CITY acceptance. CONSULTANT shall provide CITY with a written recommendation.
- 7.2 At Final Completion of the Project, provide CITY with one set of reproducible Record Drawing that reflects the changes to the work during construction based upon marked up prints, drawings, and other data furnished by the Contractor, CITY, and Consultants. If CONSULTANT adds additional sheets to the plans, these shall be properly numbered, properly referenced on other affected drawings, and included in the drawing sheet index.
- 7.3 Provide a complete set of the Record Drawings and all X-ref files "bound," including other associated fonts, plot style files on AutoCAD, including electronic copies in PDF format. CONSULTANT may, at its own expense, prepare and retain a copy of each drawing for its permanent file.
- 7.4 CONSULTANT shall provide to the City of Santa Clara, relevant digital products and related information (e.g. notes, recommendations, photographs, etc.), including land survey records and data (e.g. tridimensional geodetic and/or geographic coordinates).

### Deliverables:

1. CD containing PDF copies of all submittals received during construction phase.

## **8. TASK 8: OPTIONAL TASKS**

If deemed necessary during the course of services, this Task provides for CONSULTANT to perform Optional Tasks as part of the Basic Scope of Services. Optional Tasks shall be authorized in writing prior to performing work, and shall only be invoiced if agreed by CITY

### **8.1. OPTIONAL TASK: ADDITIONAL ENVIRONMENTAL ALLOWANCE (PHASE 1 PROJECT)**

This tasks provides for additional environmental services, including resource agency permitting, if following the reconnaissance surveys it is determined that resource agency permits are required. The following is an example of the services covered by this Optional Task:

CONSULTANT shall prepare CDFW/RWQCB permit applications and associated materials. For efficiency and cost-effectiveness, CONSULTANT would prepare a single CDFW application and a single RWQCB application for all areas where work would be performed below top of bank (rather than applying for multiple permits from each agency). This task includes time to coordinate with each agency during permit processing. In anticipation of a requirement from Valley Water that verification from the U.S. Army Corps of Engineers that no Clean Water Act Section 404 permit is needed, this task also includes USACE coordination.

Additionally, this task includes an allowance for environmental services related to obtaining approvals from Valley Water.

This task shall only be invoiced if agreed by CITY and CONSULTANT in writing prior to performing work.

### **8.2. OPTIONAL TASK: ADDITIONAL TOPOGRAPHIC SURVEYS (PHASE 1 AND PHASE 2 PROJECTS).**

This task provides for additional field surveys, to be performed consistent with the provisions described for field surveys in the Basic Services in this Scope of Services for field surveys. Additional field surveys may become necessary to identify additional details and constraints based upon the work involved beyond the assumptions for field surveys in the Basic Services. This is considered a budget allowance and prior to performing any work under this Task, CONSULTANT shall provide a written description and estimate of hours for the additional surveys.

The budget allowance assumes 3 additional days total for the Phase 1 and Phase 2 projects, and 1 additional day for the Phase 3 project. This Optional Task is included in the Schedule of Fees under the Phase 1 project and Phase 3 project.

This task shall only be invoiced if agreed by CITY and CONSULTANT in writing prior to performing work.

## EXHIBIT B SCHEDULE OF FEES

### I. GENERAL PAYMENT

Billing shall be on a monthly basis based on the services performed for each task. Consultant shall, during the term of this Agreement, invoice the City for hours and dollars of work completed under this Agreement. The invoice shall describe the Task invoiced, percent complete of the Task, time and materials expended by Task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period. All invoices shall provide a written description of work performed during the invoice period, deliverables completed, and progress to date on Tasks being invoiced in order to support the amount invoiced. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

The Phase 1, Phase 2, and Phase 3 projects shall be administered as separate and distinct projects per the fees as described herein. City may reallocate fees between the projects as necessary in City's sole discretion throughout the course of Services, which shall be in writing. Reallocation of fees between the projects will be administered as Additional Service Authorization(s) as needed and in CITY's discretion.

#### Phase 1 Project

For the Phase 1 Project ("Phase 1 Project"), the total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$227,123. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$22,712. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$249,835 for the Phase 1 Project, subject to budget appropriations.

#### Phase 2 Project (Optional Service)

For the Phase 2 Project ("Phase 2 Project"), the total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$134,732. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$13,473. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$148,205 for the Phase 2 Project, subject to budget appropriations.

#### Phase 3 Project (Optional Service)

For the Phase 3 Project ("Phase 3 Project"), the total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$87,335. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$8,735. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$96,070 for the Phase 3 Project, subject to budget appropriations.

The total combined amount for all projects (Phase 1, Phase 2, and Phase 3) billed to City by Consultant for Services under this Agreement shall not exceed \$494,110 subject to budget appropriations.

## **II. SERVICES**

The total payment to Consultant for all work necessary for performing all Tasks, as stated in Exhibit A, shall be in proportion to services rendered and on a time and materials not-to-exceed basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant services required by this Agreement, as directed by the City, and no additional compensation shall be allowed. City may reallocate budget from Tasks to other Tasks or to or from additional services. In addition to the above, City may also reallocate budget from phase to phase. The Consultant shall bill time and materials spent on a Task under the appropriate Task and will not be allowed to charge to future or inactive tasks unless approved in writing by City. The Consultant shall provide a summary of dates and hours charged per date by individual, and individual timesheets, if requested by City. The hours and amounts charged to each Task shall be proportionate to the services rendered.

Tasks denoted as Optional Tasks, as stated in Exhibit A, require pre-approval in writing by CITY prior to performing any services under the task. Payment for any Optional Task is allowed only if written authorization is given by the City in advance of the work to be performed. Fees for Optional Tasks shall be considered as Basic Services.

The total amount of all the Tasks is a not-to-exceed amount. Figures in the following table include all subconsultant costs, reimbursable expenses, and administrative markups. The following table is a summary of the Tasks based upon the negotiated Cost Proposal, submitted by Bellecci & Associates, Inc. on May, 18, 2023 and agreed by CITY and CONSULTANT, attached to this Exhibit B and incorporated herein by reference.

CONSULTANT shall invoice time and expenses according to the subtasks identified in the Proposal. The time and expenses billed for subtasks may vary above or below the fees identified on the Estimated Project Cost provided that the total billed for all subtasks billed under a Task remains within the Fee established for the Task. Upon mutual agreement between CITY and CONSULTANT in writing, subtasks may be combined as needed to facilitate CONSULTANT's invoicing.

**Phase 1 Project:**

<b>Description</b>		<b>Amount</b>
Task 1	Project Management and Coordination	\$ 10,880
Task 2	Preliminary Engineering and Evaluation (35% Design)	\$ 82,716
Task 3	CEQA Analysis & Agency Permitting	\$ 28,517
Task 4	Construction Documents (65%, 95%, 100%, and Final Bid Set Submittals)	\$ 52,452
Task 5	Bid Support Assistance	\$ 1,800
Task 6	Construction Support	\$ 5,160
Task 7	Record Drawings and Project Close-Out	\$ 1,160
Task 8	Optional Tasks	\$ 44,438
<b>Total</b>		<b>\$ 227,123</b>

For the Phase 1 project, in no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed two hundred twenty seven thousand one hundred twenty three dollars (\$227,123), subject to budget appropriations.

**Phase 2 Project (Optional Service):**

<b>Description</b>		<b>Amount</b>
Task 1	Project Management and Coordination	\$ 13,352
Task 2	Preliminary Engineering and Evaluation (35% Design)	\$ 34,840
Task 3	Agency Permitting	\$ 8,122
Task 4	Construction Documents (65%, 95%, 100%, and Final Bid Set Submittals)	\$ 68,252
Task 5	Bid Support Assistance	\$ 3,030
Task 6	Construction Support	\$ 5,672
Task 7	Record Drawings and Project Close-Out	\$ 1,464
Task 8	Optional Tasks	\$ 0
<b>Total</b>		<b>\$ 134,732</b>



For the Phase 2 project, in no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed one hundred thirty four thousand seven hundred thirty two dollars (\$134,732), subject to budget appropriations.

**Phase 3 Project (Optional Service):**

<b>Description</b>		<b>Amount</b>
Task 1	Project Management and Coordination	\$ 5,620
Task 2	Preliminary Engineering and Evaluation (35% Design)	\$ 0
Task 3	Agency Permitting	\$ 7,544
Task 4	Construction Documents (65%, 95%, 100%, and Final Bid Set Submittals)	\$ 58,835
Task 5	Bid Support Assistance	\$ 3,030
Task 6	Construction Support	\$ 1,956
Task 7	Record Drawings and Project Close-Out	\$ 1,508
Task 8	Optional Tasks	\$ 4,008
<b>Total</b>		<b>\$ 87,335</b>

For the Phase 3 project, in no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed eighty seven thousand three hundred thirty five dollars (\$87,335), subject to budget appropriations.

**III. REIMBURSABLE EXPENSES**

Reimbursable Expenses shall not be billed by the Consultant or subconsultant under this Agreement. Full compensation for all expenses shall be considered included in the hourly rates.

**IV. ADDITIONAL SERVICES**

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Monthly billing for Additional Services shall be consistent with the terms set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed the following amounts:

Phase 1 Project:	\$22,712
Phase 2 Project:	\$13,473
Phase 3 Project:	\$8,735

In no event shall the total combined amount for Additional Services for all projects (Phase 1, Phase 2, and Phase 3) billed to City by Consultant under this Agreement exceed forty four thousand nine hundred twenty dollars (\$44,920), subject to budget appropriations. Additional Services that exceed the above amounts will require a written amendment to the Agreement.

City may reallocate fees between projects or between Basic Services and Additional Services, as necessary in City's sole discretion throughout the course of Services, which shall be in writing.

## **V. RATE SCHEDULE**

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Rates by classification are listed below and shall be fixed through December 31, 2023. Any classifications added, or staff members changing classifications, shall be approved in writing by City.

After December 31, 2023 rates may be adjusted as described herein. CONSULTANT shall propose any adjusted rates in writing for CITY's consideration and acceptance in writing. Adjusted rates shall be no more than the percentage of difference between the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-Hayward, CA, area between the effective date of this Agreement and the CPI as may be available and nearest to and in advance of the month in which the adjustment is contemplated and shall be capped at a maximum of 3% for each adjustment. Rates changed by calculation shall be rounded to the nearest whole dollar. Only one adjustment is allowed per annum.

Consultant understands and agrees that adjustments to rates does not cause an adjustment in the Fees established for tasks or adjustment to the maximum compensation under this agreement. Consultant shall be required to provide the full services as described in Attachment A in accordance with the Fees established in this Attachment B, regardless of adjustments to rates.

Consultant Bellecci & Associates (2023 Rates):

<b>Classification</b>	<b>Hourly Rate</b>
Principal I/Project Manager	\$ 240
Principal II/Peer Reviewer	\$ 270
Prof. Engr I	\$ 204
Eng III	\$ 190
Eng II	\$ 174
Eng I	\$ 164
Asst. Engineer II	\$ 150
Asst. Engineer I	\$ 130
Senior PW Inspecto	\$ 174
Survey Tech III	\$ 174
Land Surveyor	\$ 220
Survey, Chief of Party	\$ 174
Survey Rodman	\$ 110
Survey, Appren II	\$ 84

Sub-consultant David J. Powers and Associates: See attached page.

Sub-consultant H.T. Harvey & Associates: See attached page.

Sub consultant 360 Aerial: the budgets set forth in this agreement are budget allowances. CONSULTANT shall submit to CITY the quotation from 360 Aerial to CONSULTANT prior to authorizing the work for CITY's approval in writing. In no circumstance shall the quotation from 360 Aerial exceed the budget allowance unless approved in writing by CITY.

Bellecci & Associates, Inc. will bill subconsultants at actual cost plus a maximum allowable markup of 10%.



**CHARGE RATE SCHEDULE**

<b><u>Title</u></b>	<b><u>Hourly Rate</u></b>
Senior Principal	\$ 330.00
Principal Project Manager	\$ 304.00
Senior Environmental Specialist	\$ 258.00
Senior Project Manager	\$ 237.00
Environmental Specialist	\$ 221.00
Project Manager	\$ 211.00
Associate Project Manager	\$ 185.00
Assistant Project Manager	\$ 155.00
Researcher	\$ 134.00
Graphic Artist	\$ 124.00

Materials, outside services and subconsultants include a 15% administration fee.  
 Mileage will be charged per the current IRS standard mileage rate at the time costs occur.  
 Subject to revision January 1, 2024.



**H. T. HARVEY & ASSOCIATES**

Ecological Consultants

50 years of field notes, exploration, and excellence

## Professional Fees

*Fees Effective October 1, 2022*

<b>Personnel Classification</b>	<b>Hourly Billing Rate</b>
Principal	\$ 299–341
Senior Associate Ecologist	\$ 268
Associate Ecologist	\$ 249
Senior Ecologist 2	\$ 226
Senior Ecologist 1	\$ 204
Ecologist 2	\$ 177
Ecologist 1	\$ 156
Field Biologist 2	\$ 136
Field Biologist 1	\$ 113
Senior GIS Analyst	\$ 167
GIS Analyst	\$ 142
Technical Editor	\$ 136
Technical Support	\$ 109
Clerical Support	\$ 90
Deposition and Testimony	Two times standard rate
<b>Subcontractual Consultants</b>	Cost plus 10%
<b>Direct Expenses</b>	Cost plus 10%
Transportation	Current IRS Federal Standard Mileage Rate <i>(62.5¢ / mile as of July 2022)</i>
Travel (Cost plus 10%)	~ \$319/day <i>(based on federal per diem rate)</i>
Field Equipment Operation	Variable

Billing rates are subject to annual increases and will be adjusted at the beginning of each calendar year.

**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 LABOR COMPLIANCE ADDENDUM**

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](http://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](http://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 Addendum 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 Addendum.

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  
MILESTONE SCHEDULE (SUMMARY OF KEY TASKS)**

This Exhibit contains a summary the key tasks from CONSULTANT's proposed project schedule for completing the Services as part of its proposal dated March 24, 2023 and subsequent discussions between CITY and CONSULTANT. The dates for key tasks as shown in this Exhibit shall not be exceeded without prior written approval by CITY.

<b>DESCRIPTION</b>	<b>COMPLETE NO LATER THAN</b>
<u>Phase 1 Project</u>	
Notice to Proceed (Assumed)	8/1/2023
Bid Set PS&E Submittal	1/22/2024
Field Construction Window (Assumed)	4/15/2024 to 10/15/2024
 <u>Phase 2 Project</u>	
Notice to Proceed (Assumed)	4/1/2024
Bid Set PS&E Submittal	12/1/2024
Field Construction Window (Assumed)	4/15/2025 to 10/15/2025
 <u>Phase 3 Project</u>	
Notice to Proceed (Assumed)	4/1/2025
Bid Set PS&E Submittal	12/1/2025
Field Construction Window (Assumed)	4/15/2026 to 10/15/2026



## Agenda Report

23-737

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action to Delegate Authority to the City Manager to Negotiate and Execute Amendments to Agreements for Design Professional Services for Silicon Valley Power's System Capacity Expansion Planning Including Development of a Twenty-Year Long-Term Strategy Plan for System Growth, Master Agreements for Plan Implementation Services, and Master Agreements for General Consulting Services

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

Silicon Valley Power (SVP) has provided electric service for over 125 years and is experiencing significant continued growth. SVP has developed a capital improvement strategy to address near-term and long-term potential load growth. In 2021, SVP recorded a peak load of nearly 600 Megawatt (MW) and delivered approximately 4,100 Gigawatt-hours (GWh) to customers. In 2022, SVP's recorded peak load increased to 702 MW, and energy delivery rose to 4,550 GWh. This represents an approximate 10% increase in energy delivery and represents the largest year-over-year growth in the last 30 years.

On October 13, 2020, City Council approved (Council Item 20-854) the following Agreements for Design Professional Services:

- Agreement with Electrical Consultants, Inc (ECI) with a maximum compensation not to exceed \$850,000 to complete a System Expansion Plan including a Three-Year Growth Plan Strategy;
- Master agreements for Plan Implementation Services with a maximum compensation not to exceed \$3,000,000 per agreement with (1) 1898 & Co., (2) TRC Solutions, Inc., (3) ECI, (4) AECOM Technical Services, Inc., and (5) Stantec Consulting Services Inc.; and
- Master agreements for general consulting services with a maximum compensation not to exceed \$2,000,000 per agreement with (1) Advisian Worley Group, (2) TRC Solutions, Inc., (3) Leidos Engineering, LLC, (4) Flynn Resource Consultants, Inc. and (5) EN Engineering LLC.

When a specific project is identified, SVP issues a call for proposals that invites these prequalified consultants to submit their proposals. The award for each project is determined based on factors such as expertise in the specific area of work needed, staff availability, project approach, proposed scope of services, project schedule/completion dates, and verification that cost is reasonable for the services.

When the agreements were approved on October 13, 2020, the total maximum compensation for the

ten (10) master agreements was authorized with an aggregate maximum compensation of \$25 million over a five-year period. On May 13, 2022, the City Council authorized the City Manager to execute Amendment No. 1 to the Agreement with AECOM Technical Services Inc., increasing the maximum compensation from \$3 million to \$11 million for additional program management services related to the System Expansion Plan. This authorization increased the total aggregate compensation for the ten (10) agreements to \$33 million. On October 4, 2022, the City Council authorized the City Manager to negotiate and execute amendments to the ten (10) agreements, resulting in a new total aggregate compensation of \$50 million.

On September 28, 2021 (Council Item 21-871), the Council accepted SVP's Three-Year Growth Plan Strategy which identified \$300 million of proposed projects to install new facilities and to replace aged infrastructure with higher capacity infrastructure on an as-needed basis. On November 15, 2022 (Council Item 22-1172), the City Council accepted SVP's System Expansion Plan for the California Independent Operator's (CAISO) Transmission Planning Process (TPP) FY2023/24 (SVP System Expansion Plan TPP FY2023/24).

In the SVP System Expansion Plan TPP FY2023/24, SVP anticipates a peak system load of 819MW in 2025 and peak load of 1,306 MW in 2032. Compared to the 2022 peak load of 702 MW, this projection represents an increase of nearly 117 MW by 2025. SVP System Expansion Plan TPP FY2023/24 identifies both near-term and ten-year improvements required for SVP to maintain electric service reliability with consideration of the projected load growth. The SVP System Expansion Plan TPP FY2023/24 provides detailed information and a technical basis for the completed analysis, including a summary of proposed projects. These projects are in addition to those previously presented to Council. To maintain electric service reliability and meet project growth, SVP requires engineering support in three areas: (1) System Expansion Planning, (2) General Consulting, and (3) Plan Implementation.

## **DISCUSSION**

Under its agreement with the City, ECI has provided consultant support for the CAISO's Annual TPP and completed a Three-Year Growth Plan Strategy. SVP requires additional related services from ECI, including, (1) a twenty-year long-term strategy plan for system growth; and (2) support for upcoming CAISO TPP studies. The twenty-year long-term strategy plan and study will address, among other things, reach codes (local energy code amendments intended to strengthen emissions reductions) and impacts of electrification and decarbonization to SVP's transmission and distribution electrical systems. To complete these additional services, SVP will require an increase in the maximum compensation of the ECI agreement for the system expansion plan from \$850,000 to \$1,500,000 and extension of the term through December 31, 2025.

The System Expansion Plan has led to a significant increase in the SVP's Capital Improvement Project (CIP) backlog. Managing and delivering these projects from detailed design through construction necessitates the augmentation of staff by hiring outside engineering firms who possess the necessary technical knowledge and expertise to support SVP. For example, the System Expansion Plan includes the following proposed projects as well as other projects not listed:

- NRS Transformer and Breaker Upgrades
- Kifer Receiving Station (KRS) & Scott Receiving Station (SRS) Rebuild and Replacement
- NRS-KRS 115kV Line Replacement

- South Loop Reconductor
- Northwest Loop Capacity Upgrade
- Walsh-Uranium 60kV Reconductor

The proposed projects include replacement of aging infrastructure and installation of new facilities to allow higher internal system capacity. These projects will include the addition of new internal 60kV transmission loops and implementation of reliability upgrades, including replacing or reconductoring transmission lines. For the new 60kV loops, it is important to note that the first step in the process is to determine technical feasibility (design). Additional CAISO transmission capacity would be required to fully take advantage of the increased internal capacity.

As identified in the Three-Year Growth Plan Strategy and SVP System Expansion Plan TPP FY2023/24, the combined cost of these CIP projects is estimated at nearly \$500 million. Of this total amount, approximately 20% to 25% is attributed to engineering services such as design and construction management. In addition, to ensure that dedicated developer substations are built to SVP standards and connect properly to SVP's electric system, SVP provides engineering services to developers who design and build their own substation with costs recovered from those developers. Design, equipment, and construction project costs for substations built by developers are not included in the \$500 million budget. Therefore, total estimated engineering costs may exceed the 20 - 25% to account for costs of engineering for projects that are not included in SVP's CIP budget. To assure sufficient support to complete the System Expansion Plan and meet schedule commitments to developers while assuring SVP standards are met, SVP requires an increase of \$30 million in aggregate maximum compensation for agreements for general consulting and plan implementation services. This will amend previous authorizations and allow SVP to spread \$80 million among the master agreements. SVP will initiate amendments after selection of consultants following the call for proposals process described in the background of this report. SVP staff manages the aggregate compensation to assure that no services are approved that will result in exceeding the aggregate maximum compensation.

### **ENVIRONMENTAL REVIEW**

These proposed actions involve the approval of amendments to existing agreements for program and project management services. Any associated capital improvements have been or will be evaluated under the California Environmental Quality Act ("CEQA"). Therefore, the proposed actions do not constitute a "project" within the meaning of CEQA pursuant to section 15061(b)(3) of Title 14 of the California Code of Regulations as it can be seen with certainty that there is no possibility that the proposed approvals will have a significant effect on the environment.

### **FISCAL IMPACT**

Sufficient funds for these amendments are included in the capital budget for each project for Fiscal Year 2023/2024. Funding for specific projects is allocated in the Electric Utility Fund in the FY2023/24 Capital Improvement Budget, such as the NRS Transformer and Breaker Upgrades (CIP 2454), NRS-KRS 115kV Line (CIP 2455), KRS Rebuild and Replacement (CIP 2453), Laurelwood Substation (CIP 2443), Democracy Substation (CIP 2464), Transmission Loop 1 (CIP 2459), and Transmission Loop 2 (CIP 2463). Additional budget appropriations will be required for the Transmission Loop projects. Required actions will be brought forward to City Council for approval of the project and associated budget after design. It is anticipated that costs will be recovered through developer contributions. As the System Expansion Plan and design and construction of developer



funded substations progress, the costs and timelines will be revised and updated, and budget adjustments will be requested at that time if required.

Funds required for these agreements in future years are subject to budget appropriations and will be incorporated into the budget development process for those years. In the event the authorized budget for a project will be exceeded, budgetary actions will be brought forward to Council as needed to cover such services in advance of authorizing those services.

### **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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

1. Authorize the City Manager to negotiate and execute an amendment to the Agreement for Design Professional Services with Electrical Consultants, Inc (ECI Agreement) for additional services associated with the System Expansion Plan increasing the maximum compensation to \$1,500,000 and extending the term of the agreement until December 31, 2025, funded by the Electric Utility Capital Fund;
2. Authorize the City Manager to negotiate and execute amendments to the following Agreements for Design Professional Services (Master Agreements) for Silicon Valley Power's System Expansion Plan with an additional aggregate maximum compensation of \$30 million for a new aggregate maximum compensation of \$80 million funded by the Electric Utility Capital Fund and allocated as SVP may require, subject to the appropriation of funds: (A) general consulting services with; (i) Advisian Worley Group; (ii) TRC Solutions, Inc.; (iii) Leidos Engineering LLC; (iv) Flynn Resource Consultants, Inc.; and (v) EN Engineering LLC; and (B) For plan implementation services with: (i) Burns & McDonnell Engineering Company, Inc. (formerly 1898 & Co.); (ii) TRC Solutions, Inc.; (iii) ECI; (iv) AECOM Technical Services, Inc.; and (v) Stantec Consulting Services Inc
3. Authorize the City Manager to take any actions as necessary to implement and administer the ECI Agreement and Master Agreements and to negotiate and execute amendments to those agreements to (a) add or delete services consistent with their scope of services; (b) adjust future rates; and (c) extend their term of the agreement to complete projects initiated during the authorized term; and
4. All amendments included in this authorization shall be subject to the review and approval as to form by the City Attorney.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jōvan D. Grogan, City Manager



## Agenda Report

23-136

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on Accepting a Grant Award from the EnergIIZE Commercial Vehicles Project to Fund Medium-Duty and Heavy-Duty (MD/HD) Zero-emission Vehicles (ZEVs) Charging Infrastructure at the City's Street Corporation Yard/Utility Yard at 1715 Martin Avenue

#### COUNCIL PILLAR

Deliver and Enhance High-Quality Efficient Services and Infrastructure  
Promote Sustainability and Environmental Protection

#### BACKGROUND

Assembly Bill (AB) 118 (AB 118, Statutes of 2007, Chapter 750) created the Clean Transportation Program, formerly known as the Alternative and Renewable Fuels and Vehicle Technology Program. Administered by the California Energy Commission (CEC), this program uses funds from vehicle and vessel registration, vehicle identification plates, and smog abatement fees to develop and implement technologies to transform California's transportation landscape.

In April 2021, the CEC awarded \$50 million in Clean Transportation Program funding to CALSTART to address medium-duty and heavy-duty (MD/HD) zero-emission vehicles (ZEVs) adoption needs in California through financial incentives to be used towards the purchase of infrastructure equipment and software. CEC has assigned CALSTART (a nonprofit organization working nationally and internationally with businesses and governments to develop clean, efficient transportation solutions) to administrate the Zero-Emission Commercial Vehicles Project (EnergIIZE Project). The EnergIIZE Project is the nation's first commercial vehicle fleet infrastructure incentive project.

There are several key pieces of policy which provide the overall framework and funding to support the EnergIIZE Project. In September 2020, Governor Newsom signed Executive Order N-79-204 mandating the transition of all MD/HD vehicles in California to zero-emission by 2045, and 2035 where possible for drayage trucks. Additionally, California Air Resources Board (CARB) adopted rules for a phased adoption of zero-emission trucks and public transit. Ultimately, these rules mandate a complete transition to zero-emission transit buses by 2040 and an increase to at least 40 percent ZEV sales by 2035 for various truck classes.

In addition, CARB passed the Advanced Clean Fleets (ACF) rule with the goal of achieving a zero-emission truck and bus California fleet by 2045. The ACF regulation applies to fleets owned by state and local government agencies. The regulation affects MD/HD on-road vehicles with a gross vehicle weight rating greater than 8,500 pounds, off-road yard tractors, and light-duty mail and package delivery vehicles.

The ACF regulation also requires public fleet purchases to equal 50 percent ZEVs by January 1, 2024, and 100 percent of ZEVs by January 1, 2027. These state guidelines emphasize the growing market for MD/HD ZEVs and the necessity of further incentives to support this transition.

#### DISCUSSION

Silicon Valley Power (SVP) applied for grant funding through the EnergIIZE Project website during the EV Fast Track application window. Applications were reviewed on a first come, first served basis. In its application, SVP's requested funds to install two dual-port DC Fast Chargers at the City's Street Corporation Yard/Utility Yard at 1715 Martin Avenue. SVP is required to select pre-approved electric vehicle (EV) charging technology from the EnergIIZE Project Approved Technology catalog. The total cost of this project is anticipated not to exceed \$350,000.

SVP has been conditionally awarded \$177,487 for an EV charging infrastructure project to support the City's MD/HD ZEV fleet. Due to the site location being in a designated Disadvantaged Community (DAC), SVP qualified for additional funding. The funding will be used for EV equipment, charge management software and electrical infrastructure (such as switchgears, wiring and conduit). The difference between the project costs and the grant funds will be paid from Greenhouse Gas Reduction Funds (Fund 191) that were transferred to support the EV Charging capital project.

At this time, the grant is conditionally approved subject to the City issuing a purchase order for equipment. After the City issues a purchase order, CALSTART will send a draft agreement to the City. CALSTART has provided sample terms and conditions. Those sample terms and conditions are attached to this Report to Council. The City will make the purchases and then request and receive reimbursement from CALSTART. Generally, funds need to be spent within twenty-four months, but extensions may be granted. SVP anticipates completing this project in a twenty-four-month timeframe.

### **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 a governmental administrative activity that will not result in direct or indirect changes in the environment.

### **FISCAL IMPACT**

Funding for this project is budgeted in the FY23/24 Operating Budget and in the Capital Budget in the Electric Vehicle [EV] Charging project (project 2441). The grant reimbursement of \$177,487 will offset a portion of the costs SVP anticipated to spend on this project in FY 2023/24. This reimbursement will be recognized once the funds are received.

Funding for operating costs associated with this equipment is included in the department operating budget using Greenhouse Gas Reduction Funds. Green House Gas Reduction funds 191-1325-87940-92300).

### **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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

1. Accept EnergllZE Project grant funds for an amount of \$177,487 (Energllze Grant) or such additional amount as may be awarded from the EnergllZE Project to fund medium-duty and heavy-duty zero-emission vehicles charging infrastructure at the City's Street Corporation Yard/Utility Yard at 1715 Martin Avenue or other eligible locations with required matching funds from Greenhouse Gas Reduction Funds (Fund 191); and
2. Authorize the City Manager, or designee, to negotiate and execute an agreement (Agreement) with CALSTART for the Energllze Grant and related documents, subject to the review and approval as to form by the City Attorney, and to take all actions necessary to administer and implement the Energllze Grant and Agreement.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jövan D. Grogan, City Manager

### **ATTACHMENTS**

1. EV Jump Start Funding Lane Fact Sheet
2. EnergllZE Terms and Conditions
3. Summary of the Advanced Clean Fleets Rule

# Electric Vehicle (EV) Jump Start Funding Lane

EV Fast Track

EV Public Charging

Hydrogen

EV Jump Start

## EnergIIZE and EV Jump Start

EnergIIZE Commercial Vehicles (Energy Infrastructure Incentives for Zero-Emission Commercial Vehicles) is the nation's first commercial vehicle fleet infrastructure incentive project. Funded by the California Energy Commission's Clean Transportation Program and implemented by CALSTART, EnergIIZE provides incentives for zero-emission vehicle (ZEV) infrastructure equipment for medium- and heavy-duty (MD/HD) battery electric and hydrogen fuel cell vehicles operated and domiciled in California.

EV Jump Start is one of four funding lanes under EnergIIZE. The application process is competitive and applications are scored on criteria demonstrating project readiness, cost effectiveness and community benefit. Commercial fleet users interested in deploying electric charging infrastructure for MD/HD electric vehicles may be eligible for up to \$750k of funding per project.

## Eligibility

Commercial fleet users that meet one or more of the criteria below are eligible for MD/HD infrastructure incentives through the EV Jump Start funding lane:

Small business as recognized by the California State Legislative Code, Section 14837.

Certified Minority Business Enterprise, Woman-Owned Small Business, Veteran-Owned Small Business, or LGBT-Owned Small Business.

Transit agencies located in or that have at least 50% of fleet operations in a designated Disadvantaged Community (according to CalEnviroScreen 4.0).

School Districts in a designated Disadvantaged Community (according to CalEnviroScreen 4.0).

Low-Income Community (as defined by AB 1550).

Tribal entity

Non-profit organizations

## What is Covered

### Increased Incentives for Eligible Applicants

Commercial fleet users that meet one or more of the eligibility criteria listed under EV Jump Start may apply under EnergIIZE's other three funding lanes and may be eligible for a unique incentive structure (up to \$750k per EV project and up to \$3M per hydrogen project) defined under EV Jump Start.

For more information, please review the Implementation Manual on EnergIIZE.org.

75% of Eligible Equipment and Software Costs

**\$750k**

\$750,000 Project Cap

EV Equipment

- Level 2 Electric Vehicle Supply Equipment (EVSE)
- DC Fast-Charge EVSE
- Charge Management Software

Make Ready

- Switchgears
- Electrical Panel Upgrades
- Wiring and Conduit
- Meters

## How to Apply

Submit your application during the EV Jump Start application window.

Get in Touch

Get Support

Get Started

Submit your Application

Visit the EnergIIZE website at EnergIIZE.org for a list of upcoming workshops, videos, and resources to help with the application process.

Navigate to the Infrastructure Readiness Center through EnergIIZE.org to view the Implementation Manual, and other documents required to submit an application.

Check the EnergIIZE website to see when the application window opens and begin uploading required documents with your application.

Submit your application through the EnergIIZE website during the EV Jump Start application window.

## Contact Us

EnergIIZE.org

1 (877) ENR-GIZE  
1 (877) 367-4493

infrastructure@calstart.org

Revised December 2021



## Sample Terms and Conditions

### EnergIIZE Applicant and/or Applicant Team

Effective Date: June 23, 2023

Applicable to EV Jump Start Q3 2023

**These sample terms and conditions are intended for informational purposes only and do not constitute a legally binding agreement until they are incorporated in an Agreement fully executed by the Parties (CALSTART and Incentive Recipient); and are subject to change.**

As a condition for participating in the Energy Infrastructure Incentives for Zero-Emission Commercial Vehicles (EnergIIZE) Project, either the incentive Applicant Team, Recipient, or Application/Installation Partners must comply with the requirements below with the Recipient of EnergIIZE funds bearing responsibility for ensuring compliance. Applicant Teams must mutually agree upon which items they intend to be responsible for by initialing each line below and by signing and dating the document. Upon execution of an agreement with CALSTART and the Incentive Recipient, CALSTART will counter sign the document executing the EnergIIZE agreement.

#### Infrastructure Will Support Medium and Heavy-Duty Vehicles

1. \_\_\_\_\_ I assure that equipment purchased with an EnergIIZE incentive, including electric vehicle charging and hydrogen fueling equipment, will be utilized for the charging or fueling of Class 2B – Class 8 commercial vehicles;
2. \_\_\_\_\_ I agree to provide access to charging/fueling equipment for the intended commercial fleet or the public at the agreed upon location;

#### Maintaining, Using, and Operating Equipment

3. \_\_\_\_\_ I agree to ensure that chargers/refueling stations installed in the project are operational at least 97 percent of a charging/refueling site's standard hours of operation for five years after commissioning. Without limitation to other rights and remedies which the CEC may have, including but not limited to provisions specified in the Terms and Conditions of this agreement, this requirement to ensure operability for five years after commissioning shall

survive the completion or termination date of this agreement. In addition to the foregoing requirements regarding uptime, I further agree to take reasonable and necessary steps in preparation for compliance with forthcoming legislation on uptime (i.e., AB 2061) which may impact infrastructure installed after 1/1/2024.

4. \_\_\_\_\_ I agree to maintain equipment insurance as required by law;
5. \_\_\_\_\_ I agree to ensure equipment purchased with an EnergIIZE incentive, including electric vehicle charging and hydrogen fueling equipment, will be maintained as recommended by the manufacturer and as needed to prolong the equipment lifetime;
6. \_\_\_\_\_ I agree that equipment purchased with an EnergIIZE incentive, including electric vehicle charging and hydrogen fueling equipment, will be operated as recommended by the manufacturer to ensure durability and efficiency;
7. \_\_\_\_\_ I agree to the Manufacturers Terms and Conditions for usage of the equipment and to purchase extended product warranty;

For Charging as a Service Vendors ONLY:

8. \_\_\_\_\_ I agree to full responsibility for project management, installation, construction, operation, and maintenance of charging infrastructure;
9. \_\_\_\_\_ I agree to provide and maintain cable management systems for charging stalls and shall ensure compliance with any associated authority having jurisdiction (AHJ) requirements for the fleet or site listed on the application;

For Hydrogen Awardees ONLY:

10. \_\_\_\_\_ I agree to follow requirements of the Hydrogen Safety Plan detailed in the Implementation Manual, including compliance, adherence to Hydrogen Safety Plan, and training.
11. \_\_\_\_\_ I agree that, should the Applicant's adherence with the public guidelines or its Hydrogen Safety Plan(s) lapse, without limitation to any other rights, EnergIIZE staff reserves the right to cancel the Applicant's agreement funded by this incentive project.



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12. \_\_\_\_\_ I agree to follow standards, laws, regulations, and guidelines applicable to Hydrogen listed in the Implementation Manual as well as though required by the applicable AHJ and by law.

#### Vendor Assurances

13. \_\_\_\_\_ I agree to carry Worker's Compensation Insurance for all employees who will be engaged in the performance of this Agreement and agree to furnish EnergIIZE staff with satisfactory evidence of this insurance at any time it may be requested;
14. \_\_\_\_\_ If self-insured for worker's compensation, I hereby warrant such self-insurance is permissible under the laws of the State of California and agree to furnish to EnergIIZE staff satisfactory evidence of this insurance at any time EnergIIZE staff may request;
15. \_\_\_\_\_ I agree to ensure vendor and/or sub-vendor's, Contractors State License Board (CSLB) number active, in good standing, and make EnergIIZE staff aware of any updates to my status in a timely manner.
16. \_\_\_\_\_ I agree to perform reasonable due diligence in the selection of a vendor, installer, or subcontractor who aids in the construction, installation, commissioning, or completion of an infrastructure site and hereby waive any rights to hold responsible EnergIIZE staff for potential delays, damages, or injuries; if applicable.

#### Equipment Compliance

17. \_\_\_\_\_ I agree that equipment must be in compliance and remain in compliance with all applicable US federal, California state, and local rules and regulations, including those regarding air quality; furthermore, I agree that EnergIIZE staff reserves the right to check compliance at any time;
18. \_\_\_\_\_ I agree to be available for any follow-up inspection by EnergIIZE staff or their designee, if requested, and agree to provide reasonable facilities and assistance for the safety and convenience of their representatives. All site visits and evaluations will be performed in a manner that does not unduly interfere with or delay the work;



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### Project Communication

19. \_\_\_\_\_ When the incentive has been received by the Project Partner, and in any instance wherein the incentive is canceled for any reason, I will notify voucherprocessing@tetrattech.com if a different person should receive these messages instead;

### Public Funding Sources

20. \_\_\_\_\_ I agree to disclose to EnerglIZE staff all sources of public funding that apply to the purchase of any equipment for which I request EnerglIZE incentives;

### ADA Compliance

21. \_\_\_\_\_ I agree to comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA;

### AB 841 Compliance

22. \_\_\_\_\_ I agree to comply with Assembly Bill 841 (2020), as applicable. AB 841 (Ting, 2020) added Public Utilities Code (PUC) section 740.20, which requires Electric Vehicle Infrastructure Training Program (EVITP) certification to install electric vehicle charging infrastructure and equipment for work performed on or after January 1, 2022, subject to certain exceptions. I agree to comply with EnerglIZE staff requests for information to confirm compliance with this item.

All electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter shall be installed by a contractor with the appropriate license classification, as determined by the Contractors' State License Board, and at least one electrician on each crew, at any given time, who holds an EVITP certification. Projects that include installation of a charging port supplying 25 kilowatts or more to a vehicle must have at least 25 percent of the total electricians working on the crew for the project, at any given time, who hold EVITP certification. One member of each crew may be both the contractor and an EVITP certified



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electrician. The requirements stated in this paragraph do not apply to any of the following:

- 1) Electric vehicle charging infrastructure installed by employees of an electrical corporation or local publicly owned electric utility.
- 2) Electric vehicle charging infrastructure funded by moneys derived from credits generated from the Low Carbon Fuel Standard Program (Subarticle 7 (commencing with Section 95480) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations).
- 3) Single-family home residential electric vehicle chargers that can use an existing 208/240-volt outlet.

### Billing and Payment

23. \_\_\_\_\_ I agree that all projects receiving funds through an EnergIIZE incentive shall comply with all California public works requirements (Lab. Code § 1720 et seq. and 8 CCR 16000 et seq.) including but not limited to the payment of prevailing wages;
24. \_\_\_\_\_ I agree that all project billings shall clearly summarize actual itemized costs billed and requested for reimbursement as outlined as eligible costs in the EnergIIZE Implementation Manual. I agree that I will not present ineligible costs on any invoice submitted;
25. \_\_\_\_\_ I agree to submit these itemized project billings and to report matching costs (if applicable) with sufficient supporting documentation and based upon actual costs incurred. I further acknowledge that the failure to do so may result in delayed payment;
26. \_\_\_\_\_ I agree to notify EnergIIZE staff of any changes to this project's Milestone Payment Request Form and Schedule, including but not limited to expected timeline of payment requests, and understand that failure to do so may result in delayed payment;
27. \_\_\_\_\_ I agree to retain all project records for a minimum of three (3) years after the final payment has been received or after the agreement term, whichever is later, unless otherwise specified in the agreement. These records include but are not limited to payment requests, the



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equipment invoice(s), proof of purchase, equipment payment information and related bank records, documentation of match funding, and purchaser information;

28. \_\_\_\_\_ Upon written request from EnerGIIZE staff I agree to provide detailed documentation of all project expenses at any time throughout the project and for a period of at least three (3) years thereafter. I acknowledge and agree that project documentation, including documentation of project expenses, is subject to audit by the California Energy Commission or its designated representative.

#### Requesting New Equipment

29. \_\_\_\_\_ I agree to seek pre-approval from the EnerGIIZE staff on the inclusion of new equipment for approval if not included on the Site Equipment Manifest. I understand that changes to charging/refueling equipment is not permitted after moving to Step 3;

#### Incentive Processing Center

30. \_\_\_\_\_ I agree to keep my EnerGIIZE Incentive Processing Center account, and any shared accounts, active while I have unredeemed incentives, for the three (3) years after project commissioning;
31. \_\_\_\_\_ If applicable, I agree to partner with any Project Partner requesting an incentive on my behalf to ensure complete documentation for incentive redemption. I further understand that I will receive automated emails from the EnerGIIZE Incentive Processing Center if a Project Partner requests an incentive on my behalf;

#### Data Collection

32. \_\_\_\_\_ I agree to ensure a minimum of thirty-six (36) months of data collection on deployed infrastructure equipment, reported quarterly, starting from the date of final commissioning. Data requirements are outlined in section 9.6 of the Implementation Manual;
33. \_\_\_\_\_ I agree to respond to surveys put forth by EnerGIIZE staff on a quarterly basis for a period of thirty-six (36) months from the date of final commissioning;



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### Project Timeline

34. \_\_\_\_\_ I agree to inform EnergIIZE staff in a timely manner if the deployment timeline (time from execution of this agreement to final commissioning) exceeds twenty-four (24) months. Failure to do so may place the Applicant at risk of delayed or cancelled incentive payment(s).

**EnergIIZE Applicant and, if applicable, Application Partner and Additional Signatories undersigned agree jointly to the following items:**

### Information Sharing

35. I understand and agree that basic project information (i.e. location, organization name, and infrastructure to be installed) will be shared with geographically relevant utility provider(s) for the purposes of infrastructure planning and incentive coordination;

General information about my project may be shared publicly including but not limited to awardee name, project type, project zip code, number and type of infrastructure installed, and number of vehicles being serviced. EnergIIZE staff will share approximate location on a map for the public to view.

### Confidential Information

36. I agree that application materials submitted for this incentive request are considered confidential if marked as such;

### Compliance with Terms

37. I agree that failure to comply with the terms of this agreement may result in withholding of future payments or repayment of received incentive funds to EnergIIZE staff and may be considered for any future award determinations;
38. I agree to comply with applicable US federal, California state, and/or local rules, regulations, and law. I agree that failure to do so may result in a cancellation of my incentive and repayment of received incentives.



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39. I agree the information represented on all forms submitted to EnergIIZE staff as part of my application are true and correct and all supporting documentation is true and correct and meet the minimum requirements of EnergIIZE;
40. I understand and agree that after an incentive request is submitted, the end-user cannot be changed;
41. I understand that EnergIIZE staff reserves all rights and remedies available under the law to enforce the terms of this agreement;

#### Implementation Manual

42. I acknowledge that EnergIIZE staff may at any time, by written order, make changes within the EnergIIZE Implementation Manual to affect future incentive rollout. Any such changes will not cause an increase or decrease in the estimated cost of, or the time required for, completion of the current project under this agreement;
43. I have read, understand, and agree to all provisions in the EnergIIZE Implementation Manual published on March 28, 2023;

#### Privacy Policy

44. I have read and agree to the EnergIIZE Commercial Vehicles Privacy Policy;

#### Equipment

45. I understand and agree that this EnergIIZE incentive request is only valid for the specific equipment purchased through this specific vendor/manufacture, and that any incentive provided based on this request will be null and void if the purchaser, vendor/manufacture, or equipment identified herein change after incentive receipt or for noncompliance with applicable EnergIIZE requirements;

#### Acknowledgement of Terms

46. Please place an "X" in the space provided indicating whether one or more parties are signing this agreement:



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- \_\_\_\_\_ **Applicant is sole signer of this agreement:** By signing this EnerGIIZE Incentive Request Terms and Conditions Form, I acknowledge that I have read and understand, and Applicant agrees to be bound by, the entire terms and conditions as described above. I certify under penalty of perjury that the information provided is accurate and (if applicable) do hereby assert I have been granted authority by my organization to sign and agree on their behalf.
- \_\_\_\_\_ **Applicant, Applicant Partner, and/or additional signatories are signing this agreement:** By signing this EnerGIIZE Incentive Request Terms and Conditions Form, we acknowledge that we have read and understand, and all signatories agree to be bound by, the terms and conditions as described above. We agree that each party is separately responsible for the numbered items above as defined by the party name next to each numbered item. We acknowledge all parties agree to all of the lettered items listed above, jointly. We certify under penalty of perjury that the information provided is accurate and (if applicable) do hereby assert we have been granted authority by our organizations to sign and agree on their behalf.

If applicable, does this incentive request represent your organization’s first zero-emission infrastructure purchase?

Yes  No

**By Signing the EnerGIIZE Incentive Request and Terms and Conditions Form, I acknowledge that I have read and understand, and agree to be bound by, the terms and conditions as outlined above.**

**I certify that under penalty of perjury that the information provided is accurate.**

**Applicant**

Company/Organization Name:	
Name of Authorized Representative and Title:	
Signature of Authorized Representative:	



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Date:	
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**CALSTART, Administrator of EnergIIZE**

Company/Organization Name:	CALSTART
Name of Authorized Representative and Title:	Piero Stillitano
Signature of Authorized Representative:	
Date:	

**Application Partner, if applicable**

Name of Application Partner (Company/Organization Name):	
Name of Authorized Representative and Title:	
Signature of Authorized Representative:	
Date:	

**Additional Signatory, if applicable**

Company/Organization Name:	
Relationship to project (recipient, applicant team member, installation partner, fleet, etc.):	
Name of Authorized Representative and Title:	
Signature of Authorized Representative:	
Date:	

**Additional Signatory, if applicable**

Company/Organization Name:	
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Relationship to project (recipient, applicant team member, installation partner, fleet, etc.):	
Name of Authorized Representative and Title:	
Signature of Authorized Representative:	
Date:	

June 2023



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# Summary: Advanced Clean Fleets Regulation For Public Agencies

## Regulated Entities and Vehicles

The Advanced Clean Fleet (ACF) regulation applies to fleets owned by State, local, and federal government agencies. The regulation affects medium- and heavy-duty on-road vehicles with a gross vehicle weight rating greater than 8,500 pounds, off-road yard tractors, and light-duty mail and package delivery vehicles.

Individual departments and divisions under the same agency's jurisdiction have the option to comply jointly instead of complying independently.

## Public Fleets Rules and Deadlines

There are two compliance options for public fleets:

- Purchase Requirement: 50 percent of vehicle purchases must be zero-emission beginning January 1, 2024, and 100 percent of vehicle purchases must be zero-emission beginning January 1, 2027.
  - Near-zero emission vehicles (NZEVs) are considered zero-emission vehicles (ZEVs) through the 2035 model year.
  - Early and excess purchases can count toward future requirements.
  - Delayed compliance:
    - Fleets with at least 90% of its service area in a low-population county are not required to make ZEV purchases until 2027.
    - Small government fleets (those with 10 or fewer vehicles) are not required to make ZEV purchases until 2027.
- ZEV Milestone: Up until January 1, 2030, public fleets may alternatively opt into the ZEV milestone compliance pathway. Beginning January 1, 2025, fleet owners must continuously meet or exceed the ZEV Fleet Milestone percentage requirements set forth below.

Percentage of vehicles that must be ZEVs	10%	25%	50%	75%	100%
Milestone Group 1: Box trucks, vans, buses with two axles, yard tractors, light-duty package delivery vehicles	2025	2028	2031	2033	2035 and beyond
Milestone Group 2: Work trucks, day cab tractors, pickup trucks, buses with three axles	2027	2030	2033	2036	2039 and beyond
Milestone Group 3: Sleeper cab tractors and specialty vehicles	2030	2033	2036	2039	2042 and beyond



# Summary: Advanced Clean Fleets Regulation For Public Agencies

## Exemptions

The purchase of an internal combustion engine is allowed under the following exemptions:

- Mutual Aid – for up to 25% of the fleet
- ZEV Unavailability
- Daily Usage
- Non-repairable Vehicles
- ZEV Infrastructure Delay
- Snow Equipment:
  - Dedicated snow removal vehicles.
  - Until 2030, intermittent snow vehicles that are equipped with a snow plow or snow blower mounting attachment and a control system for the plow or blower.

Exemption requests must be submitted to CARB, and the Executive Officer will notify the fleet owner by email whether the exemption has been approved within 45 calendar days from the date a complete application is received. If the Executive Officer does not respond to within this timeframe, the exemption will be deemed approved.

## Reporting

Fleet owners must submit an annual report by April 1 of each year, beginning on April 1, 2024. Annual reports include:

- Agency information, designated contacts, and whether the fleet is opting in to the ZEV milestone pathway.
- Vehicle information for each vehicle in the fleet as of January 1 of that year.

Vehicles added or permanently removed must be additionally reported within 30 calendar days of such action. This applies to both ZEV and International Combustion Engine (ICE) vehicles.



Agenda Report

23-510

Agenda Date: 7/18/2023

**REPORT TO COUNCIL**

**SUBJECT**

Action on Authorizing the Use of City Electric Forces 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.” Section 713 of the City Charter states in part that “an oral motion or order duly passed by the City Council and entered in the minutes of the Council shall have the same force and effect as a written Resolution duly introduced and passed by said City Council and shall be deemed to be a Resolution for all purposes.”

**DISCUSSION**

Staff believes that the work described below is best and most efficiently 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: 38703  
Location: 2300 Calle De Luna  
Type of Service: New Business  
Description of Work: Install ±200' high voltage conductor, 6-600 A termination elbows, 30-600 A splices.  
Estimated Cost: \$115,747  
Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
Source of Revenue: Customer/Developer Contribution

Estimate Number: 37286

Location: 2920 Scott Boulevard  
Type of Service: New Business  
Description of Work: Relocation of an existing padmount electrical transformer.  
Estimated Cost: \$37,663  
Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
Source of Revenue: Customer/Developer Contribution

Estimate Number: 35872  
Location: 2330 Monroe Street  
Type of Service: New Business  
Description of Work: Install 3-Overhead Cut Outs and Fuses, ±150' High Voltage Underground Wire, 3-Underground Splices, 3-200A Termination Elbows, 1-500KVA Padmount Transformer, 1-1200A Service Meter, 65-200A Residential Service Meters.  
Estimated Cost: \$44,102  
Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
Source of Revenue: Customer/Developer Contribution

Estimate Number: 37674  
Location: 3941 Stevens Creek Boulevard  
Type of Service: New Business  
Description of Work: Install new padmount transformer and cut into existing underground distribution system to tie in new transformer.  
Estimated Cost: \$54,094  
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 the following sections of Title 14 of the California Code of Regulations: (1) section 15302(c) (Class 2 - Replacement or Reconstruction) as the proposed work involves the replacement or reconstruction of existing utility systems and/or facilities involving negligible expansion of capacity; and (2) section 15303 (Class 3 - New Construction or Conversion of Small Structures) as the proposed work involves the construction of a limited number of small electric utility facilities.

### **FISCAL IMPACT**

The funds to support the staff time for work performed by SVP and related construction materials for the work detailed in this report, totaling \$251,606 are included in the Fiscal Year 2023/24 Capital Budget, New Business Estimate Work project in the Electric Utility Capital Fund. All referenced work will be performed with City Silicon Valley Power 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**

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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**

In accordance with Section 713 of the City Charter, the City Council hereby resolves as follows:

1. Determine the proposed action is exempt from CEQA pursuant to Sections 15302(c) (Class 2 - Replacement or Reconstruction) and 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations; and
2. Declare and determine that the public works located at 2300 Calle De Luna, 2920 Scott Boulevard, 2330 Monroe Street, and 3941 Stevens Creek Boulevard are better performed by the City with its own employees based on the information set forth in this Report to Council.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

23-764

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action to Authorize the City Manager to Execute Agreements for Two HUD CDBG-funded Capital Improvement Projects: 1) Santa Clara Methodist Retirement Foundation - Liberty Tower (Elevator Upgrades); and 2) Rebuilding Together Silicon Valley (Minor Home Repair Program); (Categorical Exemption per the California Environmental Quality Act (CEQA) section 15301 (e)(1), Existing Facilities)

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

The City of Santa Clara maintains a Consolidated Plan in conformance with requirements of the United States Department of Housing and Urban Development (HUD) which directs the City's use of funds allocated to the City by HUD. On May 9, 2023, City Council approved the 23/24 Annual Action Plan (Attachment 1) which recommended Community Development Block Grant (CDBG) funding for 1) Santa Clara Methodist Retirement Foundation (aka, Liberty Tower) for elevator systems upgrades (\$750,000); 2) Rebuilding Together Silicon Valley for the Minor Home Repair Program (\$100,000). These projects address the City's Consolidated Plan goals of Improvements to Affordable Housing for the benefit of low/moderate income residents. To begin work on these projects, the City Council must authorize the City Manager to execute agreements with each of the project sponsors. Since the City does not have alternative uses identified for these funds, it is necessary to move forward with these projects in order for the City to meet its CDBG expenditure timeliness requirement for program year 23/24.

#### DISCUSSION

The draft agreements for each of these projects are included as attachments 2 and 3 . Below is a brief description of the scope of work for each project:

- 1) Santa Clara Methodist Retirement Foundation - Liberty Tower (Elevator Upgrades). Liberty tower is a 101-unit affordable housing property for seniors in Santa Clara. The funding for this project will help pay for two (2) elevator upgrades (1 freight/1 passenger). The elevators and related systems are outdated and in need of updating for safety.
- 2) Rebuilding Together Silicon Valley (Minor Home Repair Program). The Homeowner Rehabilitation & Minor Repair Project preserves affordable housing by providing rehabilitation services to low-income homeowners who occupy their homes. Rehabilitation work will provide homeowners a safe and sanitary living environment. The primary consideration of repairs will be correcting deficiencies that create substandard and unsafe housing conditions.

**ENVIRONMENTAL REVIEW**

The action being considered qualifies as a Categorical Exemption per the California Environmental Quality Act (CEQA) section 15301 (e)(1), Existing Facilities in that the projects are limited to repairs and upgrades to systems serving existing residential units.

**FISCAL IMPACT**

These capital projects will be funded using federal HUD Community Development Block Grant (CDBG) entitlement funds allocated for the 2023/2024 fiscal year in the Housing and Urban Development Fund. The project budgets have been appropriated as part of the FY 2023/24 and FY 2024/25 Adopted Operating Budget approved by the City Council on June 27, 2023.

**COORDINATION**

This report has been coordinated with the Finance 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**

1. Authorize the City Manager to execute agreements with: 1) Santa Clara Methodist Retirement Foundation - Liberty Tower to fund up to \$750,000 for elevator upgrades and related work; 2) Rebuilding Together Silicon Valley, to fund up to \$100,000 for the administration of the City's Minor Home Repair program subject to the availability of Community Development Block Grant funds, on the terms presented, in final forms approved by the City Attorney.

Reviewed by: Andrew Crabtree, Director, Community Development

Approved by: Jōvan D. Grogan, City Manager

**ATTACHMENTS**

1. 2023-24 Annual Action Plan
2. Santa Clara Methodist Retirement Foundation - Liberty Tower (Elevator Upgrades) CDBG Agreement
3. Rebuilding Together Silicon Valley (Minor Home Repair Program) CDBG Agreement



**City of  
Santa Clara**

The Center of What's Possible

Housing & Community Services Division  
1500 Warburton Avenue,  
Santa Clara, CA 95050  
(408) 615-2490

# **2023-2024 Annual Action Plan**

**Prepared by:**

**City of Santa Clara  
Housing and Community Services Division,  
Community Development Department  
*1500 Warburton Ave,  
Santa Clara, CA 95050  
(408) 615-2490***

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## 1. Introduction

The City of Santa Clara (City) is an entitlement city that receives federal funding from the Department of Housing and Urban and Development (HUD). The City receives Community Development Block Grant (CDBG) funds and HOME and Investment Partnerships (HOME) funds.

CDBG funds address community development needs through public service activities and capital improvement projects. At least seventy percent (70%) of gross funding is used to serve low- to moderate- income households. Eligible projects and activities must meet one of the following national objectives: 1) Benefit low- and moderate-income persons; 2) Prevention or elimination of slums or blight; or 3) Address community development needs having an urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other funding is not available.

HOME funds are used for the development of affordable housing options such as building, and/or rehabilitating affordable rental housing and providing direct Tenant Based Rental Assistance to low-income households.

The City is required to develop a 5-Year Consolidated Plan (ConPlan) that identifies the goals and needs of the community. During the ConPlan cycle, the City must develop Annual Action Plans (AAPs) which detail projects and activities to be funded in during the program year in support of the identified goals and needs. In 2019, the City collaborated with the County of Santa Clara and other entitlement jurisdictions to develop the 5-year ConPlan. The ConPlan identifies and prioritizes public services and housing-related needs across the region and for the City of Santa Clara. The purpose of the ConPlan is to guide the City to:

- Assess their affordable housing and community development needs and market conditions,
- Make data-driven, place-based investment decisions; and
- Conduct community-wide discussions to identify housing and community development priorities that align and focus on eligible activities for HUD's funding

The 5-Year ConPlan is supported by the Annual Action Plan (AAP). The AAP documents annually how the City will use HUD funding consistent with the goals and needs identified in the ConPlan.

## 2. Summarize the objectives and outcomes identified in the Plan

The Annual Action Plan supports the goals and needs identified in the ConPlan as stated below:

- **Affordable Housing.** Affordable Housing projects and activities that benefit low-income households such as affordable rental housing, tenant based rental subsidies, and rehabilitation of single and multi-family housing.
- **Public Services.** Nonprofit partners provide public services to benefit lower income households.
- **Homelessness.** Support activities to end homelessness including homeless prevention programs, case management, outreach activities and support of facilities.
- **Fair Housing.** Promote Fair Housing choice through funding informational and investigative services for tenants and landlords.
- **Public Facilities.** Improvement to public facilities that provide services to low-income people.

### 3. Evaluation of past performance

The last Consolidated Annual Performance Evaluation Report (CAPER) submitted to HUD was for 2022-2023 (PY2022). The following are the highlights of the accomplishments reported in support of the ConPlan goals:

- Affordable Housing.

The Tenant Based Rental Assistance program assisted 48 households, and between the NCIP program and Rebuilding Together Silicon Valley, there were 14 households assisted.

- Public Services.

There were 1,004 residents that benefited from public services provided by eleven non-profit agencies. The City also closed out its Emergency Rental Assistance Program (ERAP) to respond to COVID crisis by assisting 58 low-income tenants with rental assistance.

- Homelessness.

213 households benefited from case management services provided by local non-profit agencies. The majority of these households were assisted with local funds. Further, 48 TBRA households, which have already been counted under the Affordable Housing goal, also received case management services.

- Fair Housing.

Project Sentinel assisted 12 households with fair housing services.

- Public Facilities.

The LifeMoves project was cancelled due to delays caused by the COVID-19 pandemic and a change in the original proposed project. The \$90,000 of 2020/2021 funds that were originally programmed for this project will be reprogrammed for a future Public Facility or Affordable Housing project.

### 4. Summary of Citizen Participation Process and consultation process

During the development of the 2023-2024 Annual Action Plan, City staff solicited public comment to help identify community needs, and non-profit agencies that could provide services to address those identified needs.

Community Outreach. In 2022 the City was just beginning to host in-person public meetings. Between April and September 2022, the City hosted a series of six virtual homelessness taskforce meetings and consulted various service providers to understand the gaps and needs of unhoused residents and more specifically of HOME ARP qualified populations. In addition, the City conducted comprehensive outreach as part of the Housing Element update process. This effort included community meetings, stakeholder interviews, digital surveys, pop-up events at City libraries and the local Art and Wine Festival, in-person tenant listening sessions at three affordable housing complexes serving families, seniors and transition aged youth, and study sessions with the Planning Commission and City Council. The meetings covered a wide range of topics regarding housing production, preservation, displacement prevention, affirmatively furthering fair housing, affordable homeownership, and the needs of seniors.

Public Hearing #1. This Public Hearing satisfies the Citizen Participation Plan requirement to hold at least one Public Hearing during the drafting phase of the Annual Action Plan. The hearing gives the public an opportunity to provide input. The first Public Hearing for the 23/24 Annual Action Plan (DRAFT) is scheduled for April 4, 2023 at the regularly scheduled City Council Meeting

Public Hearing #2. The second and final Public Hearing is scheduled for May 9, 2023. This Hearing will provide a final opportunity for public comment/input. The final version of the 23/24 Annual Action Plan (FINAL) will be presented. Any comments will be included in the final version of the Action Plan and the Plan will submitted to HUD.

Public Noticing. The noticing follows to the Citizen Participation Plan requirements. The following information for the 23/24 Annual Action Plan was publicly noticed in The Santa Clara Weekly on March 22, 2023, and also noticed via email to community non-profits, posting on the City's website, and having copies accessible at libraries and City Hall:

- 1) Notice of Public Hearing #1 on April 4, 2023 for the 2023-2024 Annual Action Plan (DRAFT)
- 2) Notice of Public Comment Period (March 3, 2023 – April 2, 2023) for the 2022-2023 Annual Action Plan (FINAL)
- 3) Notice of Public Hearing #2 on May 9, 2023 for the 2023-2024 Annual Action Plan (FINAL)

## **5. Summary of public comments**

### Public Hearing #1:

Several non-profit agencies attended to express the importance of their services, and their gratitude for being recommended for funding. The Liberty Tower representative requested more funds to be able to complete both elevators rather than just one. Several council members stated that they wanted to see both elevators updated.

City staff stated that more Program Income was being received soon and other funds from the previous program year(s) were going to be made available. It was recommended by council to increase the funding amount to Liberty Tower, and representatives from Liberty Tower stated they would likely be able to fill the gap in funding in order to get both elevators completed.

### 30-Day Public Comment Period

No public comment came in during the 30-day Public Comment Period.

### Public Hearing #2.

Public comment: Director from Meals on Wheels program thanked the Council and staff for funding recommendation and discussed how many meals will be served in the coming program year and the importance of the services they provide.

Public comment: Member of the public spoke on the "macro factors" of housing; how larger issues such as an unsecure border and releasing convicts earlier play a role in the need for housing. The speaker requested the Council send a letter to Sacramento in support of not releasing convicts early so that there wouldn't be a need for a project like Benton House. Speaker also suggested cutting developer fees to increase the number of affordable housing.

Public comment: Director of Operations at Liberty Tower thanked Council and staff for an increase of the initial funding recommendation. It offers them the opportunity to address other issues the 50-year old building is having on hand.

Public comment: Chief Community Resources Officer of Bill Wilson requested that Council approve the annual action plan. Speaker noted that the Bill Wilson Center was recommended for funding for their School Counseling Program but was not funded for one of their homelessness prevention programs for students, and will be ending the program this June. The speaker spoke on the importance of their counseling programs, and their partnership with the City.

Public comment: Directing Attorney at SALA spoke on the importance of the services they provide to seniors, and the reinstatement of providing services at the Senior Center soon after an absence due to the pandemic. Speaker noted that they do not charge fees for their services and depend on grants such as CDBG.

Public comment: Vice President of Programs at Abode services spoke on the importance of the programs and partnership that Abode and the City provide for the homeless population with the TBRA program.

Counsel Member Hardy: Spoke on the importance of Project Sentinel and Bill Wilson Center and their programs. Also noted that recent regulations regarding ADUs (i.e., granny units) has made it easier for this type of housing to be built.

## 6. Summary of comments or views not accepted and the reasons for not accepting them

The City did not receive any public comments that were not accepted. The City attempted to incorporate all feedback received through outreach efforts into the Plan.

## 7. Summary

CDBG-funded public services continue to be a great asset to the community, with many of the programs funded focusing on the senior population, persons with disabilities, and unhoused residents. The leveraging opportunities for our nonprofits by receiving HUD funding is of great value. The City will continue to seek out creative solutions to improve their grants management program.

### **PR-05 Lead & Responsible Agencies – 91.200 (b)**

The City of Santa Clara is the lead agency and administrator for the CDBG & HOME funds. The Consolidated Plan and Annual Action Plan Public Contacts are:

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## AP-10 Consultation – 91.100, 91.200(b) 91.215 (I)

### Introduction

The 2023-2024 Annual Action Plan was prepared by City staff with input from a variety of local and regional stakeholders including public service providers (e.g., senior services, homeless services, youth services), affordable housing developers, and County partners. Service partners administer projects and activities that align with the goals and objectives of the ConPlan.

### **Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(I)).**

The Santa Clara Housing Authority (SCHA) administers the Housing Choice Voucher program. The City's TBRA administrators and City staff have worked with SCHA in the past to assist long standing clients of the TBRA program to acquire long-term vouchers. Typically, these are previously homeless households that did not initially qualify for permanent supportive housing and were not able to improve their income and housing situation to at the end of the TBRA program's term. Coordination and case management services resulted in several families receiving 10-year Emergency Housing Vouchers.

The City uses CDBG funds for Bill Wilson's Family Therapy/School Outreach/Grief Counseling. This public service provides mental health services to youth and their families to cope with high-risk behavior choices, family conflict, and grief counseling. The City also funds the County Office of Supportive Housing to provide case management services to a portion of the City's homeless. Further, Abode Services and Bill Wilson Center, administrators to the City's TBRA program, use local funds to provide case management services for the City's TBRA clientele.

In order to develop the City's HOME-ARP, the City collaborated with a non-profit, Homebase, to facilitate a Homeless Taskforce outreach process and a City specific homelessness response plan. Results from the work of the Taskforce will help direct the development of homelessness response strategies as well as the City's HOME-ARP plan.

### **Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.**

The Santa Clara County Continuum of Care (CoC) is a multi-sector group of stakeholders dedicated to ending and preventing homelessness in the County of Santa Clara (County). The CoC Board is comprised of the same individuals who serve on the Destination: Home Leadership Board. Destination: Home, a program of The Health Trust, is a public-private partnership implementing collective impact strategies to end homelessness in Santa Clara County. Its mission is to drive and align resources to create permanent housing and sustainable support systems built for the long term.

The CoC primary responsibilities are to coordinate large-scale implementation of efforts to prevent and end homelessness in the County. The CoC is governed by the Santa Clara CoC Board (CoC Board), which stands as the driving force committed to supporting and promoting a systems-change approach to preventing and ending homelessness in the County. The organization is improving how systems work together to end homelessness, as well as protect individuals and families at risk of becoming homeless.

The City of Santa Clara, having endorsed the 2020-2025 Santa Clara County Community Plan to End Homelessness, convened a Homelessness Taskforce in April 2022. The Taskforce included stakeholders with a range of perspectives and experience who can help identify priorities and provide recommendations on the development of a City Plan to reduce the impacts of Homelessness. The City has partnered with the non-profit, Homebase, to facilitate the taskforce and to develop a City-centric Plan.

The results of the 2022 Point in Time Homeless Count (“Count”) showed a 35% increase in homelessness since 2019. By comparison, the Countywide count showed a 3% increase. In prior years the City redesigned the TBRA program to place more emphasis on assisting homeless families. In December 2022, the County’s HMIS system included 520 unhoused single adult households and 137 households with at least one child. There is still a need to serve households with children, but there is a greater need to serve single households. To address both needs, the City intends to use HOME funds to continue the focus on ending homelessness for families with children which is consistent with the County’s Heading Home campaign to end family homelessness by 2025. The City also intends to use HOME ARP funds to serve single adult households through the ARP qualifying populations.

The City supports services and capital improvement projects for agencies that assist chronically homeless individuals and families, families with children, veterans, and unaccompanied youth primarily through the TBRA program.

In 2023 the City began funding WeHope Dignity on Wheels to provide weekly mobile shower, laundry, and case management services.

**Describe agencies, groups, organizations, and others who participated in the process and describe the jurisdiction’s consultation with housing, social service agencies and other entities.**

1	<b>Agency/Group/Organization</b>	Bill Wilson Center
	<b>Agency/Group/Organization Type</b>	Housing Services-Children Services-homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Homelessness Needs - Unaccompanied youth Non-Homeless Special Needs
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Staff is consulted on improvements to the City TBRA program.
2	<b>Agency/Group/Organization</b>	County of Santa Clara Office of Supportive Housing
	<b>Agency/Group/Organization Type</b>	Publicly Funded Institution/System of Care Other government – County
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Homeless Needs - Families with children Market Analysis Homeless Needs – Chronically homeless
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Staff met with the County COC on several occasions to discuss the City response to homelessness.
3	<b>Agency/Group/Organization</b>	Abode Services
	<b>Agency/Group/Organization Type</b>	Services - Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Families with children
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Staff is consulted on improvements to the City TBRA program.
4	<b>Agency/Group/Organization</b>	Senior Adult Legal Services (SALA)
	<b>Agency/Group/Organization Type</b>	Services-Elderly Persons
	<b>What section of the Plan was addressed by Consultation?</b>	Non-Homeless Special Needs
	<b>Briefly describe how the Agency/Group/ Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Submitted public comment at both public hearings; highlighting the need for the services they provide.
5	<b>Agency/Group/Organization</b>	Next Door Solutions to Domestic Violence
	<b>Agency/Group/Organization Type</b>	Services - Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Homelessness Needs – Families with children and domestic violence and human trafficking survivors Homelessness Strategy

	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Submitted public comment at public hearings; highlighting the need for the services they provide.
6	<b>Agency/Group/Organization</b>	Homebase
	<b>Agency/Group/Organization Type</b>	Regional policy consultant that builds capacity to address homelessness systematically.
	<b>What section of the Plan was addressed by Consultation?</b>	AP-65 Homelessness and Other Special Needs Activities
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	Facilitated a six-month Homelessness Taskforce and provided technical assistance to City staff for homelessness policy and strategy development. One outcome is the creation of focused local strategies to address homelessness and its impacts in the City. Homebase also helped prepare the City's HOME ARP plan.

**Identify any Agency Types not consulted and provide rationale for not consulting:**

The City did not reach out to broadband-specific providers/organizations. This was due, in part, to the results of the 2020-2025 Consolidated Plan survey. 62% of respondents felt there was not a common/pressing issue with broadband or internet access. Also, local internet providers all provide low-cost options and/or discounts to low-income households.

Although the City works with organizations whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies on normal public business, these organizations were not specifically consulted for the Annual Action Plan. Issues related to such agencies were not mentioned as an issue in the ConPlan survey. Nevertheless, the City intends to consult with broadband and resilience organizations to determine if new needs have arisen following the COVID 19 pandemic and severe winter storms in 2023.

**Describe other local/regional/state/federal planning efforts considered when preparing the Plan**

<b>Name of Plan</b>	<b>Lead Organization</b>	<b>How do the goals of your Strategic Plan overlap with the goals of each plan?</b>
Continuum of Care	Continuum of Care Council	The Continuum of Care works to alleviate the impact of homelessness in the community through the cooperation and collaboration of social service providers. This effort aligns with the Strategic Plan goal to end homelessness including rental assistance, homeless prevention programs, case management, outreach activities and support of facilities.
Housing Element	City of Santa Clara	The actions in the Housing Element are consistent with the Strategic Plan, most notably in the provision of adequate sites appropriate for a range of housing types and in promoting preservation and development of affordable housing including supportive housing for persons with disabilities. The Housing Element was updated in late 2022 and is pending state approval.
City of Santa Clara Homelessness Strategic Plan (2023)	City of Santa Clara City Council	In 2022 the City conducted a six-month Homelessness Taskforce process and worked with nonprofit consultant Homebase to develop a draft strategic plan. The plan was reviewed in January 2023 and will be adopted later in the year. The plan will include strategies to prevent homelessness, connect unhoused residents with basic needs, case management, and housing opportunities.
Santa Clara County Seniors Agenda	Santa Clara County	The City's outreach for the 5-year ConPlan showed senior needs and services as a high priority. <a href="#">Seniors' Agenda 2021</a> report speaks to many of the services that have been provided through the City's CDBG funds.
Community Plan to End Homelessness in Santa Clara	Destination Home	The 2020-2025 Community Plan to End Homelessness in the County is a five-year plan to guide governmental, nonprofits, and other community members as they make decisions about funding, programs, priorities and needs. This effort aligns with the Strategic Plan goal to support activities to end homelessness: rental assistance, homeless prevention programs, case management, outreach activities & support of facilities.

**AP-12 Participation – 91.105, 91.200 (c)**

**1. Summarize citizen participation process and how it impacted goal setting.**

The City outreach efforts to obtain community input included two public hearings before City Council (one during the drafting phase of the AAP), noticing the AAP and hearings, and putting the draft AAP on the City website. The table below summarizes the results of the City efforts.

**Citizen Participation Outreach**

	<b>Mode of Outreach</b>	<b>Target of Outreach</b>	<b>Summary of response/ attendance</b>	<b>Summary of Comments received</b>	<b>Summary of comments not accepted and reasons</b>	<b>URL (If applicable)</b>
1	Public Hearing	Non-targeted/broad community	Public Hearing #1 was noticed in The Santa Clara Weekly on March 22, 2023: City Council Meeting – April 4, 2023 during the drafting phase of the Plan.	<p>Several non-profit agencies attended to express the importance of their services, and their gratitude for being recommended for funding. The Liberty Tower representative requested more funds to be able to complete both elevators rather than just one. Several council members stated that they wanted to see both elevators updated.</p> <p>City staff stated that more Program Income was being receipted soon and other funds from the previous program year(s) were going to be made available. It was recommended by council to increase the funding amount to Liberty Tower, and representatives from Liberty Tower stated they would likely be able to fill any gap in funding in order to get both elevators completed.</p>	All comments were accepted and noted.	n/a



	Mode of Outreach	Target of Outreach	Summary of response/ attendance	Summary of Comments received	Summary of comments not accepted and reasons	URL (If applicable)
2	Public Hearing	Non-targeted/broad community	Public Hearing #2 was noticed in The Santa Clara Weekly on March 22, 2023. The City Council Meeting on May 9, 2023 presented the final version of the Plan.	See AP-05, section 5 for a summary of the public comments given at Public Hearing #2.	All comments were accepted and noted.	n/a
3	Newspaper Ad	Non-targeted/broad community	<p>The following information for the 23/24 Annual Action Plan was publicly noticed in The Santa Clara Weekly on March 22, 2023, and also noticed via email to community non-profits, posting on the City website, and having copies accessible at libraries and City Hall:</p> <p>1) Notice of Public Hearing #1 on 4/4/2023 for the 2022-2023 Annual Action Plan (DRAFT);</p> <p>2) Notice of Public Comment Period (March 3, 2023 to April 2, 2023) for the 2022-2023 Annual Action Plan (FINAL);</p> <p>3) Notice of Public Hearing #2 on May 9, 2023 for the 2023-2024 Annual Action Plan (FINAL).</p>	The 30-day comment period was noticed on 3/22/23 in the Santa Clara Weekly. The comment period ran from 4/7/23 to 5/7/23 See AP-05, section 5 (Public Comment Summary) for more comments.	All comments were accepted and noted.	n/a

## AP-15 Expected Resources – 91.220 (c) (1,2)

### Introduction

**CDBG Funds:** The total amount of CDBG resources expected is \$2,185,670. This total is made up of the estimated CDBG entitlement, estimated Prior Year Resources (i.e., funds that were committed but not drawn or funds that became unprogrammed due to program income), and Program Income (i.e., income generated from prior CDBG projects such as loan repayments).

- Annual Entitlement Funds	\$1,034,553
- Estimated Prior Year Balance	\$1,041,117
- Estimated FY22/23 Program Income	<u>\$ 110,000</u>
TOTAL	\$2,185,670

### **CDBG CONTINGENCY LANGUAGE**

**More than expected:** If the City receives more 22/23 Program Income than estimated and/or more funds roll-over from prior year resources than expected, the excess amount will be programmed to NCIP or a Capital Improvement project for Multi-Family Affordable Housing depending on the source of the Program Income after the City's portion for administration is set aside and public service cap restrictions are recalculated.

**Less than expected:** If the 22/23 Program Income, and/or prior year resources is lower than estimated, the amount committed to NCIP will be reduced.

**HOME Funds:** The total amount of HOME resources expected is \$881,000. This is made up of the annual HOME entitlement, Prior Year Resources (i.e., funds that were committed but not drawn or funds that were not programmed), and Program Income (i.e., income generated from prior HOME projects).

- Entitlement Funds	\$437,588
- Estimated Prior Year Balance	\$433,412
- Estimated FY23/24 Program Income	<u>\$ 10,000*</u>
TOTAL	\$881,000

- \* **Estimated HOME Program Income (23/24).** The City estimates it will receive \$100,000 in PI during the upcoming FY23/24. Ten percent (10%), or \$10,000, will be programmed in this 2023-2024 Annual Action Plan to be used for administrative costs as allowed by HOME regulations. The other 90% (\$90,000) will be programmed next year in the 2024-2025 Annual Action Plan. Any program income above these estimates will be allocated in the same manner; 10% for administration in FY23/24, and the remaining 90% to be allocated in FY24/25.

### **HOME CONTINGENCY LANGUAGE**

**More than expected:** Should the 23/24 Entitlement allocation, 22/23 Program Income, and/or prior year resources be higher than estimated, the excess funds shall be allocated to the TBRA program after the City's portion for administration is set aside.

**Less than expected:** Should the 23/24 Entitlement allocation, 22/23 Program Income, and/or prior year resources be lower than estimated, TBRA will be reduced after the administration set-aside is calculated.

**AP-15 Table –Expected Resources Priority Table**

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan	Narrative Description
			Annual Allocation	Program Income	Prior Year Resource	Total:		
			\$	\$	\$	\$		
<b>CDBG</b>	Public-Federal	Acquisition  Housing Rehab  Capital Improvement Projects – Public Facilities  Capital Improvement Projects – Affordable Housing  Public Services Admin./Planning	\$1,034,553	\$110,000	\$1,041,117	\$2,185,670	\$1,400,000	CDBG funds may be used for: 1) Land acquisition for affordable housing; 2) NCIP program and Minor Repair Program (Rebuilding Together Silicon Valley); 3) Public infrastructure and other public facility improvements; 4) Capital Improv. to Affordable Housing; 5) Public services; 6) Planning and administration.
<b>HOME</b>	Public-Federal	CHDO and regular HOME rental projects, such as property acquisition, new const., and/or rehabilitation.  Homeowner Rehabilitation  TBRA  Admin. and Planning for HOME programs and activities.	\$437,588	\$10,000	\$433,412	\$881,000	\$450,000	Funds may be used for: 1) TBRA; 2) NCIP; 3) Fair Housing; 4) Rental development; and/or 5) Admin. & Planning.  Approximately \$52,000 of the “Prior Year Resources” is program income (PI) received in FY22/23.  Approx. \$100,000 in PI is expected to be receipted in FY23/24. 10% (i.e., \$10,000) will be programmed in this action plan for administrative activities (PA) and drawn in FY23/24. The remaining \$90,000 will be programmed in FY24/25.  If FY23/24 PI exceeds \$100,000, City will continue using 10% for admin. and the remaining will be programmed in FY24/25.

**Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied**

Federal funds will leverage local funds (i.e., General Funds, City Affordable Housing Funds, and City Housing Successor Funds) to increase project efficiencies and benefit from economies of scale. The HOME match requirement will be met through the waiving of property taxes on past HOME-funded multi-family affordable developments. The local funds will be used to fund certain the following activities:

Program	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan	Narrative Description
		Annual Allocation	Program Income	Prior Year Resource	Total:		
		\$	\$	\$	\$	\$	
<b>General Fund</b>	Public Services	\$95,264	0	0	\$95,264	\$130,000	\$24,000 Senior Nutrition  \$51,264 Project Sentinel – Landlord/Tenant Mediation Program  \$15,000 Catholic Charities Ombudsman Program  \$5,000 United Way 211
<b>City Affordable Housing Fund (CAHF)</b>	Public Services	\$225,697	0	0	\$225,697	\$243,697	\$160,697 for case management services for TBRA.  \$15,000 Intensive Case Mgt.  \$50,000 Homeless Prevention
<b>City Housing Successor Fund (CHSF)</b>	Public Services	\$250,000	0	0	\$250,000	\$250,000	\$110,000 to fund case management services for chronically homeless households.  \$140,000 for case management services for TBRA.

*Other Federal Grant Programs*

Additional federal programs that fund community development and affordable housing, and are provided by Santa Clara County Housing Authority and affordable housing developers include:

- Section 8 Housing Choice Voucher Program,
- Section 202,
- Section 811; and
- Affordable Housing Program (AHP) through the Federal Home Loan Bank.

**If appropriate, describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan**

The City owns three properties that have potential for development of low income and special needs housing: 1) Bay Area Research and Extension Center (BAREC) senior housing site at 90 North Winchester Boulevard; 2) 2330 Monroe Street, and 3) Fire Station #6 at 3575 De La Cruz Boulevard.

BAREC: On January 29, 2019, City Council approved all land use entitlements for the project and adopted a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement with Core Affordable Housing LLC for the development of the Agrihood Project located at 90 North Winchester Boulevard/ 1834 Worthington Circle and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement). The project closed in 2022 and is now under construction.

2330 Monroe Street: On January 28, 2020, City Council approved all land use entitlements for the project and adopted a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement with Freebird Development LLC and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement). The proposed development will have 65 mixed-income units with 11 set-aside for households with developmental disabilities. The project will be 100% affordable units. The project closed in 2022 and is now under construction.

3575 De La Cruz: The City Council has approved negotiations to enter into an Exclusive Negotiation Rights Agreement (ENA) with Habitat for Humanity East Bay/Silicon Valley. The proposed development will be 15 100% affordable, for-sale townhomes. In December 2022, the City Manager executed a 6-month extension of the ENA to account for project delays due to the COVID pandemic.

## AP-20 Annual Goals and Objectives – 91.220(c)(3)& (e)

Goal Description		
1	<b>Goal Name</b>	<b>Affordable Housing</b>
	<b>Goal Description</b>	Assist in the creation and preservation of multi-family rental housing for low income and special needs households, rehabilitation of low-income owner-occupied housing through the Neighborhood Conservation and Improvement Program, TBRA rental subsidies, new construction.
2	<b>Goal Name</b>	<b>Homelessness</b>
	<b>Goal Description</b>	Support activities, consistent with Continuum of Care strategies, to prevent and end homelessness. This includes building affordable housing for people who are homeless or at risk of homelessness as well as the provision of support services.
3	<b>Goal Name</b>	<b>Public Services</b>
	<b>Goal Description</b>	Support activities that provide basic needs to lower income households and special needs populations. Services would be provided to low-income households, elderly individuals, homeless persons, people with disabilities, and victims of domestic violence.
4	<b>Goal Name</b>	<b>Fair Housing</b>
	<b>Goal Description</b>	Promote fair housing choice, through the following activities: fair housing education, fair housing testing, housing assistance hotline, and landlord-tenant mediation.
5	<b>Goal Name</b>	<b>Public Facilities</b>
	<b>Goal Description</b>	Make improvements to public facilities which can include City-owned facilities and/or improvements to properties owned and operated by non-profits which serve low-income clientele.
6	<b>Goal Name</b>	<b>Planning &amp; Administration</b>
	<b>Goal Description</b>	Provide management, planning and implementation of the CDBG & HOME programs as well as monitoring of public services and housing projects.

### AP-23 –Annual Goals Summary

Goal	Category Needs Addressed		Needs Addressed	Funding
Affordable Housing	Affordable Housing		Affordable Housing	<b>CDBG: \$1,612,810</b> <b>HOME: \$827,242</b>
	Start Year: 2020	End Year: 2025	Outcome: Affordability	Objective: Provide decent affordable housing
	<p><b>Narrative:</b> Assist in the creation and preservation of multi-family rental housing for low income and special needs households, rehabilitation of low-income owner-occupied housing through the Neighborhood Conservation and Improvement Program (NCIP), TBRA rental subsidies, and/or new construction.</p> <p><b>CDBG Program</b>                      \$750,000 CIP to Affordable housing - Liberty Tower (100 household)                      \$350,000 CIP to Affordable housing – Mid Pen (70 household)                      \$352,000 NCIP Loans and Grants (5 households)                      \$60,810 NCIP Project Delivery Costs                      \$100,000 Minor Repair Program - Rebuilding Together (10 households)  <b>\$1,612,810 total (185 households)</b></p> <p><b>HOME Program</b>                      \$827,242 TBRA Administration (30 households)</p>			
	<b>Goal Outcome Indicator</b>		<b>Quantity</b>	<b>Unit of Measure</b>
	Rental Units rehabilitated		170	Household Housing Unit
	Homeowner housing rehabilitated		15	Household Housing Unit
	TBRA/Rapid Rehousing		30	Households Assisted

**AP-23 –Annual Goals Summary (continued)**

Goal	Category Needs Addressed	Needs Addressed	Funding	
Public Services	Non-Homeless Special Needs	Public Services	<b>CDBG: \$180,000</b>	
	Start Year: 2020	End Year: 2025	Outcome: Availability/accessibility	
	<b>Narrative:</b> Support activities that provide basic needs to lower income households and special needs populations. Services would be provided to low-income households, elderly individuals, homeless persons, people with disabilities, and victims of domestic violence. The following non-profit agencies will be funded with \$180,000 of CDBG dollars:  \$30,000 BWC Counseling (100 households) \$30,000 The Health Trust Meals on Wheels (20 households) \$30,000 Hope Services (100 clients) \$30,000 Silicon Valley Independent Living Center (70 clients) \$30,000 Senior Adult Legal Assistance (80clients) \$30,000 Heart of The Valley (400 clients) <b>\$180,000 total (770 households/persons)</b>			
	Local funds of \$95,264 will also be used for public services. The non-profit agencies that will be funded with local funds include:  \$51,264 Project Sentinel Landlord/Tenant Mediation (100 clients) \$15,000 Catholic Charities Ombudsman (380 persons) \$24,000 Senior Nutrition Program (400 persons) \$ 5,000 United Way 211 (500 persons) <b>\$95,264 TOTAL (1,380 households/persons)</b>			
	<b>Goal Outcome Indicator</b>		<b>Quantity</b>	<b>Unit of Measure</b>
	Public Services		770	Persons Assisted

Goal	Category Needs Addressed	Needs Addressed	Funding	
Public Facility Improvements	Public Facility Improvements	Public Facility Improvements	<b>CDBG: \$163,950</b>	
	Start Year: 2020	End Year: 2025	Outcome: Availability/accessibility	
	<b>Narrative:</b> Complete rehab/updates to the Vista Center for the Blind.			
	<b>Goal Outcome Indicator</b>		<b>Quantity</b>	<b>Unit of Measure</b>
	Public Facility Improvement		200	Persons Assisted

Goal	Category Needs Addressed	Needs Addressed	Funding	
Fair Housing	Non-Homeless Special Needs	Fair Housing	<b>HOME: \$ 22,197</b>	
	Start Year: 2023	End Year: 2025	Outcome: Availability/accessibility	
	<b>Narrative:</b> Promote fair housing choice through the following activities: fair housing education, fair housing testing, housing assistance hotline, and landlord/tenant mediation.			
	<b>Goal Outcome Indicator</b>		<b>Quantity</b>	<b>Unit of Measure</b>
	Public service activities other than low/mod income housing benefit		50	Persons Assisted

**AP-23 –Annual Goals Summary (continued)**

<b>Goal</b>	<b>Category Needs Addressed</b>		<b>Needs Addressed</b>	<b>Funding</b>
Administration & Planning	Other		Administration & Planning	<b>CDBG: \$228,910</b> <b>HOME: \$ 31,561</b>
	Start Year: 2020	End Year: 2025	Outcome: Availability/accessibility	Objective: Create economic opportunities
	<b>Narrative:</b> Provide management, planning and implementation of the CDBG & HOME programs as well as monitoring of public services and housing projects.			
	<b>Goal Outcome Indicator</b>		<b>Quantity</b>	<b>Unit of Measure</b>
	Other		0	Other

**Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.215(b).**

15 households for Homeowner housing rehabilitation (CDBG),  
     5 Extremely low-income households  
     10 Low-income households

170 households for multi-family affordable rental housing rehabilitation  
     170 Low-income households

30 households for TBRA (HOME),  
     25 Extremely low-income households  
     5 Low-income households



## AP-35 Projects – 91.220(d)

### Introduction

The activities that the City will undertake in FY 2023-2024 using CDBG and HOME funds include: Public Services, Homeowner Rehabilitation, Tenant Based Rental Assistance, Program Administration & Planning, and Affordable Housing Improvements for low and moderate-income residents. The activities meet one or more priority needs identified in the 5-year Consolidated Action Plan.

In addition to the projects and activities funded with HUD funds as noted in table “AP-35 – Project Information Summary”, the City also funds other Public Service Activities with local funds that include:

Project Sentinel – Landlord/Tenant Mediation Services (\$51,264; 100 clients)  
 Catholic Charities Long-Term Care Ombudsman (\$15,000; 380 persons)  
 Senior Nutrition Program (\$24,000; 400 persons)  
 Homeless Prevention Services for Homeless Households (\$50,000; 20 households)  
 Intensive Case Management (\$125,000; 20 households)  
 United Way Bay Area 211 Services (\$5,000; 500 households)  
**TOTAL LOCAL FUNDS: \$270,264 (1,420 persons/households)**

### AP-38 – Project Information Summary

#	Project	Goals Supported	Needs Addressed	Funding
1	Public Services	Homelessness Public Services	Homelessness Public Services	CDBG: \$180,000
	Description	Public services provided to the community that primarily benefit low to low-mod income persons and/or households.		
	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	770 persons [280 moderate income at less than 80% AMI; 380 low-income less than 50% AMI; 110 extremely low-income less than 30% AMI]		
	Location Description	Citywide		
	PLANNED ACTIVITIES	\$30,000: 2023 Family Therapy/School Outreach/Grief Counseling (Bill Wilson Center) [LMC/5D/100 persons] \$30,000: 2023 Meals on Wheels (The Health Trust) [LMC/5A/20 persons] \$30,000: 2023 Hope Services [LMC/5B/100 persons] \$30,000: 2023 Silicon Valley Independent Living Center [LMC/5B/70 clients] \$30,000: 2023 Senior Adult Legal Services (SALA) [LMC/5C/80 persons] \$30,000: 2023 Support & Transportation Services for Seniors (Heart of the Valley) [LMC/5A/400 persons]		

**AP-38 – Project Information Summary (continued)**

#	Project	Goals Supported	Needs Addressed	Funding
2	Homeowner housing rehab & minor repair	Affordable Housing	Affordable Housing	CDBG: \$512,810
	Description	Financial assistance for low income homeowners to make necessary repairs to their owner-occupied homes to address health and safety issues. This is completed through the City's NCIP program and/or Rebuilding Together Silicon Valley. Some funds are also used for Activity Delivery Costs (ACD).		
	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	15 households [10 low-income less than 50% AMI; 5 extremely low-income less than 30% AMI]		
	Location Description	Citywide		
	PLANNED ACTIVITIES	\$100,000: 2023 Homeowner rehabilitation and minor repair (Rebuilding Together Silicon Valley) [LMH/14A/10 households]  \$352,000: 2023 NCIP [LMH/14A/5 households]  \$60,810: 2023 NCIP Activity Delivery Costs [LMH/14H/n/a]		

#	Project	Goals Supported	Needs Addressed	Funding
3	Tenant Based Rental Assistance	Affordable Housing	Affordable Housing	HOME: \$827,242
	Description	Provide financial assistance to low and extremely low-income households through deposit assistance and monthly subsidy assistance.		
	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	30 households [5 low-income less than 50% AMI; 25 extremely low-income less than 30% AMI]		
	Location Description	Citywide		
PLANNED ACTIVITIES	\$827,242: 2023 TBRA Administration (Abode Services) plus \$160,697 of CAHF and \$140,000 of CHSF for case management services.			

**AP-38 – Project Information Summary (continued)**

#	Project	Goals Supported	Needs Addressed	Funding
4	Capital Improvements to Affordable Rental Housing	Affordable Housing	Affordable Housing	CDBG: \$1,100,000
	Description	Rehabilitation to affordable rental housing units to keep them sustainable and affordable.		
	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	170 units [100 low-income less than 50% AMI]		
	Location Description	Citywide		
	PLANNED ACTIVITIES	\$350,000 Rehabilitation of Affordable Housing – MidPen Housing [LMH/14B/70 units] \$750,000 Rehabilitation of Affordable Housing – Liberty Tower Elevator Rehab. [LMH/14B/100 units].		

#	Project	Goals Supported	Needs Addressed	Funding
5	Capital Improvements to Public Facilities	Public Facilities	Public Facilities	CDBG: \$163,950
	Description	Rehabilitation to the Vista Center for the Blind, a public facility serving low-income beneficiaries.		
	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	200 persons [200 low-income less than 50% AMI]		
	Location Description	Citywide		
	PLANNED ACTIVITIES	\$163,950 Rehabilitation of Public Facility – Vista Center for the Blind [LMC/03B/200 persons]		

#	Project	Goals Supported	Needs Addressed	Funding
6	Fair Housing	Fair Housing	Fair Housing	HOME \$22,197
	Description	Provide fair housing services by providing case management services, risk assessment, safety planning, legal advocacy, assistance filing restraining orders, housing assessment, individual action plan development, support groups, and other services.		
	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	50 households [40 low-income less than 50% AMI; 10 extremely low-income less than 30% AMI]		
	Location Description	Citywide		
	PLANNED ACTIVITIES	\$22,197: Fair Housing Services (Project Sentinel)		

**AP-38 – Project Information Summary (continued)**

	<b>Project</b>	<b>Goals Supported</b>	<b>Needs Addressed</b>	<b>Funding</b>
	General Program Administration & Planning	Administration	Administration	HOME \$31,561 CDBG: \$228,910
	Description	Administrative activities by City of HOME-funded projects and activities.		
7	Target Date for Completion	6/30/2024		
	Estimate the number and type of families that will benefit from the proposed activities.	N/A		
	Location Description	Citywide		
	PLANNED ACTIVITIES	Admin. and planning for HOME funded projects/activities.		

**Describe the reasons for allocation priorities and any obstacles to addressing underserved needs:**

Allocation of funds is based on needs and priorities identified in the 2020-25 ConPlan. The City prioritizes allocations to projects that serve the lowest income households, from 0-80% of Area Median Income.

**AP-50 Geographic Distribution – 91.220 (f)**

**Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed.**

Investments will be allocated citywide.

<b>AP-50 –Geographic Distribution</b>	
<b>Target Area</b>	<b>Percentage of funds</b>
Citywide	100%

**Rationale for the priorities for allocating investments geographically**

The City does not have plans to prioritize investments geographically. HOME CHDO set-aside funds may be spent in a contiguous jurisdiction if a CHDO development cannot be identified within the City limits.

## AP-55 Affordable Housing – 91.220 (g)

### Introduction

For the purpose of this section, the term “affordable housing” is defined in the HOME regulations at 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership. It is important to note that the City of Santa Clara intends to use “uncapped” 80% only income limits since Santa Clara is an entitlement city that is exempt from using the capped limits per HUD guidance effective June 1, 2021.

The City of Santa Clara has identified the production and maintenance of affordable housing as the primary objective for the expenditure of federal funds in the Consolidated Plan. While CDBG and HOME funds are limited, the City will continue to allocate funding to affordable housing projects, including owner-occupied rehabilitation. The City has non-federal funding sources that it will use toward the development of affordable housing during Fiscal Year 2023-2024.

### AP-55A – One Year Goals for the Number of Households to be Supported (by Population Type)

Homeless – Housing assistance for units <u>reserved</u> for homeless individuals and households.	30
Non-Homeless – Housing assistance for all units NOT reserved for homeless individuals and households.	185
Special-Needs – Housing assistance for units reserved for households that are not homeless but require specialized housing or supportive services.	0
Total	215

### AP-55B – One Year Goals for the Number of Households Supported Through (by Program Type)

Rental Assistance – Housing assistance for programs such as tenant-based rental assistance (TBRA) and one-time payments to prevent homelessness.	30
The Production of New Units – New units, including the conversion of non-residential properties.	0
Rehab of Existing Units – Rehabilitation of existing units, including reconstruction. If unit will be acquired and rehabilitated, report the unit only once.	185
Acquisition of Existing Units – Housing assistance for programs such as down payment assistance. If the unit will be acquired and rehabilitated, report the unit only once.	0
Total	215

### Discussion

The City’s goal, as it relates to Affordable Housing, is to assist in the creation and preservation of affordable housing for low income and special needs households through continuation of the Neighborhood Conservation and Improvement Program (NCIP), rental habilitation of units occupied by low income tenants, TBRA rental subsidies, and new construction.

15 households for Homeowner housing rehabilitation (CDBG),  
05 Extremely low-income households  
10 Low-income households

170 households for affordable rental housing rehabilitation  
170 Low-income households

30 households for TBRA (HOME),  
20 Extremely low-income households  
5 Low-income households

## AP-60 Public Housing – 91.220 (h)

### Introduction

The Santa Clara County Housing Authority (SCCHA) is the regional entity that manages and maintains housing units and administers Housing Choice Voucher programs across the County. SCCHA operates four public housing units located in City of Santa Clara. The housing authority is a HUD-designated Moving to Work (MTW) agency which allows it greater flexibility to design and implement more innovative approaches to providing housing assistance.

For FY 2023, SCCHA plans to serve 16,775 households with MTW Housing Choice Vouchers, 907 with local, non-traditional property-based vouchers, and 4 MTW Public Housing units leased for a total of 17,686 households served. The majority of voucher holders have a tenant-based voucher which allows the holder to use the voucher at any housing unit where the landlord will accept the voucher. Data on the number of vouchers in use within the City is unavailable.

### Actions planned during the next year to address the needs to public housing

The SCCHA has 444 tenant-based vouchers that the MTW PHA anticipates project -basing for the first time (county-wide); there are 3,245 currently. The City will continue to work closely with the SCCHA to address any needs identified during the program year.

The most immediate need is finding housing units and owners that will accept vouchers. Stakeholder interviews also identified the need for assisting families moving into affordable units with basic necessities.

SCCHA re-proposed allocating project-based vouchers to SCCHA-owned projects without competition. This activity was originally proposed and approved by HUD to allow SCCHA to issue Project Based Vouchers (PBVs) to projects owned by SCCHA or a SCCHA affiliate entity without needing to go through a competitive selection process. The re-proposal of this activity would leave the original activity in place and in addition SCCHA is adopting a Housing Opportunities Through Modernization Act (HOTMA) provision that has not yet been implemented by HUD. A modification to Activity 2010-4 will allow SCCHA, at its discretion, to enter into a HAP contract for housing to be rehabilitated or newly constructed even if construction had begun without an AHAP in place.

### Actions to encourage public housing residents to become more involved in management and participate in homeownership

SCCHA is proactive in incorporating resident input into the policy-making process. The SCCHA board includes two tenant commissioners that provide input from the tenant perspective.

### If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance

Not applicable.

## AP-65 Homeless and Other Special Needs Activities – 91.220 (i)

### Introduction

The 2022 Point-in-Time Count identified 10,028 homeless individuals county-wide, which was higher than the 2019 count of 9,706. Of these individuals, 2,320 are sheltered and 7,708 are unsheltered. Individuals with the highest rates of being without shelter are the chronically homeless, homeless veterans, and unaccompanied youth. It is estimated that 28.71% (2,838) of the 10,028 homeless people are chronically homeless with 67% of those chronically homeless being unsheltered. 660 are veterans (6.58%) with 79% of those being unsheltered. “Families” comprise 8.95% of total homeless population (276 families with 898 members). 1,155 (11.51%) of the homeless population are unaccompanied youth and young adults; 91% of which are unsheltered.

The City of Santa Clara saw an increase in its homeless population of 35% to 440 (up from 326).

### Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including:

#### **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs.**

The City will continue its efforts of housing homeless families through its TBRA program. The goal is to house/keep housed approximately 30 households. The City will renew its agreement with the County of Santa Clara for FY23/24 to provide intensive case management to approximately 20 chronically homeless individuals referred by the police department. This program is funded with local funds. The County provides housing subsidies for the participants in this program while the City uses its Successor Housing Agency funds to provide the case management and services for the program. HOME-ARP funds will be used to provide Tenant Based Rental Assistance and case management services to additional households who are homeless or at risk. The city will also continue to offer mobile shower, laundry and case management services on a weekly basis through a partnership with WeHope Dignity on Wheels.

#### **Addressing the emergency shelter and transitional housing needs of homeless persons.**

The City will continue to fund agencies that serve homeless persons accessing emergency and transitional shelters. Much of the funding will come from CDBG for agencies providing public services such as case management. Agencies include Next Door Solutions, Bill Wilson Center, and Abode Services. The City is also exploring partnerships with the County to potentially build an interim housing site in Santa Clara.

#### **Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again.**

Particularly for chronically homeless, it is preferable for individuals to receive intensive case management rather than simple information and referral services. Case managers work to assist homeless individuals find housing, connect with resources, and receive services to maintain housing. The provision of case management is person-based rather than shelter-based with the goal of rapid re-housing. The goals of the County's 2020-2025 Community Plan to End Homelessness establish a target of creating 6,000 housing opportunities for persons who are homeless. An additional goal is for each of the 6,000 new tenants to have access to the services that will allow them to maintain that housing.

The City will continue to use HOME funds for our TBRA program. The TBRA program is a short-term solution to homelessness (unlike permanent supportive housing for the chronically homeless). The Homeless Survey has shown that families with children are not only a special need population but tend to be underrepresented in Homeless Surveys. The TBRA program will continue to focus on assisting the homeless and at-risk of homelessness population; however, preferences towards families with children, and individuals and/or families exiting housing exclusively designated for domestic violence survivors will be given.

The City will also create a separate TBRA program using HOME-ARP funds which focus on HOME-ARP qualified populations many of which are single adult households.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.**

Although the City does not fund programs or activities that specifically help low-income individuals and families avoid becoming homeless who are being discharged from publicly funded institutions or who receive assistance from public or private agencies that address housing, health, social services, employment or youth needs, many of the programs and activities funded do assist in preventing homelessness as a byproduct.

Tenant Based Rental Assistance Program. Many of the beneficiaries of the TBRA program also receive SNAP (i.e., food assistance), and all receive case management services. The program also allows for assistance to those that are housed, but on the verge of homelessness.

Homeless Prevention Program and Intensive Case Management. The City uses local funds to match county funds for a program that houses up to twenty (20) homeless individuals that are identified by the police department as high users of community resources; some of which had been discharged from facilities and/or jails. This population is also provided case management services.

Landlord/Tenant Mediation. This program can indirectly help households stay housed through the mediation of eviction related issues.

Next Door Solutions to Domestic Violence. This program provides a safety net of housing and services to either help victims avoid homelessness or make their homeless situation shorter.

Youth needs. The City provides CDBG funding for family and individual counseling needs through the Bill Wilson Center which focuses on the needs of foster children. The Bill Wilson Center also assists in administering the City TBRA program. By administering these programs, it provides The Bill Wilson Center the unique resources to identify homeless families, foster youth in their own system, and households with children in the school system that may be in need of critical needs such as housing, health, employment, education, and other social services.

The City is currently working with the non-profit Homebase to complete a City-specific homeless needs assessment and strategic plan. The results of this process will help direct future funding for homeless activities and programs.



## AP-75 Barriers to Affordable Housing – 91.220 (j)

### Introduction

The jurisdictions within the County face barriers to affordable housing that are common throughout the Bay Area. High on the list is the lack of developable land, which increases the cost of available lands and increases housing development costs. Local opposition is another common obstacle as many neighbors have strong reactions to infill and affordable housing developments. Opposition is often based on misconceptions, such as an anticipated increase in crime; erosion of property values; increase in parking and traffic congestion; and overwhelmed schools. However, to ensure a healthy economy, the region must focus on strategies and investment that provide housing for much of the workforce in the region – sales clerks and secretaries, firefighters and police, teachers and health service workers – whose incomes significantly limit their housing choices.

**Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment.**

The City identified multiple barriers to affordable housing, including income and wages that are not consistent with the rising cost of housing, a competitive rental and home market, and diminishing public funds. The City has identified multiple constraints or barriers to the affordable housing and residential investment in its draft 2023-2031 Housing Element Update, including:

- Land use controls that limit the density of housing production; and/or
- Parking requirements increase the cost of housing.

Generally, the City faces the same affordable housing barriers as the rest of the Bay Area, including:

- High cost of development constrains the development of affordable housing units in favor of higher end units; and
- Lack of developable land prevents housing development and increases the price of land; and
- Local opposition prevents affordable housing from being built in high-resource areas; and
- Insufficient subsidies and vouchers for deeply affordable units.

Additionally, the Assessment of Fair Housing identified the following contributing factors to fair housing issues, including affordable housing, through analysis of data and community engagement feedback:

- Displacement of residents due to economic pressures
- Land use and zoning laws
- Source of income discrimination
- Community opposition
- Availability of affordable units in a range of sizes
- Availability, type, frequency, and reliability of public transportation
- Lack of access to opportunity due to high housing costs
- Lack of affordable, accessible housing in a range of unit sizes
- Lack of affordable housing for individuals who need supportive services
- Lack of assistance for housing accessibility modifications
- Lack of resources for fair housing agencies and organizations
- Location and type of affordable housing
- Loss of affordable housing

- Private discrimination

The Housing Element includes the following actions to remove or ameliorate barriers: Work with nonprofits to acquire and rehabilitate distressed multi-family housing and convert it to low income housing, update the City zoning ordinance to comply with state laws on reasonable accommodations, emergency shelters, transitional and supportive housing and density bonuses, accommodation of the Regional Housing Needs Assessment for the 2015 Housing Element to maintain an inventory of housing sites appropriate for a range of income levels and for supportive housing for persons with physical and developmental disabilities, analysis of impact fees, promote construction of accessory units and low income housing types such as Single Room Occupancy units, continue to require developers of 10 or more homeowner units to provide Below Market Rate units, consider establishing an affordable housing mitigation fee for large office and industrial developments, consider a local source of affordable housing funds.

## AP-85 Other Actions – 91.220 (k)

### **Introduction**

This section discusses efforts in addressing the underserved needs, expanding and preserving affordable housing, reducing lead-based paint hazards, and developing institutional structure for delivering housing and community development activities.

### **Actions planned to address obstacles to meeting underserved needs**

One of the major obstacles to meeting the needs of the underserved is the limited amount of funding available to fund public services. The City contributes general funds to fund the tenant/landlord mediation program and the United Way 211 information line.

### **Actions planned to foster and maintain affordable housing**

The City funds Rebuilding Together Silicon Valley to administer a portion of its Homeowner Housing Rehabilitation program. The program addresses building/housing code deficiencies, abatement of hazardous conditions, repair/rehabilitation of deteriorated conditions, and accessibility for persons with disabilities, all to improve the habitability, use and occupancy of owner-occupied housing. Financial assistance is provided in the form of grants. The City also administers its Neighborhood Conservation Improvement Program (i.e., Homeowner Housing Rehabilitation Program). These projects are typically larger in scope than the projects performed by Rebuilding Together Silicon Valley. Financial assistance is provided in the form of loans with flexible terms and below market rates.

A Memorandum of Understanding, approved by the City Council and RDA Board on November 14, 2006, directed that all RDA funds appropriated for the NCIP Program “will be committed permanently” to the NCIP Affordable Housing Rehabilitation Fund (AHRF). Any program income accruing from the expenditure of Successor Housing Agency (SHA) funds for NCIP activities would also be deposited in the AHRF. That program income will not be subject to federal restrictions or requirements. It will primarily be used for the NCIP program but may be used for other activities that benefit low and moderate-income persons as long as those activities address one or more of the housing and community goals set forth in the Consolidated Plan.

The City has a Below Market Purchase Program (BMP). This program requires developers to set aside 15% of newly constructed units for housing affordable to moderate income homebuyers. The Program is administered by HouseKeys. The Program created an additional source of revenue to augment future housing and community objectives – the City Affordable Housing Fund (CAHF). After five years, a BMP housing unit can convert from a restricted sales price to a market price. If a BMP unit is sold after the initial 5-year period, the City recaptures the value of the affordable purchase price discount. Proceeds are deposited in the CAHF. Use of CAHF funds is not subject to federal or state restrictions. The CAHF funds will be used for activities that benefit low and moderate-income persons and address one or more of the housing and community goals set forth in the ConPlan and the City Housing Element.

### **Actions planned to reduce lead-based paint hazards**

The City undertakes HUD-funded projects in accordance with the Lead-Based Paint Regulations. These regulations most commonly affect residential structures rehabilitated through NCIP. When identified, lead paint will be controlled or abated and disposed of properly to eliminate or reduce the hazard of environmental or human contamination. The City has adopted a written plan to implement the regulations in its NCIP Program and other housing rehabilitation activities.

### **Actions planned to reduce the number of poverty-level families**

On August 22, 2017, the Santa Clara City Council approved a plan establishing the City's local minimum wage to reach \$15.00 per hour by 2019. As of January 1, 2020, the City of Santa Clara minimum wage will be adjusted annually based on the regional Consumer Price Index (CPI). The City's minimum wage as of January 1, 2023 was \$17.20 per hour.

On March 24, 2017 the Santa Clara City Council unanimously passed the first worker retention ordinance in Silicon Valley. This ordinance will provide much-needed job security to some of the most vulnerable workers. This law protects food and building service workers from mass layoffs when companies switch contractors. It requires that if a company with an office or venue in Santa Clara hires a new contractor or brings services in-house, the workers who currently work at that location must be kept on for a 90-day transition period.

The Santa Clara Unified School District (SCUSD) Adult Education Center has a CalWORKs Site Representative who acts as a liaison for participating CalWORKs students and Santa Clara County Social Services Agency. Some of these responsibilities include ensuring that all participants on campus are remaining in compliance with federal regulations, developing a welfare to work plan, reporting monthly attendance to the County for each participant, and reporting progress reports on a quarterly basis for each participant CalWORKs student to the County. In addition to the Site Representative, the Adult Education Center has a Career Advisor for CalWORKs students to help them in job placement, resume development, and interviewing skills.

### **Actions planned to develop institutional structure**

The City will continue its participation in the CDBG Coordinators Committee, which increasingly has become a forum for discussion and active planning of common strategies to address the housing and community needs in Santa Clara County. The City is also allocating additional staffing capacity to work on HUD-related activities.

### **Actions planned to enhance coordination between public and private housing and social service agencies**

The City will continue its efforts to encourage consortium-building among housing developers, public service providers, and governmental and non-governmental entities. The City has achieved proven results in using federal funds to leverage private funds. The City participates in the quarterly meetings of the Supportive Housing Roundtable, which includes government agencies, housing developers, service providers, legal services and private funders.

### **Discussion**

In 1983, the City of Santa Clara joined with several other cities to create the North Valley Job Training Consortium (NOVA) in response to the federal Workforce Investment Act. The consortium is a private/public partnership made up of representatives of local government, business and industry, labor, education and training systems, employment services, and community support organizations. The NOVA Workforce Board was established to guide the agency in its mission to deliver employment and training services that enhance the ability to live and work in Silicon Valley. Many of the services and programs provided by NOVA target disadvantaged youth and adult populations, who may have limited education and/or barriers to employment. NOVA is a partner in the CONNECT! Job Seeker Center, a comprehensive resource center opens to all job seekers, which offers computer access, a resource library, resume assistance and job search workshops.

## AP-90 Program Specific Requirements – 91.220 (I) (1,2,4)

### Introduction

#### Community Development Block Grant Program (CDBG) Reference 24 CFR 91.220(I) (1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	0
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the strategic plan.	0
3. The amount of surplus funds from urban renewal settlements.	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan.	0
5. The amount of income from float-funded activities	0
Total Program Income	0

#### Other CDBG Requirements

1. The amount of urgent need activities.	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	100.00%

## **HOME Investment Partnership Program (HOME) Reference 24 CFR 91.220(l) (2)**

### **A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:**

1. The City does not use HOME funds beyond those identified in Section 92.205.

Homeowner Equity – for purposes of this policy, it is defined as the sum of the down-payment, principal paid, and homeowner improvements. Home Equity – for purposes of this policy, it is defined as the amount of HOME investment, adjusted as follows: (1) The HOME investment amount would be reduced if, at the time of the homeowner purchase, the market price is less than the cost of construction, by the amount of that difference; and (2) Beginning after six years of residency by the original buyer, the City would reduce its share of excess proceeds by a maximum of 10% for each additional full year the original buyer resides in the home. After the completion of 15 years of residency by the original buyer, the City would have no interest in recapturing any portion of its original HOME investment.

In the event of a sale of a HOME-assisted house during the 15-year HOME affordability period, sales proceeds would be distributed in the following order of priority:

- a. Closing costs.
- b. Primary mortgage loan (City or private lender).
- c. Other loans superior to the HOME investment lien (if any have been approved by the City).

The remaining funds are considered Shared Net Proceeds under the HOME regulations and would be distributed in the following order of priority:

- d. Homeowner Equity, or the amount of Shared Net Proceeds, whichever is less.
- e. Homeowner Shared Net Proceeds. This amount will be the greater of: (1) Homeowner Equity that was paid as described above; or (2) proportionately of the Shared Net Proceeds, according to the formula - Homeowner Equity, divided by the sum of Homeowner Equity plus HOME Equity.
- f. HOME investment. The remainder of the Shared Net Proceeds. If the remaining Shared Net Proceeds are insufficient to repay the full amount of the HOME investment, the City would forgive any of the HOME investment that could not be repaid from the remaining Shared Net Proceeds.

2. **A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds. See 24 CFR 92.254(a)(4) are as follows:**

The City will not carry out Home buyer activities in PY 23/24. A description of the guidelines that will be used for resale or recapture of HOME funds, if used for homebuyer activities as required in 92.254, are as follows: The City secures its HOME funds by recording Deeds of Trust on the title of the property that received the funding. The period of affordability would be a minimum of 15 years.

3. **Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:**

The City does not have any plans to use HOME funds to refinance existing debt on multi-family.

4. **HOME funds may be allocated to affordable housing capital projects in contiguous jurisdictions.**

The City does not plan on using HOME funds to refinance existing debt.

### **Discussion**

CHDO set-aside funds. The City of Santa Clara will consider providing assistance to affordable housing developments in contiguous jurisdictions using CHDO set-aside funds.

TBRA assistance. While it would be ideal for participants to locate housing within the city limits, the program will allow participants to find housing located anywhere within the County of Santa Clara.

### **95% After Rehab Valuation**

The City of Santa Clara may use HOME funds for acquisition purposes. Per CFR 24 92.254 (a)(iii), the City has chosen to determine separate limits for existing housing than the given median purchase price issued by HUD. City staff researched the Multiple Listings Service (MLS) to determine the number of single-family and multi-family home sales. There were less than 250 sales per months; thus, per 24.92.254 (a)(iii), we were required to compile 3 months of sales figures. The following details the home sales in Santa Clara over the most recent three (3) months for single-family homes and multi-family homes at the time of publication.

**CONTRIBUTION AGREEMENT  
SUMMARY PAGE**

Agency: **Santa Clara Methodist Retirement Foundation**

Project: **Capital Improvement – Elevator Replacement at Liberty Tower**

Description: *Liberty tower is a senior-only affordable rental housing development in the City of Santa Clara. The project is the replacement of a freight elevator, a passenger elevator and all related electrical systems.*

Funding Source: **Community Development Block (CDBG) – CDFA #14.218**

Grant Number: **B-23-MC-06-0022** Project No.: **CDI-23-C01**

Total Grant Award: **\$750,000 (Not to Exceed)**

Agreement Term: Start Date: **07/18/2023** End Date: **04/30/2024**

Affordability Period: Start Date: **05/1/2024** End Date: **05/1/2034**

**PARTIES TO AGREEMENT:**

	<b>ORGANIZATION</b>	<b>CITY OF SANTA CLARA</b>
Organization Name:	Santa Clara Methodist Retirement Foundation	Housing & Community Services Division
Address for Legal Notice (city/state/zip)	890 Main Street Santa Clara, CA 95050	1500 Warburton Avenue Santa Clara, CA 95050
Attention:	Kathy Betts Director of Operations	Adam Marcus Housing Division Manager
Email Address:	kathy@scmrf.org	<a href="mailto:amarcus@santaclaraca.gov">amarcus@santaclaraca.gov</a>
Telephone No.:	(408) 243-6226	(408) 615-2491
Project Contact:	Kathy Betts	(408) 850-6155
Tax ID	94-2205588	
Federal Unique ID #	FEQLKRTY5M34	
Type of Entity:	501 (c) 3 public benefit corp.	
State of Incorporation or Residency:	California	
Ebix Insurance #	S20002312	



**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Santa Clara Methodist Retirement Foundation, Inc., a California non-profit corporation, ("Organization") City and Organization 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 Works and Performance".
- B. Organization 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 PROVISIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Organization 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 Work and Performance Measures
- Exhibit B: Budget Summary and Payments Requirements
- Exhibit C: Insurance Requirements
- Exhibit D: Special Grant Conditions
- Exhibit E: Ethical Standards and Affidavit of Compliance
- Exhibit F: MBE/WBE Guidelines
- Exhibit G: Section 3 Guidelines
- Exhibit H: Use Restriction Agreement
- Exhibit I: Promissory Note
- Exhibit J: Deed of Trust

This Agreement, including the Exhibits set forth above, contains all the Agreement's, 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. FUNDING AND APPROPRIATION**

Pursuant to the provisions of Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383, the City has received Community Development Block Grant funds ("CDBG") from the United States Department of Housing and Urban Development ("HUD") as an entitlement. From the CDBG grant funds, City has appropriated an amount not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) ("CDBG Funds"), subject to budget appropriations, to be given to Organization.

Upon Organization's compliance with the terms and conditions of this Agreement, City will contribute to Organization the amount set forth in this Section. The Grant Funds shall not be used for any other purpose than to pay expenses (or if said expenses have already been paid by Organization, then for reimbursement of same to Organization) related to the purpose of the Grant, as set forth in Exhibit A. None of the City's Contribution will be used to pay for any expenses of Organization incurred before the start of the Term of Agreement. All work performed or materials provided in excess of the maximum compensation or work performed or materials provided that are deemed ineligible shall be at the Organization's expense

## **3. 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 July 18, 2023, and terminate on April 30, 2024.

The City reserves the right at its sole discretion, and subject to funding and City Council appropriation, to extend the term of this Agreement Unless otherwise mutually agreed upon by the Parties, the Scope of Services (Exhibit A) shall remain the same under any extension of the Agreement.

## **4. PROPERTY USE RESTRICTIONS**

### **A. Affordability Restriction.**

The Organization must execute the 10-year affordability agreement, attached hereto as Exhibit H, restricting the use of the property where the Project is located. The Affordability Agreement shall impose restrictions commencing on May 1, 2024 and terminating on May 1, 2034. The Organization agrees to record

this Use Restriction against the property where the Project is located upon written request of City.

The Organization agrees that improvements shall be used to provide services for low-income persons at or below 80% of area median income (AMI). The Organization agrees to maintain the use in accordance with all applicable CDBG program requirements for the term of this Use Restriction. The Grant Award is conditioned upon the Organization maintaining the CDBG-use for a period not less than ten (10) years.

The Organization hereby warrants, represents, and agrees that it shall not interfere with, terminate or otherwise discontinue CDBG-use during the term of this Affordability Agreement. If Organization terminates or otherwise suspends the CDBG-use during the ten (10) years of the term of the Affordability Agreement, the Organization agrees it shall be immediately obligated to refund to the City all of the Grant funds awarded unless the City and the Organization otherwise agree in writing. If Organization terminates or otherwise suspends the CDBG Use between the second (2<sup>th</sup>) and the fifth (5<sup>th</sup>) years of the Term, Organization agrees it shall be immediately obligated to refund to CITY a pro-rated portion of the Grant Award funds unless the City and the Organization otherwise agree in writing.

B. Promissory Note.

The Organization shall execute a Promissory Note (the "Note") in a form acceptable to the City for the amount determined in accordance with provision set forth in this Agreement. The Note shall become due and payable:

- i. Upon sale of the property located at 890 Main Street in Santa Clara, CA by the Organization prior to May 1, 2034; or
- ii. Upon a change in the use of the property by the Organization prior to the end of the Affordability Restriction Agreement to a use which is not an "eligible activity" under the Acts and Regulations issued by HUD pursuant thereto; or
- iii. Upon a default or breach under the Promissory Note, Deed of Trust, or this Grant Agreements, and any exhibits thereto, including without limitation the Use Restriction Agreement.

The parties expressly agree that no sum shall be due and payable under the Note if, on **May 1, 2034**, the contingencies set forth as "(i)", "(ii)", and "(iii)" in the preceding paragraph have not occurred. At the end of the Use Restriction Term, the note and any liabilities or obligations, or both, arising therefrom, whether expressed or implied, shall be deemed null and void, and the Note shall be canceled without further act by any party hereto, unless the City has exercised its rights under the Deed of Trust, prior to the end of the Affordability Restriction.

C. Deed of Trust

The Promissory Note shall be secured by a Deed of Trust (the "Deed of Trust), in a form acceptable to the City on the Property that is more fully described in **EXHIBIT J**, attached hereto and incorporated herein by reference. In the event that the contingencies set forth in the preceding section do not occur, the City shall record a Full Reconveyance on the Property.

D. Conditions

The use of the property will be in accordance with all applicable City regulations and ordinances, as well as the CDBG national objectives and eligible activity provisions of the Housing and Community Development Acts, **further defined in 24 CFR Part 570.200**. The specific CDBG National Objective met by this Project is described in **EXHIBIT A**.

**5. SCOPE OF WORK**

Organization shall perform the work as specified in detail on **EXHIBIT A** entitled "Scope of Work and Performance Measures" and shall comply with the terms and conditions of this Agreement.

**6. REPROGRAMMING OF FUNDS**

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

A. Initiated by City: City may re-channel funds budgeted in one cost category into another cost category of the Program. Before re-channeling funds, the City will give the Organization ten (10) business days written notice of the re-channeling of funds along with a copy of an expenditure review for the Program. City shall make its final determination with respect to the re-channeling of funds only after Organization has been given an opportunity to present its views and recommendations. In no event shall the City be bound to accept Organization's views or recommendations.

B. Initiated by Organization: The City's Program Manager may, at the request of Organization, approve re-channeling of funds from any cost category(ies) to another at any time provided that there is not an increase in the overall Total Budget amount specified in Exhibit B of this Agreement. Approval by the City's Program Manager of such rechanneling of funds must be in writing.

## 7. PROGRAM COORDINATION

- A. CITY: The Housing and Community Services Manager or his/her designee, shall be the Program Manager on behalf of City and shall render overall supervision of the progress and performance of this Agreement by City. All services to be performed by City shall be under the overall direction of the Program Manager.
- B. ORGANIZATION: Organization shall assign a single Program Director who shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program Director, Organization shall notify City immediately of such occurrence. Program Director and Organization staff will fully cooperate with City's Program Manager relating to the Program, areas of concern, and the impact of Program on residents of City.
- C. NOTICES: All notices or other correspondence required or contemplated by this Agreement shall be sent to the Parties at the following addresses:

City:                   Housing and Community Services Division  
                          City of Santa Clara  
                          1500 Warburton Avenue  
                          Santa Clara, California 95050  
                          and via email at: [communityservice@santaclaraca.gov](mailto:communityservice@santaclaraca.gov)

Organization: Santa Clara Methodist Retirement Foundation  
                          Kathy Betts  
                          890 Main Street  
                          Santa Clara, CA 95050

## 8. ACCOUNTING AND FINANCIAL RECORDS

Organization shall establish and maintain at all times, on a current basis in connection with the provision of Project, an adequate accounting system in accordance with generally accepted accounting principles and standards and acceptable to Director covering all revenues, costs, and expenditures with respect to Organization's performance under this Agreement. Organization shall maintain its accounting system and shall provide City with reports that separate costs and expenses incurred by Organization with City funds as distinguished from costs and expenses paid for from other funding sources.

## **9. REPORTING REQUIREMENTS**

Organization shall submit reports related to Organization's performance under this Agreement prepared in accordance with **EXHIBIT A** and, to the extent applicable. The format of the reports shall be as provided in this Agreement unless otherwise directed by the Director. A final report shall be delivered to City prior to expiration of this Agreement, as may be further described in **EXHIBIT A**

## **10. RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS**

Organization agrees that the City Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of Organization related to Organization's performance of this Agreement, including the right to audit, conduct further financial review, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this Agreement at any time during the term of this Agreement. Organization shall cooperate with City in such audit, examination, further review and shall provide City with access to Organization's staff and to all relevant records, documents, and data, including but not limited to, management letters, board minutes, and payroll

## **11. INSURANCE**

Prior to the commencement of any of the activities described in this Agreement and during its entire term, the Organization shall provide and maintain, in full force and effect, the insurance requirements set forth in the attached **EXHIBIT C** not later than the date of execution of this Agreement. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City as to form and content. These requirements may not be amended or waived unless approved in writing by the Risk Manager. Organization agrees to provide City with a copy of said policies, certificates and/or endorsements upon execution of this Agreement.

## **12. OBLIGATIONS OF ORGANIZATION**

A. Cooperation of Organization. Organization shall:

- i. Provide City, prior to the Effective Date of this Agreement, and, at all times during the Agreement period, within thirty (30) days of a change in status of any of the following documents, with:
  - a. A copy of Articles of Incorporation under the laws of the State of California.
  - b. A copy of current Bylaws of Organization.

- c. Verification and documentation of Internal Revenue Service nonprofit status under Title 26, Section 501(c) of the Internal Revenue Code.
  - d. Verification and documentation of State of California Franchise Tax Board tax exempt status under Section 23701(d), of the California Revenue and Taxation Code.
  - e. Names and addresses of current Board of Directors of Organization.
  - f. A copy of the adopted personnel policies and procedures including an Affirmative Action Plan if staff exceeds fifteen (15) employees; and,
  - g. An organizational chart and staffing profile.
- ii. Report in writing any changes in the Organization 's Articles of Incorporation, Bylaws, tax exempt status and/or Board membership immediately to the City's Program Manager or his/her designee.
  - iii. Maintain no greater than forty nine percent (49%) of the Board of Directors as "interested persons" under this Agreement. For the purposes of this Agreement, "interested persons" means either:
    - a. Any person currently being compensated by the Organization for services rendered to the Organization within the previous twelve (12) months, whether those services were rendered as a full or part time employee, independent contractor or otherwise, excluding any reasonable compensation to a director as a director; or,
    - b. Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.
  - iv. Include on the Board of Directors representation from the broadest possible cross section of the community, including those with expertise and interest in the Organization's services, representatives from community organizations interested in the Organization's services, and users of the Organization's services.
  - v. Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters.
  - vi. Keep minutes, approved by the Board of Directors, of all regular and special meetings. (A copy of approved minutes shall be forwarded to the City's Program Manager).
  - vii. Encourage public participation in planning and implementing services provided under this Agreement.

- viii. Comply with 2 CFR § 200.321(b) and the City of Santa Clara Disadvantaged Business Enterprise Program, available from the City's Program Manager, regarding the use of minority and/or female owned businesses, vendors, suppliers, and contractors to the maximum extent feasible, for items funded under this Agreement.

B. Program Performance of Organization. Organization shall:

- i. Submit to City performance criteria and schedule of activities describing measurable annual goals and objectives of the Program incorporated in this Agreement as **Exhibit A**.
- ii. Submit to the City, on the prescribed form, a line-item operating budget of the Program to be incorporated in this Agreement as **Exhibit B**, titled "Budget Summary and Payment Requirements", attached hereto and incorporated herein by this reference.
- iii. Obtain completed intake documents for each City of Santa Clara resident receiving services under this Agreement. Such forms shall be approved by the City and shall be made available for review during the monitoring process.
- iv. File reports (on forms approved by City) with the city on the type and number of services rendered to beneficiaries through the operation of the Program. Such reports shall evaluate the manner in which the Program is achieving its objectives and goals according to standards established by City. The reports shall be due within ten (10) business days after the end of each reporting period and shall cover the time immediately preceding the date on which the report is filed.
- v. Provide a completed Program evaluation survey from a representative sampling of beneficiaries served. The results of this survey shall be periodically reviewed and approved by the Organization's Board of Directors. Format of survey documents shall be subject to the approval of the City's Program Manager. Forms shall be held at Organization's administrative offices and shall be made available for review by City during the monitoring process.
- vi. Coordinate its services with existing organizations providing similar service in order to foster community cooperation and to avoid unnecessary duplication of services.
- vii. Seek out and apply for other sources of revenue in support of its operation or services from county, state, federal and private sources.
- viii. Include an acknowledgement of City support on all appropriate Program publicity and publications using words to the effect that services are funded by the City of Santa Clara. Any Program publicity acknowledging



City funding that is produced during the Agreement period shall be reviewed by City prior to any public release.

- ix. Organization represents and warrants that it has the authority to enter into this Agreement. Organization further represents and warrants that its signatory to this Agreement is authorized to execute this Agreement on Organization's behalf.
- x. Comply with the City's Ethical Standards as set forth in **EXHIBIT E**.

### **13. OBLIGATIONS OF CITY**

- A. Monitoring for Compliance with Agreement: Consistent with the applicable sections of 24 CFR §§ 570.501-502 and 2 CFR § 200.328, the city will evaluate the Program based on compliance with the Agreement, semi-annual reports received from Organization, and on-site monitoring of client and service-based data.
- B. Method of Payment: City shall reimburse Organization for all allowable costs and expenses incurred in providing the Program during the Agreement period, not to exceed the total sum of Seven Hundred Fifty Thousand Dollars (\$750,000).

The City may, at any time and in its absolute discretion, elect to suspend or terminate payment to Organization, in whole or in part, under this Agreement or not to make any particular payment under this Agreement in the event of unsatisfactory performance or noncompliance. Reimbursement shall be initiated quarterly, or other time period approved by the City, upon submission of invoices and appropriate documentation

### **14. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS**

City and Organization bind themselves, their successors and assigns to all covenants of this Agreement.

- A. The relationship of Organization to City is that of an independent contractor. Organization has full rights to manage its employees subject to the requirements of the law. All persons employed by Organization in connection with this Agreement shall be employees of Organization and not employees of City in any respect. Organization shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.
- B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written City approval.
- C. No subcontractor of Organization will be recognized by City as such. All subcontractors are deemed to be employees of Organization, and Organization agrees to be responsible for their performance and any liabilities attaching to their actions or omissions.

- D. Organization will monitor any subcontractors to ensure compliance with the terms and conditions of this Agreement and provide records of their compliance as requested.
- E. Organization assures that the subcontractor(s) maintain(s) current licensure and indemnity insurance appropriate for obligations undertaken by subcontractor(s) and provides copies of such to City.
- F. Organization will provide City with records of reimbursement to subcontractor(s) for obligations incurred under subcontract.
- G. City has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms of this Agreement.
- H. Organization shall “hold-back” a ten percent (10%) retention from invoice submissions from subcontractors. Retention funds shall be paid out to subcontractors after a Notice of Completion has been recorded for at least 35 days, or until all lien releases are received, and all local, federal, and state requirements have been certified and completed.

## 15. COMPLIANCE WITH LAW

- A. Compliance: Organization shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in **Exhibit D**, titled “**Special Grant Conditions**”, attached hereto and incorporated herein by this reference.
- B. Assurances: Failure Organization, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve Organization of its responsibility to adhere to same and Organization herein acknowledges this responsibility. Organization shall hold City, its City Council, officers, employees and boards and commissions harmless from Organization's failure(s) to comply with any requirement imposed on Organization by virtue of the utilization of City funds. Organization shall reimburse City for any disallowed costs and/or penalties imposed on City because of Organization's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

## 16. INTEGRATED DOCUMENT

This Agreement embodies the Agreement between City and Organization and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

## **17. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Organization 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 Organization receipt of funds pursuant to this Agreement – including claims of any kind by Organization's employees or persons contracting with Organization to perform any portion of the Scope of Work and Performance Measures as outlined in **Exhibit A** – 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. Organization'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 Organization, against City (either alone, or jointly with Organization), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Organization 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, Organization 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 Organization's responsibilities under the Act.

## **18. WHEN RIGHTS AND REMEDIES WAIVED**

In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of Organization, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to City or Organization with respect to such breach or default.

## **19. TERMINATION**

- A. In accordance with 2 CFR § 200.338, the City may suspend or terminate this Agreement if the Organization materially fails to comply with any terms of this Agreement, which include, but are not limited to;

- i. Organization fails to comply with existing conditions of the Agreement; or,
  - ii. Organization refuses to accept any additional conditions that may be imposed by City or the Federal government; or,
  - iii. With receipt by City of any information that indicates a failure or deficiency by Organization to comply with any provision of this Agreement or provide unsatisfactory service, the City shall have the right to require corrective action to enforce compliance with such provision; or,
  - iv. Organization fails to implement required corrective actions in a timely and sufficient fashion.
- B. Termination for Convenience: Consistent with the applicable section of 24 CFR § 570.503 and 2 CFR § 200.326, City or Organization may terminate or suspend this Agreement in whole or in part when both Parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds.
- C. Upon Suspension or Termination Organization Shall
- i. Not incur new obligations and shall cancel as many outstanding obligations as possible; and,
  - ii. Be paid only for services actually rendered to City to the date of such suspension or termination; provided, however, if this Agreement is suspended or terminated for fault of Organization, City shall be obligated to compensate Organization only for that portion of Organization's services which are of benefit to City; and,
  - iii. Turn over to City immediately any and all copies of studies, reports and other data, prepared by Organization or its subcontractors, whether or not completed, if any, in connection with this Agreement; such materials shall become property of City. Organization, however, shall not be liable for City's use of incomplete materials or for City's use of complete documents if used for other than the services contemplated by this Agreement; and,
  - iv. Act in accordance with the Closing Out Procedure.

## **20. CLOSING OUT PROCEDURE**

- A. Organization is responsible for City's receipt of final billing by after the completion of the Agreement period. Any amount of the grant remaining unbilled after the applicable date will be reprogrammed by City.

- B. City is not liable for any Organization expenses incurred after the Agreement period of this Agreement.
- C. Closing Out does not impair the City's right to subsequently require repayment by Organization for disallowed costs or other adjustments, or any other City costs and expenses related to this Agreement or the enforcement thereof.

## **21. THE CAPTIONS**

The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

## **22. NO THIRD-PARTY BENEFICIARY**

This Agreement shall not be construed or deemed 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 hereunder for any cause whatsoever.

## **23. SEVERABILITY**

In case any one or more of the provisions contained herein 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.

If any part of this Agreement is for any reason found to be unenforceable by a court of competent jurisdiction, all other parts nevertheless remain enforceable. CITY and Organization agree that to the extent that the exclusion of any unenforceable provisions from this Agreement affects the purpose of this Agreement, then the parties shall negotiate an adjustment to this Agreement in order to give full effect to the purpose of this Agreement or either party may terminate this Agreement.

## **24. NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Organization have the authority or power to pledge the credit of City or incur any obligation in the name of City. Organization shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

## **25. NO USE OF CITY NAME OR EMBLEM**

Organization 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.

**26. VENUE**

In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, Santa Clara Division.

**27. ORGANIZATION FINANCIAL DISCLOSURE REQUIREMENTS**

Organization services to be rendered under the provisions of this Agreement are excluded from the requirement of filing a Financial Disclosure Statement by Title 2, California Code of Regulations, Section 18700 (2)(A) and (B).

**28. CONFLICT OF INTEREST**

Organization certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Organization and that no person associated with Organization has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Organization 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. Organization will advise City if a conflict arises.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

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: \_\_\_\_\_

\_\_\_\_\_  
Glen R. Googins  
City Attorney

\_\_\_\_\_  
Jōvan D. Grogan, City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**  
a California nonprofit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: Priscilla J. Haynes

Title: Executive Officer

Local

Address: 890 Main Street

Santa Clara, California 95050

Email

Address: phaynes@scmrf.org

Telephone: (408) 374-9511

Fax: \_\_\_\_\_

“ORGANIZATION”

**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT A**  
**SCOPE OF WORK AND PERFORMANCE REQUIREMENTS**

1.01 Purpose of Project

Organization shall implement this Agreement in accordance with the applicable provisions of Title I of the Housing and Community Development Act of 1990, as amended, the federal regulations as set forth in 24 CFR Part 570, written interpretations, or requirements by the Department of Housing and Urban Development (HUD), and all other rules and regulations pertaining thereto. All these elements shall be collectively called "CDBG".

The purpose of this Project is to modernize the aging elevators at 890 Main Street (a.k.a, Liberty Tower) constructed in 1973. The scope of work will encompass elevator modernization/replacement and improvements to the related systems.

**Scope of Work**

***Electrification***

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

24/7 Emergency Communications which meets the intent of IBC 2018 and ASME A17.1 2019 code. In addition to the two-way audio communication, it allows for text based two-way communication between the elevator cab and a Customer Care Center as well as means to visually verify if the cab is occupied when an emergency call is placed.



***Fixtures & Doors***

New signalization. New door panels that are UL fire rated to 1.5 hours.

A new car door operator shall be installed and arranged to automatically open and close the car door panel. The opening and closing shall be made smoothly and shall be cushioned at both final limits of travel. The door operator shall be arranged so that, in the event of a power failure of the operating circuits, the car doors cannot be readily opened by hand from within the elevator cab. The elevator shall not be able to move away from a landing until the car door panel is fully closed. The car door shall be equipped with a contact, which will prevent operation of the car unless the car door is closed. The contact shall be of the approved type and tested as required by code.

***Shaft Equipment***

New guide shoes and buffers. Buffers will be of the proper capacity rating and stroke as required by Code.

***Hydraulic Equipment***

New field pipe and/or accessories

**Power Unit**

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

**Jack Unit**

The elevator will be raised to a convenient point in the hoist way and then secured. The piston will be disconnected and lowered until it rests on the cylinder head and all oil from the hydraulic line and tank will be drained from the system. The existing piston and cylinder will then be removed.

1.02 Location of Project

Unless otherwise indicated, the Project specified below will be offered at the following location:

<b><i>Site Name</i></b>	<b><i>Site Address</i></b>
Liberty Tower	890 Main Street Santa Clara, CA 95050

1.03 Project National Objective and Eligibility

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR § 570.208.

1.04 HUD Objectives and HUD Outcomes

The Organization certifies that the activity(ies) carried out under this Agreement will **Create Suitable Living Environments** by meeting the Consolidated Plan Goal of **Providing Affordable Housing** through rehabilitation of affordable multi-family rental housing.

<b>Matrix Code</b>	14B
<b>National Objective</b>	LMH Low/Mod Housing
<b>Accomplishment type</b>	Rehab; Multi-Unit Residential
<b>HUD Objective</b>	Provide Affordable Housing
<b>HUD Outcome</b>	Create Suitable Living Environments

Project meets the National Objective of benefiting low- and moderate-income persons. Eligible clients under this Agreement shall be senior residents of the City of Santa Clara. Seniors are recognized by HUD as a population of presumed benefit.

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1.05 Project Timeline.

The timeline below constitutes the measurable goals by which Project performance will be evaluated. Activities are identified for each type of Project Identify target dates (month/year) for all items that apply to the Project. If an activity is already completed, write the date (month/year) that it was completed.

<b>Work Phase</b>	<b>Completion Date</b>
<b>Pre-Development Phase.</b>	
Complete Environmental Review process	<b>DONE</b>
Complete/submit the draft of Design and Architecture Drawing Plan and Project Specifications to City for review and approval (if applicable)	<b>n/a</b>
Housing approves the Project Plan/Drawing	<b>n/a</b>
Submit the Final Architecture Drawing/Plan to the Building Department to review and issuance of permits	<b>n/a</b>
Pre-Construction Meeting with Grantee – Discuss bid process, procurement, project, timeline, etc.	<b>6/1/2023</b>
<b>Constructions Phase.</b>	
Modify Project Specifications for Bid Package	<b>6/15/2023</b>
Prepare Bid Package for construction	<b>6/30/2023</b>
Provide the Prevailing Wage Decision for bid package	<b>7/1/2023</b>
Place a short advertise for bids in newspapers (at least 21 days before bid opening)	<b>7/15/2023</b>
Pre-Bid Conference or Walk-Thru (Not Mandatory)	<b>8/1/2023</b>
Bid opening	<b>8/15/2023</b>
Select the Bidder	<b>8/30/2023</b>
Pre-Construction meeting (Mandatory for parties involved)	<b>9/15/2023</b>
Complete Construction Contract (AIA Agreement)	<b>10/15/2023</b>
Sign Contract (AIA Agreement)	<b>10/30/2023</b>
Issue Notice to Award/Proceed	<b>11/10/2023</b>
Obtain necessary permits	<b>11/30/2023</b>
Begin construction	<b>12/01/2023</b>
Finish construction	<b>02/28/2024</b>
Building Permit sign-off	<b>03/15/2024</b>
Issue and Record the Notice of Acceptance or Notice of project completion (send a conforming copy to Housing)	<b>03/31/2024</b>

#### 1.06 Project Implementation.

Organization shall have full responsibility to procure and to monitor the performance of contractors and subcontractors hired, with technical assistance provided by the City as needed, subject to the following requirements:

- 1) Organization or Organization's representative shall describe its method of procuring contractors. This procurement plan shall be subject to written approval by City.
- 2) Organization shall prepare a scope of work, describing the various development and construction activities to be undertaken. This scope of work shall be approved, in writing, by City, before any financial commitments to contractors are entered into by Organization.
- 3) Organization shall develop bid/proposal documents for all contractors. These documents shall be approved by the City, in writing, prior to public release.
- 4) Organization shall obtain required permits and plan approvals before undertaking any construction work.
- 5) The City shall comply with state prevailing wage reporting requirements. Contractors and subcontractors shall be registered with the Department of Industrial Relations (DIR) prior to submitting any bid documents.

#### 1.07 Reporting Requirements.

On a format prescribed by the City, the Organization must submit the following reports:

- 1) Semi-Project Status Reports. At the end of the 2<sup>nd</sup> and 4<sup>th</sup> quarters, Organization shall provide the Project Status Report to the Housing and Community Services Division an updated Project status until the Project completes.
- 2) Reporting Schedule. All required reports shall be submitted to the no later than fifteen (15) calendar days after the end of the second quarter and no later than fifteen (15) calendar days after the end of the fourth quarter.
- 3) Annual Report. At the end of each fiscal year during the 10-year use period, Organization shall submit an Annual Report that certifies clients benefiting from services provided on site continue to be Low- and Moderate-Income persons.

- 4) Unduplicated Participants. For purposes of this Agreement, **UNDUPLICATED PARTICIPANTS** shall be defined as participants who receives more than one service offered by this project, and at least once a year but who may not be counted more than once in that year. Organization shall retain records documenting eligibility. Such records shall include family size, total household income, gender head of household, race, ethnic and disability data.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Total Client serve after project completion</b>	101	101	101	101	101	505

1.08 Cost Reimbursement.

Project will be reimbursed based upon the percentage of work completed on approved invoices submitted pursuant to this Agreement. Requests for reimbursement will be made on a form and in manner prescribed by the City under provisions as set forth in **EXHIBIT B**, entitled “Budget Summary and Payments Requirements”.

1.09 Final Payment/Close-Out Project Requirements

Organization will ensure that the following documentation is provided to the City in a timely manner:

- 1) Closeout Construction Certificate of Substantial Completion
- 2) Complete Certification of Completion Form
- 3) Certification of Final Design Letter
- 4) Closeout Construction Insurance Notification
- 5) Closeout Construction Certificate of Occupancy Closeout Construction
- 6) Closeout Construction Photos & Brief Description
- 7) Unconditional Lien Release for Final Payment from the General Contractor and all the Sub-Contractor(s)
- 8) Recorded of Notice of Completion Report
- 9) Final Progress Report: (The report shall include a summary of progress toward the achievement, a list of significant results (positive or negative).

**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE  
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AND  
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT B**

**BUDGET SUMMARY AND PAYMENT REQUIREMENTS**

1.01 Budget Summary.

<b>BUDGET CATERGORY</b>	<b>CDBG Request</b>	<b>Other Funds</b>	<b>Total Project Cost</b>
<b><i>Predevelopment Costs</i></b>			
Environmental Review Assessment			
Planning Design, or Architectures Costs		25,550	25,550
Permits Fees		TBD	TBD
Construction Manager costs			
Admin costs			
<b>SUBTOTAL</b>			
<b><i>Construction Costs</i></b>			
Construction Materials Costs			
Bolt-in Fixtures Costs			
General Construction Costs			
Landscaping Costs			
Site Improvements	750,000	75,000	825,000
Plumbing,			
Electrical			
<b>SUBTOTAL</b>	<b>750,000</b>	<b>100,550+</b>	<b>850,550+</b>
<b><i>Admin &amp; Project Delivery Costs</i></b>			
Addendum 1			
Addendum 2			
Addendum 3			
<b>SUBTOTAL</b>			
<b>TOTAL PROJECT COSTS</b>	<b>750,000</b>	<b>100,550+</b>	<b>850,550+</b>

\*Attach one page listing construction components included in the Primary Construction and/or elements included in the Other Construction category (physical improvement projects only). TBD – Permit Fees and Plan Check fees not identified as of yet

\*\*Federally funded projects must meet all ADA requirements.

1.02 Payments Process.

- 1) City agrees to reimburse Organization for the expenses incurred as set forth in this Agreement in an amount of money not to exceed the amount set forth in this Agreement. Such sum shall be expended and paid by City to Organization on a reimbursement basis for expenses actually incurred and paid by Organization during the term of this Agreement for the cost categories appearing in **EXHIBIT B**, as described in subsection B below.
- 2) Payments to Organization shall be made within thirty (30) days of:
  - a. Receipt by City of statement or statements in a form approved by City specifying in detail the costs incurred by and paid by Organization during the month for which payment is requested; and,
  - b. Documents evidencing these costs, including but not limited to, paid invoices, and the determination by City, in its sole discretion, that expenses for which Organization seeks reimbursement can properly be paid under this Agreement and such statement(s) and supporting documents reasonably evidencing that the expenses have been incurred and paid by supporting documents reasonably evidencing that the expenses have been incurred and paid by supporting documents reasonably evidencing that the expenses have been incurred and paid by Organization. In making such determination, City may, but need not, rely upon the certification by Organization that the items appearing on said statement and supporting documents are eligible items for reimbursement under this Agreement. Such determination by City shall in no way constitute a waiver by City of its right to recover from Organization the amount of money paid to Organization on any items which is not eligible for payment under this Agreement.

**CONTRIBUTION AGREEMENT  
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**EXHIBIT C**

**INSURANCE REQUIREMENTS**

Without limiting the Organization's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Organization 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:

\$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 Organization; 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 Organization 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.

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, Organization 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 Organization 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 Organization 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 Organization'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 Organization 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 Organization'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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Organization and City agree as follows:

1. Organization 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 Organization, provide the same minimum insurance coverage required of Organization, except as with respect to limits. Organization 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. Organization 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. Organization 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 Organization 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 Organization in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Organization, 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. Organization 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

Organization 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, Organization 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 [Housing & Community Services]

Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: ctsantaclara@ebix.com

#### H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Organization 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.

**CONTRIBUTION AGREEMENT  
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**EXHIBIT D  
SPECIAL GRANT CONDITIONS**

The Organization, its contractors and subrecipients shall comply with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR Part 200 the Uniform Administrative requirements, as well as all state laws, regulations and department guidelines applicable to the activities set forth.

**SECTION 1 GENERAL GRANT CONDITIONS**

- 1.01 Definitions. As used herein, “HUD” means United States Department of Housing and Urban Development. “Project Area” for the purposes of this **EXHIBIT D** means the City of Santa Clara.
- 1.02 Compliance with Applicable Federal Regulations. Organization agrees to comply with the requirements of Title 24 CFR Part 570, including subpart K of these regulations, except that (1) the Organization does not assume the City’s environmental responsibilities described in 24 CFR § 570.604; and (2) the Organization does not assume the City’s responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Organization also agrees to comply with all other applicable Federal, state and local laws, regulations and policies governing the funds provided under this Agreement. The Organization further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- 1.03 Applicable Federal Civil Rights Laws and Executive Orders. In providing the services and work set forth in this Agreement, Organization will carry out its work in a manner that will permit full compliance by City and strict adherence by Organization with the following:
- a. Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and
  - b. The Housing and Community Development Acts of 1974 and 1977, as amended, which provide that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available pursuant to said acts; and

- c. Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act) which prohibits discrimination in the sale, rental, and financing of housing and the provision of brokerage services because of race, color, religion, sex, sexual orientation, actual or perceived gender identity, national origin, handicap, or familial status; and
- d. Executive Order 11063, as amended by Executive Order 12259, which provides for equal opportunity in housing and related facilities provided by federal financial assistance. This order and its implementing regulations require the Department of Housing and Urban Development to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental or other disposition of residential property assisted with Federal loans, advances, grants or contributions; and
- e. Executive Order 11246, (as amended by Executive Orders 11375 and 12086 and further amendments) Equal Opportunity Under HUD Contracts and HUD-assisted Construction Contracts, which requires that City and Organization, and their respective subcontractors, agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, or national origin; and
- f. Section 3 of the Housing and Community Development Act of 1968 Pertaining to Employment Opportunities for Lower-Income Persons (12 U.S.C. 1701u), requires that, to the greatest extent feasible on projects financed by HUD, a subrecipient must:
  - i. Provide opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project, are given to persons residing in the Santa Clara metropolitan area with household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD. Where feasible, priority should be given to residents within the service area of the Project or the neighborhood in which the Project is located who have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% AMI of that area; and
  - ii. Award contracts for work undertaken in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for persons residing within the metropolitan area in which the CDBG-funded

Project is located and have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD. Where feasible, priority should be given to business concerns that provide economic opportunities to residents within the service area or the neighborhood in which the Project is located who have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% AMI of that area; and

- iii. Self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low-income persons when an award of \$100,000 or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction projects, and/or \$100,000 or more to subcontractors: and
- iv. At a minimum, provide documentation on federal compliance, reporting and outreach efforts; and
- g. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published which specify that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance; and
- h. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect which provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal assistance; and
- i. Presidential Executive Order 13166 (“Improving Access to Services for Persons with Limited English Proficiency”), and
- j. The requirements relating to Minority-Owned and Women-Owned Business Enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637, a subrecipient must exercise affirmative outreach efforts when soliciting bids for service or construction when the Federal funds received by the subrecipient or subcontractor exceeds \$10,000 and when the subrecipient or subcontractor is a for-profit organization/ business; and

- k. The Uniform Federal Accessibility Standards set forth in 24 CFR Part 40, Appendix A; and
- l. Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability in employment and in public accommodations and commercial facilities and defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities where such removal is readily achievable – that is easily accomplishable and able to be carried out without much difficulty or expense; and,
- m. The provisions of 24 CFR Part 24, relating to the employment, engagement of services, awarding of contracts, or funding of any grantee or sub during any period of debarment, suspension, or placement in ineligibility status; and,
- n. Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846 and implementing regulations at 24 CFR Part 35; and,
- o. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*) This law provides that any grant under section 106 shall be made only if the City certifies to the satisfaction of the Secretary of HUD that the Organization will, among other things, affirmatively further fair housing; and,
- p. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*, particularly 42 U.S.C. 6101 *ets. seq.*, and 29 U.S.C. 794) and further amendments, which mandates that no person on the grounds of race, color, national origin, sex, sexual orientation, actual or perceived gender identity, age or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with CDBG funds; and,
- q. Architectural Barriers Act of 1968 requires that federally funded buildings and other facilities, as defined in 24 CFR § 40.2 and 40 CFR § 101-19.602(2), to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people; and,
- r. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must

include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence; and,

s. Uniform Accessibility Standard, at 24 CFR Part 40, Appendix A, as the relate to substantial rehabilitation or conversion; and,

t. Procurement of Recovered Materials: See 2 CFR 200.322.

1.04 Relocation and Real Property Acquisition. Organization shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and 24 CFR § 570.606(b); and (b) the requirements of 24 CFR §570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. Under the URA and the Plan, the subrecipient must provide relocation assistance to persons (families, individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. All property occupants must be issued certain notices on a timely basis. The Plan also required the one-for-one replacement of any occupied or vacant occupiable low/moderate-income housing that is demolished or converted to another use in connection with a CDBG-assisted project. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

1.05 Political Reform Act. Organization shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified at California Government Code Section 87000, *et seq.*) Organization will promptly advise City of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

1.06 Flood Disaster Protection. Notwithstanding any other provision of this Agreement, Organization shall comply with the Flood Disaster Protection Act of 1973, as amended (P.L. 93-234), and the standards issued thereto. No portion of the moneys to be paid to Organization pursuant to this Agreement shall be used for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in an area not in compliance with the requirements for participation



in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any of said moneys for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001, et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973, as amended. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

- 1.07 Equal Employment Opportunity. In providing the work and services herein specified, Organization shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Organization shall take action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Organization shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or the City setting forth the provisions of this nondiscrimination clause. Organization shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Organization shall incorporate the foregoing requirements of this paragraph 1.07 in all of its contracts for program work, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.
- 1.08 Prohibition of and Elimination of Lead-Based Paint Hazard. Notwithstanding any other provision, Organization agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR § 570.608 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including painting, pursuant to which such federally assisted construction or

rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.

- 1.09 Compliance With Clean Air and Water Acts. This Agreement is subject to 42 U.S.C. 1857, *et seq.*, and 33 U.S.C. 1251 *et seq.*, and the regulations issued pursuant thereto. Therefore, Organization agrees as follows:
- a. Organization stipulates that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20; and,
  - b. Organization agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder; and,
  - c. Organization stipulates that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities; and,
  - d. Organization agrees that criteria and requirements in subparagraphs (a) through (d) of this section 1.09 will be included in every non-exempt subcontract and Organization shall take such action as the City or HUD requires as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

- 1.10 Federal Labor Standards (i.e., Davis Bacon Act) Provisions. Except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) families, Organization and all subrecipients engaged under contracts in excess of Two Thousand Dollars (\$2,000) for the construction, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of

Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Organization shall not award any contract or subcontract which is otherwise in compliance with this Agreement to any person or subcontractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

- 1.11 Nondiscrimination Under Title VI of the Civil Rights Act of 1964. Organization under this Agreement shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Organization shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in the use of occupancy of such land or any improvements erected or to be erected thereon, and providing that Organization and the United States are beneficiaries of and entitled to enforce such covenant. Organization, in providing the services and work it is to provide, pursuant to this Agreement, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
- 1.12 Interest of Certain Federal Officials. No member of, or Delegate to, the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit arising from same.
- 1.13 Conflict of Interest. Under 24 CFR Part 570.66, no officer, employee or agent of City or Organization who exercises any functions or responsibilities with respect to the CDBG Program or to the services and work to be performed by Organization pursuant to this Agreement, during such officer's, employee's or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Organization shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.

- 1.14 Prohibition Against Payments of Bonuses or Commissions. The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HUD approval of the application for such assistance, or HUD approval of applications for additional assistance, or any other approval or concurrence of HUD required under this Agreement, Title I of the Housing and Community Development Acts of 1974 or 1977, or HUD regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.
- 1.15 Copyrights. If this Agreement results in a book or other copyrightable material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- 1.16 Patents. Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to City and HUD for determination by HUD as to whether patent protection on such invention or discovery will be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.
- 1.17 Political Activity.
  - a. Partisan Activity Prohibited. No funds provided in this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this Agreement with the following: (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity.

Participants employed in the administration of the CDBG Plan and/or Program, and participants whose principal employment is in connection with an activity financed by the CDBG Program or its proceeds are subject to limitation on political activities under the Hatch Act (5 U.S.C. 1502(a), 18

U.S.C. 595). All participants may take part in non-partisan activities outside working hours

b. Lobbying Prohibited.

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Organization, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Organization shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The Organization shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

1.18 Guidelines on Church-Related Activities. In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of public services with CDBG funds pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the Organization agrees that, in connection with the public services performed under this Agreement:

- a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

- b. It will not discriminate against any persons applying for public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion; and,
- c. It will provide no inherently religious activities, such as worship, religious instruction, or religious proselytizing, as part of the programs or services funded under this Agreement and will only conduct such activities in a separate time or place; and,
- d. It will exert no other religious influence in the provision of public services and participation in religious activities by any beneficiaries of those services shall be voluntary; and,
- e. The funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Organization and in which the public services are to be provided, provided that, minor repairs may be made if such repairs (1) are directly in a structure used exclusively for non-religious purposes, and (2) constitute in dollar terms only a minor portion of expenditure for the public services.
- f. Construction or Rehabilitation of Facilities. Block grant fund recipients shall not use any funds to construct, rehabilitate, maintain, or restore religious structures (including those which may be historic properties) currently used for religious purposes. Block grant funds shall not be used to construct, rehabilitate, maintain, or restore structures or other real property owned by “pervasively sectarian” organizations. Block grant funds shall not be used to assist a religious organization in acquiring property. These prohibitions apply whether or not the property is used for religious services or instruction or is used in any other way for religious activities.
- g. Public Services. Block grant funds may be used for the provision of public services under the following conditions:
  - i. The public services provided are exclusively non-religious in nature and scope; and,
  - ii. There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services; and,
  - iii. There is no religious discrimination in terms of employment or benefits under the public services; and,
  - iv. The CDBG funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be

provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public services, (b) are located in a structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the CDBG expenditure for the public services.

- 1.19 Resident Aliens. (24 CFR § 570.613) Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for the benefits under covered activities funded by the CDBG Program. “Covered activities” are activities meeting the requirements of 24 CFR § 570.208(a) that either (1) have income eligibility requirements limiting benefits exclusively to low- and moderate-income persons, or (2) are targeted geographically or otherwise to primarily benefit low- and moderate-income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.
- 1.20 Environmental Requirements. (24 CFR § 470.604) Organization is not allowed to incur program expenses until the City has performed an environmental review of the proposed activities, received the release of funds, and provided the Organization with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).
- 1.21 Historic Preservation. Organization shall not violate provisions of the Historic Preservation Act and related laws and Executive Orders. Before any commitments are made to make any physical improvements or alterations or demolition of any building, Organization shall receive assurances from the City that the Organization is in compliance.
- 1.22 If Organization receives State or City funds, Organization shall, in the use of those State or City funds adhere to the applicable Federal laws, regulations, policies, guidelines or requirements, herein specified, only insofar as adherence thereto would not be prohibited by valid City or State laws, regulations, policies, guidelines or requirements.

## **SECTION 2. FINANCIAL OBLIGATIONS OF ORGANIZATION**

- 2.01 Fiscal Responsibilities of Organization. Organization agrees to comply with 2 CFR § 200.49 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. Organization shall:
  - a. Appoint and submit to City, the name of a fiscal agent who shall be responsible for the financial and accounting activities of the Organization, including the receipt and disbursement of Organization funds.

- b. Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of City.
- c. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to contracts, invoices, time cards, cash receipts, vouchers, cancelled checks, bank statements and/or other official documentation evidencing in proper detail the nature and propriety of all charges.
- d. Submit to the City, within ten (10) working days of the end of the preceding month, requests for reimbursement, together with documentation required by City.
- e. Perform an independent fiscal audit annually in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed, and funds granted and expended relating to this Agreement, in a form sufficient to identify, track, and correlate such funds. The Costs for such audits shall be at Organization's expense, unless otherwise provided for in this Agreement. Copies of the completed audits must be provided to the City.
- f. Be liable for repayment of disallowed costs. Disallowed costs may be identified by the City through audits, monitoring, or other sources. Organization shall be afforded the opportunity to respond to any adverse findings, which may lead to disallowed costs. The City shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200.
- g. Administer all programs in conformance with 2 CFR Part 200 Subpart E, Cost Principles. These principles shall be applied for all costs incurred whether charged in a direct or indirect basis.
- h. If indirect costs are charged, the Organization will develop an indirect cost allocation plan for determining the appropriate Organization's share of administrative costs and shall submit such plan to the City for approval.
- i. Certify insurability subject to City approval as outlined in **EXHIBIT C** entitled "INSURANCE".
- j. Submit to HUD or City at such times and in such forms as HUD or City may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.
- k. Submit for approval by the City any lease agreement either contemplated or in effect, which would be funded under this Agreement.



2.02 Records, Reports and Audits of Organization. Organization shall comply with all applicable federal Uniform Administrative Requirements as delineated in 24 CFR § 570.502:

- a. Establishment and Maintenance of Records. Organization shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
  - i. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and
  - ii. All other matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the City.
- b. Preservation of Records. Organization shall preserve and make available its records:
  - i. For the period of five (5) years after the affordability period under this Agreement; or,
  - ii. For such longer period, if any, as may be required by applicable law; or,
  - iii. If this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting final settlement.
- c. Records to be Maintained. The subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR § 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
  - i. Records providing a full description of each activity undertaken; and,
  - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program; and,
  - iii. Records required to determine the eligibility of activities; and,
  - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance; and,
  - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program; and,

- vi. Financial records as required by 24 CFR § 570.502 and 2 CFR Part 200; and,
  - vii. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- d. Examination of Records; Facilities. At any time during normal business hours, and as often as may be deemed necessary, Organization agrees that HUD and/or City, and/or any of their respective authorized representatives shall:
- i. For a period of five (5) years after the affordability period under this Agreement; or,
  - ii. For such longer period as may be required by applicable law; or,
  - iii. If this Agreement is completely or partially terminated, for a period of five (5) years from date of any resulting settlement; or
  - iv. Have access to and the right to examine its plants, offices, and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. Organization also agrees that HUD and/or City, or any of their respective authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. Notwithstanding anything in this Agreement to the contrary for monitoring purposes, City shall not require access to any information of Organization mutually determined by the parties hereto to be proprietary.
- e. Audits. 2 CFR § 200.500 sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.
- i. Funds may be set aside in Organization's budget in an amount equal to City's fair share of Organization's cost of an independent audit, if required, with prior approval from City. A separate line item will be established.
  - ii. Organization shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this Agreement calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source.

- iii. The audit must be completed and sent to the City's Department of Housing staff within one hundred fifty (150) days from the end of Organization's fiscal year.
- iv. Audit Standards. The independent fiscal audit shall conform to generally accepted governmental auditing principles. Such audits shall identify the funds received and disbursed under this Agreement and include the following components:
  - (a) Balance Sheet or Statement of Financial Position;
  - (b) Statement of Support, Revenue, and Expenses and Changes in Fund Balances or Statement Activities;
  - (c) Statement of Functional Expenses;
  - (d) Statement of Auditor's Report;
  - (e) Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor;
  - (f) Organization shall also submit to the agency a written management response to the findings of the Internal Control Matters.
- f. Single Audits. 2 CFR § 200.501 states that Organizations that expend \$750,000 or more of Federal financial assistance in a fiscal year (in aggregate, from all funding sources), in addition to conducting normal financial audit procedures, the Organization's independent public accountant certified to practice in the State of California shall perform tests to ascertain that:
  - i. Expenditures submitted for reimbursement are allowable under 2 CFR Part 200; and,
  - ii. Expenditures are in compliance with the grant agreements between the City and Organization; and,
  - iii. Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and Appendix XI to 2 CFR Part 200 — Compliance Supplement;
  - iv. The single audit must include the following components:

- (a) *Balance* Sheet or Statement of Financial Position;
  - (b) Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
  - (c) Statement of Functional Expenses
  - (d) Schedule of Expenditures of Federal Awards;
  - (e) Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
  - (f) Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
  - (g) Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
  - (h) Schedule of Findings and Questioned Costs;
  - (i) Summary of Schedule of Prior Audit Findings;
  - (j) Corrective Action Plan;
  - (k) Data Collection Form.
- g. Organization's independent public accountant, certified to practice in the State of California, shall perform reviews of Organization internal control systems and Organization's compliance with applicable laws, regulations and requirements of this Agreement.

The independent public accountant shall issue a report on the financial statements and the Schedule of Governmental Financial Assistance, a report on the study and evaluation of internal controls and a report on Organization compliance. The three reports may be bound into a single report or presented at the same time as separate documents.

- h. Should Organization not enter into an agreement with an independent public accountant certified to practice in the State of California, or should an audit not be done on a timely basis, City, at its sole discretion, may enter into an agreement with an independent public accountant certified to practice in the State of California to perform the audit.
- i. City Audits. City may perform an independent audit. Such audits may cover program as well as fiscal matters. Organization will be afforded an opportunity

to respond to any audit findings and have the responses included in the final audit report. Costs of such audits will be borne by City.

- j. Disallowed Costs. Organization is liable for repayment of disallowed costs as determined by City, in its sole discretion, and/or HUD. Disallowed costs may be identified through audits, monitoring or other sources. Organization shall be afforded the opportunity to respond to any adverse findings which may lead to disallowed costs. Director shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200 and applicable HUD regulations.

### **SECTION 3. OTHER REQUIREMENTS OF GRANTEE**

3.01 Client Data. The Organization shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3.02 Disclosure. The Organization understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Organization's or subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

To the extent allowed under law, City agrees to maintain the confidentiality of any information regarding applicants for services offered by the Program pursuant to this Agreement or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Program through subcontracts.

3.03 Close-outs. The subrecipient's obligation to the City shall not end until all close-out requirements are completed pursuant to 24 CFR § 570.509. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

- 3.04 Program Income. The Organization shall report all program income (as defined at 24 CFR § 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the subrecipient shall comply with the requirements set forth at 24 CFR § 570.504. By way of further limitations, the subrecipient may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the City at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.
- 3.05 Indirect Costs. If indirect costs are charged, the Organization will develop an indirect cost allocation plan for determining the appropriate Organization's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.
- 3.06 Use and Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR §§ 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:
- a. The subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
  - b. Real property under the subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR § 570.208 until five (5) years after expiration of the affordability period or such longer period of time as the City deems appropriate. If the Organization fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the City. The subrecipient may retain real property acquired or improved under this Agreement after the expiration of the ten-year period or such longer period of time as the City deems appropriate.
  - c. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG Program or (b) retained after compensating the City an amount equal

to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

- 3.07 Hatch Act. The Organization agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- 3.08 HMIS Participation. All agencies providing homeless services in receipt of funding from the City's CDBG Program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the County of Santa Clara Office of Supportive Housing ("CSC OSH"), to ensure the agency has the mechanisms and staffing in place to use the system appropriately and in a timely manner. Funded agencies are required to collect demographic information on all clients served by the funded projects, the services provided, and consent to release the information to CSC OSH and the City's Housing and Community Services Division.

Funded projects must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the City on all universal and program level elements of the HUD Data Standards. These statistical reports must be generated directly out of HMIS. No adjustments to the HMIS reports will be accepted and it is therefore incumbent on the agency to ensure that the information they put into HMIS is accurate and up to date. City will measure performance and outcomes relating to these funded projects through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the City. The City will request from the HMIS Administrator, acknowledgement of the recipient agencies' certificate of compliance with HUD privacy and security standards, acknowledgement of use of the Shelter Point program, and statistics on the percentage of Universal and Top Level Program data captured.

- 3.09 Language Access Plan (LAP). Organization shall fully implement and comply with the Language Access Plan ("LAP") as approved by City to ensure that limited English proficient clients have equal access to community programs and services.
- 3.10 Organization shall include in all outreach and marketing materials, including public websites, an affirmative statement that it will provide services or benefits to all persons, race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin, or familial status.

**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE  
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AND  
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**EXHIBIT E**

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO  
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA, AND  
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

1.01 Ethical Standards For Contractors.

Termination of Agreement for Certain Acts.

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor<sup>1</sup> does any of the following:

- a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation.
- b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a city contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

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<sup>1</sup>For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.



2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The city may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or,
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

I hereby state that I have read and understand the language, entitled “Ethical Standards” set forth in **Exhibit E**. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of “Contractor” contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said “Contractor” category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

**SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

a California non-profit corporation

By: \_\_\_\_\_  
Signature of Authorized Person or Representative

Name: Priscilla J. Haynes

Title: Executive Officer

**ORGANIZATION**

**NOTARY’S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public’s acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity’s complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**CONTRIBUTION AGREEMENT  
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**EXHIBIT F**  
**GUIDELINES FOR MINORITY-OWNED AND WOMEN-OWNED**  
**BUSINESS ENTERPRISES (MBE/WBE)**

Section 281 of the National Affordable Housing Act requires each contractor to prescribe procedures to establish and oversee a minority outreach program for the receipt of all federal housing and community development funds including CDBG, HOME, HOPWA, ESG, Section 108, and BEDI grants.

The program shall include minority and women-owned businesses in all contracting activities entered into by the contractor to facilitate the provision of affordable housing authorized under this Act or any other federal housing law applicable to such jurisdiction.

***Definitions:***

- **The City:** The primary Organization of federal housing and community development funds is the City of Santa Clara.
- **Developer/Contractor/ Subrecipient:** The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of Santa Clara to carry out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/ subrecipient general contract.
- **Minority-Owned Business Enterprise (MBE):** Business primarily (51%) owned, operated, and controlled by one or more members of the following race/ethnicity: Pacific Islander, American Native, African American/Black, American Indian/Alaskan Native, Hawaiian/Pacific Islander, Asian, or Hispanic.
- **Women-Owned Business Enterprise (WBE):** Primarily (51%) owned by one or more females.

***Required Program Participants' Responsibility:***

- 1 The City will ensure that when soliciting bids for service, construction, or maintaining "contractor lists" for developers/contractor/ subrecipient, the City will use the outreach provisions described under "Outreach Criteria."
- 2 The City will require its developers/contractors/ subrecipient to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

***Applicability:***

- When the City makes a grant to a developer/contractor/ subrecipient for services or construction.
- When a developer/contractor/subrecipient's subcontracts for services or construction.
- When the grant received by the developer/contractor/ subrecipient, or subcontractor exceeds \$10,000.
- When the developer/contractor/ subrecipients or subcontractor is a for-profit organization/business, or a nonprofit hire a for-profit subcontractor.

***Steps to Meeting the Reporting Requirements:***

1. If applicable, each developer/contractor/ subrecipient will need to self-certify to the city whether it is an MBE/WBE. A form will be provided to each agency awarded funds and reported annually by the developer/contractor/ subrecipients.
2. Each developer/contractor/ subrecipient will ensure that every subcontractor also self-certifies whether it is a MBE/WBE and this information is reported annually.
3. The city will follow the guidelines for "Outreach" when soliciting bids for developer/contractor/ subrecipient.
4. Each developer/contractor/ subrecipient will follow the guidelines for "Outreach" when soliciting bids for subcontractors and will report these efforts annually to the City.

***Required Outreach Criteria:***

- The Housing and Community Services Division will maintain a list of local MBE/WBE companies and addresses and distribute to all developers/contractors/ subrecipients.
- When developers/contractors/ subrecipient are soliciting bids from subcontractors, they will include in any notice to local newspaper that "Women and Minority Owned Businesses are strongly encouraged to apply." Developers/contractors/subcontractors, when feasible, are strongly encouraged to consider posting in Spanish and Vietnamese newspapers.
- When the Housing and Community Services Division announces Notices of Funding Availability or Community Development Block Grants application availability, efforts will be made to include in local newspaper posting that "Women and Minority Owned Businesses are strongly encouraged to apply" and printed, when feasible, in Spanish and Vietnamese newspapers.

**MINORITY BUSINESS-OWNER ENTERPRIZE/  
WOMEN BUSINESS-OWNER ENTERPRIZE (MBE/WBE)  
(List of Prime and Subcontractor)**

Grantee/ Contractor Name:									
Project Number & Project Name:									
Contact Person:					Phone #:				
Reporting Period: <b>Oct. 1, 20__ - Sept 30, 20__</b>					Program Code:				
Project # or HUD # or dwelling unit #	Prime or Subcontractor (P or S)	Prime or Subs Name	Prime/Sub. Address (City/State/ Zip)	Amount of Prime or Sub. Contract	Type of Trade Code (Select Code# below) 7a.	Prime or Subs. Business Racial/Ethnic (See Code # below) 7b.	Woman Owned Business (Yes or No) 7c.	Sec. 3 (Yes/No) 7d.	Prime or Sub (ID # / Lic. #)
<b>7a: Type of Trade Codes: (Select One)</b> 1 = New Construction 2 = Substantial Rehab. 3 = Repair 4 = Service 5 = Management 6 = Professional 7 = Tenant Services 8 = Education/Training 9 = Architect/Engineer 10 = Other			<b>7b: Racial/Ethnic Codes: (select one)</b> 1 = White Americans 2 = Black Americans 3 = Native Americans 4 = Hispanic Americans 5 = Asian/Pacific Ameri. 6 = Hasidic Jews <b>7c: MBE/WBE: (Yes/No)</b> • <b>MBE:</b> Business primarily (51%) owned, operated and controlled by one or more members of the following race/ethnicity: Pacific Islander, American Native, African American/Black, American Indian/Alaskan Native, Hawaiian/Pacific Islander, Asian, or Hispanic. • <b>WBE:</b> Primarily owned (51%) by one or more females. <b>7d. Sec 3 businesses:</b> Those individuals, companies, corporations, partnerships, businesses, or other entities that are 51% or more owned by persons residing within the Section 3 area.				<b>5: Program Codes</b> (Complete for Housing and Public and Indian Housing programs only): 5 = Section 202 6 = HUD-Held (Management) 7 = Public/India Housing 8 = Section 811		

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**EXHIBIT G  
SECTION 3 GUIDELINES**

Responsibilities and Procedures for Carrying Out the Requirements Under Section 3 of the Housing and Urban Development Act of 1968 Pertaining to Employment Opportunities for Lower-Income Persons.

***Purpose:***

To ensure that, to the greatest extent feasible, projects financed by the United States Department of Housing and Urban Development (HUD) provide lower-income residents within the city the opportunity for employment and training. Additionally, the policy should ensure that awards are made to businesses located or owned by persons residing within the City.

***Definitions:***

- **The City:** The primary Organization of federal housing and community development funds is the City of Santa Clara.
- **Developer/Contractor/** subrecipient: The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of Santa Clara to carrying out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/ subrecipient general contract.
- **Section 3 Area:** Is the entirety of the area located within the incorporated boundaries of the City of Santa Clara.
- **Section 3 resident:** An individual who resides in the Section 3 area whose family income does not exceed 80% of the area median income (AMI), or is a resident of public housing, or is a person with disabilities.
- **Section 3 businesses:** Those individuals, companies, corporations, partnerships, businesses, or other entities that are 51% or more owned by persons residing within the Section 3 area.

***Required Program Participants' Responsibility:***

- The City will ensure that when contracting with developers, contractors, or subrecipient, the City will use the outreach provisions described under "Outreach Criteria."

- The City will require its developers/contractors/subrecipients to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

***Applicability:***

- The grant from the city to the developer, contractor, or subrecipient is for housing rehabilitation, housing construction, or other public construction projects; and
- When a developer, contractor, or subrecipient receives a federal HUD grant in excess of \$200,000 from the city; or
- A subcontractor receives a grant in excess of \$100,000.

***Steps to Meeting the Reporting Requirements:***

1. If applicable, each developer, contractor, or subrecipient, and each subcontractor must self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low and very low-income persons. A form will be provided by the Housing and Community Services to each eligible developer, contractor, or subcontractor which will be requested to be completed annually.
2. Each developer, contractor, or subrecipient must attempt to recruit and hire Section 3 residents or subcontract with Section 3 businesses if it finds the need for additional staff to complete the project.
3. Developers, contractors, and subrecipients, who receive HUD funding, shall seek to participate in a HUD program or other programs that promote training and education of Section 3 residents. A form will be provided by the Housing and Community Services to each eligible developer, contractor, or subcontractor, which will be requested to be completed annually.

***Required Outreach Criteria:***

- When hiring, it is required of all developers, contractors, or subrecipient and subcontractors to attempt to recruit Section 3 residents through local media and advertisement; signs placed at the job site; and notifying community/public/private agencies that work with low-income people.
- When developers, contractors, or subrecipient are subcontracting, they should seek to recruit Section 3 businesses.
- Developers, contractors, and subrecipient, who receive HUD funding, must seek to participate in a HUD program or other program that promotes training and education of Section 3 residents.

***Goals:***

- The city will develop goals for the hiring, training, and recruiting of Section 3 businesses and residents once implementation and data can be collected from current Organizations. These goals will be incorporated into the City's Section 3 Plan.

## Section 3 Tracking Labor Hours Report

	Labor Hours	Calculated %	Safe Harbor Benchmark Met
<b>Total Labor Hours</b>			
Section 3 Worker Hours		#DIV/0!	
Section 3 Target Worker Hours		#DIV/0!	
	0		

### Nature of Agency Efforts

This section is required if, based on the labor hours reporting above, the reporting agency did not meet the safe harbor benchmarks.

### Check all that apply. Maintain records for HUD review documented efforts

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding child care.
- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify:



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**EXHIBIT H  
AFFORDABILITY RESTRICTION AGREEMENT**

This Affordability Restriction Agreement and Covenant (“Covenant”) is entered by Santa Clara Methodist Retirement Foundation, Inc. (“Owner”) for the benefit of the City of Santa Clara (“City”) on the terms and conditions set forth below.

**RECITALS**

- A. Owner is the owner of certain real property located at **890 Main Street in the City of Santa Clara**, County of Santa Clara, State of California, as more particularly described in the attached ATTACHMENT A (“Property Description”).
- B. Pursuant to Grant Agreement **CDI-23-C01**, with an end date **April 30, 2024**, City has made a grant of Community Development Block Grant (“CDBG”) funds (the “Grant Award”) to the Owner for Improvements (as defined in Section 1 below) to the Property,
- C. Pursuant to 24 CFR 570.208, activities funded with grants of CDBG funds must meet one of the CDBG program’s three broad National Objectives: benefit low- and moderate-income persons, aid in the prevention or elimination of slums or blight conditions or meet community development needs having a particular urgency.
- D. The National Objective to benefit low- and moderate-income persons may be met by an activity that benefits a limited clientele, at least 51 percent of whom are low- and moderate-income persons (“Limited Clientele”).
- E. The Grant Award to the Owner is intended to satisfy the CDBG National Objective to serve a population that is generally presumed to be low- to moderate-income individuals (i.e., homeless persons). 24 CFR 570.208(a)(2)(i)(A).

- F. Pursuant to 24 CFR 570.505, where CDBG funds in excess of \$25,000 are used to acquire or improve a grantee's property, or portion thereof, that property must be used to meet the National Objective for a period of five (5) years after the grant expires. The City is extending to a total of ten (10) years after the grant expires.
- G. Consistent with 2 CFR 200 and 24 CFR 570.502, 570.503, and 570.505, as applicable, and as a condition of disbursement of CDBG funds, the Owner is required to maintain the Improvements and to maintain the intended use on the Property as described herein.
- H. As a condition of the Grant Award, the City has required the Owner to execute and record a deed of trust with assignment of rents, including exhibits thereto, which incorporate by reference this Affordability Restriction Agreement requiring the maintenance of this use against the Property.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the Owner agrees as follows:

**1. IMPROVEMENTS**

Pursuant to the Grant Award, the City of Santa Clara has made available CDBG funds for the following improvements on the Property: Replacement/update of two elevators and their related systems.

**USE COVENANT**

The Owner agrees that Improvements shall be used in accordance with their planned use (i.e., improvements to an affordable multi-family residential development for seniors with incomes at or below 80% AMI) (collectively, the "CDBG Use") for the duration of the term of this Covenant. Owner agrees to maintain the CDBG Use in accordance with all applicable CDBG program requirements for the term of this Covenant. The Grant Award is conditioned upon the Owner maintaining the CDBG Use for a period not less than ten (10) years.

Owner hereby warrants, represents, and agrees that it shall not interfere with, terminate, or otherwise discontinue the CDBG Use during the term of this Covenant. If Owner terminates or otherwise suspends the CDBG Use during the first five (5) years of the term of this Covenant, the Owner agrees it shall be

immediately obligated to refund to City all of the Grant Award funds, unless the City and the Owner otherwise agree in writing. If Owner terminates or otherwise suspends the CDBG Use between the fifth (5th) and the tenth (10th) years of the Term, Owner agrees it shall be immediately obligated to refund to CITY a pro-rated portion of the Grant Award funds unless the City and the Owner otherwise agree in writing.

## **2. TERM**

This Covenant shall expire on the Affordability Restriction Agreement end date of the Grant Award. Until the 10th anniversary of the end date of the Grant Award, the Covenant shall be for the benefit of City and the U.S. Department of Housing and Urban Development (“HUD”). After that time, or such later time that HUD’s five (5) year requirements have been met, the Covenant shall be for the benefit of City for an additional five (5) years.

## **3. MAINTENANCE COVENANT**

The Owner shall maintain the Improvements and the portion of the Property where they are located consistent with CDBG rules, The Owner shall not make or allow any changes thereto that would prevent the use of Improvements for the activities described in Section 2. On an annual basis, the Owner shall submit to the City a certificate of self-insurance or other proof of adequate property insurance

## **4. RUNS WITH THE LAND**

The Owner hereby declares its understanding and intent that:

- (i) The covenants and restrictions contained herein shall be construed as covenants running with the land pursuant to California Civil Code section 1468 and not as conditions which might result in forfeiture of title by Owner; and,
- (ii) The burden of the covenants and restrictions set forth in this Covenant touch and concern the interest in the Property in that the Owner’s legal interest in the Property; and,
- (iii) The benefit of the covenants and restrictions set forth in this Covenant touch and concern the Property by enhancing and increasing the

enjoyment and use of the Property by low and moderate-income residents of the community, the intended beneficiaries of such covenants and restrictions.

All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon the Owner and its successors in interest for the benefit of the city, and such covenants and restrictions shall run in favor of such the City for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenant and restrictions relate.

## **5. NON-DISCRIMINATION**

The Grant Award is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under the Grant Award, the Owner shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in tire use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants.

## **6. REMEDIES**

In the event of any breach of any of the covenants or restrictions set forth herein (a "'Default-'), the City shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceeding. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the provisions hereof in the future for any continuing or new breach or violation of any of the covenants or restrictions contained in this Covenant, All rights and remedies, including without limitation, any action to obtain repayment of the Grant Award, of any party legally entitled to enforce this Covenant, shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such rights and remedies.

**7. NOTICES**

Any notice or submittal required or permitted to be given to the City under this Covenant shall be in writing and personally served or sent by U.S. Mail, postage prepaid, addressed as follows:

To City:           City of Santa Clara  
                          c/o Housing and Community Services  
                          1500 Warburton Avenue  
                          Santa Clara, CA 95050

**8. RECITALS AND EXHIBITS**

Attachment A:       For Exhibit H – Affordability Restriction Agreement

The above recitals and the attached exhibits are hereby incorporated and made a part of this Covenant.

**Attachment A**  
**(For Exhibit H-Affordability Restriction Agreement)**

**Property Legal Description**

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, described as follows.

The parcel has one building with 10 stories over 17,410 square feet.

Property address: 890 Main Street, Santa Clara, CA 95050.

Zoning: CT

Lot size: 22,762 sq. ft.

Acres: 0.52

Census Tract / Block: 5056.00/ 1

Map Reference: 54-B6

APN: 269-28-061

**IN WITNESS WHERE OF**, the Organization has executed this Covenant as of the date below

**OWNER/ORGANIZATION:**

**SANTA CLARA METHODIST RETIREMENT  
FOUNDATION, INC.**

a California non-profit corporation

---

By: Priscilla J. Haynes  
Title: Executive Officer  
Address: 890 Main Street  
Santa Clara. CA 95050

Date: \_\_\_\_\_

**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT I  
PROMISSORY NOTE  
SECURED BY DEED OF TRUST**

**Liberty Tower Elevator Replacement**

**\$750,000**

**Santa Clara, California**

\_\_\_\_\_, **2023**

FOR VALUE RECEIVED, the undersigned, SANTA CLARA METHODIST RETIREMENT FOUNDATION INC., a California nonprofit corporation (“Owner”) promises to pay to the CITY OF SANTA CLARA, a Chartered California Municipal Corporation, (the “City”) at 1500 Warburton Avenue, Santa Clara, CA 95050, or such other place as the City may from time to time designate in writing, the principal sum of **SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000)**.

This Note, along with the agreement by and between the City of Santa Clara and SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC., to carry out **Liberty Tower Elevator Replacement** for the **2023-24** program year, as may be amended from time to time, (the “Grant Agreement”), is secured by a deed of trust with assignment of rents of even date herewith to be recorded in the Official Records of the City of Santa Clara (“Deed of Trust”) which encumbers the Property (APN 269-28-061) located at 890 Main Street, in the City of Santa Clara, as more particularly described in Exhibit A to the Deed of Trust

In addition to this Note, the terms and conditions of the indebtedness evidenced by this Note are set forth in the Deed of Trust, and the Grant Agreement (collectively the “Grant Documents”). Except where expressly stated otherwise, if there is any conflict between this Note, on the one hand, and the Grant Documents, on the other, this Note shall control.

1. **Interest.** The principal sum of this Note shall not accrue interest.
2. **Payment.** The entire unpaid balance of principal and interest shall be due and payable in the event of a default under the Loan Documents occurring by the Tenth Anniversary of the recordation of the Deed of Trust, or as extended by an amendment to the Agreement. If such a default has not occurred by this date, the Loan shall convert to a grant,



the Owner shall be entitled to request a reconveyance of the Deed of Trust and cancellation of this Note. After the reconveyance of the Deed of Trust, the Owner shall have no further obligation under the Grant Documents.

**BORROWER HEREBY ACKNOWLEDGES AND UNDERSTANDS THAT THE ENTIRE PRINCIPAL SUM OF THE PROMISSORY NOTE MAY BE UNPAID AND DUE AND PAYABLE ON THE MATURITY DATE.**

**3. Acceleration of Obligation**

3.1 All unpaid principal, plus any applicable fees or charges due under this Note, or the Grant Documents, shall, at the option of the City, be immediately due and payable, time being of the essence, if during the term of this Note there occurs any of the following:

- (a) by Borrower of any covenant or provision required to be performed by Borrower under the terms of this Note, or the Loan Documents, or the occurrence of any event of default under any of such documents; or
- (b) The voluntary or involuntary (including by operation of law), sale, transfer, lease, pledge, encumbrance, creation of a security interest in, or otherwise hypothecation or alienation of *all* or any part of the security secured by the Deed of Trust ("Security"), without City's prior written consent, except as allowed in the Deed of Trust. The consent by the City to any sale, transfer, lease, pledge, encumbrance, creation of a security interest in, or other hypothecation of: the Security shall not be deemed to constitute a novation or a consent to any further sale, transfer, lease, pledge encumbrance, creation of a security interest in or other hypothecation of, the Security without notice to and consent by the City. The City may, at its option, declare the indebtedness secured hereby immediately due and payable without notice to the Owner or any other person or entity (except as provided herein), upon all such sale, transfer, lease, pledge, encumbrance, creation of a security interest in, or other hypothecation or alienation in violation hereof. Without the written consent of the City, no sale, transfer, lease, pledge encumbrance, creation of security interest in, or other hypothecation of, the Security shall relieve or release the Owner from primary liability under the Deed of Trust or this Note, as the case may be. As used in this Section 4.1(b) the term "transfer" includes, without limitation, the following transactions:

- (i) Any total or partial sale, assignment or conveyance, or creation of any trust or power, or any transfer in any other mode or form with respect to the Security or any paid thereof or any interest therein, or any contract or agreement to do the same; and,
    - (ii) The cumulative transfer of more than ten percent (10%) of the capital stock, partnership profit and loss interest, or other form of interest in Owner; and,
    - (iii) any merger, consolidation, sale or lease of all or substantially all of the assets of the Owner.
  - (c) Owner defaults under any of the other deeds of trust that encumber the Property.
- 3.2 From and after the time at which City has the right to accelerate the repayment of this Note pursuant to Section 3.1 above, the entire principal sum of this Note shall automatically bear a maximum interest rate permitted by Section I (2) of Article XV of the California Constitution ("Default Rate").
- 3.3 Borrower shall have the right but not the obligation to prepay, without penalty, at any time all or any portion of the outstanding principal balance of this Note.
- 3.4 Notwithstanding any agreements between Borrower and City, in no event shall the total liability for payments in the nature of interest, additional interest and other charges exceed the applicable limits imposed by the usury laws of the State of California. Any such payments that are determined to exceed applicable usury rates, shall be deemed a payment of principal.
- 4. **Waiver by Owner.** Owner, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability. The pleading of any statute of limitations as a defense to any demand against the Owner is expressly waived by Owner.
- 5. **Other Encumbrances.**
  - 5.1 Subject to the terms of the Deed of Trust which, in this case, shall control over the Note, Borrower shall not further encumber, mortgage, or subject the Property or any interest therein to a Deed of Trust without

the prior written consent of the City.

- 5.2 Except for the existing Deed of Trust recorded against the Property, unless the City shall expressly agree otherwise in writing, all mortgage and Deed of Trust documents affecting the Property shall provide that in the event of any default or breach by the Borrower under any mortgage or Financing Statement other than the Deed of Trust entitling any party thereunder to accelerate the indebtedness secured thereby and foreclose upon the Property or any interest therein, the City may, at its option, (a) cure the default prior to the completion of any foreclosure and reinstate the mortgage Deed of Trust, or (b) pay the total unpaid indebtedness secured by such mortgage or Deed of Trust, in which event such mortgage or Deed of Trust shall be released. Amounts expended by the City under this paragraph shall be reimbursed by Borrower upon demand of the City therefor, and, in the event, shall bear interest at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution from the date advanced by the City until paid in full. All such amounts (including such interest) shall be added to the principal of this Note. The approval by Borrower of any mortgage or Deed of Trust documents, and the placing of a security interest therefor on the Property or any portion thereof, not containing the provisions required by this Paragraph 5 shall constitute a default under this Note.
6. **Joint and Several.** The undersigned, if more than one, shall be jointly and severally liable hereunder.
7. **Purpose of Agreement.** It is the intent of the parties that the relationship evidenced by this Note shall be deemed to be one of debtor/creditor, and not of partnership or joint venture.
8. **Waiver by City.** Any failure of the City or other holder to exercise any rights hereunder shall not constitute a waiver of the rights to the later exercise thereof.
9. **Amendment.** This Note may not be changed, amended or modified orally.
10. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of California.
11. **Binding on Successors.** The terms of this Note shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors, and assigns. Whenever used, the words "Owner", "Grantee", "Organization" and "Trustor" shall be deemed to include the respective heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns of Maker and Holder.

12. **No Individual Liability.** Notwithstanding any provisions of this Note or the Grant Documents to the contrary, no director, officer, employee, shareholder, or other individual associated with the Owner shall have any personal liability under this Note or the Grant Documents, it being the intention of the parties that such liability is imposed solely on the corporate entity which comprises the Owner.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the Organization has executed this Covenant as of the date of this agreement.

**OWNER/ORGANIZATION:**

**SANTA CLARA METHODIST RETIREMENT  
FOUNDATION, INC.,**

a California non-profit corporation

---

By: Priscilla J. Haynes  
Title: Executive Officer  
Address: 890 Main Street  
Santa Clara. CA 95050

Date: \_\_\_\_\_

**CONTRIBUTION AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT J**

**DEED OF TRUST**

RECORDING REQUESTED BY  
 AND WHEN RECORDED MAIL TO  
 Name: City Clerk's Office  
 Street Address: 1500 Warburton Avenue  
 City & State: Santa Clara, California  
 Zip Code: 95050

Order No.: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

<b>REC</b>	
<b>RMF</b>	
<b>MICRO</b>	
<b>RTCF</b>	
<b>LIEN</b>	
<b>SMPF</b>	
<b>PCOR</b>	

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TO BE RECORDED WITHOUT FEE FOR GOVERNMENT CODE SELECTIONS 6103 AND 27383**

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**

**(This Deed of Trust contains an acceleration clause)**

This DEED OF TRUST made this \_\_\_\_ day of \_\_\_\_\_, 2023 between **SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**, a California nonprofit corporation, herein called Trustor, whose address is 890 Main Street, Santa Clara, CA 95050, the City of Santa Clara, herein called Trustee, and the CITY OF SANTA CLARA, herein called Beneficiary.

Witnessed: That Trustor irrevocably grants, transfer and assigns to Trustee in Trust, with Power of Sale, that Property located at **890 Main Street, Santa Clara, CA 95050** in the City of Santa Clara, County of Santa Clara, California, more particularly described as in **EXHIBIT A** Legal Description, attached hereto and incorporated herein.

If the Trustor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the beneficiary being first had and obtained, beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing (1) payment of the sum of **(\$750,000.00)** according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured; (3) Payment

of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A of that certain Fictitious Deed of Trust recorded in the book and page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3788	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	71-10-26	615	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Juaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4788	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego SERIES 5 Book 1964, Page 149774					

Said agreements, terms and provisions contained in said subdivision A and B, (identical in all counties are printed on the reverse side hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefore does not exceed the maximum allowed by laws.

The foregoing assignment of rents is absolute unless initiated here, in which case, the assignment serves as additional security.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument (including those provisions of the Fictitious Deed of Trust that are incorporated by reference) and in the Rider executed by Trustor and attached hereto as **EXHIBIT B** and incorporated hereby.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at this address hereinbefore set forth.

[SIGNATURE(S) TO FOLLOW]



**IN WITNESS WHEREOF**, the Organization has executed this Covenant as of the date of this agreement.

**OWNER/ORGANIZATION:**

**SANTA CLARA METHODIST RETIREMENT  
FOUNDATION, INC.,**  
a California non-profit corporation

---

By: Priscilla J. Haynes  
Title: Executive Officer  
Address: 890 Main Street  
Santa Clara. CA 95050

Date: \_\_\_\_\_

The following is a copy of provisions (1) to (14) inclusive, of the fictitious Deed of Trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To Protect the Security of This Deed of Trust, Trustor Agrees:

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration herein not excluding the general.
- (2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or Beneficiary may apply other insurance policy upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- (4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges, and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.
- (5) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any in cumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto;

and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

B. It is mutually agreed:

- (1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- (2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not, waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- (3) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- (4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Owner in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such lull reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).
- (5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection

of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

- (6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration or default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation or said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- (7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

- (8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, or the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- (9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- (10) Subordination: Notwithstanding any provision herein, the City agrees the Deed of Trust may be subordinated to the lien of a loan secured by a deed of trust securing financing for the seismic retrofit upgrades to the Property.

**DO NOT RECORD**

**REQUEST FOR FULL RECONVEYANCE TO TRUSTEE:**

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to your underline terms of said deed of Trust, to cancel said note or notes above mentioned and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to: **SANTA CLARA METHODIST RETIREMENT  
FOUNDATION, INC.,  
890 Main Street, SANTA CLARA, CA 95050**

Do not lose or destroy this Deed of Trust OR THE NOTE, which it secures. Both must be delivered to the Trustee

**EXHIBIT A  
(For Deed of Trust)**

**Property Legal Description**

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, described as follows.

The parcel has one building with 10 stories over 17,410 square feet.

Property address: 890 Main Street, Santa Clara, CA 95050.

Zoning: CT

Lot size: 22,762 sq. ft.

Acres: 0.52

Census Tract / Block: 5056.00/ 1

Map Reference: 54-B6

APN: 269-28-061

## EXHIBIT B

### RIDER TO DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS RIDER TO DEED OF TRUST AND ASSIGNMENT OF RENTS is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, and is incorporated into and shall be deemed to amend and supplement the Deed of Trust and Assignment of Rents (“Deed of Trust”) covering real property and any improvements thereon located 890 Main Street, Santa Clara, California 95050, and further described in the property description set forth in the Deed of Trust, (“Property”), of the same date given by the undersigned, SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC., a California Nonprofit Corporation (“Trustor”) to secure Trustor’s promissory note to the City of Santa Clara, a municipal corporation (“City”) in the amount of **SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$750,000.00)** dated of even date herewith (the “Note”).

In addition to the covenants and agreements made in the Deed of Trust, City and Trustor further covenant and agree as follows:

1. This Rider and the Deed of Trust are made in connection with a certain Grant Agreement by and between the City of Santa Clara and **SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**, for the 2023-24 programs, as may be amended from time to time (“Grant Agreement”).

The Grant Agreement provides that Trustor is the recipient of certain Community Development Block Grant (“CDBG”) funds designated for rehabilitating Trustor’s building located at **890 Main Street** in Santa Clara, California (the “Facility”).

2. All sums secured by the Deed of Trust shall, at the option of City, become immediately due and payable upon:
  - (a) The sale or transfer by Trustor of the Facility or Property, without the prior written consent of City, prior to time periods specified in the Note and Grant Agreement; or,
  - (b) A use by Trustor of the Property or the Facility, prior to the expiration of time periods specified in the Note and Grant Agreement and the reconveyance of the Deed of Trust, which violates the terms of the Grant Agreement including the Affordability Restriction Agreement attached thereto, or which is not an



“eligible activity” under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended and regulations issued pursuant thereto by the United States Department of Housing and Urban Development; or,

- (c) An uncured default under the terms of the Deed of Trust, if City exercises this option. City shall give Trustor notice of acceleration. The notice shall provide a period of not less than sixty (60) days from the date the notice is mailed, within which Trustor must pay all sums secured by the Deed of Trust, If Trustor fails to pay these sums prior to the expiration of this sixty (60) day period, such failure shall constitute an uncured default and City may invoke any remedies permitted by the Deed of Trust without further notice or demand on Trustor.
3. The sums secured by the Deed of Trust shall be considered paid in full if the contingencies set forth in the Note and Grant Agreement have not occurred within the time periods set forth in the Grant Agreement. When said contingencies in the Note and the Grant Agreement do not occur within the time periods specified in the Grant Agreement, the Promissory Note shall have no further force or effect and shall be deemed null and void at the end of the latter of the time periods specified in the Grant Agreement, and City shall instruct the Trustee of the Deed of Trust to execute a full reconveyance, without warranty, of the Property described in the Deed of Trust.
  4. Trustor hereby agrees to indemnify, hold harmless and defend with counsel of City’s choice, City, its agents, successors, and assigns for any and all expenses, costs, or liabilities directly or indirectly caused by displacement of and relocation of tenants located at the Facility.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

By signing below, Trustor accepts and agrees to the terms and provisions contained in this Rider.

**IN WITNESS WHEREOF**, the Organization has executed this Covenant as of the date of this agreement.

**OWNER/ORGANIZATION:**

**SANTA CLARA METHODIST RETIREMENT  
FOUNDATION, INC.,**

a California non-profit corporation

---

By: Priscilla J. Haynes  
Title: Executive Officer  
Address: 890 Main Street  
Santa Clara. CA 95050

Date: \_\_\_\_\_

## SUMMARY PAGE

Agency: Rebuilding Together Silicon Valley

Project: Homeowner Rehabilitation & Minor Repair Project

Description: The Homeowner Rehabilitation & Minor Repair Project will preserve and maintain affordable housing by providing rehabilitation services to low-income homeowners of the City of Santa Clara who occupy their homes. Rehabilitation work will provide homeowners a safe and sanitary living environment. The primary consideration of repairs will be correcting deficiencies that create substandard and unsafe housing conditions.

Funding Source: Community Development Block (CDBG) – CDFA #14.218

Grant Number: B-23-MC-06-0022 Project No.: PSA-23-001

**TOTAL AWARD: \$100,000 (not to exceed)**

**Agreement Term:** Start Date: July 1, 2023 End Date: June 30, 2024

### PARTIES TO AGREEMENT:

	ORGANIZATION	CITY OF SANTA CLARA
Organization Name:	Rebuilding Together Silicon Valley	Housing & Community Services Division
Address for Legal Notice:	1701 S. 7 <sup>th</sup> Street, Ste., #10	1500 Warburton Avenue.
City/State/Zip Code:	San Jose, CA 95112	Santa Clara, CA 95050
Attention:	Deanne Everton Executive Director	Adam Marcus Housing Division Manager
Email Address:	Deanne@rtsv.org	<a href="mailto:amarcus@santaclaraca.gov">amarcus@santaclaraca.gov</a>
Telephone No.:	(408) 578-9519	(408)615-2491
Tax ID	77-0289381	
UEI #:	017547055	
Type of Entity:	501 (c) 3 public benefit corp.	
State of Incorporation or Residency:	California	
Ebix Insurance #	S200004294	

**PUBLIC SERVICE GRANT AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
REBUILDING TOGETHER SILICON VALLEY**

**PREAMBLE**

This agreement for the performance of services (“Agreement”) is by and between Rebuilding Together Silicon Valley, a California nonprofit corporation, (“Organization”) and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Organization 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. Organization 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 PROVISIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Organization 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 – Performance Measures & Reporting Requirements

Exhibit C – Budget & Basis for Reimbursement

Exhibit D – Insurance Requirements

Exhibit E – Special Grant Conditions

Exhibit F – Employee/Volunteer Clearance & Compliance with Child Abuse and Neglect Reporting Act

Exhibit G – MBE/WBE Guidelines

Exhibit H – Ethical Standards

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. FUNDING AND APPROPRIATION**

Pursuant to the provisions of Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383, the City has received Community Development Block Grant funds (“CDBG”) from the United States Department of Housing and Urban Development (“HUD”) as an entitlement. From the CDBG grant funds, City has appropriated an amount not to exceed One Hundred Thousand Dollars (\$100,000) (“Grant Funds”), subject to budget appropriations, to be given to Organization

Upon Organization’s compliance with the terms and conditions of this Agreement, City will contribute to Organization the amount set forth in this Section. The Grant Funds shall not be used for any other purpose than to pay expenses (or if said expenses have already been paid by Organization, then for reimbursement of same to Organization) related to the purpose of the Grant, as set forth in Exhibit A. None of the City’s Contribution will be used to pay for any expenses of Organization incurred before the start of the Term of Agreement. All work performed or materials provided in excess of the maximum compensation or work performed or materials provided that are deemed ineligible shall be at the Organization’s expense.

## **3. 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 July 1, 2023 and terminate on June 30, 2024.

Renewal Term: The City reserves the right at its sole discretion, and subject to funding and City Council appropriation, to extend the term of this Agreement. The Parties may mutually agree to renew this Agreement for one additional year (“RENEWAL TERM”). The Renewal Term shall be subject to the Subrecipient’s successful performance in the first year and the availability of funds from the U.S. Department of Housing and Urban Development for the CDBG program. Unless otherwise mutually agreed upon by the Parties, the Scope of Services (Exhibit A) shall remain the same for each year of funding. If Organization’s appropriation for the next year decreases/increases significantly from the previous year’s appropriation, the Parties will negotiate adjustments to Exhibit A.

#### 4. REPROGRAMMING OF FUNDS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

- A. Initiated by City: City may re-channel funds budgeted in one cost category into another cost category of the Program. Before re-channeling funds, the City will give the Organization ten (10) business days written notice of the re-channeling of funds along with a copy of an expenditure review for the Program. City shall make its final determination with respect to the re-channeling of funds only after Organization has been given an opportunity to present its views and recommendations. In no event shall the City be bound to accept Organization's views or recommendations.
- B. Initiated by Organization: The City's Program Manager may, at the request of Organization, approve re-channeling of funds from any cost category(ies) to another at any time provided that there is not an increase in the overall Total Budget amount specified in Exhibit C of this Agreement. Approval by the City's Program Manager of such rechanneling of funds must be in writing.

#### 5. OBLIGATIONS OF ORGANIZATION

- A. Corporation of Organization: Organization shall:
  - 1) Provide City, prior to the Effective Date of this Agreement, and, at all times during the Agreement period, within thirty (30) days of a change in status of any of the following documents, with:
    - a) A copy of Articles of Incorporation under the laws of the State of California;
    - b) A copy of current Bylaws of Organization;
    - c) Verification and documentation of Internal Revenue Service nonprofit status under Title 26, Section 501(c) of the Internal Revenue Code;
    - d) Verification and documentation of State of California Franchise Tax Board tax exempt status under Section 23701(d), of the California Revenue and Taxation Code;
    - e) Names and addresses of current Board of Directors of Organization;
    - f) A copy of the adopted personnel policies and procedures including an Affirmative Action Plan if staff exceeds fifteen (15) employees; and,
    - g) An organizational chart and staffing profile.

- 2) Report in writing any changes in the Organization 's Articles of Incorporation, Bylaws, tax exempt status and/or Board membership immediately to the City's Program Manager or his/her designee.
- 3) Maintain no greater than forty nine percent (49%) of the Board of Directors as "interested persons" under this Agreement. For the purposes of this Agreement, "interested persons" means either:
  - a) Any person currently being compensated by the Organization for services rendered to the Organization within the previous twelve (12) months, whether those services were rendered as a full or part time employee, independent contractor or otherwise, excluding any reasonable compensation to a director as a director; or,
  - b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.
- 4) Include on the Board of Directors representation from the broadest possible cross section of the community, including those with expertise and interest in the Organization's services, representatives from community organizations interested in the Organization's services, and users of the Organization's services.
- 5) Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters.
- 6) Keep minutes, approved by the Board of Directors, of all regular and special meetings. (A copy of approved minutes shall be forwarded to the City's Program Manager).
- 7) Encourage public participation in planning and implementing services provided under this Agreement.
- 8) Comply with 2 CFR § 200.321(b) and the City of Santa Clara Disadvantaged Business Enterprise Program, available from the City's Program Manager, regarding the use of minority and/or female owned businesses, vendors, suppliers, and contractors to the maximum extent feasible, for items funded under this Agreement.

B. Program Performance of Organization: Organization shall:

- 1) Submit to City performance criteria and schedule of activities describing measurable annual goals and objectives of the Program incorporated in this Agreement as Exhibit A.
- 2) Submit to the City, on the prescribed form, a line item operating budget of the Program to be incorporated in this Agreement as Exhibit C, titled "Budget and Basis for Reimbursement", attached hereto and incorporated herein by this reference.
- 3) Obtain completed intake documents for each City of Santa Clara resident receiving services under this Agreement. Such forms shall be approved by the City and shall be made available for review during the monitoring process.
- 4) File reports (on forms approved by City) with the City on the type and number of services rendered to beneficiaries through the operation of the Program. Such reports shall evaluate the manner in which the Program is achieving its objectives and goals according to standards established by City. The reports shall be due within ten (10) business days after the end of each reporting period and shall cover the time immediately preceding the date on which the report is filed.
- 5) Provide a completed Program evaluation survey from a representative sampling of beneficiaries served. The results of this survey shall be periodically reviewed and approved by the Organization's Board of Directors. Format of survey documents shall be subject to the approval of the City's Program Manager. Forms shall be held at Organization's administrative offices and shall be made available for review by City during the monitoring process.
- 6) Coordinate its services with existing organizations providing similar service in order to foster community cooperation and to avoid unnecessary duplication of services.
- 7) Seek out and apply for other sources of revenue in support of its operation or services from county, state, federal and private sources.
- 8) Include an acknowledgement of City support on all appropriate Program publicity and publications using words to the effect that services are funded by the City of Santa Clara. Any Program publicity acknowledging City funding that is produced during the Agreement period shall be reviewed by City prior to any public release.

G. Compliance with Ethical Standards: Organization shall comply with the City's Ethical Standards, a copy of which is set forth in Exhibit H, attached hereto and incorporated into this Agreement.



## **6. OBLIGATIONS OF CITY**

- A. Monitoring for Compliance with Agreement: Consistent with the applicable sections of 24 CFR §§ 570.501-502 and 2 CFR § 200.328, the City will evaluate the Program based on compliance with the Agreement, semi-annual reports received from Organization, and on-site monitoring of client and service-based data.
- B. Method of Payment: City shall reimburse Organization for all allowable costs and expenses incurred in providing the Program during the Agreement period, not to exceed the total sum of One Hundred Thousand Dollars (\$100,000).

The City may, at any time and in its absolute discretion, elect to suspend or terminate payment to Organization, in whole or in part, under this Agreement or not to make any particular payment under this Agreement in the event of unsatisfactory performance or noncompliance. Reimbursement shall be initiated quarterly, or other time period approved by the City, upon submission of invoices and appropriate documentation.

## **7. PROGRAM FEES**

- A. All fees collected by the Organization for direct services during the Agreement period shall be retained by the Organization and shall be added to funds committed to Program by the City. These Program Fees shall be used to further Program activities. Spending of such fees is subject to all applicable requirements governing use of CDBG funds.
- B. Fees collected that remain unspent at the end of the Agreement period shall continue to be subject to the requirements of federal CDBG regulations and this Agreement.
- C. Fees received subsequent to the Agreement period shall not be governed by federal CDBG regulations or this Agreement.

## **8. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS**

City and Organization bind themselves, their successors and assigns to all covenants of this Agreement.

- A. The relationship of Organization to City is that of an independent contractor. Organization has full rights to manage its employees subject to the requirements of the law. All persons employed by Organization in connection with this Agreement shall be employees of Organization and not employees of City in any respect. Organization shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.
- B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written City approval.

- C. No subcontractor of Organization will be recognized by City as such. All subcontractors are deemed to be employees of Organization, and Organization agrees to be responsible for their performance and any liabilities attaching to their actions or omissions.

## **9. COMPLIANCE WITH LAW**

- A. Compliance: Organization shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in Exhibit E, titled "Special Grant Conditions", attached hereto and incorporated herein by this reference.
- B. Assurances: Failure of Organization, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve Organization of its responsibility to adhere to same and Organization herein acknowledges this responsibility. Organization shall hold City, its City Council, officers, employees and boards and commissions harmless from Organization's failure(s) to comply with any requirement imposed on Organization by virtue of the utilization of City funds. Organization shall reimburse City for any disallowed costs and/or penalties imposed on City because of Organization's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

## **10. INTEGRATED DOCUMENT**

This Agreement embodies the Agreement between City and Organization and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

## **11. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Organization 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 Organization receipt of funds pursuant to this Agreement – including claims of any kind by Organization's employees or persons contracting with Grantee 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. Organization'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 Organization, against City (either alone, or jointly with Organization), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Organization 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, Organization 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 Organization's responsibilities under the Act.

## **12. WHEN RIGHTS AND REMEDIES WAIVED**

In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of Organization, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to City or Organization with respect to such breach or default.

## **13. TERMINATION**

- A. In accordance with 2 CFR § 200.338, the City may suspend or terminate this Agreement if the Organization materially fails to comply with any terms of this Agreement, which include, but are not limited to:
  - 1) Organization fails to comply with existing conditions of the Agreement; or,
  - 2) Organization refuses to accept any additional conditions that may be imposed by City or the Federal government.
  - 3) Organization fails to implement required corrective actions in a timely and sufficient fashion.
- B. Termination for Convenience: Consistent with the applicable section of 24 CFR § 570.503 and 2 CFR § 200.326, City or Organization may terminate or suspend this Agreement in whole or in part when both Parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds.
- C. Upon Suspension or Termination Organization Shall:
  - 1) Not incur new obligations and shall cancel as many outstanding obligations as possible;

- 2) Be paid only for services actually rendered to City to the date of such suspension or termination; provided, however, if this Agreement is suspended or terminated for fault of Organization, City shall be obligated to compensate Organization only for that portion of Organization's services which are of benefit to City;
- 3) Turn over to City immediately any and all copies of studies, reports and other data, prepared by Organization or its subcontractors, whether or not completed, if any, in connection with this Agreement; such materials shall become property of City. Organization, however, shall not be liable for City's use of incomplete materials or for City's use of complete documents if used for other than the services contemplated by this Agreement; and,
- 4) Act in accordance with the "Closing Out Procedure".

#### **14. CLOSING OUT PROCEDURE**

- A. Organization is responsible for City's receipt of final billing by July 15 after the completion of the Agreement period. The City will accept no further billing for that year's Agreement period after July 15. Any amount of the year's grant remaining unbilled after the applicable date may be reprogrammed by City without notice to Organization.
- B. City is not liable for any Organization expenses incurred after the Agreement period of this Agreement.
- C. Closing Out does not impair the City's right to subsequently require repayment by Organization for disallowed costs or other adjustments, or any other City costs and expenses related to this Agreement or the enforcement thereof.

#### **15. THE CAPTIONS**

The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

#### **16. NO THIRD-PARTY BENEFICIARY**

This Agreement shall not be construed or deemed 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 hereunder for any cause whatsoever.

#### **17. SEVERABILITY**

In case any one or more of the provisions contained herein 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.

## **18. NO PLEDGING OF CITY'S CREDIT**

Under no circumstances shall Organization have the authority or power to pledge the credit of City or incur any obligation in the name of City. Organization shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

## **19. NO USE OF CITY NAME OR EMBLEM**

Organization 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.

## **20. VENUE**

In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose Division.

## **21. ORGANIZATION FINANCIAL DISCLOSURE REQUIREMENTS**

Organization services to be rendered under the provisions of this Agreement are excluded from the requirement of filing a Financial Disclosure Statement by Title 2, California Code of Regulations, Section 18700 (2)(A) and (B).

## **22. AFFORDABLE CARE ACT OBLIGATIONS**

To the extent Organization 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, Organization 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 Organization's responsibilities under the Act.

## **23. CONFLICT OF INTEREST**

Organization certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Organization and that no person associated with Organization has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Organization 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. Organization will advise City if a conflict arises.

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; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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: \_\_\_\_\_

\_\_\_\_\_  
GLEN R. GOOGANS  
City Attorney

\_\_\_\_\_  
JOVAN GROGAN  
City Manager

“CITY”

**REBUILDING TOGETHER SILICON VALLEY**  
a California non-profit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Person executing the Agreement on behalf of Organization)

Name: Deanne Everton

Title: Executive Director

Local Address: 1701 S. 7<sup>th</sup> Street, Suite #10

San Jose, CA 95112

Email Address: [Deanne@rtsv.org](mailto:Deanne@rtsv.org)

Telephone: (408) 578-9519

“ORGANIZATION”

**PUBLIC SERVICE GRANT AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
REBUILDING TOGETHER SILICON VALLEY**

**EXHIBIT A  
SCOPE OF SERVICES**

The Services to be performed for the City by the Organization under this Agreement are more fully described herein to this Exhibit A.

Organization shall implement this agreement in accordance with the applicable provisions of Title I of the Housing and Community Act of 1990, as amended, the federal regulations as set forth in 24 CFR Part 570, written interpretations or requirements by the Department of Housing and Urban Development (HUD), and all other rules and regulations pertaining thereto.

**1. Program Description**

**PURPOSE**

Rebuilding Together Silicon Valley (RTSV) believes that everyone deserves to live in a safe and health home. The project purpose is to improve the quality of life for low-income, aging, and/or physically challenged adults/families by providing a suitable living environment through focused home repairs.

**SCOPE**

RTSV proposes to preserve and maintain affordable housing by providing housing rehabilitation services to low-income homeowners of the City of Santa Clara who occupy their homes. Rehabilitation made to the homes will provide homeowners a safe and sanitary living environment. The primary consideration of repairs to the home will be correcting deficiencies that create substandard and unsafe housing conditions.

Individual scopes of work may not exceed twenty-five thousand dollars (\$25,000) and can include any combination of the following:

- 1) Major Repairs including, but not limited to:
  - a. Re-roof and gutter/downspout replacements.
  - b. Furnace replacement and other HVAC related work.
  - c. Re-pipe, waste line, and other major plumbing repairs.
  - d. Electrical panel replacement/upgrades.
  - e. Walkway/driveway repairs/replacements.

2) Minor Repairs.

- a. Accessibility modifications (e.g., wheelchair ramps/lifts, grab bars, handrails, replacement of door handles, faucets, toilets, etc.
- b. Window/door replacements and weather stripping.
- c. Smoke and carbon monoxide detectors.

Electrical repairs such as light switches, GFCI outlets, light fixtures.

**2. Location of the Program/Activities**

Unless otherwise indicated, the Project/Activity will be offered at the following location:

<b>Site Name</b>	<b>Site Address</b>
Citywide	

**3. National Objectives**

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR § 570.208.

The Organization certifies that the activity(ies) carried out under this Agreement will meet the national objective of **Benefit to low-and moderate-income (LMI) persons through rehabilitation of owner-occupied residential housing (i.e., Low-Mod Housing Activities).**



**PUBLIC SERVICE GRANT AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
REBUILDING TOGETHER SILICON VALLEY**

**EXHIBIT B  
PERFORMANCE MEASURES & REPORTING REQUIREMENTS**

The City will monitor the performance of the organization against goals and performance standards as stated.

1.01 Unduplicated Participants.

**Proposed total number of unduplicated participants to be served by this Project only.** For purposes of this Agreement, UNDUPLICATED PARTICIPANTS shall be defined as participants who receive services at least once a year but who may not be counted more than once in that year. Organization shall retain records documenting eligibility. Such records shall include, but not be limited to, family size, total household income, gender head of household, race, ethnic, and disability data.

	<b>Quarter 1</b>	<b>Quarter 2</b>	<b>Quarter 3</b>	<b>Quarter 4</b>	<b>Total</b>
<b>Total Project</b>	2	3	3	1	9

1.02 Services.

Throughout the term of this Agreement, Organization shall provide services to participants during the regular office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday:

**Activity 1:**

Number of urgent, safety and/or, accessibility/mobility repairs completed to ensure safe and decent living environment. One unit service defined as one individual repair. (*i.e.*, 3 grab bars = 3 repairs)

<b>Activity 1</b>	<b>Quarter 1</b>	<b>Quarter 2</b>	<b>Quarter 3</b>	<b>Quarter 4</b>	<b>Total</b>
Number of MINOR repairs	4	6	6	2	18
Number of MAJOR repairs	2	3	3	1	10
<b>TOTALS</b>	<b>6</b>	<b>9</b>	<b>9</b>	<b>3</b>	<b>27</b>

1.03 Outcome Measure Statement and Measurement Methodology.

Measurement Methodology.

Organization shall use pre- and post-surveys to measure improved safety conditions of PARTICIPANTS in their homes. At the conclusion of the work completed, the homeowner responds to completed scope of work survey and indicates yes (has

improved), or no (has not improved) to the improvement safety condition of their home. Organization shall calculate the percentage of unduplicated households who indicate yes, that they have improved safety conditions by dividing the total number of UNDUPLICATED HOUSEHOLDS that had safety repairs performed on their home.

Organization shall submit results of outcome measures to CDBG no later than ten (10) calendars days after the end of the second quarter and no later than seven (7) calendar days after the end of the fourth quarter.

<b>Outcome Measure #1</b>	80% of households shall have improved safety conditions in their home.
<b>Measurement Methodology</b>	Pre and Post questions. At the conclusion of the completed work, the applicant responds to a questionnaire, indicating completion of agreed upon work and that they have improved living/safety conditions in the home. Of the total projects completed, the number of responses that indicate yes, are divided by the total (yes & no) responses to determine the final calculation.

	Quarter 1	Quarter 2	Quarter 3	Quarter 4
<b>Outcome Goal</b>	N/A	80%	N/A	80%

<b>Outcome Measure #2</b>	80% of households that shall have improved accessibility and mobility modifications in their home.
<b>Measurement Methodology</b>	Pre and Post questions. At the conclusion of the completed work, the applicant responds to a questionnaire, indicating completion of agreed upon work and that they have improved accessibility and mobility modifications in their home. Of the total projects completed, the number of responses that indicate yes, are divided by the total (yes & no) responses to determine the final calculation.

	Quarter 1	Quarter 2	Quarter 3	Quarter 4
<b>Outcome Goal</b>	N/A	80%	N/A	80%

1.04 Organization must describe outreach efforts employed, and to be employed, to reach out to all persons without regard to race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin, or familial status. Documentation of these efforts must be submitted along with the second and fourth quarterly performance reports.

1.05 Monitoring and Evaluation of Services: Organization shall timely furnish all client and service data, statements, records, information and reports necessary for City to monitor, review and evaluate the performance of the Organization with respect to the program and its components. The results of Organization's performance will be recorded on a standard monitoring and evaluation form. City shall have the right to request the services of an outside agent to assist in any such evaluation. Such services shall be paid for by City.

1.06 Contract Noncompliance: With receipt by City of any information that indicates a failure or deficiency by Organization to comply with any provision of this Agreement or provide unsatisfactory service, the Agency shall have the right to require corrective action to enforce compliance with such provision. Corrective action shall be taken if any of the following, as examples only, occur:

- A. If Organization (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to City in connection with the Program;
- B. If there is pending litigation with respect to the performance by Organization of any of its duties or obligations under this Agreement, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Program;
- C. If Organization shall have taken any action pertaining to the Program that requires City approval without having obtained such approval;
- D. If Organization is in default under any provisions of this Agreement;
- E. If Organization makes improper use of grant funds;
- F. If Organization fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof; or,
- G. If Organization submits to City any reports that are incorrect or incomplete in any material respect.

1.07 Corrective Action: City shall have the right to require the presence of any of Organization's officers at any meeting called for the purpose of considering corrective action within seven (7) business days of issuing such notice.

Following such meeting, the City shall forward to Organization a set of corrective action recommendations relative to unsatisfactory performance and/or noncompliance, and a timetable for implementing the specified corrective action recommendations; such timetable shall allow Organization not less than seven (7) business days to comply with the specified corrective action recommendations. Following implementation of the corrective actions, Organization shall forward to City, within the time specified by City, any documentary evidence required by City to verify that the corrective actions have been taken. In the event Organization does not implement the corrective action recommendations in accordance with the corrective action timetable, City may suspend payments hereunder, disallow all or part of the cost of the activity or action in noncompliance, provide notice of intent to terminate this Agreement, withhold future awards, and/or take other remedies that may be legally available.



**PUBLIC SERVICE GRANT AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
REBUILDING TOGETHER SILICON VALLEY**

**EXHIBIT D  
INSURANCE REQUIREMENTS**

Without limiting the Organization's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Organization 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:

\$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 Organization; 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 Organization 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.

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, Organization 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 Organization 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 Organization 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 Organization'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 Organization 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 Organization'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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Organization and City agree as follows:

1. Organization 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 Organization, provide the same minimum insurance coverage required of Organization, except as with respect to limits. Organization 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. Organization 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. Organization 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 Organization 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 Organization in the event of material noncompliance with the insurance requirements set forth in this Agreement.

## F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Organization, 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. Organization 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

Organization 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, Organization 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 [Housing & Community Services]

Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

## H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Organization 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.



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**EXHIBIT E  
SPECIAL GRANT CONDITIONS**

**SECTION 1 GENERAL GRANT CONDITIONS**

- 1.01 Definitions. As used herein, “HUD” means United States Department of Housing and Urban Development. “Project Area” for the purposes of this **EXHIBIT E** means the City of Santa Clara.
- 1.02 Compliance with Applicable Federal Regulations. Organization agrees to comply with the requirements of Title 24 CFR Part 570, including subpart K of these regulations, except that (1) the Organization does not assume the City’s environmental responsibilities described in 24 CFR § 570.604; and (2) the Organization does not assume the City’s responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Organization also agrees to comply with all other applicable Federal, state and local laws, regulations and policies governing the funds provided under this Agreement. The Organization further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- 1.03 Applicable Federal Civil Rights Laws and Executive Orders. In providing the services and work set forth in this Agreement, Organization will carry out its work in a manner that will permit full compliance by City and strict adherence by Organization with the following:
- a. Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and
  - b. The Housing and Community Development Acts of 1974 and 1977, as amended, which provide that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available pursuant to said acts; and
  - c. Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act) which prohibits discrimination in the sale, rental, and financing of housing and the provision of brokerage services because of race, color, religion, sex, sexual orientation,

actual or perceived gender identity, national origin, handicap, or familial status;  
and

- d. Executive Order 11063, as amended by Executive Order 12259, which provides for equal opportunity in housing and related facilities provided by federal financial assistance. This order and its implementing regulations require the Department of Housing and Urban Development to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental or other disposition of residential property assisted with Federal loans, advances, grants or contributions; and
- e. Executive Order 11246, (as amended by Executive Orders 11375 and 12086 and further amendments) Equal Opportunity Under HUD Contracts and HUD-assisted Construction Contracts, which requires that City and Organization, and their respective subcontractors, agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, or national origin; and
- f. Section 3 of the Housing and Community Development Act of 1968 Pertaining to Employment Opportunities for Lower-Income Persons (12 U.S.C. 1701u), requires that, to the greatest extent feasible on projects financed by HUD, a subrecipient must:
  - i. provide opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project, are given to persons residing in the Santa Clara metropolitan area with household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD. Where feasible, priority should be given to residents within the service area of the Project or the neighborhood in which the Project is located who have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% AMI of that area; and
  - ii. award contracts for work undertaken in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for persons residing within the metropolitan area in which the CDBG-funded Project is located and have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD. Where feasible, priority should be given to business concerns that provide economic

opportunities to residents within the service area or the neighborhood in which the Project is located who have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% AMI of that area; and

- iii. self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low-income persons when an award of \$200,000 or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction projects, and/or \$100,000 or more to subcontractors; and
  - iv. at a minimum, provide documentation on federal compliance, reporting and outreach efforts; and
- g. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published which specify that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance; and
  - h. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect which provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal assistance; and
  - i. The requirements relating to Minority-Owned and Women-Owned Business Enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637, a subrecipient must exercise affirmative outreach efforts when soliciting bids for service or construction when the Federal funds received by the subrecipient or subcontractor exceeds \$10,000 and when the subrecipient or subcontractor is a for-profit organization/ business; and
  - j. The Uniform Federal Accessibility Standards set forth in 24 CFR Part 40, Appendix A; and
  - k. Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability in employment and in public accommodations and commercial facilities and defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure

equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities where such removal is readily achievable – that is easily accomplishable and able to be carried out without much difficulty or expense; and

- l. The provisions of 24 CFR Part 24, relating to the employment, engagement of services, awarding of contracts, or funding of any grantee or sub during any period of debarment, suspension or placement in ineligibility status; and
- m. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*) This law provides that any grant under section 106 shall be made only if the City certifies to the satisfaction of the Secretary of HUD that the Organization will, among other things, affirmatively further fair housing; and
- n. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*, particularly 42 U.S.C. 6101 *ets. seq.*, and 29 U.S.C. 794) and further amendments, which mandates that no person on the grounds of race, color, national origin, sex, sexual orientation, actual or perceived gender identity, age or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with CDBG funds; and
- o. Architectural Barriers Act of 1968 requires that federally funded buildings and other facilities, as defined in 24 CFR § 40.2 and 40 CFR § 101-19.602(2), to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people.
- p. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles

ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

q. Procurement of Recovered Materials: See 2 CFR 200.322.

- 1.04 Relocation and Real Property Acquisition. Organization shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and 24 CFR § 570.606(b); and (b) the requirements of 24 CFR § 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. Under the URA and the Plan, the subrecipient must provide relocation assistance to persons (families, individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. All property occupants must be issued certain notices on a timely basis. The Plan also required the one-for-one replacement of any occupied or vacant occupiable low/moderate-income housing that is demolished or converted to another use in connection with a CDBG-assisted project. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.
- 1.05 Political Reform Act. Organization shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified at California Government Code Section 87000, *et seq.*) Organization will promptly advise City of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.
- 1.06 Flood Disaster Protection. Notwithstanding any other provision of this Agreement, Organization shall comply with the Flood Disaster Protection Act of 1973, as amended (P.L. 93-234), and the standards issued thereto. No portion of the moneys to be paid to Organization pursuant to this Agreement shall be used for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in an area not in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any of said moneys for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001, *et seq.*, provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction

purposes under Section 102(a) of the Flood Disaster Protection Act of 1973, as amended. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

- 1.07 Equal Employment Opportunity. In providing the work and services herein specified, Organization shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Organization shall take action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Organization shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or the City setting forth the provisions of this nondiscrimination clause. Organization shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Organization shall incorporate the foregoing requirements of this paragraph 1.07 in all of its contracts for program work, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.
- 1.08 Prohibition of and Elimination of Lead-Based Paint Hazard. Notwithstanding any other provision, Organization agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR § 570.608 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.
- 1.09 Compliance With Clean Air and Water Acts. This Agreement is subject to 42 U.S.C. 1857, *et seq.*, and 33 U.S.C. 1251 *et seq.*, and the regulations issued pursuant thereto. Therefore, Organization agrees as follows:
- a. Organization stipulates that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20;
  - b. Organization agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal

Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder;

- c. Organization stipulates that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;
- d. Organization agrees that criteria and requirements in subparagraphs (a) through (d) of this section 1.09 will be included in every non-exempt subcontract and Organization shall take such action as the City or HUD requires as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

- 1.10 Federal Labor Standards (i.e., Davis Bacon Act) Provisions. Except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) families, Organization and all subrecipients engaged under contracts in excess of Two Thousand Dollars (\$2,000) for the construction, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise

entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Organization shall not award any contract or subcontract which is otherwise in compliance with this Agreement to any person or subcontractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

- 1.11 Nondiscrimination Under Title VI of the Civil Rights Act of 1964. Organization under this Agreement shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Organization shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in the use of occupancy of such land or any improvements erected or to be erected thereon, and providing that Organization and the United States are beneficiaries of and entitled to enforce such covenant. Organization, in providing the services and work it is to provide, pursuant to this Agreement, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
- 1.12 Interest of Certain Federal Officials. No member of, or Delegate to, the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit arising from same.
- 1.13 Conflict of Interest. Under 24 CFR Part 570.66, no officer, employee or agent of City or Organization who exercises any functions or responsibilities with respect to the CDBG Program or to the services and work to be performed by Organization pursuant to this Agreement, during such officer's, employee's or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Organization shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.

- 1.14 Prohibition Against Payments of Bonuses or Commissions. The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HUD approval of the application for such assistance, or HUD approval of applications for additional assistance, or any other approval or concurrence of HUD required under this Agreement, Title I of the Housing and Community Development Acts of 1974 or 1977, or HUD regulations with respect thereto; provided, however, that reasonable fees or bona fide



technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

- 1.15 Copyrights. If this Agreement results in a book or other copyrightable material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- 1.16 Patents. Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to City and HUD for determination by HUD as to whether patent protection on such invention or discovery will be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.
- 1.17 Political Activity.

- a. Partisan Activity Prohibited. No funds provided in this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this Agreement with the following: (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity.

Participants employed in the administration of the CDBG Plan and/or Program, and participants whose principal employment is in connection with an activity financed by the CDBG Program or its proceeds are subject to limitation on political activities under the Hatch Act (5 U.S.C. 1502(a), 18 U.S.C. 595). All participants may take part in non-partisan activities outside working hours

- b. Lobbying Prohibited.
- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Organization, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Organization shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The Organization shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

1.18 Guidelines on Church-Related Activities. In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of public services with CDBG funds pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the Organization agrees that, in connection with the public services performed under this Agreement:

- a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
- b. It will not discriminate against any persons applying for public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
- c. It will provide no inherently religious activities, such as worship, religious instruction, or religious proselytizing, as part of the programs or services funded under this Agreement and will only conduct such activities in a separate time or place;

- d. It will exert no other religious influence in the provision of public services and participation in religious activities by any beneficiaries of those services shall be voluntary; and,
- e. The funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Organization and in which the public services are to be provided, provided that, minor repairs may be made if such repairs (1) are directly in a structure used exclusively for non-religious purposes, and (2) constitute in dollar terms only a minor portion of expenditure for the public services.
- f. Construction or Rehabilitation of Facilities. Block grant fund recipients shall not use any funds to construct, rehabilitate, maintain, or restore religious structures (including those which may be historic properties) currently used for religious purposes. Block grant funds shall not be used to construct, rehabilitate, maintain, or restore structures or other real property owned by “pervasively sectarian” organizations. Block grant funds shall not be used to assist a religious organization in acquiring property. These prohibitions apply whether or not the property is used for religious services or instruction or is used in any other way for religious activities.
- g. Public Services. Block grant funds may be used for the provision of public services under the following conditions:
  - i. The public services provided are exclusively non-religious in nature and scope;
  - ii. There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services;
  - iii. There is no religious discrimination in terms of employment or benefits under the public services; and
  - iv. The CDBG funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public services, (b) are located in a structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the CDBG expenditure for the public services.

1.19 Resident Aliens. (24 CFR § 570.613) Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for the benefits under covered activities funded by the CDBG Program. “Covered activities” are activities meeting the requirements of 24 CFR § 570.208(a) that either (1) have income eligibility

requirements limiting benefits exclusively to low- and moderate-income persons, or (2) are targeted geographically or otherwise to primarily benefit low- and moderate-income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.

- 1.20 Environmental Requirements. (24 CFR § 470.604) Organization is not allowed to incur program expenses until the City has performed an environmental review of the proposed activities, received the release of funds, and provided the Organization with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).
- 1.21 Historic Preservation. Organization shall not violate provisions of the Historic Preservation Act and related laws and Executive Orders. Before any commitments are made to make any physical improvements or alterations or demolition of any building, Organization shall receive assurances from the City that the Organization is in compliance.
- 1.22 If Organization receives State or City funds, Organization shall, in the use of those State or City funds adhere to the applicable Federal laws, regulations, policies, guidelines or requirements, herein specified, only insofar as adherence thereto would not be prohibited by valid City or State laws, regulations, policies, guidelines or requirements.

## **SECTION 2. FINANCIAL OBLIGATIONS OF ORGANIZATION**

- 2.01 Fiscal Responsibilities of Organization. Organization agrees to comply with 2 CFR § 200.49 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. Organization shall:
  - a. Appoint and submit to City, the name of a fiscal agent who shall be responsible for the financial and accounting activities of the Organization, including the receipt and disbursement of Organization funds.
  - b. Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of City.
  - c. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to contracts, invoices, time cards, cash receipts, vouchers, cancelled checks, bank statements and/or other official documentation evidencing in proper detail the nature and propriety of all charges.

- d. Submit to the City, within ten (10) working days of the end of the preceding month, requests for reimbursement, together with documentation required by City.
- e. Perform an independent fiscal audit annually in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed, and funds granted and expended relating to this Agreement, in a form sufficient to identify, track, and correlate such funds. The Costs for such audits shall be at Organization's expense, unless otherwise provided for in this Agreement. Copies of the completed audits must be provided to the City.
- f. Be liable for repayment of disallowed costs. Disallowed costs may be identified by the City through audits, monitoring, or other sources. Organization shall be afforded the opportunity to respond to any adverse findings, which may lead to disallowed costs. The City shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200.
- g. Administer all programs in conformance with 2 CFR Part 200 Subpart E, Cost Principles. These principles shall be applied for all costs incurred whether charged in a direct or indirect basis.
- h. If indirect costs are charged, the Organization will develop an indirect cost allocation plan for determining the appropriate Organization's share of administrative costs and shall submit such plan to the City for approval.
- i. Certify insurability subject to City approval as outlined in **EXHIBIT D** entitled "INSURANCE".
- j. Submit to HUD or City at such times and in such forms as HUD or City may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.
- k. Submit for approval by the City any lease agreement either contemplated or in effect, which would be funded under this Agreement.

2.02 Records, Reports and Audits of Organization. Organization shall comply with all applicable federal Uniform Administrative Requirements as delineated in 24 CFR § 570.502:

- a. Establishment and Maintenance of Records. Organization shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:

- i. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and
    - ii. All other matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the City.
  - b. Preservation of Records. Organization shall preserve and make available its records:
    - i. for the period of five (5) years from the date of final payment to Organization under this Agreement; or
    - ii. for such longer period, if any, as may be required by applicable law; or
    - iii. if this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting final settlement.
  - c. Records to be Maintained. The subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR § 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
    - i. Records providing a full description of each activity undertaken;
    - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
    - iii. Records required to determine the eligibility of activities;
    - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
    - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program;
    - vi. Financial records as required by 24 CFR § 570.502 and 2 CFR Part 200; and
    - vii. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
  - d. Examination of Records; Facilities. At any time during normal business hours, and as often as may be deemed necessary, Organization agrees that HUD and/or City, and/or any of their respective authorized representatives shall:

- i. for a period of five (5) years after final payment under this Agreement; or,
  - ii. for such longer period as may be required by applicable law; or
  - iii. if this Agreement is completely or partially terminated, for a period of five (5) years from date of any resulting settlement;
  - iv. have access to and the right to examine its plants, offices, and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. Organization also agrees that HUD and/or City, or any of their respective authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. Notwithstanding anything in this Agreement to the contrary for monitoring purposes, City shall not require access to any information of Organization mutually determined by the parties hereto to be proprietary.
- e. Audits. 2 CFR § 200.500 sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.
- i. Funds may be set aside in Organization's budget in an amount equal to City's fair share of Organization's cost of an independent audit, if required, with prior approval from City. A separate line item will be established.
  - ii. Organization shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this Agreement calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source.
  - iii. The audit must be completed and sent to the City's Department of Housing staff within one hundred fifty (180) days from the end of Organization's fiscal year.
  - iv. Audit Standards. The independent fiscal audit shall conform to generally accepted governmental auditing principles. Such audits shall identify the funds received and disbursed under this Agreement and include the following components:

- (a) Balance Sheet or Statement of Financial Position;
  - (b) Statement of Support, Revenue, and Expenses and Changes in Fund Balances or Statement Activities;
  - (c) Statement of Functional Expenses;
  - (d) Statement of Auditor's Report;
  - (e) Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor;
  - (f) Organization shall also submit to the agency a written management response to the findings of the Internal Control Matters.
- f. Single Audits. 2 CFR § 200.501 states that Organizations that expend \$750,000 or more of Federal financial assistance in a fiscal year (in aggregate, from all funding sources), in addition to conducting normal financial audit procedures, the Organization's independent public accountant certified to practice in the State of California shall perform tests to ascertain that:
- i. Expenditures submitted for reimbursement are allowable under 2 CFR Part 200;
  - ii. Expenditures are in compliance with the grant agreements between the City and Organization; and
  - iii. Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and Appendix XI to 2 CFR Part 200 — Compliance Supplement;
  - iv. The single audit must include the following components:
    - (a) Balance Sheet or Statement of Financial Position;
    - (b) Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
    - (c) Statement of Functional Expenses
    - (d) Schedule of Expenditures of Federal Awards;
    - (e) Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;



- (f) Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
  - (g) Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
  - (h) Schedule of Findings and Questioned Costs;
  - (i) Summary of Schedule of Prior Audit Findings;
  - (j) Corrective Action Plan;
  - (k) Data Collection Form.
- g. Organization's independent public accountant, certified to practice in the State of California, shall perform reviews of Organization internal control systems and Organization's compliance with applicable laws, regulations and requirements of this Agreement.

The independent public accountant shall issue a report on the financial statements and the Schedule of Governmental Financial Assistance, a report on the study and evaluation of internal controls and a report on Organization compliance. The three reports may be bound into a single report or presented at the same time as separate documents.

- h. Should Organization not enter into an agreement with an independent public accountant certified to practice in the State of California, or should an audit not be done on a timely basis, City, at its sole discretion, may enter into an agreement with an independent public accountant certified to practice in the State of California to perform the audit.
- i. City Audits. City may perform an independent audit. Such audits may cover program as well as fiscal matters. Organization will be afforded an opportunity to respond to any audit findings and have the responses included in the final audit report. Costs of such audits will be borne by City.
- j. Disallowed Costs. Organization is liable for repayment of disallowed costs as determined by City, in its sole discretion, and/or HUD. Disallowed costs may be identified through audits, monitoring or other sources. Organization shall be afforded the opportunity to respond to any adverse findings which may lead to disallowed costs. Director shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200 and applicable HUD regulations.

### **SECTION 3. OTHER REQUIREMENTS OF GRANTEE**

- 3.01 Client Data. The Organization shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
- 3.02 Disclosure. The Organization understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Organization's or subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

To the extent allowed under law, City agrees to maintain the confidentiality of any information regarding applicants for services offered by the Program pursuant to this Agreement or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Program through subcontracts.

- 3.03 Close-outs. The subrecipient's obligation to the City shall not end until all close-out requirements are completed pursuant to 24 CFR § 570.509. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.
- 3.04 Program Income. The Organization shall report all program income (as defined at 24 CFR § 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the subrecipient shall comply with the requirements set forth at 24 CFR § 570.504. By way of further limitations, the subrecipient may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the City at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

- 3.05 Indirect Costs. If indirect costs are charged, the Organization will develop an indirect cost allocation plan for determining the appropriate Organization's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.
- 3.06 Use and Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR §§ 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:
- a. The subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
  - b. Real property under the subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR § 570.208 until five (5) years after expiration of this Agreement or such longer period of time as the City deems appropriate. If the Organization fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the City. The subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period or such longer period of time as the City deems appropriate.
  - c. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG Program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.
- 3.07 Hatch Act. The Organization agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- 3.08 HMIS Participation. All agencies providing homeless services in receipt of funding from the City's CDBG Program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the County of Santa Clara Office of Supportive Housing ("CSC OSH"), to ensure the agency has

the mechanisms and staffing in place to use the system appropriately and in a timely manner. Funded agencies are required to collect demographic information on all clients served by the funded projects, the services provided, and consent to release the information to CSC OSH and the City's Housing Department.

Funded projects must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the City on all universal and program level elements of the HUD Data Standards. These statistical reports must be generated directly out of HMIS. No adjustments to the HMIS reports will be accepted and it is therefore incumbent on the agency to ensure that the information they put into HMIS is accurate and up to date. City will measure performance and outcomes relating to these funded projects through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the City. The City will request from the HMIS Administrator, acknowledgement of the recipient agencies' certificate of compliance with HUD privacy and security standards, acknowledgement of use of the Shelter Point program, and statistics on the percentage of Universal and Top Level Program data captured.

- 3.09 Language Access Plan (LAP). Organization shall fully implement and comply with the Language Access Plan ("LAP") as approved by City to ensure that limited English proficient clients have equal access to community programs and services.
- 3.10 Organization shall include in all outreach and marketing materials, including public websites, an affirmative statement that it will provide services or benefits to all persons, race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin, or familial status.

**PUBLIC SERVICE GRANT AGREEMENT  
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REBUILDING TOGETHER SILICON VALLEY**

**EXHIBIT F  
EMPLOYEE/VOLUNTEER CLEARANCE AND  
COMPLIANCE WITH CHILD ABUSE AND NEGLECT REPORTING ACT**

If Organization provides services involving minors, and as a City-approved method of complying with the provisions contained in this Agreement, Organization shall conduct a criminal background check through the database of the California Department of Justice **and** an FBI criminal database or equivalent national database as approved in writing by Organization's liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

Organization shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, Organization certifies to the following:

1. Any and all personnel employed or retained by Organization in conducting the operations of Organization's program shall be qualified to perform the duties assigned to them by City. City agrees that Organization shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164 (copy attached).

City and Organization understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If Organization intends to have employees or volunteers under the age of 18 providing services under this Agreement, Organization shall maintain and make available to City, if requested, guidelines, procedures or policies, that safeguard and ensure that no employees or volunteers under the age of 18 will be providing services under this Agreement unsupervised and further Organization shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. Organization shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by Organization shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this Agreement, and the person meets the standards set forth above. If requested by City, and to the extent allowed by law, Organization shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying

that the Organization has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. Regardless of whether such documentation is requested or delivered by Organization, Organization shall be solely responsible for compliance with the provisions of this Section.

3. That no person paid or unpaid by Organization shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless Organization has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this Agreement and every four (4) years thereafter, if the term of this Agreement exceeds four (4) years. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. Organization shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to City if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.
4. Organization understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. GRANTEE acknowledges that it is Organization's sole responsibility to comply with all applicable laws, regulations and licensing requirements in Organization's provision of services hereunder.

I, the Organization by signing below verify that I have read and agree to the above:

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Signature

Date

Rebuilding Together Silicon Valley

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Please Print or Type Name of Organization

## CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

**5164.** (a) (1) A county, city, city and county, or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of an offense specified in paragraph (2).

(2) (A) A violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or a sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) A felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) A felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of an offense specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, an offense specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or an offense specified in subdivision (c) of Section 667.5 of the Penal Code, provided that a record of a misdemeanor conviction shall not be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of an offense specified in subdivision (a). The county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that person's criminal background.

(2) A local agency request for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. A fee shall not be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the county, city, city and county, or special district's costs attributable to the requirements imposed by this section.

## CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163

**5163.** (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two (2) years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four (4) years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within thirty (30) days of the examination to the local health officer to determine the need for follow-up care.

“Certificate” means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

**5163.1.** The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this Section.

**5163.2.** The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

**5163.3.** The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

**5163.4.** Nothing in Section 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.



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**EXHIBIT G  
MBE/WBE GUIDELINES**

Section 281 of the National Affordable Housing Act requires each contractor to prescribe procedures to establish and oversee a minority outreach program for the receipt of all federal housing and community development funds including CDBG, HOME, HOPWA, ESG, Section 108, and BEDI grants.

The program shall include minority and women-owned businesses in all contracting activities entered into by the contractor to facilitate the provision of affordable housing authorized under this Act or any other federal housing law applicable to such jurisdiction.

***Definitions:***

- **The City:** The primary grantee of federal housing and community development funds is the City of Santa Clara.
- **Developer/Contractor/Subrecipient:** The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of Santa Clara to carry out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/subrecipient general contract.
- **Minority-Owned Business Enterprise (MBE):** Business primarily (51%) owned, operated and controlled by one or more members of the following race/ethnicity: Pacific Islander, American Native, African American/Black, American Indian/Alaskan Native, Hawaiian/Pacific Islander, Asian, or Hispanic.
- **Women-Owned Business Enterprise (WBE):** Primarily (51%) owned by one or more females.

***Required Program Participants' Responsibility:***

- The City will ensure that when soliciting bids for service, construction, or maintaining "contractor lists" for developers/contractor/subrecipient, the City will use the outreach provisions described under "Outreach Criteria."
- The City will require its developers/contractors/subrecipient to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

### ***Applicability:***

- When City makes a grant to a developer/contractor/subrecipient for services or construction.
- When a developer/contractor/subrecipient subcontracts for services or construction.
- When the grant received by the developer/contractor/subrecipient or subcontractor exceeds \$10,000.
- When the developer/contractor/subrecipient or subcontractor is a for-profit organization/business, or a nonprofit hires a for-profit subcontractor.

### ***Steps to Meeting the Reporting Requirements:***

1. If applicable, each developer/contractor/subrecipient will need to self-certify to the City whether it is an MBE/WBE. A form will be provided to each agency awarded funds and reported annually by the developer/contractor/subrecipient.
2. Each developer/contractor/subrecipient will ensure that every subcontractor also self-certifies whether it is an MBE/WBE and this information is reported annually.
3. The City will follow the guidelines for “Outreach” when soliciting bids for developer/contractor/subrecipient.
4. Each developer/contractor/subrecipient will follow the guidelines for “Outreach” when soliciting bids for subcontractors and will report these efforts annually to the Housing Department.

### ***Required Outreach Criteria:***

- The Housing Department will maintain a list of local MBE/WBE companies and addresses and distribute to all developers/contractors/subrecipients.
- The Housing Department Rehabilitation Division will ensure that its “Contractor List” includes MBE/WBEs for homeowners to use when selecting eligible contractors. The list will be updated annually and include outreach to MBE/WBEs.
- When developers/contractors/subrecipients are soliciting bids from subcontractors, they will include in any notice to local newspaper that “Women and Minority Owned Businesses are strongly encouraged to apply.” Developers/contractors/subrecipients, when feasible, are strongly encouraged to consider posting in Spanish and Vietnamese newspapers.
- When the Housing Department announces Notices of Funding Availability or Community Development Block Grants application availability, efforts will be made to include in local newspaper posting that “Women and Minority Owned Businesses are strongly encouraged to apply” and printed, when feasible, in Spanish and Vietnamese newspapers.

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**EXHIBIT H  
ETHICAL STANDARDS**

**Termination of Agreement for Certain Acts.**

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
    - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
    - e. Made/makes any false statements/representations with respect to this Agreement.
  2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance

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<sup>1</sup> For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or,
2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.



## Agenda Report

23-840

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on a Special Permit to Allow up to Four Two-day Community Festivals per Year for a Period of Two Years at 1375 Lafayette Street, S.E.S. Portuguese Hall of Santa Clara

#### BACKGROUND

The applicant, Erica Toste, representing S.E.S Portuguese Hall of Santa Clara, is requesting a Special Permit (File No. PLN23-00320) pursuant to Zoning Code Section 18.60.030 for a duration of two years to allow for multiple two-day community festivals in the parking lot of the S.E.S. Portuguese Hall located at 1375 Lafayette Street. The community festivals will have food booths, game booths, and musical performances throughout a two-day community festival. Community festivals dates for 2023 will occur on August 12<sup>th</sup> and 13<sup>th</sup>, September 16<sup>th</sup> and 17<sup>th</sup>, and October 7<sup>th</sup> and 8<sup>th</sup>. Dates for four two-day festivals in 2024 are to be determined and will be coordinated with the City at a later date.

#### DISCUSSION

The property is currently zoned Public or Quasi Public (B) which is applied for sites to encourage their use for parks, recreational facilities, and religious and other nonprofit organizations. The surrounding area is comprised of properties zoned for Single-Family use. The proposed temporary use, with limited duration and operations proposed, is not anticipated to adversely impact the surrounding land uses in that the events will occur over a limited time period and will be subject to conditions which mitigate potential negative impacts, including a condition of approval that the use be conducted in a manner that does not create a public or private nuisance. The concern about possible impacts would also be offset by their limited duration and the cultural benefit to the community from the event. The Special Permit is subject to revocation should a problem arise.

Approval of the Special Permit would be subject to the following conditions:

1. This Special Permit shall be valid for the festival dates of August 12<sup>th</sup> and 13<sup>th</sup>, September 16<sup>th</sup> and 17<sup>th</sup>, and October 7<sup>th</sup> and 8<sup>th</sup>, 2023. Festival Dates in 2024 will be coordinated with the City prior to scheduling.
2. Setup shall occur on the same day as the event and clean-up/breakdown shall occur at the conclusion of each event, which shall be completed by 9:00 p.m.
3. The applicant shall comply with all Zoning Ordinance regulations regarding temporary and permanent structures and obtain all necessary Building/Fire permits.
4. The applicant shall comply with Fire Department directives and requirements
5. The applicant shall obtain all applicable permits from the Santa Clara County Health Department, including but not limited to permits related to food service at the event.
6. The applicant shall obtain an amplified music permit from the Business Tax and License Department, if applicable.

7. The applicant shall obtain temporary sign permits from the Planning Department for all temporary signs advertising the event, if applicable.
8. There shall be no “searchlight” beams, streamers, or roof-mounted balloons during this event; and
9. Upon conclusion of each event, the parking lot shall be cleaned and returned to its prior condition.

### **ENVIRONMENTAL REVIEW**

The action being considered is categorically exempt from formal environmental review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15304(e) (Class 4 - “Minor Alterations to Land”), which applies to the minor temporary use of land having negligible or no permanent effects on the environment, including carnivals.

### **FISCAL IMPACT**

There is no cost to the City other than administrative staff time and expense. The applicant paid for the necessary permit fees.

### **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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

1. Determine the proposed action is categorically exempt pursuant to CEQA Guidelines section 15304(e) (Class 4 - “Minor Alterations to Land”); and
2. Approve the request of a Special Permit for two years to allow up to four two-day community festivals per year at 1375 Lafayette Street, S.E.S Hall Portuguese Hall of Santa Clara subject to conditions.

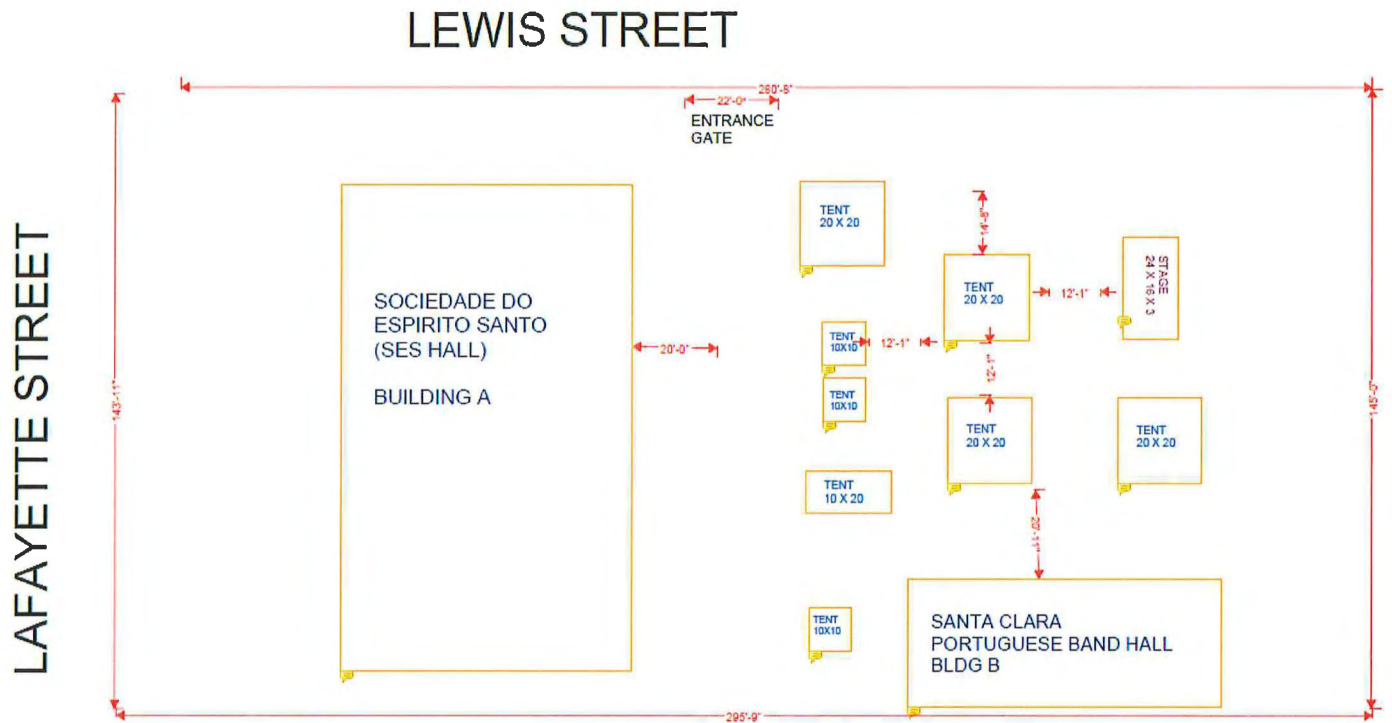
Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Jōvan Grogan, City Manager

### **ATTACHMENTS**

1. Site Plan

# SITE PLAN



1/16" = 1'



## Agenda Report

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23-795

Agenda Date: 7/18/2023

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### REPORT TO COUNCIL

#### SUBJECT

Action to Adopt Resolution to Rescind Stage 2 of the Water Shortage Contingency Plan, While Continuing to Implement State Water Resources Control Board (SWRCB) Water Use Restrictions

#### COUNCIL PILLAR

Promote Sustainability and Environmental Protection

#### BACKGROUND

On July 12, 2021, the City Manager, as Director of Emergency Services, proclaimed the City of Santa Clara's emergency drought conditions as recognized by the City's water supply partners.

On July 13, 2021, City Council ratified and adopted Resolution 21-8989 declaring the drought emergency and implementing Stage 2 of the City's Water Shortage Contingency Plan (WSCP).

On April 19, 2022, City Council amended Stage 2 with Resolution 22-9077, reducing the three days per week outdoor watering restriction to a maximum of two days per week.

On March 24, 2023, Governor Newsom issued Executive Order N-5-23, terminating several drought provisions, including California's 15% voluntary water conservation target. The SWRCB drought emergency regulations requiring implementation of agency level 2 drought water shortage contingency plans remained in effect.

On April 11, 2023, Valley Water's Board approved a 15% voluntary water use reduction and to continue two days per week outdoor watering. The San Francisco Public Utilities Commission also rescinded their drought emergency but kept a voluntary call for 11% water use reduction compared to FY19-20 and Level 2 requirements until the SWRCB requirements expire or are rescinded.

On May 9, 2023, the Council adopted a Resolution to Terminate the Proclamation of Emergency Drought Conditions for the City of Santa Clara, keeping water use restrictions in Stage 2 active.

As of June 5, 2023, the SWRCB requirement for urban water suppliers to implement demand-reduction actions that correspond to at least Level 2 of their water shortage contingency plans is no longer in effect.



**DISCUSSION**

In response to improved water supply conditions, and actions set forth by both the SWRCB and Water Suppliers, staff recommends rescinding Stage 2 of the Water Shortage Contingency Plan.

The SWRCB has emergency regulations that prohibit wasteful water practices; set to expire on December 21, 2023, these include the following:

- outdoor watering that lets water run onto sidewalks and other areas,
- washing vehicles without an automatic shutoff nozzle,
- washing hard surfaces like driveways or sidewalks that do not absorb water,
- filling decorative fountains, lakes or ponds without a recirculation pump,
- outdoor watering within 48 hours after at least ¼ inch of rainfall, and
- watering decorative grass on public medians,

All of these regulations are already permanent water use prohibitions in the Normal Stage of Santa Clara's WSCP. Additionally, the SWRCB includes prohibitions of potable water used for street cleaning or construction site preparation, and staff recommends continuing to require water used for construction and dust control must be recycled if available. These conservation measures will be necessary until SWRCB restrictions are rescinded on December 21, 2023.

Similarly, staff recommends restricting the watering of decorative grass in commercial, industrial, and institutional areas, including common areas of homeowners' associations (HOAs) per SWRCB regulation effective until June 5, 2024. In addition, consistent with the recommendation of Valley Water, staff recommends continuing to maintain a 15% voluntary water use reduction, as established by Resolution 23-9226.

City staff will continue public conservation outreach, educational and rebate programs. Permanent water use restrictions and prohibitions outlined in Section 1C of the City's Water Service and Use Rules and Regulations that prevent the wasting of water will continue to be required.

As climate change continues to contribute to more frequent and severe droughts, the City must permanently adopt the drought adaptations it has made, making them part of a conservation mindset and lifestyle that sustains Santa Clara regardless of California's weather fluctuations.

Staff will continue to partner with Valley Water, Bay Area Water Supply and Conservation Agency, and San Francisco Public Utilities Commission to develop approaches that promote water conservation as a way of life in the City of Santa Clara.

**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 action itself does not have a fiscal impact beyond the cost of staff time.

**COORDINATION**

This report was 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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

Adopt a Resolution Rescinding Stage 2 of the City's Water Shortage Contingency Plan While Continuing to Implement SWRCB Water Use Restrictions.

Reviewed by: Gary Welling, Director, Water & Sewer Utilities

Approved by: Jovan D. Grogan, City Manager

**ATTACHMENTS**

1. Proposed Resolution Rescinding Stage 2 of the City's Water Shortage Contingency Plan

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA, RESCINDING STAGE 2 OF THE CITY'S WATER  
SHORTAGE CONTINGENCY PLAN WHILE CONTINUING TO  
IMPLEMENT SWRCB WATER USE RESTRICTIONS**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on May 9, 2023, the City Council adopted Resolution 23-9226 Terminating the Proclamation of Emergency Drought Conditions, continuing implementation of Stage 2 of the City's Water Shortage Contingency Plan ("WSCP"), and establishing a 15% voluntary water use reduction in alignment with the Valley Water Board recommendation;

**WHEREAS**, the State Water Resources Control Board ("SWRCB") requirement for urban water suppliers to implement demand-reduction actions that correspond to at least Stage 2 of their WSCPs expired on June 5, 2023; and

**WHEREAS**, the City continues to support and promote water conservation as a way of life, and intends to continue to follow SWRCB water conservation regulations.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That Stage 2 of the City's Water Shortage Contingency Plan is hereby rescinded, removing the water use regulations set forth in Resolution 22-9077.

2. That the City hereby implements the following additional water saving measures, effective until December 21, 2023, in alignment with SWRCB regulations prohibiting certain wasteful water practices:

A. Water Used for Construction and Dust Control shall be Recycled Water when that Water is Available.

B. The use of potable water for street cleaning or construction site preparation is prohibited.

3. That the City recognizes that the following activities are prohibited under SWRCB

regulations until December 21, 2023, and acknowledges that all of the following activities are also prohibited under the City's WSCP, and will continue to be prohibited after December 21, 2023, as set forth in Section 8.4 of the City's 2020 UWMP:

- A. outdoor watering that lets water run onto sidewalks and other areas;
- B. washing vehicles without an automatic shutoff nozzle;
- C. washing hard surfaces like driveways or sidewalks that don't absorb water;
- D. filling decorative fountains, lakes or ponds without a recirculation pump;
- E. outdoor watering within 48 hours after at least ¼ inch of rainfall; and
- F. watering decorative grass on public medians.

4. That the City also restricts watering decorative grass in commercial, industrial, and institutional areas, including common areas of homeowners' associations (HOAs), per SWRCB emergency regulation effective June 5, 2023 to June 5, 2024,

5. That the prohibitions listed above are in addition to the permanent prohibitions already codified in Section 1C of the City's Water Service and Use Rules and Regulations.

6. That the City reaffirms its commitment to support long-term water use efficiency efforts by continuing a 15% voluntary water use reduction target for all users, in alignment with the policies of Valley Water.

7. 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 \_\_\_\_\_, 20\_\_, BY THE FOLLOWING VOTE:

AYES:                      COUNCILORS:  
NOES:                      COUNCILORS:  
ABSENT:                    COUNCILORS:

ABSTAINED:            COUNCILORS:

ATTEST:

\_\_\_\_\_  
NORA PIMENTAL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None



## Agenda Report

23-873

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on Deleting an Electric Program Manager Position and Adding an Electric Division Manager Position at Silicon Valley Power and Related Budget Amendment

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure; and Manage Strategically Our Workforce Capacity and Resources

#### BACKGROUND

Silicon Valley Power (SVP) has provided electric service for over 127 years and is experiencing significant continued growth. SVP has developed a Council approved Capital Improvement Strategy to address the near-term and long-term potential load growth. In 2021, SVP recorded a peak load of nearly 600 Megawatt (MW) and delivered approximately 4,100 Gigawatt-hours (GWh) to customers. In 2022, SVP's recorded peak load increased to 702 MW, and energy delivery rose to 4,550 GWh. This represents an approximate 10% increase in energy delivery and represents the largest year-over-year growth in the last 30 years.

On September 28, 2021, City Council accepted SVP's Three-Year System Growth Strategy Plan. The Three-Year System Growth Strategy Plan identified \$300 million in proposed projects to install new facilities and to replace aged infrastructure with higher capacity infrastructure where needed. An amendment to the agreement with AECOM Technical Services, Inc. (AECOM) was authorized and executed, and AECOM has been onboarded to provide program management and project management support to assist with this effort.

At its November 15, 2022, meeting, City Council accepted the report of the SVP System Expansion Plan for the California Independent System Operator's Transmission Planning Process FY2023/24. The Summary of Proposed Projects for SVP System Growth Strategy included a comprehensive project list from this study with conceptual cost estimates of \$200 million of proposed projects for this study period. The identified work includes replacement of aged infrastructure and installation of new facilities which will allow higher internal SVP system capacity. These projects would add two additional internal 60kV loops totaling 13 miles of new transmission loops along with a number of reliability upgrades including 6.5 miles of reconducted transmission lines required to serve the additional projected internal load (1,306 MW by 2032).

In March 2023, the California Independent System Operator selected LS Power as the developer, owner and operator of two 500 MW transmission lines to the South Bay with an estimated cost of over \$1.0 billion. SVP is focusing on one of the 500 MW transmission lines that will link PG&E's existing Newark Substation in Fremont to SVP's Northern Receiving Station. In addition to all the

new growth, staff has also presented to Council numerous times during SVP’s quarterly reports on SVP’s increased proactive maintenance program which bolsters reliability but also requires a much higher level of work effort.

Over the last two years SVP’s workload has increased significantly. To facilitate the current and upcoming workload, the new Program Manager in the Transmission and Distribution Division (and a few other new positions throughout SVP) was approved by Council to help manage the workload.

**DISCUSSION**

Staff has explored SVP’s organizational needs to better align with current workload priorities, operational and maintenance needs, and the system growth plan projects, and has determined that higher level management support is warranted in the Transmission and Distribution Division. The Transmission and Distribution Division has 31 budgeted full-time positions and two as-needed employees with only one Electric Division Manager. The new Program Manager position was intended to provide that additional level of supervisory support and oversight. After further analysis, staff is requesting to fill the position as an Electric Division Manager instead, which will provide for more experience and flexibility within the group. The amount and level of new and maintenance work combined with the expansion plan requires appropriate higher level of management for the 30 positions within the Division. As SVP staff has done over the last few years, they will continue to consider organizational alignment and modifications throughout to accommodate an expansion that will almost result in the doubling of its size of the Utility.

**ENVIRONMENTAL REVIEW**

The proposed staffing changes are not a project subject to the California Environmental Quality Act (CEQA) pursuant to section 15378(b)(5) of Title 14 of the California Code of Regulations as they are administrative activities that will not result in direct or indirect physical changes to the environment.

**FISCAL IMPACT**

The annual cost differential between an Electric Division Manager and Electric Program Manager is approximately \$41,500 for FY2023/24. The budget amendment below allocates funding from the Electric Utility Fund Ending Fund Balance to cover the cost differential for 11 months in FY 2023/24 to add an Electric Division Manager and delete an Electric Program Manager as recommended in this memorandum.

	<b>Budget Amendment FY 2023/24</b>		
	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b><u>Electric Utility Fund</u></b>			
<b><u>Expenditures</u></b>			
Electric Department	\$626,816,941	\$38,000	\$626,854,941
<b><u>Ending Fund Balance</u></b>			
Unrestricted Ending Fund Balance	\$72,526,687	(\$38,000)	\$72,488,687

**COORDINATION**

This report has been coordinated with the Human Resources Department, 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) <<mailto:clerk@santaclaraca.gov>>.

**RECOMMENDATION**

1. Approve the addition of one Electric Division Manager and deletion of one Electric Program Manager position in the Electric Utility Department funded by the Electric Utility Fund; and
2. Approve the following FY2023/24 budget amendment in the Electric Utility Fund to increase the Electric Department appropriation by \$38,000 and reduce the Unrestricted Ending Fund Balance by \$38,000 (**five affirmative Council votes required for the use of unused balances**).

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager





## Agenda Report

23-747

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on a Rezone from PD - Planned Development to MH - Heavy Industrial for the Properties Located at 700 Mathew Street to Allow Reestablishment of Industrial Use for the Property for a Metal Fabrication and Spinning Business

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

On February 16, 2023, Brian Brown with HPC Architecture (“Applicant”), on behalf of Andrew Czisch with QMS Shields (“Owner”) filed an application (File No. PLN23-00054) to change the use of two parcels (APNs: 224-03-086 and 224-03-000) located at 700 Mathew Street. The proposal includes interior changes and site improvements to use the existing buildings on the site for a Heavy Industrial use of metal fabrication/spinning for the business operating as Quality Metal Spinning.

The project site is currently vacant and was previously occupied by a business, “Off the Wall Soccer”, and warehouse use. In 2005, the City Council approved a request to rezone the parcel (APN: 224-04-082) from Heavy Industrial (MH) to Planned Development (PD) and a Tentative Parcel Map to subdivide the property into two parcels with one common area parcel. This created three parcels- Parcel One (700 Mathew Street, APN: 224-03-086), Parcel Two (2201 Lafayette Street, APN: 224-03-087) and Parcel Three (Parking lot along Mathew Street, APN: 224-03-000). The rezoning was approved with specific conditions of approval restricting the use of Parcel One to warehouse use or a soccer recreational facility that was an existing approved use through a previous Use Permit. A parking variance was also approved by the Planning Commission at that time.

The current application includes only Parcel One (warehouse/former indoor recreation) and Parcel Three (surface parking lot). Given the specific uses allowed in the existing PD zoning, the proposal to use this site for Heavy Industrial use (Quality Metal Spinning) requires a Rezone from Planned Development (PD) to Heavy Industrial (MH). The proposed project also includes a request for Variance for parking, and a reduction of the required front setback and landscaping in the Heavy Industrial Zoning district.

#### DISCUSSION

The proposed rezone to MH from PD would allow for a reestablishment of heavy industrial use, which was the original use at this site. The applicant proposes to use the property for a metal fabrication/spinning business, but with the rezoning to MH, the property could be used for any of the permitted uses in the MH zone, such as manufacturing, outdoor storage, and laboratories. The project site consists of two developed parcels (Parcels 224-03-086 and 224-03-000) and existing structures on the site will meet all the development standards and regulations listed in Chapter 18.50,

Heavy Industrial Zoning District, with the exception of the required front setback and landscaping, as the existing building was built at the property line.

On June 14, 2023, the Planning Commission reviewed the application for the Rezone and Variance. The Planning Commission staff report (Attachment #1) provides an analysis of the project's conformance to the General Plan and the substandard lot size and dimensions which were created by the previous rezoning and tentative map approved in 2005. The analysis concludes that the existing circumstances support the granting of the Variance.

The proposal was placed on the consent calendar for the Planning Commission agenda and was approved unanimously without any discussion.

The Planning Commission recommended approval of the rezoning and approved the Variance request for parking, required front setback and landscaping.

Rezoning applications require approval by the Council after the Planning Commission has reviewed and provided a recommendation.

### **ENVIRONMENTAL REVIEW**

The proposed project is categorically exempt from the California Environmental Quality Act ("CEQA") per CEQA Guidelines section 15301 (Class 1 - "Existing Facilities"), because the proposal involves an interior remodel and exterior modifications to the site without expanding the existing buildings.

### **FISCAL IMPACT**

There is no fiscal impact to the City for processing the requested application other than administrative time and expense typically covered by processing fees paid by the applicant.

### **COORDINATION**

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

### **PUBLIC CONTACT**

On June 1, 2023, a notice of the Planning Commission and City Council Hearings for this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 300 feet of the project site.

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.

At the time of this staff report, the Planning staff has not received public comments in support or opposition to the proposed project.

**ALTERNATIVES**

1. Determine that the Project is categorically exempt under Section 15301 (Class 1 Existing Facilities) of the CEQA Guidelines;
2. Adopt a resolution approving the Rezone from Planned Development (PD) to Heavy Industrial (MH) for the property located at 700 Mathew Street, subject to conditions of approval.
3. Deny the Rezone from Planned Development (PD) to Heavy Industrial (MH) for the property located at 700 Mathew Street, subject to conditions of approval.

**RECOMMENDATION**

1. Determine that the Project is categorically exempt under Section 15301 (Class 1 Existing Facilities) of the CEQA Guidelines;
2. Adopt a resolution approving the Rezone from Planned Development (PD) to Heavy Industrial (MH) for the property located at 700 Mathew Street, subject to conditions of approval.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Jovan D. Grogan, City Manager

**ATTACHMENTS**

1. Planning Commission Staff Report of June 14, 2023
2. Resolution approving the Rezone
3. Applicant Statement of Justification and Operational Plan
4. Development Plans



## Agenda Report

23-666

Agenda Date: 6/14/2023

### REPORT TO PLANNING COMMISSION

#### SUBJECT

Action on a Rezone from PD - Planned Development to MH - Heavy Industrial and Variance for the properties located at 700 Mathew Street (CEQA: Categorical Exemption, Class 1 Section 15301 Existing Facilities)

#### REPORT IN BRIEF

Applicant: Brian Brown, HPC Architecture

Owner: Andrew Czisch, QMS Shields

General Plan: Heavy Industrial

Zoning: Planned Development (PD)

Site Area: 64,898 square feet

Existing Site Conditions: The property is developed with an industrial building that is currently vacant and surface parking.

#### Surrounding Land Uses:

North: Vantage Data Center

South: Digital Realty Data Center

East: Heavy Industrial Uses

West: Heavy Industrial Uses

Issues: Consistency with the City's General Plan and conformance with the City's Zoning Ordinance

Staff Recommendation: Approve a Class I Categorical Exemption per Section 15301, Existing Facilities of the CEQA Guidelines, adopt a resolution approving a Variance for the front setback, landscaping, and parking, and adopt a resolution recommending the City Council approve the Rezone from Planned Development (PD) to Heavy Industrial (MH) for the property located at 700 Mathew Street, subject to conditions of approval.

#### BACKGROUND

On February 16, 2023, Brian Brown with HPC Architecture ("Applicant"), on behalf of Andrew Czisch with QMS Shields ("Owner") filed an application (File No. PLN23-00054) to change the use of two parcels (APNs: 224-03-086 and 224-03-000) located at 700 Mathew Street. The proposal includes interior changes and site improvements to use the existing buildings on the site for a Heavy Industrial use of metal fabrication/spinning for the business operating as Quality Metal Spinning.

The project site consists of two buildings, Building A (22,032 square feet) and Building B (16,503 square feet) that are currently vacant. They were previously occupied with a business, "Off the Wall Soccer", and a warehouse use. In 2005, the City Council approved a request (File No. PLN2005-05047) to rezone the parcel (APN: 224-04-082) from Heavy Industrial (MH) to Planned Development

(PD) to allow for the sale of the building located at 2201 Lafayette Street. Along with the Rezoning, the City Council also approved a Tentative Parcel Map (File No. PLN2005-04910) to subdivide the property into two parcels with one common area parcel. This created three parcels- Parcel One (700 Mathew Street, APN: 224-03-086), Parcel Two (2201 Lafayette Street, APN: 224-03-087) and Parcel Three (Parking lot along Mathew Street, APN: 224-03-000). The rezoning was approved with specific conditions of approval restricting the use of Parcel One to warehouse use or a soccer recreational facility that was an existing approved use through a previous Use Permit. A parking variance was also approved by the Planning Commission to provide 48 parking spaces, where 58 parking spaces were required by Code. A Parking Agreement was executed between Parcel One and Parcel Two, where ten parking spaces on Parcel Three would be available for use by Parcel Two.

The current application includes only Parcel One (warehouse/former indoor recreation) and Parcel Three (surface parking lot). Given the specific uses allowed in the existing PD zoning, the proposal to use this site for Heavy Industrial use (Quality Metal Spinning) would require a Rezone from Planned Development (PD) to Heavy Industrial (MH). Both buildings have been vacant since November 2021 and the existing Use Permit has expired. The proposal would preserve the configuration of the required 10 parking spaces on Parcel Three and they would continue to be available for use by Parcel Two per the existing Parking Agreement. This project also includes a Variance as discussed below.

## **DISCUSSION**

The proposal includes interior remodeling, adding a mezzanine area for office use, equipment platforms in each of the buildings, restriping the parking lot, adding a new trash enclosure, adding a sidewalk and other site improvements. The footprint of the existing buildings would not change. Parcel One does not have any parking and would require an off-site parking permit to utilize the parking on Parcel Three to provide the required 32 parking spaces for the proposed heavy industrial use. Per Section 18.86.040, off-site parking permits shall be granted administratively by the Zoning Administrator. With the new requirement to add a sidewalk along the project frontage and improve Fire access, the proposal will be short of the required parking by six spaces and would require a parking variance. Additionally, the project proposal includes a variance request for the required front setback and landscaping in the Heavy Industrial Zoning district for Parcel One as the existing building is built to the property line and a variance for required landscaping for Parcel Three to accommodate the new sidewalk. The project was reviewed by applicable City departments at the Project Clearance Committee meeting on May 23, 2023. The property owner has worked with the City departments to develop a phased approach for the construction of the project and appropriate conditions of approval have been added (Attachment 3).

## **General Plan Conformance**

The land use designation for site is currently Heavy Industrial that allows primarily manufacturing, refining, warehouse and distribution, and similar activities. Therefore, the proposed Rezoning from Planned Development (PD) to Heavy Industrial (MH) will be consistent with the General Plan. Further, the proposed project is consistent with existing General Plan Policies as follows:

### ***General Land Use Policies***

- 5.3.1-P8: Work with property owners to improve or redevelop underutilized and vacant properties.
- 5.3.1-P9: Require that new development provide adequate public services and facilities, infrastructure, and amenities to serve the new employment or residential growth.

The project would revamp the vacant and underutilized property by locating a new Quality Metal Spinning business. The project site is located in an urban environment surrounded by primarily industrial uses and is served by existing public services, facilities, infrastructure, and amenities. The proposal will make necessary infrastructure upgrades to serve the new use.

#### *Office and Industrial Land Use Policies*

- 5.3.5 P1 Work with existing Santa Clara businesses to retain and expand employment opportunities and strengthen the existing tax base.
- 5.3.5-P11 Construct sidewalks in industrial areas, with priority along streets served by existing or planned transit services.
- 5.3.5-P16 Protect the industrial land use designations from incompatible uses in order to maintain the City's strong fiscal health and quality services that are supported by new businesses and technologies and retention of well established existing businesses.

The proposed business would have up to 35 employees, providing employment opportunities in Santa Clara. The project has a condition of approval to construct a sidewalk along Mathew Street. The proposed heavy industrial use will be consistent with the industrial land use designation for the parcel.

#### Zoning Conformance

The project site is zoned PD with specific conditions of approval restricting the use of Parcel One to warehouse use or a soccer recreational facility. The proposed rezone to MH from PD would allow for heavy industrial use, which was the original use at this site. The project site consists of two parcels (224-03-086 and 224-03-000) that will meet all the regulations listed in Chapter 18.50 Heavy Industrial Zoning District except the required front setback and landscaping. The MH Zoning district requires a front setback of 15 feet and a minimum of ten feet of the required front yard to be maintained as open landscape area. The existing buildings on 'Parcel One' (700 Mathew Street; 224-03-086) are constructed with zero front setback and do not provide the required landscaping. Similarly, 'Parcel Three' does not meet the ten feet landscaping requirement of the MH zoning district. The proposal includes a request for a variance from Sections 18.50.080 Front Setback and 18.50.120(a) Landscaping of the zoning code.

The project site will be accessed through a 26-foot wide circular driveway. A five-foot wide sidewalk meandering around the existing transmission poles will be constructed along the project frontage along Mathew Street behind the existing landscaping fronting the site. Per Section 18.74.020(h)(3) (A), the proposed use will require 32 parking spaces at a ratio of 1 space per 1,500 square feet of floor area. The project provides 26 parking spaces and would therefore require a Variance for Parking.

#### Variance Request

In order to grant a Variance, the Planning Commission must make the findings listed in the Zoning Code (SCCC Section 18.108.040). The Zoning Code limits granting of Variances to situations where the peculiar physical characteristics of a site would make it difficult to develop consistent with standard regulations. A Variance may be granted in order to enable the development of a disadvantaged property at the equivalent level of use enjoyed by nearby properties in the same zone. The subject site has an unusual condition in that the Rezoning and Tentative Map approval in 2005

created a substandard condition for front setback and landscaping in that the building on Parcel One is built at the front property line thereby not allowing for a setback or landscaping. Additionally, the existing buildings were constructed in the 70's with reduced parking. The proposed use would repurpose the existing industrial site and the variance is necessary for the preservation and enjoyment of the substantial property rights of the owner.

The Variance is recommended for approval by the Planning Commission, but would only become effective in the event that the City Council approves the proposed rezoning. If the City Council declines to approve the rezoning, the Variance resolution will be null and void. If the City Council approves the rezoning, then the Variance resolution shall become effective on the effective date of the rezoning.

### Conclusion

The project site is located in a heavy industrial neighborhood originally zoned MH and developed with industrial buildings and uses. Therefore, the proposed project to rezone the property to MH meets the purpose and intent of the Zoning Code and is in conformance with the General Plan designation of Heavy Industrial.

### ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from the California Environmental Quality Act ("CEQA") per CEQA Guidelines section 15301 (Class 1 - "Existing Facilities"), because the proposal involves interior remodel and exterior modifications to the site without expanding the existing buildings.

### FISCAL IMPACT

There is no fiscal impact to the City for processing the requested application other than administrative time and expense typically covered by processing fees paid by the applicant.

### COORDINATION

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

### PUBLIC CONTACT

On June 1, 2023, a notice of public hearing on this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 300 feet of the project site. At the time of this staff report, Planning staff has not received public comments in support or opposition to the proposed project.

### RECOMMENDATION

1. Approve the use of the Class I Categorical Exemption per Section 15301, Existing Facilities of the CEQA Guidelines;
2. Adopt a resolution approving the Variance for front setback, landscaping, and parking, including the required findings; and
3. Adopt a resolution recommending City Council approve the Rezone from Planned Development (PD) to Heavy Industrial (MH) for the property located at 700 Mathew Street, subject to conditions of approval.

Prepared by: Nimisha Agrawal, Senior Planner

Reviewed by: Alexander Abbe, Assistant City Attorney

Approved by: Lesley Xavier, Planning Manager

**ATTACHMENTS**

1. Resolution recommending approval for Rezone
2. Resolution approving the Variance
3. Conditions of Approval
4. Applicant Statement of Justification and Operational Plan
5. Development Plans



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A REZONING FROM PLANNED DEVELOPMENT (PD) TO HEAVY INDUSTRIAL (MH) TO ALLOW THE PROPOSED USE OF HEAVY INDUSTRIAL AT 700 MATHEW STREET, SANTA CLARA**

**(File No. PLN23-00054- Rezoning and Variance)**

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on February 16, 2023, Brian Brown with HPC Architecture (“Applicant”), on behalf of Andrew Czisch with QMS Shields (“Owner”) filed an application (PLN23-00054) for the 64,989 square foot site consisting of two contiguous parcels (APN: 224-03-086 and 224-03-000) located at 700 Mathew Street with a surface parking lot and two one-story industrial buildings totaling 38,535 square feet (“Project Site”);

**WHEREAS**, the General Plan land use designation for the Project Site is Heavy Industrial, and it is zoned Planned Development (PD);

**WHEREAS**, the Project Site is developed with two industrial buildings that were previously occupied by a recreation business, ‘Off the Wall Soccer’, warehouse, and surface parking;

**WHEREAS**, the Property Owner applied to rezone the Project Site from Planned Development (PD) to Heavy Industrial (MH) to allow the existing buildings to be used for a heavy industrial business (“Project”) as shown on the development plans, attached hereto and incorporated herein by reference;

**WHEREAS**, the Project is Categorically Exempt from formal environmental review per Section 15301, Class 1 “Existing Facilities” of the Guidelines of the California Environmental Quality Act (“CEQA”), which applies to small additions and minor modifications to existing facilities. Here the proposal involves a small mezzanine addition inside the building without changing the building footprint and site improvements, and would have negligible effects on the environment;

**WHEREAS**, on June 1, 2023, the notice of meeting date for this item was posted in three conspicuous locations within 300 feet of the Project Site and mailed to property owners within a 300 foot radius of the Project Site for the Planning Commission hearing on June 14, 2023; and,

**WHEREAS**, on June 14, 2023, the Planning Commission held a duly noticed public hearing to consider the Variance application, during which the Planning Commission invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the proposed Project.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Planning Commission hereby recommends that the City Council rezone the Project Site from Planned Development (PD) to Heavy Industrial (MH) to allow the existing buildings on the project site to be used for a heavy industrial business; as depicted on the attached Illustration Plan, incorporated herein by this reference.

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3. 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 PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A SPECIAL MEETING THEREOF HELD ON THE 14<sup>th</sup> DAY OF JUNE 2023, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: \_\_\_\_\_  
ANDREW CRABTREE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
CITY OF SANTA CLARA

Attachments Incorporated by Reference:  
1. Development Plans

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING A VARIANCE FOR THE FRONT SETBACK, REQUIRED LANDSCAPING AND PARKING TO ALLOW THE PROPOSED USE OF HEAVY INDUSTRIAL AT 700 MATHEW STREET, SANTA CLARA**

**(File No. PLN23-00054- Rezoning and Variance)**

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on February 16, 2023, Brian Brown with HPC Architecture (“Applicant”), on behalf of Andrew Czisch with QMS Shields (“Owner”) filed an application (PLN23-00054) requesting a Variance for the property located at 700 Mathew Street (APN: 224-03-086 and 224-03-000) (“Project Site”) in the City of Santa Clara;

**WHEREAS**, the General Plan land use designation for the Project Site is Santa Clara Station Heavy Industrial;

**WHEREAS**, the Project Site is zoned Planned Development (PD);

**WHEREAS**, the Project Site is developed with two industrial buildings that were previously occupied with a recreation business, ‘Off the Wall Soccer’, warehouse and surface parking;

**WHEREAS**, the Property Owner has submitted an application for a Variance (“Project”) to Section 18.50.080 of the City Code to allow a zero front setback, where 15 feet is required, a Variance to Section 18.50.120(a) of the City Code’s landscaping requirement for the first minimum of ten feet of the required front yard to be maintained as open landscape area, and a Variance from Section 18.74.020(h)(3)(A) of the City Code for reduced parking of 26 spaces where 32 parking spaces are required to allow the existing buildings to be used for a heavy industrial business;

**WHEREAS**, the Project is Categorically Exempt from formal environmental review per Section 15301, Class 1 “Existing Facilities” of the Guidelines of the California Environmental Quality Act (“CEQA”), which applies to small additions and minor modifications to existing facilities. Here the

proposal involves a small mezzanine addition inside the building without changing the building footprint and site improvements and would have negligible effects on the environment;

**WHEREAS**, on June 1, 2023, the notice of meeting date for this item was posted in three conspicuous locations within 300 feet of the Project Site and mailed to property owners within a 300 foot radius of the Project Site for the Planning Commission hearing on June 14, 2023; and,

**WHEREAS**, on June 14, 2023, the Planning Commission held a duly noticed public hearing to consider the Variance application, during which the Planning Commission invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the proposed Variance.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. That the Planning Commission hereby approves the Variance to the Heavy Industrial (MH) zoning regulations and parking regulations to allow the existing buildings on the project site to be used for a heavy industrial business; as depicted on the attached Illustration Plan and subject to the attached Conditions of Approval, all of which are incorporated herein by this reference.

3. That pursuant to SCCC Section 18.108.040, the Planning Commission hereby makes the following findings related to the Variance request:

A. That there are special conditions and extraordinary circumstances applicable to the property involved or its intended uses and which were not created by the owner or his/her tenant, in that the Rezoning and Tentative Map approval in 2005 for the project site created a substandard condition for front setback and landscaping, and that a parking variance was also approved at that time.

B. That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner, in that it would allow the rehabilitation of the existing

underutilized site that is almost fully built out by existing buildings and is significantly constraint in the approved use of recreation soccer or warehouse through the PD approval.

C. That literal enforcement of the provisions of the Heavy Industrial Zoning district and parking regulations would result in unnecessary hardship inconsistent with the spirit and intent of the zoning code, in that the project utilizes the existing footprint of the industrial buildings to establish a heavy industrial business consistent with the General Plan land use designation of Heavy Industrial.

D. That the granting of such Variance shall not, under the circumstances of the particular case, materially affect adversely the health, safety, peace, comfort or general welfare of persons residing or working in the neighborhood of the applicant's property, and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood, in that the proposal would allow the adaptive reuse of the existing vacant industrial buildings, site improvements and better connectivity to the neighborhood.

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4. Effective date. This project comprises two entitlements: the variance approved by this resolution, and a separate rezoning to be approved by the City Council. This resolution shall become effective only in the event that the City Council approves that rezoning. If the City Council declines to approve the rezoning, this resolution shall be null and void. If the City Council approves the rezoning, then this resolution shall become effective on the effective date of the rezoning.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A SPECIAL MEETING THEREOF HELD ON THE 14<sup>th</sup> DAY OF JUNE 2023, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:
ABSTAINED:	COMMISSIONERS:

ATTEST: \_\_\_\_\_  
ANDREW CRABTREE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
CITY OF SANTA CLARA

Attachments Incorporated by Reference:  
1. Conditions of Approval  
2. Development Plans

## **CONDITIONS OF APPROVAL**

### **GENERAL**

- A. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.
- B. Comply with all applicable codes, regulations, ordinances and resolutions.

### **ATTORNEY'S OFFICE**

- A. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

### **COMMUNITY DEVELOPMENT**

#### **BUILDING DIVISION**

- BD1. The construction permit application drawings submitted to the Santa Clara Building Division shall include a copy of the latest Federal Emergency Management Agency (FEMA) Flood Zone Map: <https://msc.fema.gov/portal/home>. The project drawings shall indicate how the project complies with the Santa Clara Flood Damage Prevention Code.
  - a. FEMA Flood Zone map designations and requirements are based on the map in effect at date of Building Permit issuance.
- BD2. The construction permit application drawings submitted to the Santa Clara Building Division shall include Santa Clara Valley Urban Runoff Pollution Prevention Program Low Impact Development (LID) practices [http://www.scvurppp-w2k.com/nd\\_wp.shtml](http://www.scvurppp-w2k.com/nd_wp.shtml). All projects that disturb more than one acre, or projects that are part of a larger development that in total disturbs more than one acre, shall comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program Best Management Practices (BMP): [http://www.scvurppp-w2k.com/construction\\_bmp.shtml](http://www.scvurppp-w2k.com/construction_bmp.shtml), and shall provide a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer (QSD). All site drainage and grading permit applications submitted to the Santa Clara Building Division shall include a city of Santa Clara "C3" data form, available on this web page:
  - <https://www.santaclaraca.gov/our-city/departments-g-z/public-works/environmental-programs/stormwater-pollution-prevention> and will be routed to a contract consultant for review.
- BD3. No construction code review or analysis is being done at this time. The construction permit application drawings submitted to the Santa Clara Building Division shall include an overall California Building Code analysis, including; proposed use and occupancy of all spaces (CBC Ch. 3), all building heights and areas (CBC Ch. 5), all proposed types of construction (CBC Ch. 6), all proposed fire and smoke protection features, including all types of all fire rated penetrations proposed (CBC Ch. 7), all proposed interior finishes fire resistance (CBC Ch. 8), all fire protection systems proposed (CBC Ch. 9), and all means of egress proposed (CBC Ch. 10). -Noncombustible exterior wall, floor, and roof finishes are strongly encouraged.
  - During construction retaining a single company to install all fire rated penetrations is highly recommended.
  - The grade level lobbies shall be min.1 hour rated all sides and above.
  - All stair shafts shall be min. 1 hour rated.
  - All elevator shafts shall be min. 1 hour rated.
  - All trash chute shafts shall be min. 1 hour rated.



- Recommendation: provide a minimum of two trash chutes; one for recyclables, one for trash, each trash chute to be routed down to a grade level trash collection room.
  - Any trash rooms shall be min. 1 hour rated all sides and above.
- BD4. The overall project construction permit application shall include the geotechnical, architectural, structural, energy, electrical, mechanical, and plumbing drawings and calculations. Prior to the issuance of the overall project construction permit, a conditions of approval review meeting must be held in city hall, which meeting must be attended by the on-site field superintendent(s). The meeting will not be held without the attendance of the on-site field superintendent(s). The on-site grading permit shall be a separate permit application to the Building Division.
- BD5. Temporary Certificates of Occupancy will not be routinely issued and will be considered on a very limited basis only when there is a clear and compelling reason for city staff to consider a TCO. A TCO will be approved only after all applicable City staff have approved in writing; Planning, P.W./ Engineering, Fire Prev., Santa Clara Water, Silicon Valley Power, and any other applicable agencies such as the Santa Clara County Health Dept., with the Building Division being the final approval of all TCO.'s.
- BD6. See Title 15 of the Santa Clara City Code for any amendments to the California Building Codes.

#### PLANNING DIVISION

- P1. Any modification to the approved statement of operations shall require an amendment to the use permit subject to Planning Commission review and approval prior to commencement of any new or modified business operation.
- P2. Any new or existing lighting shall be adequately addressed in the interest of safety and sensitivity to nearby properties.
- P3. The existing landscape cover shall be maintained and supplemented with new ground cover/plants matching the existing. Additionally, the existing irrigation system shall be maintained, and necessary repairs shall be made to help sustain the ground cover on the property.
- P4. The business owner shall be responsible for collection and pick-up of all trash and debris on-site and adjacent public right-of-way.
- P5. Rooftop equipment, if any, shall be screened.
- P6. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits, including the disconnection of roof downspouts to drain over landscaped yards on site.
- P7. Submit plans for final architectural review to the Planning Division and obtain architectural approval prior to issuance of building permits. Said plans to include, but not be limited to site plans, floor plans, elevations, landscaping, lighting and signage. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection. Lighting details shall be provided as part of the Architectural Review for the project and shall be designed and maintained to avoid light trespass and reflect away from residential properties and public streets.
- P8. Construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 300 feet of a residential use and shall not be allowed on recognized State and Federal holidays.
- P9. Provide trash enclosure, the location and design of which shall be approved by the Director of Planning and Inspection prior to issuance of any building permits. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the building(s) onsite and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite. Roofed enclosures

- with masonry walls and solid metal gates are the preferred design.
- P10. Use shall operate in a manner such that it does not create a public or private nuisance.

## **FIRE**

- F1. Prior to Building Permit Issuance, a Phase II environmental assessment is required to be submitted to CRRD for review. If hazards are present that require site mitigation, cleanup, or management of chemical contaminants in soil, soil vapor, or groundwater a separate permit from one of the regulatory agencies below will be required. The type and extent of contamination on site(s) will govern which of the regulatory agencies noted below can supervise the cleanup:
- a. Department of Toxic Substances Control (DTSC);
  - b. State Water Resources Control Board; or
  - c. Santa Clara County, Department of Environmental Health.
  - d. If the project intends to contract with a State or County Agency for onsite/offsite environmental remediation activities the following documentation shall be provided to the Fire Prevention & Hazardous Materials Division prior to issuance of a Building Permit for demolition or grading: Oversight agency case number; and Oversight managers contact name, phone number.
- F2. Prior to Building Permit Issuance, a Hazardous Materials Inventory Statement is required to be submitted and reviewed.
- F3. Prior to Building Permit Issuance, a permit for Construction Safety & Demolition shall be submitted to the fire department for review and approval in compliance with our Construction Safety & Demolition standard.
- F4. Prior to Building Permit Issuance, provide documentation from the City of Santa Clara Water & Sewer Department that the minimum required fire-flow can be met. Fire Department fire-flow will be based on the current California Fire Code. The most restrictive departments requirement shall apply.
- F5. Prior to Building Permit Issuance, a separate construction permit for fire hydrants shall be obtained from the fire department. The required number, location and distribution of fire hydrants for the buildings will be based on the current California Fire Code, Appendix C as amended. The required number of fire hydrants will be based on the fire-flow before the reduction for fire sprinklers. Both public and private fire hydrants will be required.
- F6. Prior to the issuance of the Building Permit, a construction permit from the fire department apparatus access roads is required to be submitted for review and approval. Roadways must be provided to comply with all the following requirements:
- a. Fire apparatus access roadways shall be provided so that the exterior walls of the first story of the buildings are located not more than 150 feet from fire apparatus access as measured by an approved route around the exterior of each building. In addition, aerial apparatus roadways must be located so aerial apparatus will have clear access to the "entire" face/sides of the building. The minimum number of sides is project-specific and depends on the building configuration, building design, occupancy, and construction type, etc. As part of Building Permit Issuance, an alternative materials, design, and methods of construction and equipment permit application will need to be submitted for review and approval incorporating applicable mitigation measures as determined by the fire department for the lack of compliance. Please note acceptable mitigation methods may have been agreed to during the planning stage. A formal alternate means permit is needed to document that and needs to be submitted concurrently with the Building Plans.
  - b. The parking garage fire department drive-thru shall have a minimum vertical clearance of not less than 16 feet. For all other areas, the "minimum" unobstructed vertical clearance shall not be less than 13 feet 6 inches.
  - c. The "minimum" width of aerial roadways for aerial apparatus is 26 feet.

- d. The minimum inside turning radius shall be 30 feet, and minimum outside of 56 feet.
  - e. The “minimum” width of roadways for aerial apparatus is 26 feet. Aerial access roadways shall be located a minimum of 15 feet and a maximum of 30 feet from the protected building.
  - f. Overhead utility and power lines easements shall not be located over fire apparatus access roads or between the aerial fire apparatus roads and the buildings to avoid the possibility of injury and equipment damage from electrical hazards.
  - g. Fire apparatus access roadways shall be all-weather surface(s) designed to support a gross vehicle weight of 75,000-pounds.
  - h. Trees at full development must not exceed 30’ in height and not impair aerials apparatus operations to sweep opposing sides of a building. Other obstructions such as site lighting, bio-retention, and architectural features are reviewed case-by-case to ensure they do not obstruct aerial and ground ladder access. Exception: Existing Redwoods trees around the perimeter of the proposed parking garage.
  - i. Traffic control/calming devices are not permitted on any designated fire access roadway unless approved. A separate Fire Department permit is required for any barrier devices installed along fire department apparatus access roads.
  - j. Prior to any Building Department Issuance, all fire department apparatus access roadways on private property are required to “be recorded” with the County of Santa Clara as Emergency Vehicle Access Easements (EVAE’s) and reviewed by the Fire Department. No other instruments will be considered as substitutions such as P.U.E, Ingress/Egress easements and/or City Right-of-Ways.
  - k. Prior to Building Permit Issuance, any EVAEs or fire protection equipment (including but not limited to fire service undergrounds, sprinkler piping, fire alarm equipment, fire pumps, ERRCS) that cross property lines or is not located on the parcel of the building it serves shall have a CC&R legally recorded detailing who is responsible for maintenance and repair of the EVAE or fire protection equipment.
- F7. Prior to any Building Permit issuance, an alternate means or methods permits to mitigate any code deficiency must be submitted and approved. Please submit this permit concurrently with the building plans. Please note specific mitigations may have been discussed and approved during the PCC process. The AMM permit is formally documenting that and still needs to be submitted. Conversely, mitigation methods may have not been specified during the PCC process in which case the AMM permit will be evaluated at the Building Permit phase. Due to this building being a change of occupancy, any alternate means permit approved will need to have any mitigation methods completed before occupancy of the building.

## **PUBLIC WORKS**

### **ENGINEERING**

- E1. Obtain site clearance through Public Works Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Public Works Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be submitted within a Single Encroachment Permit to be reviewed and issued by the City Public Works Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.

- E3. Submit public improvement/encroachment permit plans prepared in accordance with City Public Works Department procedures which provide for the installation of public improvements directly to the Public Works Department. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of final map and/or issuance of building permits.
- E4. Construct minimum 5' ADA compliant sidewalk and driveways along entire frontage.
- E5. Dedicate sidewalk easements along the project frontage where public sidewalks extend into private property. Sidewalk easements are to be 1' behind proposed back of walk where there is landscaping behind sidewalk. Sidewalk easement where hardscape is behind sidewalk is to be at back-of-walk. Cold joint is required between public sidewalk and private hardscape.
- E6. Dedicate new public utility easement and vacate existing public utility easement so there is no encroachment of existing building into easement.
- E7. Submit Vehicle Miles Travel and vehicle trip calculations in accordance with the City transportation policy <https://www.santaclaraca.gov/our-city/departments-g-z/public-works/engineering/traffic-engineering/transportation-analysis-policy-update>
- E8. Landscape improvements within 10 feet of a driveway must be less than 3 feet or greater than 10 feet per City Standard Detail TR-9.
- E9. All on-site structures must be clear of Driveway Visibility Clearance Areas per City Standard Detail TR-9.
- E10. Trash collection shall be conducted on-site.
- E11. Design and construct minimum 5-foot wide sidewalk along project frontage. A minimum 4-foot clearance around obstructions in sidewalk is required.
- E12. Design and construct driveway in accordance with City Standard Detail ST-8.
- E13. Traffic improvements must comply with the City of Santa Clara Standard Specifications for Public Works Construction
- E14. Bicycle parking shall be 2 Class I spaces (1 per 20 employees) and 10 Class II spaces (1 per 5,000 s.f.) per VTA Bicycle Technical Guidelines.
- E15. Class I and Class II bicycle parking, as defined in SCMC 18.74.075, shall be conveniently accessible from the street, within 200 feet of a building entrance and/or highly visible areas.

STREETS DIVISION

Right of Way Landscape

- L1. Include [City of Santa Clara Tree Preservation/City Arborist specifications](#) on all improvement plans.
- L2. No removal or cutting of any part of **trees in the ROW**, including roots, shall be done without securing prior approval of the City Arborist. Tree trimming/removal shall be done in accordance to the City of Santa Clara Tree Preservation/City Arborist specifications and with direct supervision of a certified arborist (Certification of International Society of Arboriculture).
- L3. Trees that are removed from City ROW are subject to a 2:1 replacement. If replacement ratio can't be met, a tree planting fee shall be paid by the developer.
- L4. Identified existing mature trees to be maintained. Prepare a tree protection plans for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site.
- L5. All approved landscaping shall be maintained by the development.

Solid Waste

- SW1. The applicant shall complete and provide the Post-Construction Solid Waste Generation Estimation and Collection Form, which includes the estimation of trash and recycling materials generated from the project. Use the City's Solid Waste Guidelines for New and Redevelopment Projects as specified by the development type. Contact the Public Works Department at [Environment@SantaClaraCA.gov](mailto:Environment@SantaClaraCA.gov) or (408) 615-3080 for more information.
- SW2. The applicant shall provide a site plan showing all proposed locations of solid waste containers, chutes, compactors, trash enclosures and trash staging areas. The site plan shall show the route or access for trash and recycling collectors (trucks) including vertical clearance, turning radius and street/alley widths. All plans shall comply with the City's Solid Waste Guidelines.

- SW3. For projects that involve construction, demolition or renovation of 5,000 square feet or more, the applicant shall comply with City Code Section 8.25.285 and recycle or divert at least sixty five percent (65%) of materials generated for discard by the project during demolition and construction activities. No building, demolition, or site development permit shall be issued unless and until applicant has submitted a construction and demolition debris materials check-off list. Applicant shall create a Waste Management Plan and submit, for approval, a Construction and Demolition Debris Recycling Report through the City's online tracking tool at <http://santaclara.wastetracking.com/>.
- SW4. Prior to obtaining a Temporary or Final Certificate of Occupancy, individual weight tickets for all materials generated for discard or reuse by the project during demolition and construction activities shall be uploaded to Green Halo and submitted for review and approval by Environmental Services. At a minimum two (2) weeks review time is required.
- SW5. This project is subject to the City's Accumulation, Transportation and Disposal of Solid Waste Ordinance (Chapter 8.25 of the Municipal Codes), which requires the handling and disposal of waste by authorized service haulers. Insert the General Notes for the Construction & Demolition (C&D) Waste Management into construction plans in accordance with the City's municipal codes prior to the issuance of a Building or Grading permit. Provide the Green Halo waste online tracking number to Building staff prior to the issuance of a demolition or building permit.
- SW6. This property falls within the City's exclusive franchise hauling area. The applicant is required to use the City's exclusive franchise hauler and rate structure for any hired debris boxes. Prior to the issuance of a Public Works clearance, the project applicant shall complete and sign the Construction and Demolition (C&D) / Waste Management Rules and Regulations Form.
- SW7. All refuse from all residential, commercial, industrial and institutional properties within the city shall be collected at least once a week, unless otherwise approved in writing (SCCC 8.25.120). All project shall submit to the Public Works Department the preliminary refuse service level assessment for approval.

#### Stormwater

- ST1. The applicant shall incorporate Best Management Practices (BMPs) into construction plans and incorporate post-construction water runoff measures into project plans. Include the [SCVURPPP Countywide Construction BMPs Plan Sheet](#) with the plans.
- ST2. Developer shall install an appropriate stormwater pollution prevention message such as "No Dumping – Flows to Bay" on any storm drains located on private property.
- ST3. Full Trash capture devices shall be installed in any site drain that is not part of a stormwater bioretention treatment area that connects to the City's stormdrain system. Devices installed shall meet the State Water Resources Control Board standard and manufacturer and type shall be chosen from the [State Water Resources Control Board's Certified Full Capture System List of Trash Treatment Control Devices](#).
- ST4. Interior floor drains shall be plumbed to the sanitary sewer system and not connected to the City's storm drain system.
- ST5. Floor drains within trash enclosures shall be plumbed to the sanitary sewer system and not connected to the City's storm drain system.
- ST6. All outdoor equipment and materials storage areas shall be covered and/or bermed, or otherwise designed to limit the potential for runoff to contact pollutants.
- ST7. The use of architectural copper is discouraged. If such material is used, all wastewater generated by the installation, cleaning, treating, or washing of the surface of copper architectural features, including copper roofs, shall not be discharged to the City's storm drain system.

#### **SILICON VALLEY POWER**

- SVP1. Applicant has a separate permit BLD22-65860 for the electrical upgrades to this building. As part of this permit a developers work drawing will be require for new conduits/infrastructure along the frontage. This may be completed with an SVP estimator or through the applicant design process. Please reach out to your key customer representative "Ashley Sterling <ASterling@SantaClaraCA.gov>" if you wish to proceed with the applicant design process.

- SVP2. Loads for the parcel are not to exceed 2.5MVA cumulatively between the two services.
- SVP3. Clearances: **(Make sure job notes do not conflict with SVP clearance requirements)**
- a. EQUIPMENT
    - i. Ten (10) foot minimum clearance is required in front of equipment access doors. (UG1000 sheet 11)
    - ii. Five (5) foot minimum clearance from pad is required on sides without equipment access doors. (UG1000 sheet 11)
    - iii. Eighteen (18) foot minimum width, shall be provided and maintained on one side of the equipment pad to allow an electric dept. line truck to drive up next to the pad for installation and maintenance of equipment. (UG1000 Sheet 11).
    - iv. Barrier pipes are required only on sides accessible to vehicles. (UG1000 Sheet 12).
      1. Thirty (30) inches from side of equipment sides.
      2. Forty Eight (48) inches in front of access doors.
        - a. Barrier Pipes in front of access doors shall be removable.
  - b. CONDUITS
    - i. Five (5) foot minimum longitudinal clearance between new conduits or piping systems (open trench installation) and any existing or proposed SVP conduit system. This is for longitudinal. (UG1250 sheet 5)
    - ii. Twelve (12) inch minimum vertical clearance between new conduit/pipes installed perpendicular to existing SVP conduits for open trench installations. (UG1000 sheet 36, UG1250 Sheet 6)
    - iii. Three (3) foot six (6) inches clearance is required from poles for open trench installation. Exceptions are for riser conduit. (UG1250 Sheet 7)
    - iv. Three (3) foot minimum clearance is required between sign posts, barrier pipes or bollards, fence posts, and other similar structures. (UG1250 sheet 10).
    - v. Five (5) foot minimum from new splice boxes, pull boxes, manholes, vaults, or similar subsurface facilities. (UG1000 sheet 8)
    - vi. Five (5) foot minimum clearance from walls, footings, retaining wall, landscape planter, tree root barrier or other subsurface wall or structure. (UG1250 sheet 9).
    - vii. Five (5) foot minimum clearance is required between fire hydrant thrust block. The thrust block extends 5' foot on either side of the fire hydrant in line with the radial water pipe connected to the hydrant.
  - c. VAULTS/MANHOLES
    - i. Ten (10) foot minimum clearance is required between adjacent Vaults or Manholes.
    - ii. Five (5) foot minimum clearance is required between adjacent conduits.
    - iii. Minimum 36" from face of curb, or bollards required.
  - d. Poles (Electrolier, Guy Stub poles, service clearance poles, self-supporting steel poles and lighting poles.)
    - i. Three (3) foot six (6) inches clearance is required from poles for open trench installation. Exceptions are for riser conduit. (UG1250 Sheet 7)
  - e. Guy Anchors
    - i. Five (5) foot minimum clearance is required between center of anchor line and any excavation area. (UG1250 sheet 15).
  - f. Trees
    - i. OH 1230 for Overhead Lines
    - ii. SD 1235 for Tree Planting Requirements near UG Electric Facilities
- SVP4. Reference listed SVP standards for clearances.
- a. Installation of Underground Substructures by Developers
  - b. UG1250 – Encroachment Permit Clearances from Electric Facilities
  - c. UG0339 – Remote Switch Pad
  - d. OH1230 – Tree Clearances From Overhead Electric Lines
  - e. SD1235 – Tree Planting Requirements Near Underground Electric Facilities

- SVP5. Prior to submitting any project for Electric Department review, applicant shall provide a site plan showing all existing utilities, structures, easements and trees. Applicant shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning Department for review by the Electric Planning Engineer. Silicon Valley Power will do exact design of required substructures after plans are submitted for building permits.
- SVP6. The Developer shall provide and install electric facilities per Santa Clara City Code chapter 17.15.210.
- SVP7. Electric service shall be underground. See Electric Department Rules and Regulations for available services.
- SVP8. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code chapter 17.15.050.
- SVP9. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G7, Rev. 2.
- SVP10. The developer shall grant to the City, without cost, all easements and/or right of way necessary for serving the property of the developer and for the installation of utilities (Santa Clara City Code chapter 17.15.110).
- SVP11. If the "legal description" (not "marketing description") of the units is condominium or apartment, then all electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. If they are townhomes or single-family residences, then each unit shall have it's own meter, located on the structure. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.
- SVP12. If transformer pads are required, City Electric Department requires an area of 17' x 16'-2", which is clear of all utilities, trees, walls, etc. This area includes a 5'-0" area away from the actual transformer pad. This area in front of the transformer may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" min. wide sidewalk. Transformer pad must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck.
- SVP13. All trees, existing and proposed, shall be a minimum of five (5) feet from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in PUE's or electric easements.
- SVP14. Any relocation of existing electric facilities shall be at Developer's expense.
- SVP15. Electric Load Increase fees may be applicable.
- SVP16. The developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code chapter 17.15.210 (2)).
- SVP17. Electrical improvements (including underground electrical conduits along frontage of properties) may be required if any single non-residential private improvement valued at \$200,000 or more or any series of non-residential private improvements made within a three-year period valued at \$200,000 or more (Santa Clara City Code Title 17 Appendix A (Table III)).
- SVP18. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans.



Review process may take several months depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.

- SVP19. Encroachment permits will not be signed off by Silicon Valley Power until Developers Work substructure construction drawing has been completed.
- SVP20. All SVP-owned equipment is to be covered by an Underground Electric Easement (U.G.E.E.) This is different than a PUE. Only publically-owned dry utilities can be in a UGEE. Other facilities can be in a joint trench configuration with SVP, separated by a 1' clearance, providing that they are constructed simultaneously with SVP facilities. See UG 1000 for details.
- SVP21. Proper clearance must be maintained from all SVP facilities, including a 5' clearance from the outer wall of all conduits. This is in addition to any UGEE specified for the facilities. Contact SVP before making assumptions on any clearances for electric facilities.
- SVP22. Transformers and Switch devices can only be located outdoors. These devices MAY be placed 5' from an outside building wall, provided that the building wall in that area meets specific requirements. (See UG 1000 document for specifics) EXAMPLE: If there are any doors, windows, vents, overhangs or other wall openings within 5' of the transformer, on either side, then the transformer MUST be 10' or more away from the building. These clearances are to be assumed to be clear horizontally 5' in either direction and vertically to the sky.
- SVP23. All existing SVP facilities, onsite or offsite, are to remain unless specifically addressed by SVP personnel by separate document. It is the Developers responsibility to maintain all clearances from equipment and easements. Developer to contact SVP outside of the PCC process for clear definitions of these clearance requirements. Developer should not assume that SVP will be removing any existing facilities without detailed design drawings from SVP indicating potential removals. *Simply indicating that SVP facilities are to be removed or relocated on conceptual plans does not imply that this action has been approved by SVP.*
- SVP24. SVP does not utilize any sub-surface (below grade) devices in its system. This includes transformers, switches, etc.
- SVP25. All interior meter rooms at ground level are to have direct, outside access through only ONE door. Interior electric rooms must be enclosed in a dedicated electric room and cannot be in an open warehouse or office space.
- SVP26. High Rise Metering and Multi-Floor Infrastructure Requirements
- a. Refer to UG0250 – High Density Residential Metering Requirements
  - b. Refer to FO-1901 – Fiber Optic Splicing and Testing Methods
- SVP27. In the case of podium-style construction, all SVP facilities and conduit systems must be located on solid ground (aka “real dirt”), and cannot be supported on parking garage ceilings or placed on top of structures.
- SVP28. Applicant is advised to contact SVP (CSC Electric Department) to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-615-6620 to facilitate plan review.
- SVP29. In events where electric load demand exceeds 2MVA or service size exceeds 4000 Amps at 480V for a building, the Customer shall take service at 12KV. If electric load for a single metered location service exceeds 4.5MVA, additional 12KV service(s) may be provided. All 12KV utility connection points terminate at the Customer Switchgear. UGEE easement up to the Customer Switchgear is required, along with an 18' drivable space. 10' working clearance is required in front of and behind the switchgear. 5' working clearance is required on the sides of the switchgear (with no panels). Customer 12KV Switchgear must be located outdoors on “real dirt” unless otherwise agreed upon with SVP. SVP owns and maintains the cable/conduit up to the customer switchgear.
- SVP30. In events where electric service is provided at 120/208V or 277/480V the utility connection point is at the secondary compartment of SVP transformers. Customer owns and maintains the cable and conduits up to the SVP transformers.



- SVP31. No cross-parcel distribution is allowed. SVP service points must be within the parcels that they serve.

## **WATER & SEWER**

### **Conditions that are to be met with Phase 0**

- W1. Upgrade Fire Service Backflows: All existing backflows for all fire services that will remain shall be upgraded to meet the current City of Santa Clara Water & Sewer Utilities Standard Details. Plans shall show meter and backflow configurations to scale.

### **Conditions that are to be met with Phase 1**

- W2. City Standard Meters and Backflows: All remaining meters and backflows for all water services that will remain but have not been upgraded shall be upgraded to meet the current City of Santa Clara Water & Sewer Utilities Standard Details. Plans shall show meter and backflow configurations to scale.
- W3. Recycled Water Use: Pursuant to Chapter 13.15, Water, Article IV. Regulation of Recycled Water Service and Use, of the Municipal Code, the project is required to use recycled water for all non-potable uses where recycled water is made available and where provided for by Recycled Water regulations. This project is required to extend and connect to the City's existing Recycled Water System.
- W4. Recycled Water Design: Each Recycled Water land use (irrigation, dual-plumbing, cooling system, industrial processes, etc.) shall have a separate metered service connection to the main. Applicant shall verify separations between all potable/fire lines and recycled water lines, pipe type, pipe depths, equipment types, warning lids, tags and signs.
- W5. Onsite Recycled Water Review: The applicant shall submit all completed [SBWR Proposed Use Request Applications](#) to the Compliance Division of Water and Sewer Utilities at [watercompliance@santaclaraca.gov](mailto:watercompliance@santaclaraca.gov) for review and approval. All on-site recycled water plans shall be reviewed, approved, and signed by the City of Santa Clara, SBWR, and Department of Drinking Water. All three entities must individually review and approve a plan set for Final Approval. Contact the Compliance Division of Water and Sewer Utilities via email or by phone at (408) 615-2002 for more information.
- W6. On-site Recycled Water Construction: Construction and installation of all on-site recycled water system equipment shall not begin until the Compliance Division of Water and Sewer Utilities has approved the on-site recycled water design. Please note on-site designs are generally not the same as the Building Permit plans. On-site recycled water plans require SBWR and California State Water Resources Control Board, Division of Drinking Water signatures for final approval.
- W7. On-site Recycled Water Inspection: Inspections are required at all on-site recycled water systems being installed prior to backfilling trenches or cover in walls and ceilings. Request a recycled water inspection by email [watercompliance@santaclaraca.gov](mailto:watercompliance@santaclaraca.gov) or call (408) 615-2002. Please provide the site location, SBWR project ID, and date and time preferences. These inspections are in addition to the Building Permit inspections.
- a. Need to verify separations between all potable/fire lines and recycled water lines, pipe type, pipe depths, equipment types, warning lids, tags and signs.

### **Conditions that are to be met with all Phases**

- W8. Encroachment Permit: Prior to issuance of Building Permits, the applicant shall submit an encroachment permit application and design plans for construction of water utilities that comply with the latest edition of the Water & Sewer Utilities Water Service and Use Rules and Regulations, Water System Notes, and Water Standard Details and Specifications. In addition, prior to the City's issuance of Occupancy, the applicant shall construct all public water utilities per the approved plans. The Water & Sewer Utilities will inspect all public water utility installations and all other improvements encroaching public water utilities.
- W9. Utility Design Plans: Utility Design Plans shall indicate the pipe material and the size of existing water, recycled water and sewer main(s). The plans shall show the nearest existing fire hydrant and the two nearest existing water main line gate valves near the project area. The plans shall show meter and backflow configurations to scale and per City of Santa Clara Water & Sewer Utilities Standard Details.

Note that all new water meters and backflow prevention devices shall be located behind the sidewalk in a landscape area. Fire hydrants should be located two feet behind monolithic sidewalk if sidewalk is present; two feet behind face of curb if no sidewalk is present, per City Std Detail 18. The plans shall provide the profile section details for utilities crossing water, sewer, or recycled water mains to ensure a 12" minimum vertical clearance is maintained.

- W10. Utility Separations: Applicant shall adhere to and provide a note indicating that all horizontal and vertical clearances comply with State and local regulations. The applicant shall maintain a minimum 12" of vertical clearance at water service crossing with other utilities, and all required minimum horizontal clearances from water services: 10' from sanitary sewer utilities, 10' from recycled water utilities, 8' from storm drain utilities, 5' from fire and other water utilities, 3' from abandoned water services, 5' from gas and electric utilities, and 5' from the edge of the propose or existing driveway. For sanitary sewer, water, and recycled water utilities, the applicant shall maintain a minimum horizontal clearance of 10' from existing and proposed trees. If applicant installs tree root barriers, clearance from tree reduces to 5' (clearance must be from the edge of tree root barrier to edge of water facilities). No structures (fencing, foundation, biofiltration swales, etc.) allowed over sanitary sewer, potable water and/or recycled water utilities and easements.
- W11. Separate Services: Applicant shall submit plans showing proposed water, recycled water, sanitary sewer, and fire services connected to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Different types of water and recycled water use (domestic, irrigation, fire) shall be served by separate water services, each separately tapped at the water main. Tapping on existing fire service line(s) is prohibited. Approved backflow prevention device(s) are required on all potable water services.
- W12. City Standard Meters and Backflows: All proposed meters and backflows for all water services shall meet the current City of Santa Clara Water & Sewer Utilities Standard Details. All existing meters and backflows for all water services that will remain shall be upgraded to meet the current City of Santa Clara Water & Sewer Utilities Standard Details. Plans shall show meter and backflow configurations to scale.
- W13. Existing Services: The applicant must indicate the disposition of all existing water and sewer services and mains on the plans. If existing services will be used, all existing meters and backflow devices shall be upgraded to meet current City standards. If the existing services will not be used, then the applicant shall properly abandon these services to the main per Water & Sewer Utilities standards and install a new service to accommodate the water needs of the project. The applicant shall bear the cost of any relocation or abandonment of existing Water Department facilities required for project construction to the satisfaction of the Director of Water and Sewer Utilities.
- W14. On-Site Storm Drain Treatment: Prior to issuance of Building Permit, the applicant shall submit plans showing any onsite storm water treatment system. The plan shall include a section detail of the treatment system. No water, sewer, or recycled water facilities shall be located within 5-feet of any storm water treatment system.
- W15. Water Usage: Prior to the issuance of Building Permits, the applicant shall provide documentation of water usage so the Water Division can verify the appropriate size of all proposed water meters. Please note that if the existing water services are incapable of supplying the water needs to the site, the existing services shall be abandoned, and new separate dedicated water services shall be provided for each use (domestic and irrigation).
- W16. Landscaping: All the landscaping for the project shall comply with the California Water Conservation in Landscaping Act, Government Code Section 65591 et. seq. All plants shall be California native, non-invasive, low water-using or moderate water-using. High water-using plants and nonfunctional turf are prohibited.
- W17. Prior to issuance of Building Permits, the applicant shall submit plan details for all water features (including but not limited to fountains and ponds) designed to include provisions for operating the system without City potable water supply and capable of being physically disconnected from source of potable water supply during City declared water conservation periods, to the satisfaction of the Director of the Water & Sewer Utilities. Decorative water features shall be permanently connected to the City's recycled water supply.

- W18. Easements: Prior to City's issuance of Building or Grading Permits, the applicant shall provide a dedicated water utility easement around the backflow prevention device onsite. The water utility easement for the water services and all other public water appurtenances shall be a minimum 15 feet wide and be adjacent to the public right-of-way without overlapping any public utility easement. Additionally, the applicant shall submit plans defining existing easements so Water Division can verify if there are any conflicts with proposed easements and water utilities.
- W19. Underground Fire Permit: Prior to issuance of Building Permits, applicant shall submit an underground fire permit unless otherwise waived by the Fire Department. If fire flow information is needed, applicant shall coordinate with Water and Sewer Utilities Department, for fire flow information at (408)615-2000. A dedicated fire service line, with an approved backflow prevention device, shall be used for on-site fire hydrants. Fire service lines required for commercial and industrial use shall be sized appropriately per fire flow demand and code requirements.
- W20. Record Drawings: Upon completion of construction and prior to the City's issuance of a Certificate of Occupancy, the applicant shall provide "as-built" drawings of the public water utility infrastructure prepared by a registered civil engineer to the satisfaction of the Director of Water & Sewer Utilities Department.
- W21. Water Shortage Response Actions: Pursuant to the City of Santa Clara's Urban Water Management Plan, during times of drought or water shortage, the City implements water shortage response actions in accordance with the level of water shortage declared. All construction activities and all new irrigation connections are subject to the Water Shortage Response Actions in effect at the time of construction and connection of the irrigation service.

Water Shortage Response Actions for Stage 2 and higher include water use restrictions that limit the use of potable water such as:

- a. prohibiting the installation of new potable water irrigation services. new irrigation connections, construction, and dust control.
- b. restrict the use of potable water used for construction and dust control if recycled water is available.

This project is subject to all the requirements and restrictions of the Water Shortage Response Actions in place or adopted during the duration of the project. For more information, visit the City of Santa Clara Water & Sewer Utilities website at [www.santaclaraca.gov/waterconservation](http://www.santaclaraca.gov/waterconservation)



## **QMS Owner's Operation Summary**

QMS – Quality Metal Spinning and Machining, Inc. is a sheet metal forming and CNC machining company which primarily manufactures machined products delivered on a contractual basis.

The property at 700 Mathew St. will be an expansion to the company's current operations and will primarily support high volume / low mix production on machines with a large degree of automation. This automation allows for a reduced workforce when compared to traditional manufacturing methods.

There are two major manufacturing processes utilized for our production – Metal Spinning and CNC routing. The metal spinning process transforms sheet metal into round cylindrical shaped products. The CNC machining process is utilized for traditional “subtractive routing” of billet materials and further processing of the formed sheet metal into finished products.

The equipment utilized onsite includes metal spinning lathes and various CNC support equipment (laser cutting, milling and inspection equipment). Additional operational support includes air compressors, welding, deburring, ultrasonic cleaning and degreasing, forklifts, material handling, automated storage and vending equipment. The primary raw materials processed include aluminum, stainless steel and brass as well as other common materials and alloys.

Our operations do not require any high hazard materials. All chemicals used onsite are primarily standard lubricants for the equipment, mild degreasing and cleaning supplies, glycol and compressed gases (oxygen, argon, nitrogen and propane) - all well below the MAQ for this building type. The primary uses of the compressed gases are for shielding-gas for welding, laser cutting and packaging, and process heating for the metal spinning production process.

### **PHASE '0' (August 2023 – February 2024):**

This first phase will be limited to setup for the production line to deliver on a time-critical contract. The scope will require limited TI work with no alteration to the footprint or floorspace of the buildings. TI modifications including large openings in the exterior to bring in equipment and raw materials, a remodel of an existing space into a quality control room, repair/replacement of the existing floor inside the building, and an electrical service upgrade which is already in process thru an existing permit (submitted on 6/24/2022 - currently in review with SVP).

Footings for future equipment platforms and mezzanines will also be added at the owner's risk with the hope of acquiring entitlement to build those structures at a future date under a separate permit. The work area in this phase would be limited to approximately half of building A and all of Building B. This would allow the company to start bringing in revenue from the property which is required to continue any additional development.

### **PHASE '1' (May 2024 – November 2024):**

This next phase would bring in additional equipment and utilize the remainder floorspace for both Building A and Building B. Further repair/ replacement of the floor in the building would be required along with new engineered footings for future equipment platforms and mezzanines.

**PHASE '2' (March 2027 – September 2027):**

This subsequent phase would include the buildout of the elevated equipment platforms, mezzanines, recessed truck dock in Building B, additional restroom facilities and additional second floor office space. Office space would remain at/under 10% of the floorspace of the property.

**STAFFING:**

The company aims to run a 24-hour operation with the bulk of the employees working during the day, and a limited night shift primarily monitoring the automated equipment. The split would be roughly 70% to 80% of the employees working during the day with the remainder working the night shift. Day shift is generally from 6AM – 8PM with employees staggering the start times of their standard 8-hour workdays based upon specific responsibilities. Second shift would be 6PM – 8AM again with staggered start times.

Phase 0 would require approximately 8 employees split between the two shifts.

Phase 1 would increase to 16 employees.

Phase 2 would potentially increase to 20 employees, up to a max of 35 employees.







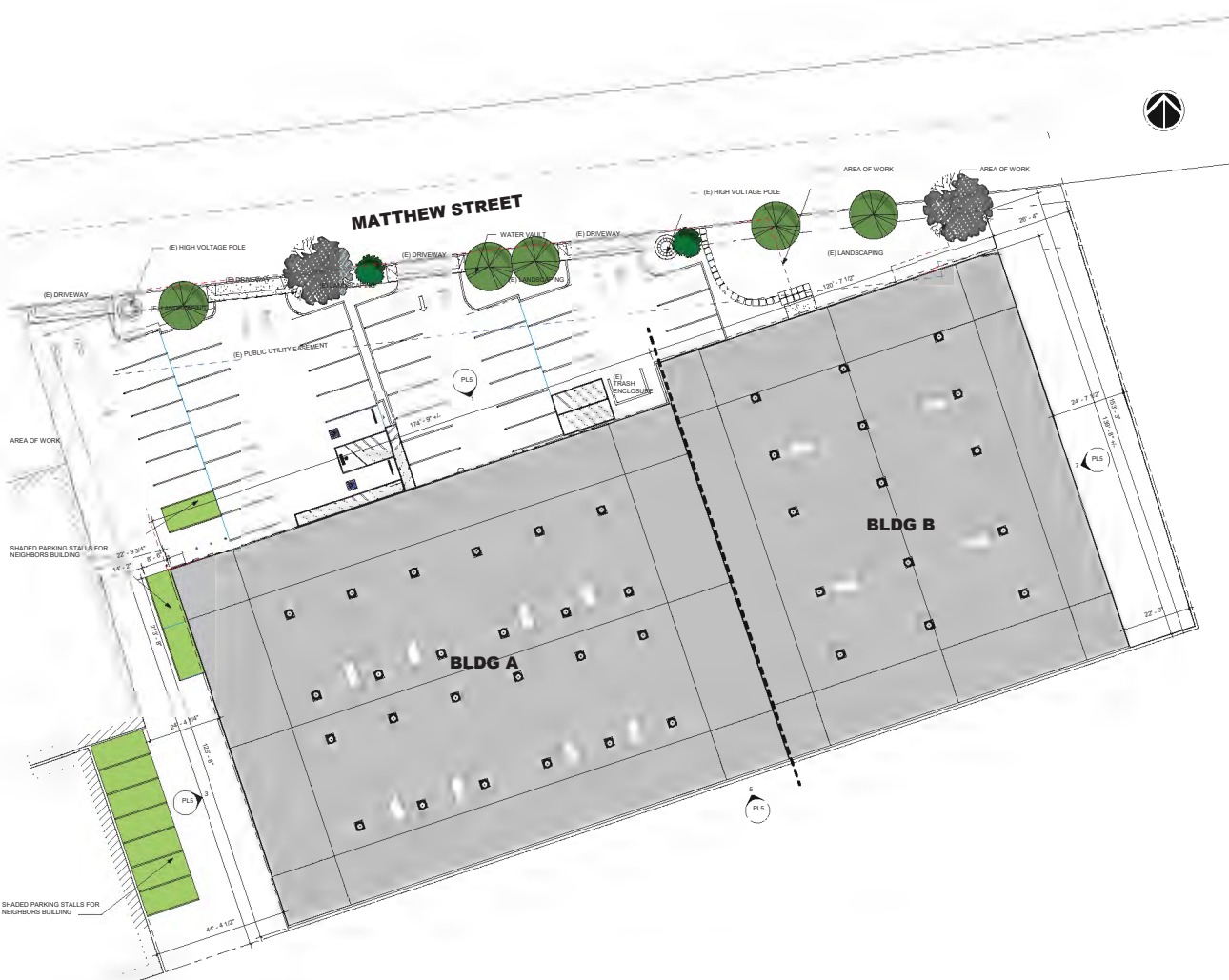


**SITE LEGEND**

- ACCESSIBLE PATH OF TRAVEL
- PLANTING AREA

**PARKING COUNTS**

USE	PARKING REQUIRED			Parking Schedule - EXISTING	
	RATIO	AREA	REQUIRED	Family	Count
INDOOR SOCCER OFFICE	12000	34,605 SF	18	Accessible Space - Standard	2
	1300	4,031 SF	14	Parking Space	39
				Grand total:	41
		Total SF: 38,536	TOTAL: 32		



**1 Site - Existing**  
SCALE: 1/8" = 1'-0"

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2. THIS SHEET IS NOT TO BE USED FOR ANY OTHER PROJECTS WITHOUT THE ARCHITECT'S REVIEW AND SIGNATURE.  
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Job Number	22032
Date	2023.01.09
Drawn	
Author	
Sheet Title	EXISTING SITE PLAN
Scale	As Indicated
Revisions	



1  
 SCALE: 1/8" = 1'-0"  
 Site - Proposed

**SITE LEGEND**

- ACCESSIBLE PARKING
- LANDSCAPING AREA

**PARKING COUNTS**

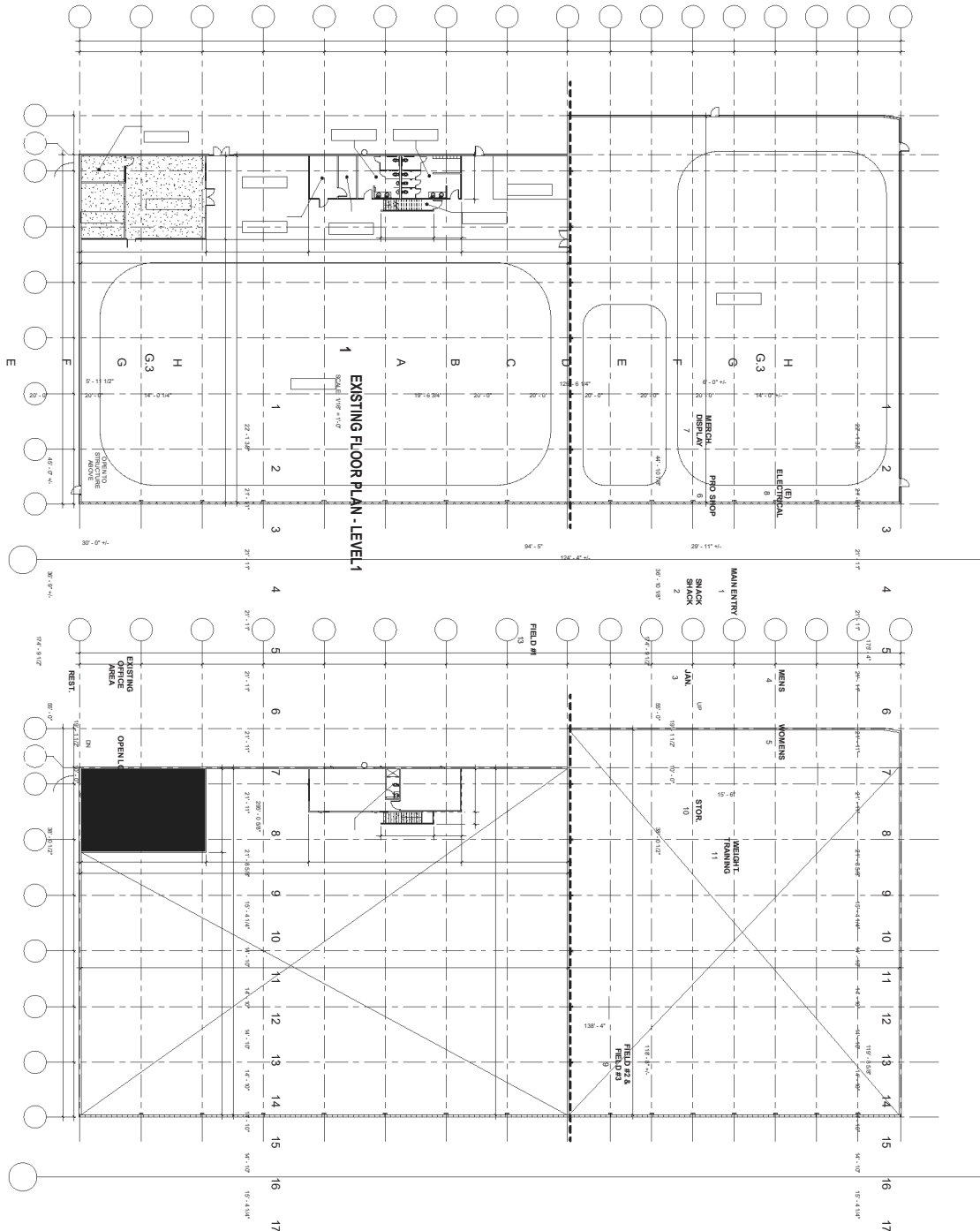
SITE	PARKING REQUIRED		PARKING PROVIDED	
	TOTAL	REQUIRED	TYPE	COUNT
HEAVY MANUFACTURING	1100	4244 SF	ACCESSIBLE SPACE 5.0M	1
			PARKING SPACES	28
<b>TOTAL</b>	<b>32</b>		<b>TOTAL PROVIDED</b>	<b>28</b>

RECYCLED PAPER  
**PL2**

DATE: 02/21/09  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT: [Name]  
 SHEET TITLE: PROPOSED SITE  
 SCALE: AS SHOWN  
 DRAWING NO.: [Number]

**QMS**  
 QUALITY METAL SPINNING  
**QMS - Santa Clara**  
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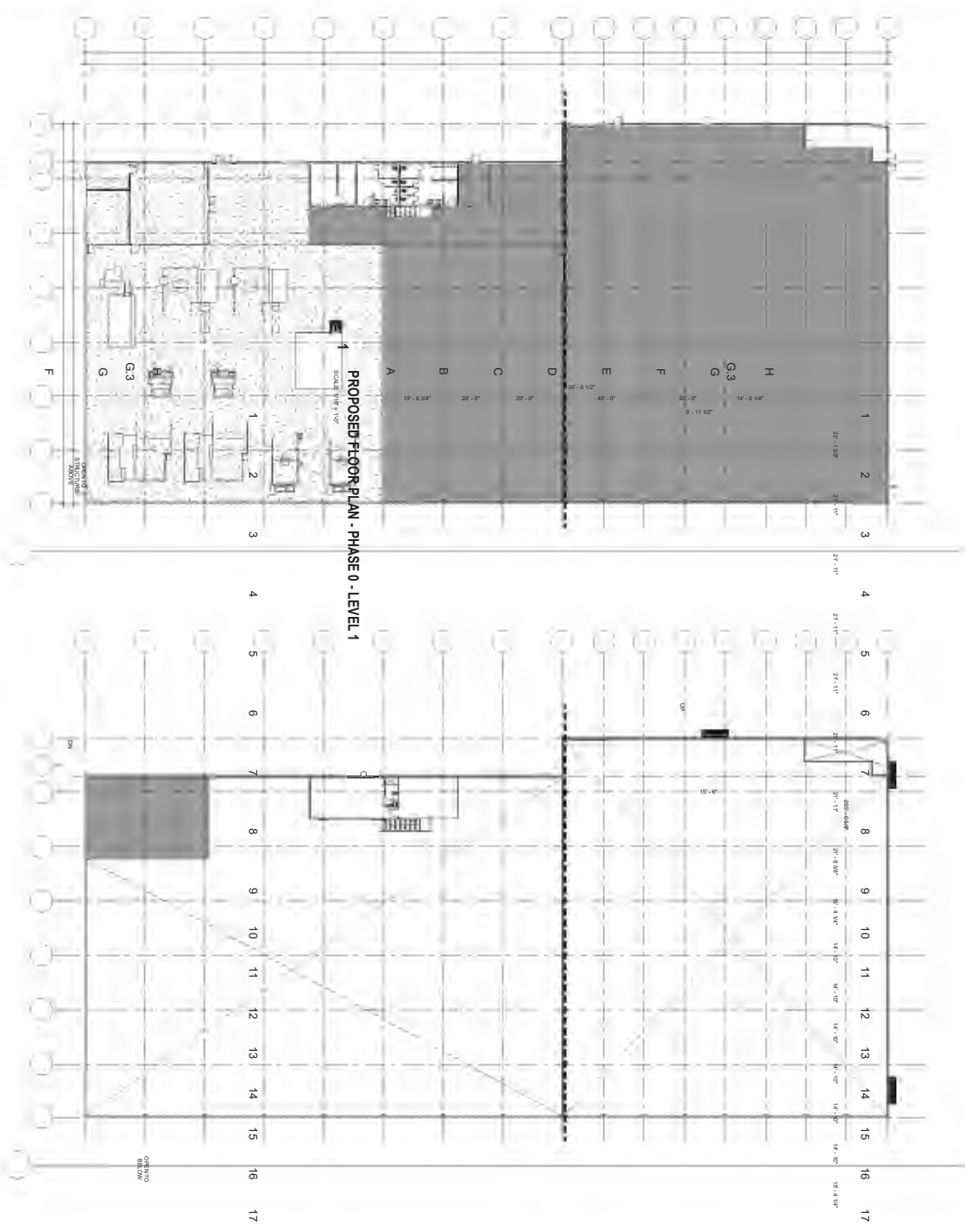
**2** EXISTING FLOOR PLAN - LEVEL 2  
SCALE: 1/8" = 1'-0"

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Job Number: 22032  
Date: 2023.01.09  
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Sheet Title: FLOOR PLANS - EXISTING  
Scale: 1/8" = 1'-0"  
Revisions:

**PL3**



PROPOSED FLOOR PLAN - PHASE 0 - LEVEL 1

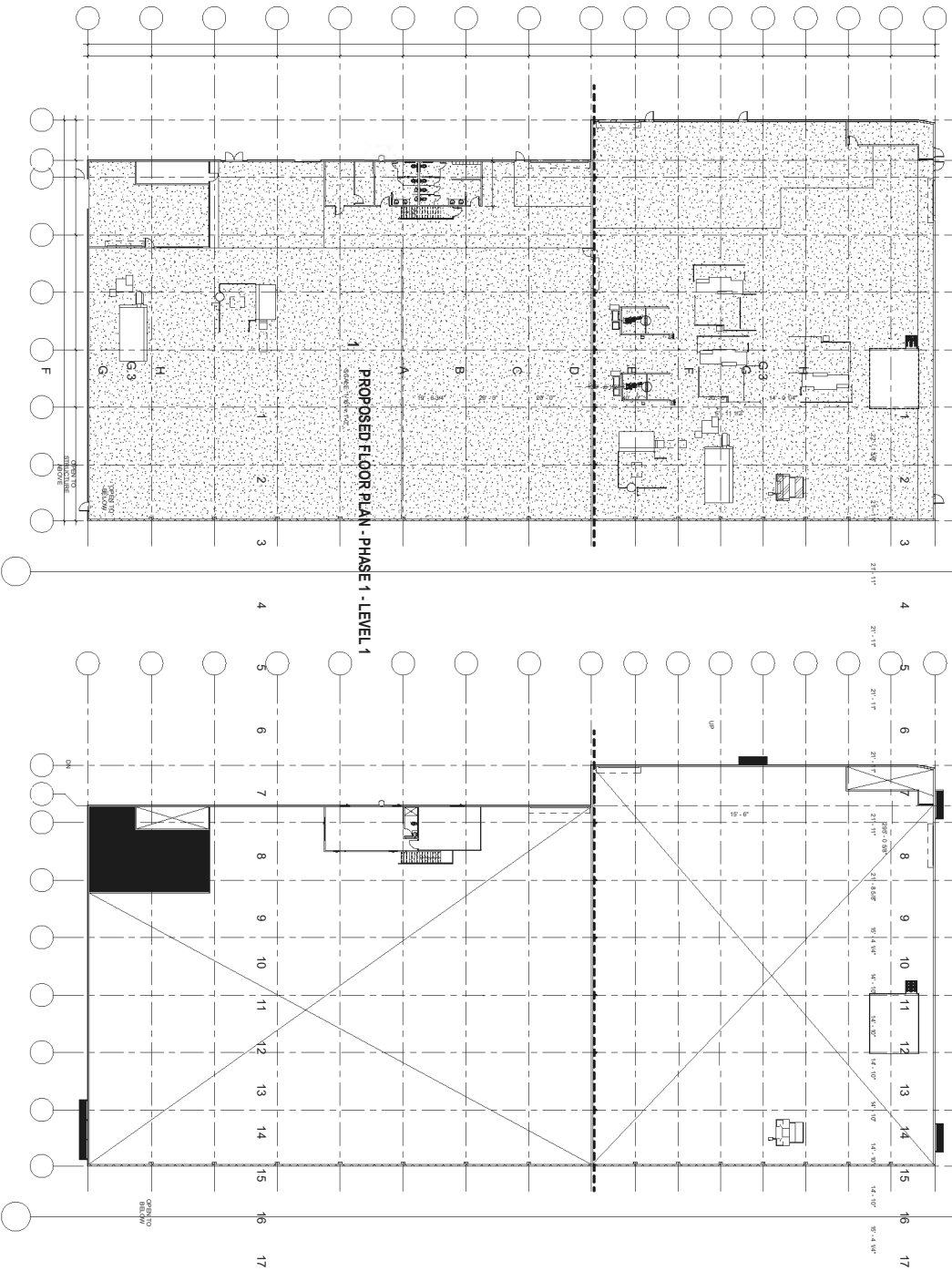
2 PROPOSED FLOOR PLAN - PHASE 0 - LEVEL 2

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Job Number: 22032  
 Date: 2023.01.09  
 Drawn: [Name]  
 Checked: [Name]  
 Sheet Title: FLOOR PLANS - PHASE 0 - NOT BIDDING PHASE  
 Scale: 1/8" = 1'-0"  
 Revisions:

PL4-1



PROPOSED FLOOR PLAN - PHASE 1 - LEVEL 1

E  
D  
C  
B  
A

2 PROPOSED FLOOR PLAN - PHASE 1 - LEVEL 2

SCALE: 1/8" = 1'-0"

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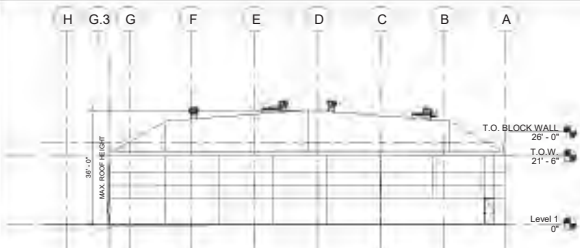
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Job Number: 22032  
Date: 2023.01.09  
Drawn: [Name]  
Checked: [Name]  
Sheet Title: FLOOR PLANS FOR PHASE 1  
Scale: 1/8" = 1'-0"  
Revisions:

REGISTERED ARCHITECT  
PL4-2

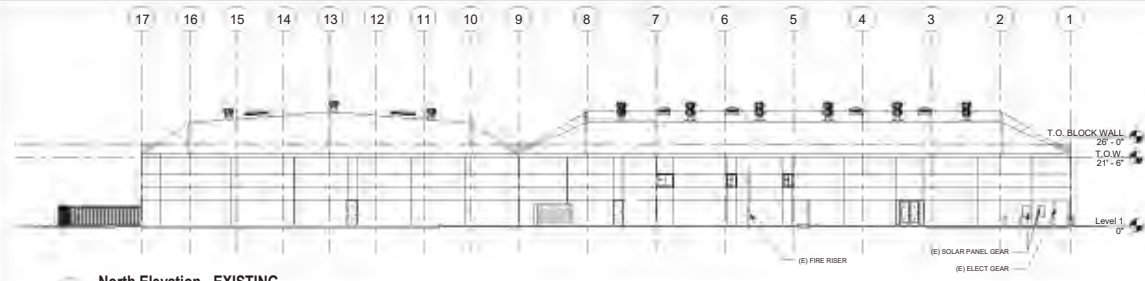






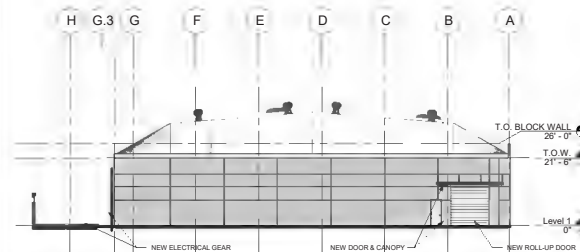
**3 West Elevation - EXISTING**

SCALE: 1/16" = 1'-0"



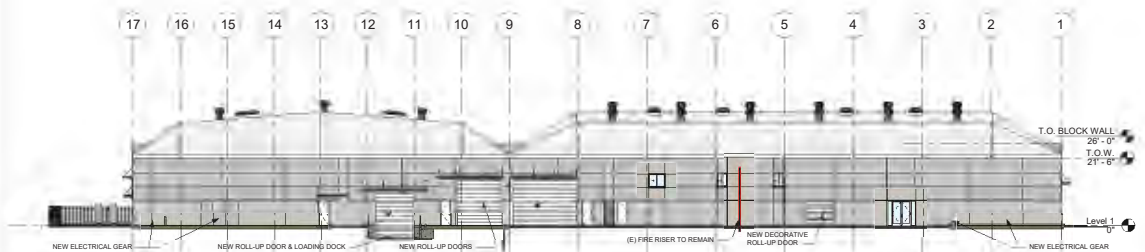
**1 North Elevation - EXISTING**

SCALE: 1/16" = 1'-0"



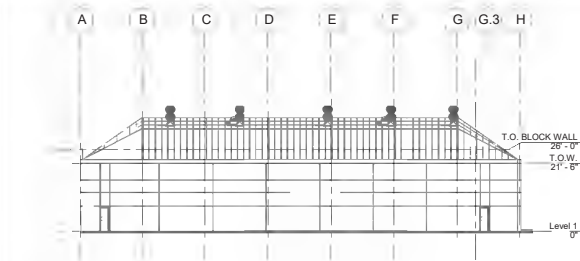
**4 West Elevation - PROPOSED**

SCALE: 1/16" = 1'-0"



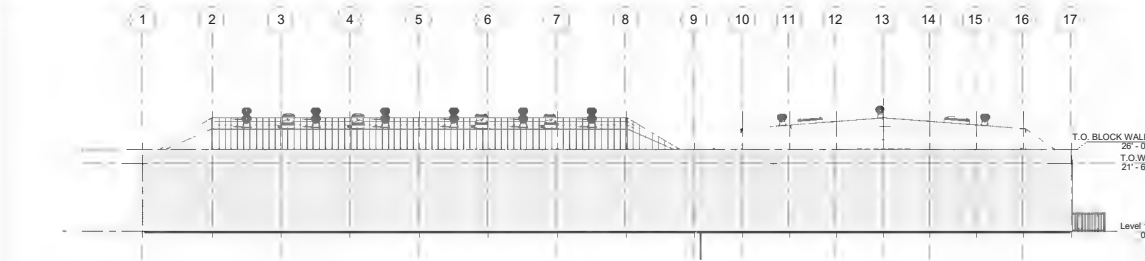
**2 North Elevation - PROPOSED**

SCALE: 1/16" = 1'-0"



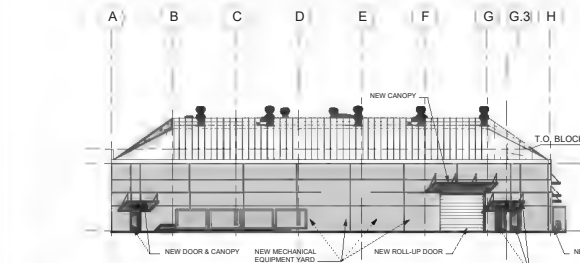
**7 EAST ELEVATION - EXISTING**

SCALE: 1/16" = 1'-0"



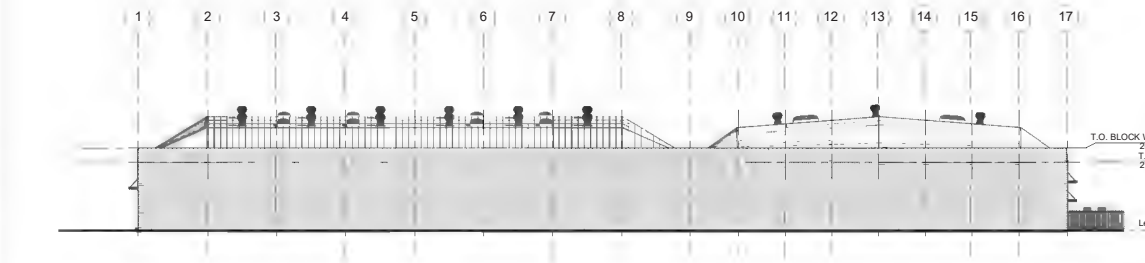
**5 SOUTH ELEVATION - EXISTING**

SCALE: 1/16" = 1'-0"



**8 EAST ELEVATION - PROPOSED**

SCALE: 1/16" = 1'-0"



**6 SOUTH ELEVATION - PROPOSED**

SCALE: 1/16" = 1'-0"

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Job Number	22032
Date	2023.01.09
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Author	
Sheet Title	ELEVATIONS

Scale: 1/16" = 1'-0"  
Revisions

Revisions	
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**PL5**



P1 - AERIAL PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P2 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P3 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P4 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P5 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P6 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



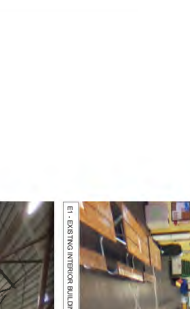
P7 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P8 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P9 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P10 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P11 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P12 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P13 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P14 - AERIAL PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P15 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P16 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P17 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



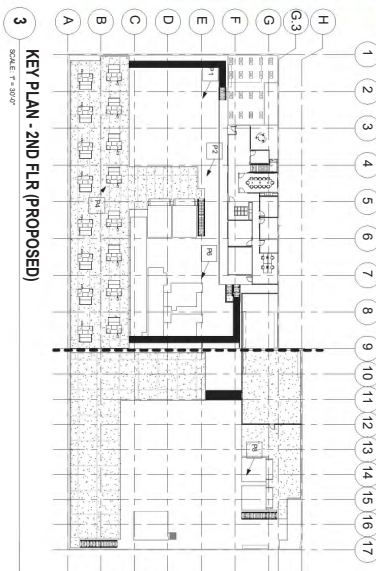
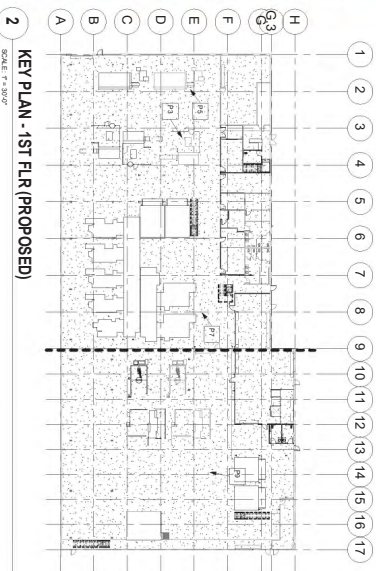
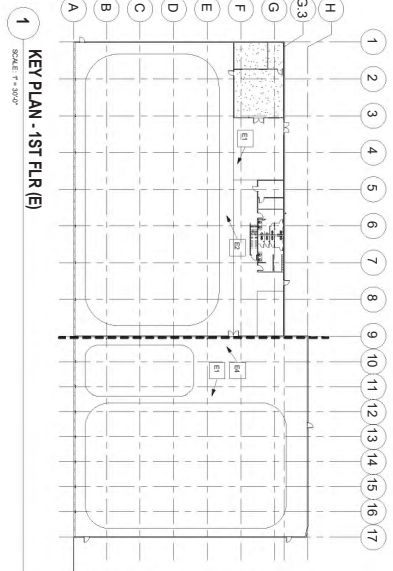
P18 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P19 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)



P20 - INTERIOR PHOTOGRAPH SHOWING EXISTING BUILDING STRUCTURE AND EQUIPMENT AREA. BUILDING B (PROPOSED)







E1 - EXISTING STREET PERSPECTIVE FOR SITE CONTEXT



E3 - EXISTING EAST YARD AND NORTHEAST CORNER OF BUILDING B



E3 - EXISTING NORTH ELEVATION OF BUILDING B AND BUILDING A



E4 - EXISTING NORTH ELEVATION OF BUILDING A



AERIAL VIEW - EXISTING



AERIAL VIEW - PROPOSED



P1 - PROPOSED EAST YARD AND NORTHEAST CORNER OF BUILDING B



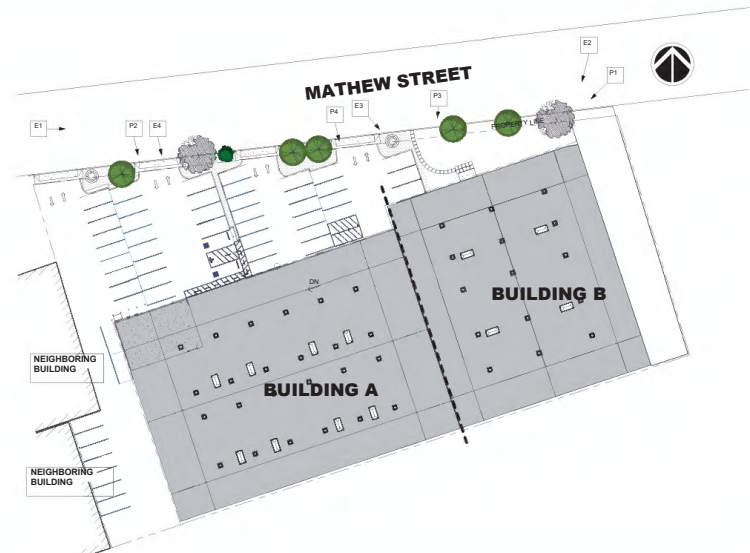
P2 - PROPOSED NORTHERN ELEVATION FOR BUILDING A



P3 - PROPOSED TRUCK DOCK FOR BUILDING B



P4 - PROPOSED NORTHERN ELEVATION FOR BUILDING A & BUILDING B



KEY SITE PLAN

SCALE: 1" = 30'-0"

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Author	
Sheet Title	EXTERIOR IMAGES & PROPOSED RENDERINGS
Scale	1" = 30'-0"

Revisions

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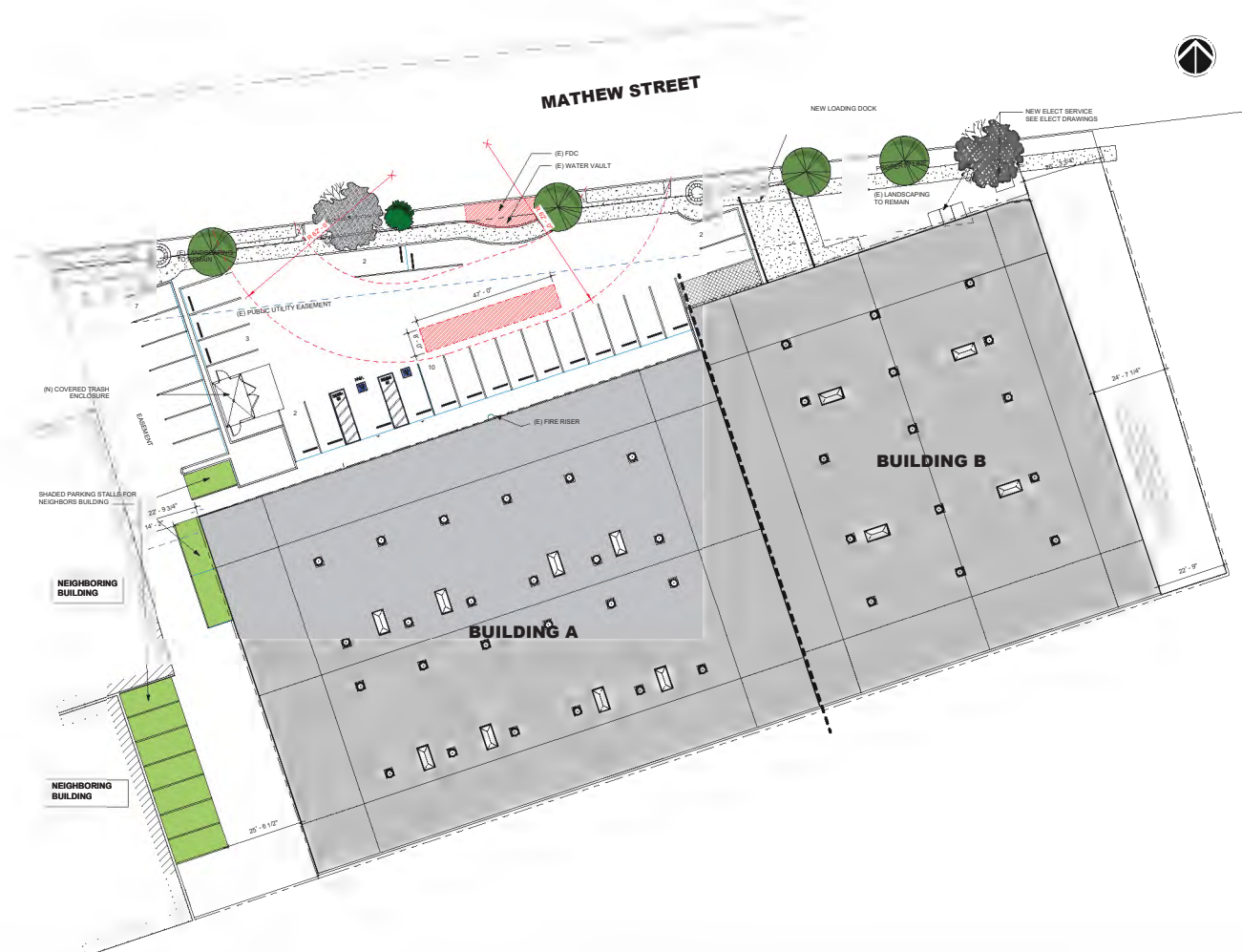
**PL7**

### SITE LEGEND

-  ACCESSIBLE PATH OF TRAVEL
-  PLANTING AREA

### PARKING COUNTS

PARKING REQUIRED				PARKING PROPOSED	
USE	RATIO	AREA	REQUIRED	TYPE	COUNT
HEAVY MANUFACTURING	1/1500	43,027 SF	29	ACCESSIBLE SPACE - VAN	1
				ACCESSIBLE SPACE - STANDARD	1
				PARKING SPACE	26
<b>TOTAL</b>			<b>29</b>	<b>TOTAL PROVIDED</b>	<b>28</b>



1 Site Plan - Proposed EVA Route  
SCALE: 1/8" = 1'-0"

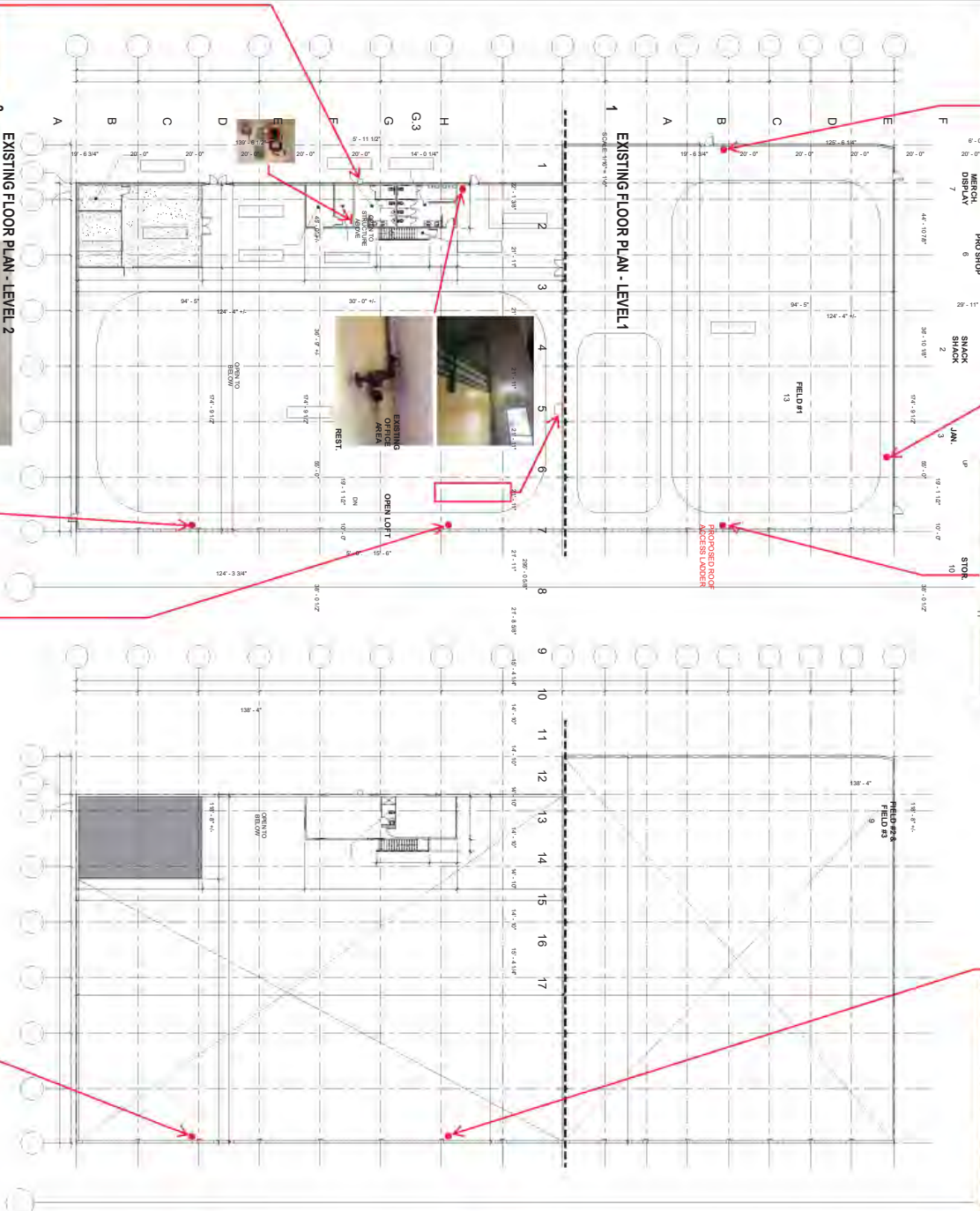
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Job Number	22032
Date	2023.01.09
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Author	
Sheet Title	PROPOSED SITE PLAN - EVA LAYOUT
Scale	As Indicated
Revisions	





2  
SCALE: 1/8" = 1'-0"

EXISTING FLOOR PLAN - LEVEL 2

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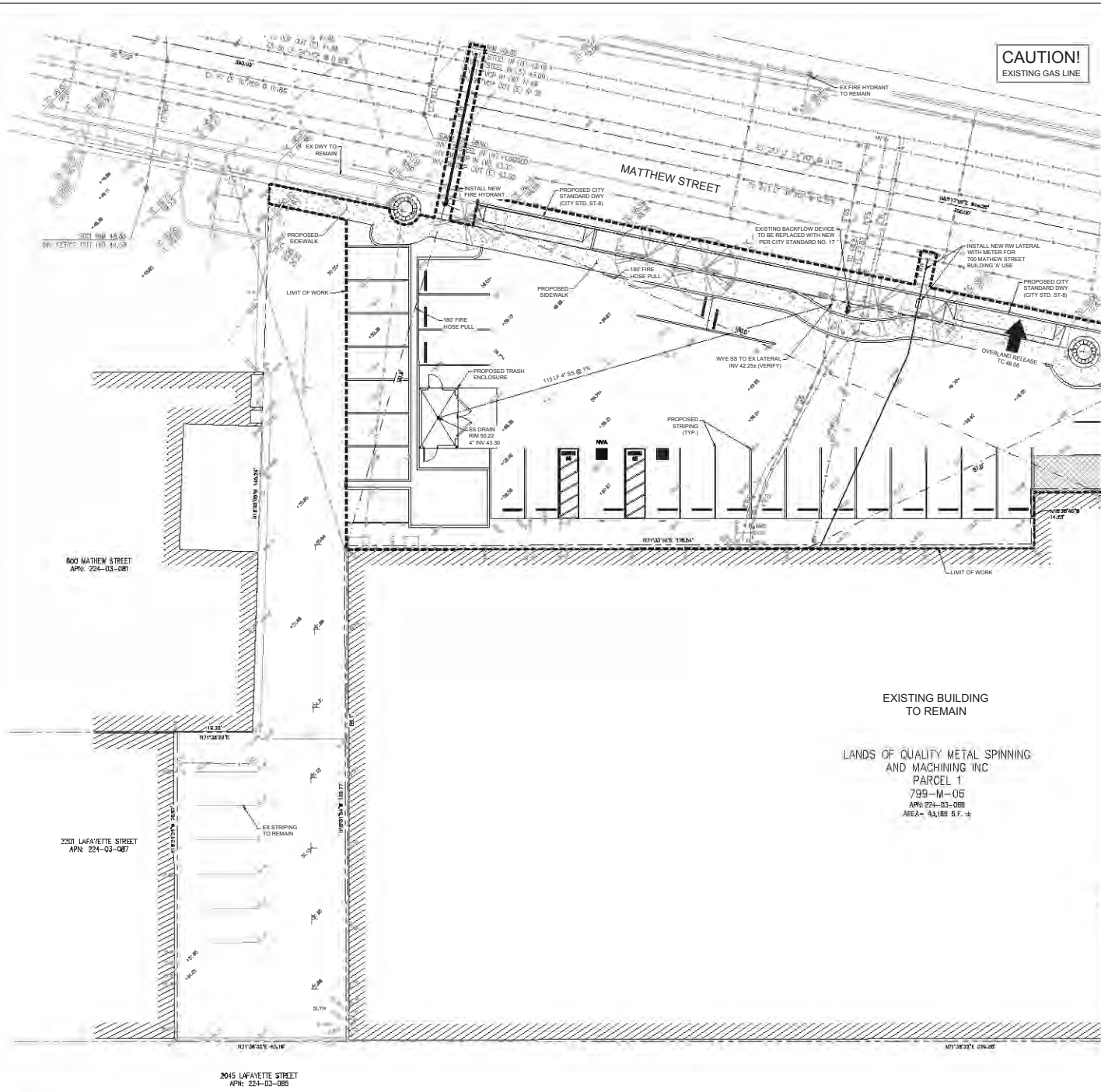
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Job Number: 22032  
Date: 2023/01/09  
Drawn: [Name]  
Checked: [Name]  
Sheet Title: FLOOR PLANS EXISTING  
Scale: 1/8" = 1'-0"  
Revisions:









**CAUTION!**  
EXISTING GAS LINE

EXISTING BUILDING  
TO REMAIN

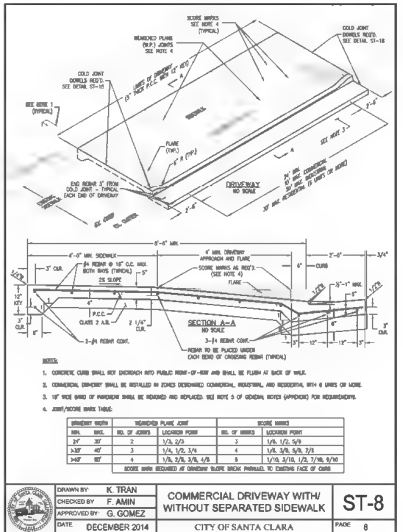
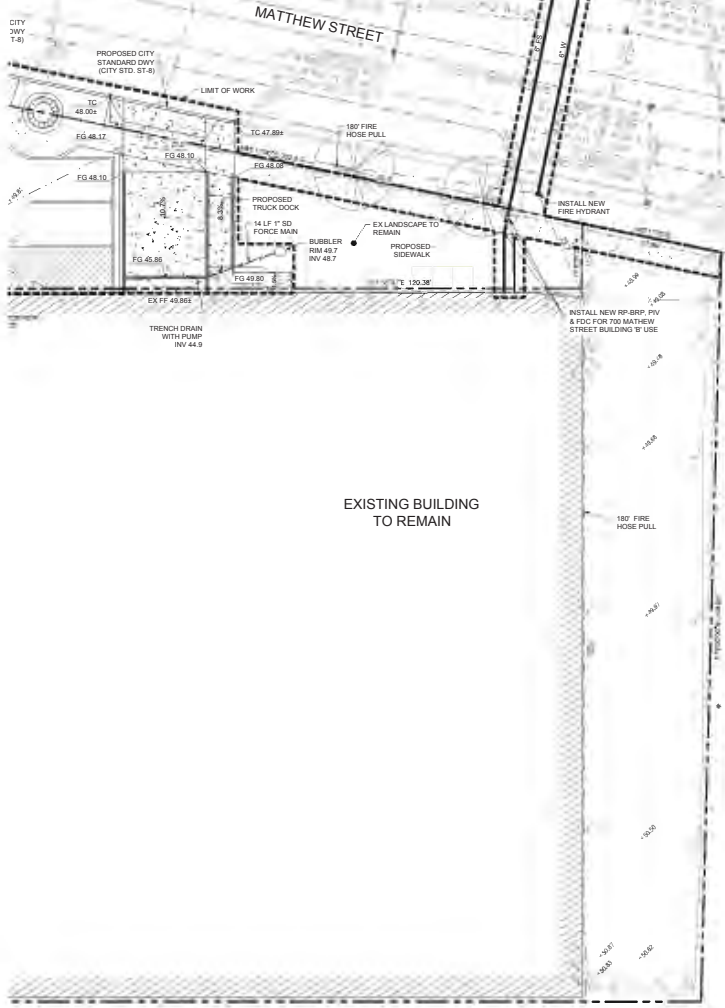
LANDS OF QUALITY METAL SPINNING  
AND MACHINING INC  
PARCEL 1  
799-M-06  
APN: 224-03-088  
AREA - 43,185 S.F. ±

SEE SHEET C2.1



<p><b>IMPROVEMENT PLANS</b> FOR <b>700 MATTHEW STREET</b> <b>PLN23-XXX</b></p> <p>SANTA CLARA - CALIFORNIA PROJECT NO. 2023-0001 (EXHIBIT 1111) (SHEET 02)</p>	<p><b>weiss</b> Real Estate Development Consultants</p> <p>1731 Technology Drive, Suite 800 San Jose, CA 95110 t: 408.264.6555 www.jrweiss.com</p>	<p>DATE: 1/23/2023 BY: [Signature] SCALE: 1" = 10'</p>	<p>DATE: _____</p>
			<p>DATE: _____</p>
<p>GRADING, DRAINAGE, &amp; UTILITY PLAN</p>		<p>SCALE: 1" = 10'</p>	
<p>SHEET <b>C2.0</b> 2 OF 4 SHEETS</p>		<p>DRAFT SET - NOT FOR CONSTRUCTION</p>	

**CAUTION!**  
EXISTING GAS LINE



JMH Weiss, Inc. 70276 - 700 Mathew Street Santa Clara, CA May 2023

LAND DEVELOPMENT CONSULTANTS

Total Required Fire Flow Estimates

Construction Type	Light Industrial	Residential	Total	Fire Hydrant Calculation			Fire Sprinkler Calculation		
				Cal Required Fire Flow <sup>1</sup>	Total Required Fire Flow <sup>2</sup>	Reduced Fire Flow, 25% Reduction <sup>3</sup>	Required Fire Flow, 50% Reduction <sup>4</sup>	Total Required Fire Flow with Reductions <sup>5</sup>	
Type V-A	25,321		25,321	2,750	2,750	2,063	1,375	772	
Type V-A	19,798		19,798	2,500	2,500	1,875	1,250	548	
Totals	45,119		45,119	5,250	5,250	3,938	2,625	1,320	
Round Up				5,750	5,750	4,250	2,750	1,400	

2016 CPC Table	
Min. number of hydrants	2
Fire spacing between hydrants <sup>6</sup>	300'
Max. distance from any point on street to a hydrant, B	300'

<sup>1</sup> Fire Flow and Hydrant Rating, Extra Hazard Occupancy of "Full Floor"

<sup>2</sup> Required fire flow multiplied by 1.5 for fire area, per Pressure Fire Department Fire Flow Requirements with Most Conservative demand (80%)

<sup>3</sup> Fire Flow and Hydrant Rating, allowed for Light Hazard Occupancy

<sup>4</sup> Fire Flow and Hydrant Rating, allowed for Light Hazard Occupancy

**WATER UTILITY SUMMARY**

- EX. 6" FIRE SERVICE (FS) REPLACE EXISTING BACKFLOW DEVICE
- EX. 2" DOMESTIC WATER (DOM.) KEEP
- EX. 2" IRRIGATION (IRR.) KEEP
- NEW 6" FIRE SERVICE (FS) 700 MATHEW STREET BUILDING 'B'

IMPROVEMENT PLANS  
700 MATHEW STREET  
PLN23-XXX

SANTA CLARA, CALIFORNIA  
1409.28(4)455 www.jmwweiss.com

weiss  
Real Estate Development Consultants

GRADING, DRAINAGE & UTILITY PLAN

DRAWN BY: K. TRAN  
CHECKED BY: F. AMIN  
APPROVED BY: G. GOMEZ  
DATE: DECEMBER 2014

COMMERCIAL DRIVEWAY WITH WITHOUT SEPARATED SIDEWALK  
CITY OF SANTA CLARA

ST-8  
PAGE 8

DATE: BY: DESIGNED BY: REVISIONS:

THIS WORK WAS PREPARED BY THE CONSULTANT AS AN INSTRUMENT OF PROFESSIONAL SERVICE AND SHALL BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED BY INSTRUMENT NO. 1409.28(4)455

DANIEL J. LEWIS, P.E. LICENSED PROFESSIONAL ENGINEER

SHEET C2.1  
3 OF 4 SHEETS









**GENERAL NOTES:**

- ALL ELECTRICAL EQUIPMENTS AND FEEDERS ARE NEW UNLESS OTHERWISE NOTED AS 'EY' FOR EXISTING. RETORQUE ALL EXISTING TERMINATIONS PER MANUFACTURER RECOMMENDATION.
- SWITCHBOARD SHOWN ON THE SINGLE LINE DIAGRAM SHALL BE 'FULLY RATED' ADEQUATE FOR THE MAXIMUM FAULT CURRENT AVAILABLE AT THE POINT OF APPLICATION, INCORPORATING THE CURRENT LIMITING DEVICES AS SPECIFIED. SERIES-RATING FOR PANELBOARDS IS ACCEPTABLE. PROVIDE REQUIRED MARKING AS REQUIRED PER NEC ARTICLE 110.22(B) & (C) FOR SIGNAGE AT ALL PANELS AND EQUIPMENT. IF NOT 'FULLY RATED SYSTEM' CONTRACTOR SHALL SUBMIT SHOP DRAWINGS INDICATING SERIES RATING AND INCLUDE A COPY OF ALL LABELING, INCLUDING RESPECTIVE UL LISTING, TO THE AHJ FOR REFERENCE.
- PROVIDE PHENOLIC NAMEPLATE LABELLING & TYPE WRITTEN PANEL DIRECTORY FOR ALL PANELS.
- INTERIOR METAL PIPING SYSTEM SHALL BE BONDED TO THE GROUNDING ELECTRODE SYSTEM.
- GROUND AND NEUTRAL SHALL ONLY BE BONDED AT THE SERVICE EQUIPMENT AND AT THE SEPARATELY SERVED SYSTEM.
- EQUIPMENT LINE-UP IS BASED ON SQUARE D PRODUCT. ALTERNATE MANUFACTURER IS ACCEPTABLE PROVIDED THAT IT MEETS THE DESIGN INTENT AND CLEARANCE REQUIREMENTS.
- ONLY UL LISTED EQUIPMENT SHALL BE USED.
- PROVIDE ALL NECESSARY SIGNAGE, LABELING AND PLAQUES AS REQUIRED BY CEC 23-70(B), 695 & 705.
- ELECTRICAL CONTRACTOR TO PROVIDE MAIN LUGS ADAPTOR LUGS AS NEEDED FOR CONNECTIONS AT PANEL, BOARDS AND EQUIPMENT.
- ALL METERING EQUIPMENTS SHALL BE SUBMITTED TO THE UTILITY PROVIDER FOR APPROVAL.
- INSTALL ENGRAVED BAKELITE NAMEPLATE ON SERVICE DISCONNECT SWITCH WITH SERVICE ADDRESS.
- LOAD CALCULATION FOR FUTURE TENANT IMPROVEMENT PROJECT TO BE PROVIDED UNDER PHASE 2 PACKAGE.

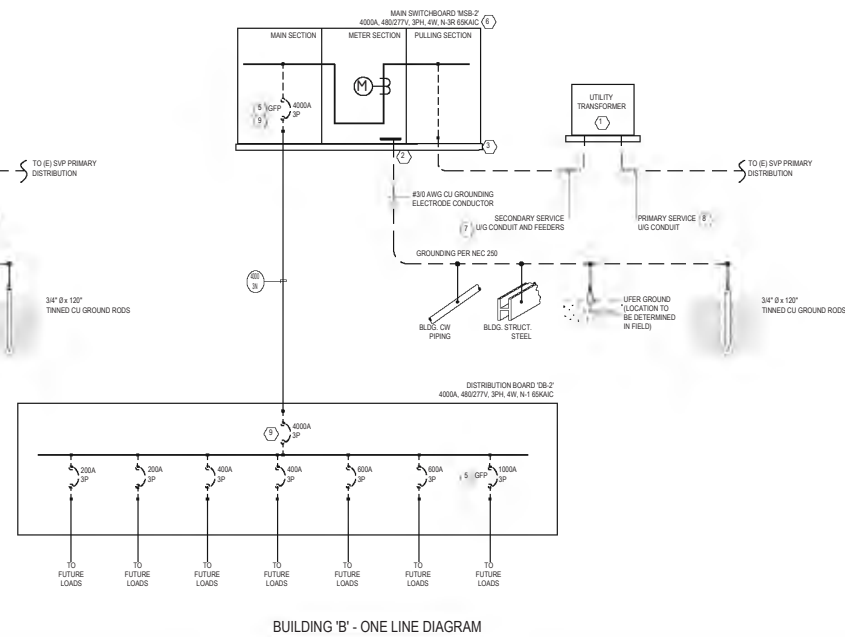
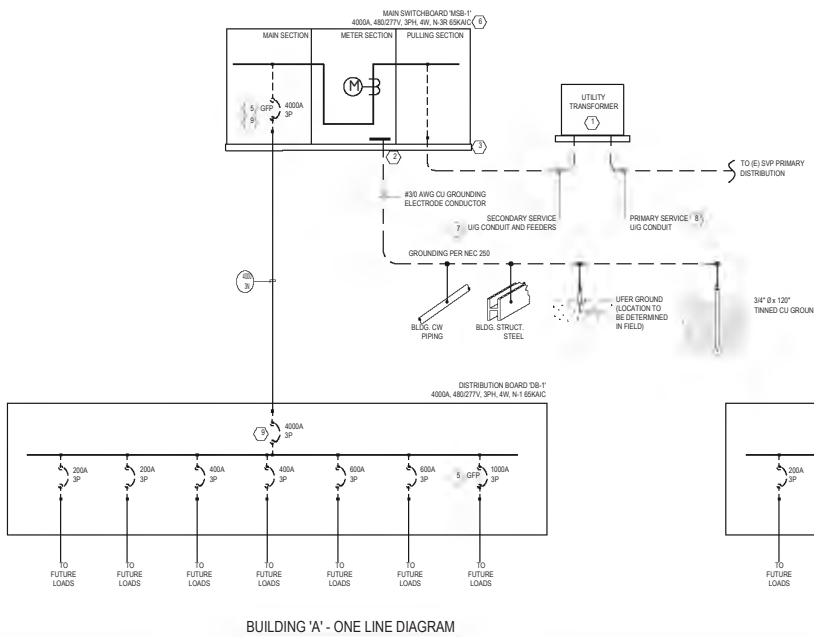
**KEY NOTES:**

- NEW PAD MOUNTED UTILITY TRANSFORMER: CONTRACTOR TO COORDINATE WITH SUP REPRESENTATIVE FOR WORK REQUIRED. SEE ELECTRICAL PLANS FOR MORE INFORMATION.
- GROUNDING ELECTRODE SYSTEM: CONNECT TO GROUNDING ELECTRODE SYSTEM USING #6 UNDERGROUND METAL WATER PIPE WITHIN 2' OF ENTRANCE TO BUILDING. ALL METAL PIPING SYSTEM, CONTIGUOUS STRUCTURAL METAL (IF PRESENT) SHALL BE BONDED TO THE GROUNDING ELECTRODE SYSTEM IN MAIN SWITCHBOARD USING #6. PROVIDE (3) 3/4" x 12" TINNED CU GROUND ROD - MINIMUM 12' APART. USE #4 CU WIRE FOR SOLE CONNECTION TO GROUND ROD. PROVIDE ADDITIONAL GROUNDING ELECTRODE WHERE RESISTANCE TO GROUND EXCEEDS 5 OHMS.
- PROVIDE PAD TO ENSURE LEVEL WORKING CLEARANCE IN FRONT OF EQUIPMENT. SEE PLANS FOR ADDITIONAL INFORMATION.
- NOT USED.
- PROVIDE CIRCUIT BREAKER WITH GROUND FAULT PROTECTION.
- PRIOR TO PURCHASE THE EQUIPMENT, COORDINATE EXACT AVAILABLE FAULT CURRENT WITH UTILITY PROVIDER. ADJUST TO THE NEXT STANDARD SIZE IF UTILITY FAULT CURRENT IS HIGHER THAN EQUIPMENT RATING AS SHOWN.
- PROVIDE 12 SETS OF 3 1/2" x 4800 MCM, 1# 3/8" GND FOR SECONDARY SERVICE ENTRANCE CONDUCTORS.
- PROVIDE 2 1/2" EMPTY CONDUIT FOR PRIMARY SERVICE CONDUCTORS.
- PROVIDE CIRCUIT BREAKER WITH LONG TIME, SHORT TIME AND INSTANTANEOUS TRIP SETTINGS.

**FEEDER SCHEDULE**

TAG	WIRE & CONDUIT SIZE	TAG	WIRE & CONDUIT SIZE	TAG	WIRE & CONDUIT SIZE	TAG	WIRE & CONDUIT SIZE
1	3#12H + 1#12G N12TC	11	3#10H + 1#10G N10TC	21	3#6H + 1#6N + 1#10G N1TC	31	3#6H + 1#6G N1TC
2	3#10H + 1#10G N10TC	12	3#8H + 1#8G N8TC	22	3#6H + 1#6N + 1#10G N1TC	32	3#6H + 1#6G N1TC
3	3#8H + 1#8G N8TC	13	3#6H + 1#6G N6TC	23	3#6H + 1#6N + 1#10G N1TC	33	3#6H + 1#6G N1TC
4	3#6H + 1#6G N6TC	14	3#4H + 1#4G N4TC	24	3#6H + 1#6N + 1#10G N1TC	34	3#6H + 1#6G N1TC
5	3#4H + 1#4G N4TC	15	3#4H + 1#4G N4TC	25	3#6H + 1#6N + 1#10G N1TC	35	3#6H + 1#6G N1TC
6	3#4H + 1#4G N4TC	16	3#4H + 1#4G N4TC	26	3#6H + 1#6N + 1#10G N1TC	36	3#6H + 1#6G N1TC
7	3#4H + 1#4G N4TC	17	3#4H + 1#4G N4TC	27	3#6H + 1#6N + 1#10G N1TC	37	3#6H + 1#6G N1TC
8	3#4H + 1#4G N4TC	18	3#4H + 1#4G N4TC	28	3#6H + 1#6N + 1#10G N1TC	38	3#6H + 1#6G N1TC
9	3#4H + 1#4G N4TC	19	3#4H + 1#4G N4TC	29	3#6H + 1#6N + 1#10G N1TC	39	3#6H + 1#6G N1TC
10	3#4H + 1#4G N4TC	20	3#4H + 1#4G N4TC	30	3#6H + 1#6N + 1#10G N1TC	40	3#6H + 1#6G N1TC
11	3#4H + 1#4G N4TC	21	3#4H + 1#4G N4TC	31	3#6H + 1#6N + 1#10G N1TC	41	3#6H + 1#6G N1TC
12	3#4H + 1#4G N4TC	22	3#4H + 1#4G N4TC	32	3#6H + 1#6N + 1#10G N1TC	42	3#6H + 1#6G N1TC
13	3#4H + 1#4G N4TC	23	3#4H + 1#4G N4TC	33	3#6H + 1#6N + 1#10G N1TC	43	3#6H + 1#6G N1TC
14	3#4H + 1#4G N4TC	24	3#4H + 1#4G N4TC	34	3#6H + 1#6N + 1#10G N1TC	44	3#6H + 1#6G N1TC
15	3#4H + 1#4G N4TC	25	3#4H + 1#4G N4TC	35	3#6H + 1#6N + 1#10G N1TC	45	3#6H + 1#6G N1TC
16	3#4H + 1#4G N4TC	26	3#4H + 1#4G N4TC	36	3#6H + 1#6N + 1#10G N1TC	46	3#6H + 1#6G N1TC
17	3#4H + 1#4G N4TC	27	3#4H + 1#4G N4TC	37	3#6H + 1#6N + 1#10G N1TC	47	3#6H + 1#6G N1TC
18	3#4H + 1#4G N4TC	28	3#4H + 1#4G N4TC	38	3#6H + 1#6N + 1#10G N1TC	48	3#6H + 1#6G N1TC
19	3#4H + 1#4G N4TC	29	3#4H + 1#4G N4TC	39	3#6H + 1#6N + 1#10G N1TC	49	3#6H + 1#6G N1TC
20	3#4H + 1#4G N4TC	30	3#4H + 1#4G N4TC	40	3#6H + 1#6N + 1#10G N1TC	50	3#6H + 1#6G N1TC

- NOTES:
- ALL WIRE SHALL BE COPPER AND INSULATION SHALL BE THHN, THWN 2, XHHW 2.
  - H - HOT/UNGROUND CONDUCTOR; N - NEUTRAL/GROUNDED CONDUCTOR; G - GROUNDING CONDUCTOR; IG - ISOLATED GROUNDING CONDUCTOR.
  - UNLESS LISTED OTHERWISE, THE AMPACITY OF 600V OR LESS CONDUCTORS SHALL BE BASED ON THE TERMINALS NOT TO EXCEED 60 DEG C (140 DEG F) FOR CONDUCTOR SIZE #14 THROUGH #1 AWG OR 75 DEG C (167 DEG F) FOR CONDUCTOR SIZES OVER #1 AWG.
  - WHERE THE PHASE CONDUCTORS ARE INCREASED IN SIZE (E.G. FOR VOLTAGE DROP COMPENSATION), EQUIPMENT GROUNDING CONDUCTOR SHALL BE INCREASED IN SIZE PROPORTIONATELY ACCORDING TO CIRCULAR MIL AREA OF THE PHASE CONDUCTOR.



FOR REFERENCE ONLY

NO.	DESCRIPTION	DATE
1	PERMIT SET	06/27/2022



PROJECT:  
700 MATHEW ST.  
SERVICE APPLICATION  
PHASE -1  
700 MATHEW ST.  
STA. CLARA, CA 95050

SHEET TITLE:  
ELECTRICAL  
ONE LINE DIAGRAM

ELECTRICAL ONE LINE DIAGRAM	SCALE	1
	NONE	

PROJECT #:	SHEET NO.:
DATE: 06/22/2022	E5.0
SCALE: AS NOTED	

Building A' Load Calc	AREA(SQ FT)	VA PER SQ FT	Quantity	VA per Qty	VA
Lighting per CEC 220.12	22252	5.00			111260
General Receptacle loads	22252	3.00			66756
Plumbing equipment	22252	5.00			111260
Outdoor lighting per T24	12905	1.00			12905
HVAC	22252	12.00			267824
					0
Dedicated Equipment load (CNC laser, Machine Tools, Spinning Lathes, Machines, Inspection Machine, etc)			1	350000	350000
AC unit			20	2000	40000
15HP 3phase motor			10	11400	114000
15HP 3phase motor			15	17459	261885
15HP Compressor 3phase motor			10	17459	174590
Grinding Machine			1	150000	150000
Data servers UPS			1	100000	100000
Appliances (Coffee, Refrig, etc)			20	1200	24000
EV charger			12	7500	90000
					0
					0
<b>Total load</b>					<b>1589080</b>

Load Type & CEC Demand Load Formula	Quantity	VA per Qty	Load VA	CEC Demand VA
Lighting per CEC 220.12 @ 125% per CEC 220.3	22252 SF		111260	X125% = 139075
Receptacle @ 125% per CEC 220.14(F)	4 circuits	4800	4800	X125% = 6000
Outdoor lighting @ 125% per CEC 220.3	12905	12905	12905	X125% = 16131
Gen Receptacle loads (service) per CEC 220.44	9250 SF	3	27750	10000 X100% + 59750 X50% = 33775
HVAC	267024		267024	149644 X125% + 96789 X100% = 1117543
Motor loads	1 lot	350000	350000	X100% = 350000
Dedicated equipment load	111260		111260	X100% = 111260
Plumbing Equipment	22252		111260	X100% = 111260
Electric Vehicle Charger @ 125%	12	7500	90000	X125% = 112500
AC unit	20	2000	40000	X100% = 40000
Data Servers UPS etc	1 lot	100000	100000	X125% = 125000
Appliances (Coffee, Refrig, etc)	20	1200	24000	X100% = 24000
Subtotal Demand Load				2051947
Spans for future (25%)				521472
Total Demand Load				2607359
<b>Total Demand Amperage @ 480277V .3PH, 4W</b>				<b>3136</b>
<b>Service Size Requested in Amps @ 480277V .3PH, 4W</b>				<b>4000</b>

BUILDING A - ELECTRICAL LOAD CALCULATION

SCALE: NONE 2

Building B' Load Calc	AREA(SQ FT)	VA PER SQ FT	Quantity	VA per Qty	VA
Lighting per CEC 220.12	16961	5.00			84805
General Receptacle loads	16961	3.00			50883
Plumbing equipment	16961	5.00			84805
Outdoor lighting per T24	16961	1.00			16961
HVAC	16961	12.00			203532
					0
Dedicated Equipment load (CNC laser, Machine Tools, Spinning Lathes, Machines, Inspection Machine, etc)			1	350000	350000
AC unit			20	2000	40000
15HP 3phase motor			10	11400	114000
15HP 3phase motor			15	17459	261885
15HP Compressor 3phase motor			10	17459	174590
Grinding Machine			1	150000	150000
Data servers UPS			1	100000	100000
Appliances (Coffee, Refrig, etc)			20	1200	24000
EV charger			12	7500	90000
					0
					0
<b>Total load</b>					<b>1781861</b>

Load Type & CEC Demand Load Formula	Quantity	VA per Qty	Load VA	CEC Demand VA
Lighting per CEC 220.12 @ 125% per CEC 220.3	22252 SF		84805	94805 X125% = 118506
Receptacle @ 125% per CEC 220.14(F)	4 circuits	4800	4800	X125% = 6000
Outdoor lighting @ 125% per CEC 220.3	12905	12905	12905	X125% = 16131
Gen Receptacle loads (service) per CEC 220.44	9250 SF	3	27750	10000 X100% + 59750 X50% = 33775
HVAC	203532		203532	149644 X125% + 90407 X100% = 1664651
Motor loads	1 lot	350000	350000	X100% = 350000
Dedicated equipment load	111260		111260	X100% = 111260
Plumbing Equipment	22252		111260	X100% = 111260
Electric Vehicle Charger @ 125%	12	7500	90000	X125% = 112500
AC unit	20	2000	40000	X100% = 40000
Data Servers UPS etc	1 lot	100000	100000	X125% = 125000
Appliances (Coffee, Refrig, etc)	20	1200	24000	X100% = 24000
Subtotal Demand Load				2003100
Spans for future (25%)				509710
Total Demand Load				2504261
<b>Total Demand Amperage @ 480277V .3PH, 4W</b>				<b>3012</b>
<b>Service Size Requested in Amps @ 480277V .3PH, 4W</b>				<b>4000</b>

BUILDING B - ELECTRICAL LOAD CALCULATION

SCALE: NONE 1

FOR REFERENCE ONLY

FOR REFERENCE ONLY

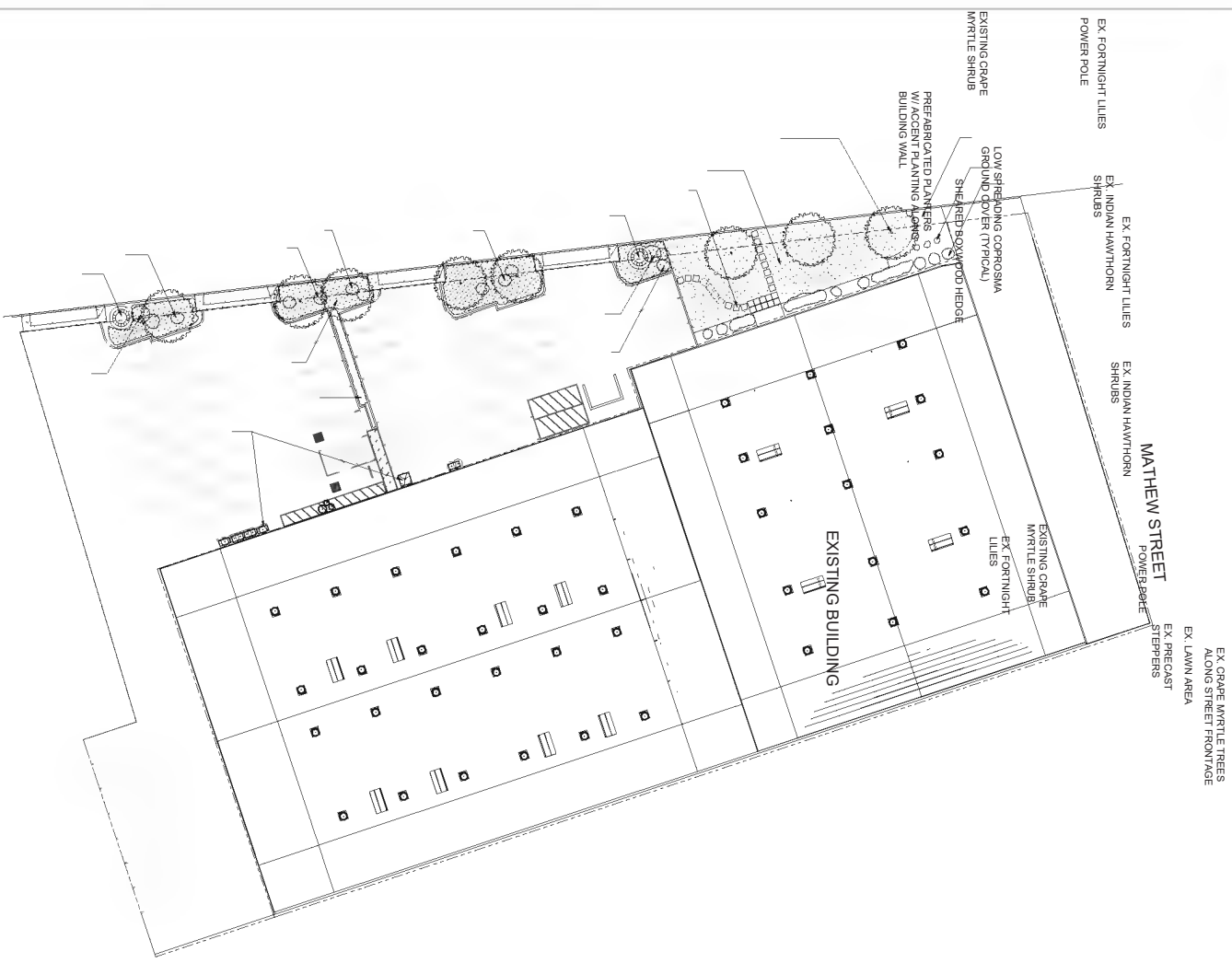
NO.	DESCRIPTION	DATE
1	PERMIT SET	06/27/2022



PROJECT:  
700 MATHEW ST.  
SERVICE APPLICATION  
PHASE -1  
700 MATHEW ST.  
STA. CLARA, CA 95050

SHEET TITLE:  
ELECTRICAL LOAD  
CALCULATION

PROJECT #: \_\_\_\_\_ SHEET NO.: \_\_\_\_\_  
DATE: 06/22/2022  
SCALE: AS NOTED **E6.0**



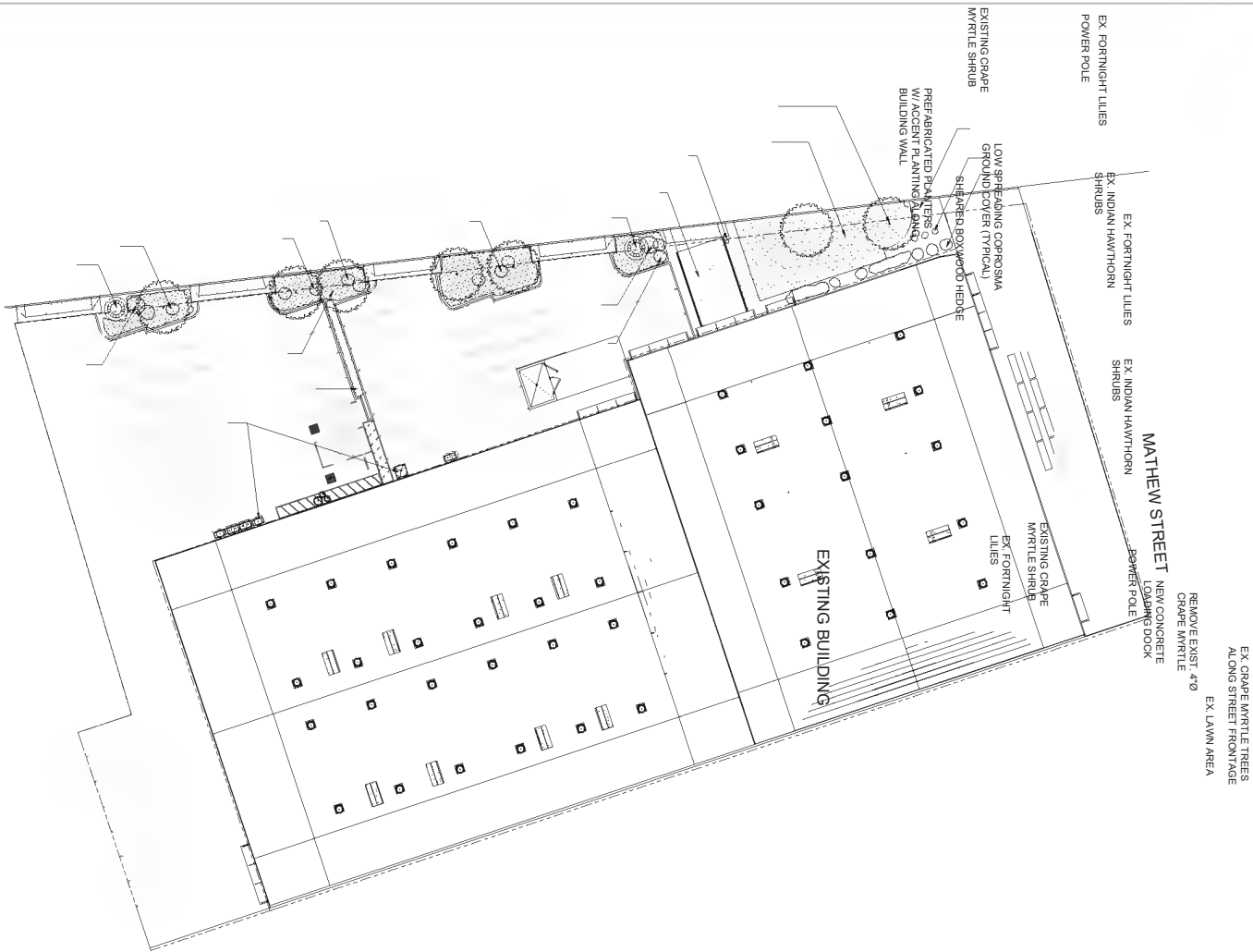
GRAPHIC SCALE  
[ IN FEET ]  
1 inch = 10 ft

RW Stover & Associates, Inc.  
Landscape Architecture  
1000 North Main Street, Suite 4  
P.O. Box 1000  
San Jose, CA 95128  
PH: (408) 281-1234

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QMS - Santa Clara  
700 MATTHEW ST, SANTA  
CLARA, CA 95050

Job Number: 22032  
Date: 2023/01/09  
Drawn: [Name]  
Sheet Title: LANDSCAPE PLAN  
Scale:  
Revisions: 2023/01/09 0P-SB/MTTL



EX. GRAPE MYRTLE TREES  
ALONG STREET FRONTAGE  
EX. LAWN AREA

MATHEW STREET  
NEW CONCRETE  
LOADING DOCK  
POWER POLE

EX. FORTNIGHT LILIES  
EX. INDIAN HAWTHORN  
SHRUBS  
EX. FORTNIGHT LILIES  
EX. INDIAN HAWTHORN  
SHRUBS

EXISTING GRAPE  
MYRTLE SHRUB

LOW SPREADING COPROSA  
GROUND COVER (TYPICAL)  
SHEARED BOXWOOD HEDGE

PREFABRICATED PLANTERS  
W/ ACCENT PLANTING ALONG  
BUILDING WALL

EXISTING BUILDING

EXISTING GRAPE  
MYRTLE SHRUB  
LILIES

EX. BARK MULCH DRESSING  
EX. CARPET ROSES  
EX. SHEARED HEDGE ALONG  
BUILDING FOUNDATION



GRAPHIC SCALE  
1 inch = 10'

RW Stover & Associates, Inc.  
Landscape Architecture  
1000 North Main Street, Suite 4  
Santa Clara, CA 95050  
PH: (408) 253-1234

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QMS - Santa Clara  
700 MATHEW ST, SANTA  
CLARA, CA 95050

Job Number: 22032  
Date: 2023.01.09  
Drawn: [Name]  
Checked: [Name]  
Sheet Title: PROPOSED LANDSCAPE PLAN  
Revisions: 2023.01.09 OP-SM/TTL

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
TO APPROVE A REZONE FROM PLANNED DEVELOPMENT  
(PD) TO HEAVY INDUSTRIAL (MH) TO ALLOW THE  
PROPOSED USE OF HEAVY INDUSTRIAL FOR A METAL  
FABRICATION AND SPINNING BUSINESS AT 700 MATHEW  
STREET, SANTA CLARA**

**(File No. PLN23-00054- Rezoning)**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on February 16, 2023, Brian Brown with HPC Architecture (“Applicant”), on behalf of Andrew Czisch with QMS Shields (“Owner”) filed an application (PLN23-00054) for the 64,989 square foot site consisting of two contiguous parcels (APN: 224-03-086 and 224-03-000) located at 700 Mathew Street with a surface parking lot and two one-story industrial buildings totaling 38,535 square feet (“Project Site”);

**WHEREAS**, the General Plan land use designation for the Project Site is Heavy Industrial, and it is zoned Planned Development (PD);

**WHEREAS**, the Project Site is developed with two industrial buildings that were previously occupied by a recreation business, ‘Off the Wall Soccer’, warehouse, and surface parking;

**WHEREAS**, the Property Owner applied to rezone the Project Site from Planned Development (PD) to Heavy Industrial (MH) to allow the existing buildings to be used for a heavy industrial business (“Project”) as shown on the development plans, attached hereto and incorporated herein by reference;

**WHEREAS**, the Project is Categorically Exempt from formal environmental review per Section 15301, Class 1 “Existing Facilities” of the Guidelines of the California Environmental Quality Act (“CEQA”), which applies to small additions and minor modifications to existing facilities. Here the proposal involves a small mezzanine addition inside the building without changing the building footprint and site improvements, and would have negligible effects on the environment;

**WHEREAS**, on June 1, 2023, the notice of meeting date for this item was posted in three conspicuous locations within 300 feet of the Project Site and mailed to property owners within a 300 foot radius of the Project Site for the Planning Commission hearing on June 14, 2023 and City Council hearing on July 18, 2023;

**WHEREAS**, on June 14, 2023, the Planning Commission held a duly noticed public hearing, at the conclusion of which the Planning Commission voted unanimously to recommend that the City Council approve the Rezoning; and

**WHEREAS**, on July 18, 2023, the City Council held a duly noticed public hearing to consider the Rezoning application, at which time all interested persons were given an opportunity to give testimony and the City Council considered the information presented in the Staff Report and all verbal and written evidence.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby approves rezoning the Project Site from Planned Development (PD) to Heavy Industrial (MH) to allow the existing buildings on the project site to be used for a heavy industrial business, as depicted on the attached Illustration Plan, incorporated herein by this reference.

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3. 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 18<sup>th</sup> 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:  
1. Development Plans



## **QMS Owner's Operation Summary**

QMS – Quality Metal Spinning and Machining, Inc. is a sheet metal forming and CNC machining company which primarily manufactures machined products delivered on a contractual basis.

The property at 700 Mathew St. will be an expansion to the company's current operations and will primarily support high volume / low mix production on machines with a large degree of automation. This automation allows for a reduced workforce when compared to traditional manufacturing methods.

There are two major manufacturing processes utilized for our production – Metal Spinning and CNC routing. The metal spinning process transforms sheet metal into round cylindrical shaped products. The CNC machining process is utilized for traditional “subtractive routing” of billet materials and further processing of the formed sheet metal into finished products.

The equipment utilized onsite includes metal spinning lathes and various CNC support equipment (laser cutting, milling and inspection equipment). Additional operational support includes air compressors, welding, deburring, ultrasonic cleaning and degreasing, forklifts, material handling, automated storage and vending equipment. The primary raw materials processed include aluminum, stainless steel and brass as well as other common materials and alloys.

Our operations do not require any high hazard materials. All chemicals used onsite are primarily standard lubricants for the equipment, mild degreasing and cleaning supplies, glycol and compressed gases (oxygen, argon, nitrogen and propane) - all well below the MAQ for this building type. The primary uses of the compressed gases are for shielding-gas for welding, laser cutting and packaging, and process heating for the metal spinning production process.

### **PHASE '0' (August 2023 – February 2024):**

This first phase will be limited to setup for the production line to deliver on a time-critical contract. The scope will require limited TI work with no alteration to the footprint or floorspace of the buildings. TI modifications including large openings in the exterior to bring in equipment and raw materials, a remodel of an existing space into a quality control room, repair/replacement of the existing floor inside the building, and an electrical service upgrade which is already in process thru an existing permit (submitted on 6/24/2022 - currently in review with SVP).

Footings for future equipment platforms and mezzanines will also be added at the owner's risk with the hope of acquiring entitlement to build those structures at a future date under a separate permit. The work area in this phase would be limited to approximately half of building A and all of Building B. This would allow the company to start bringing in revenue from the property which is required to continue any additional development.

### **PHASE '1' (May 2024 – November 2024):**

This next phase would bring in additional equipment and utilize the remainder floorspace for both Building A and Building B. Further repair/ replacement of the floor in the building would be required along with new engineered footings for future equipment platforms and mezzanines.

**PHASE '2' (March 2027 – September 2027):**

This subsequent phase would include the buildout of the elevated equipment platforms, mezzanines, recessed truck dock in Building B, additional restroom facilities and additional second floor office space. Office space would remain at/under 10% of the floorspace of the property.

**STAFFING:**

The company aims to run a 24-hour operation with the bulk of the employees working during the day, and a limited night shift primarily monitoring the automated equipment. The split would be roughly 70% to 80% of the employees working during the day with the remainder working the night shift. Day shift is generally from 6AM – 8PM with employees staggering the start times of their standard 8-hour workdays based upon specific responsibilities. Second shift would be 6PM – 8AM again with staggered start times.

Phase 0 would require approximately 8 employees split between the two shifts.

Phase 1 would increase to 16 employees.

Phase 2 would potentially increase to 20 employees, up to a max of 35 employees.

# RE-ZONING PERMIT FOR

700 MATHEW ST,  
SANTA CLARA, CA 95050

# QMS

QUALITY METAL SPINNING

### SHEET INDEX

ARCHITECTURAL
P1.0 COVER SHEET
P1.0.1 PHASING SHEET PLAN
P1.2 PROPOSED SITE PLAN
P1.3 FLOOR PLANS EXISTING
P1.4 FLOOR PLANS PROPOSED - PHASE 1
P1.4.1 FLOOR PLANS PROPOSED - PHASE 1
P1.4.2 FLOOR PLANS PROPOSED - PHASE 1
P1.4.3 FLOOR PLANS PROPOSED - PHASE 2
P1.5 ELEVATIONS
P1.6 EXISTING AND PROPOSED RENDERINGS
P1.7 EXTERIOR MATERIALS & FINISHES CHANGES
FIRE PROTECTION RESPONSE
P1.7.1 EXISTING STRIPPER/PROPOSED ROOF ACCESS

### SCOPE OF WORK

Re-zoning application for existing adjacent building. Plans to be changed from minor source facility to automotive metal spinning facility for production of high production materials and completed fabricated products.

Scope of work to include demolition of interior concrete minor framing and structural steel framing and foundations for large 2-story office area. Both buildings will have a new developed equipment platform where the open mezzanine for tool installation.

### PROJECT DATA

TOTAL SITE AREA	64,863 S.F.
EXISTING BUILDING AREA	BUILDING A 42,000 S.F.
EXISTING USE	INDUSTRIAL STRIPPER FACILITY
PROPOSED BUILDING AREA	BUILDING B 23,827 S.F.
PROPOSED USE	INDUSTRIAL METAL SPINNING

### PROJECT REPRESENTATIVES

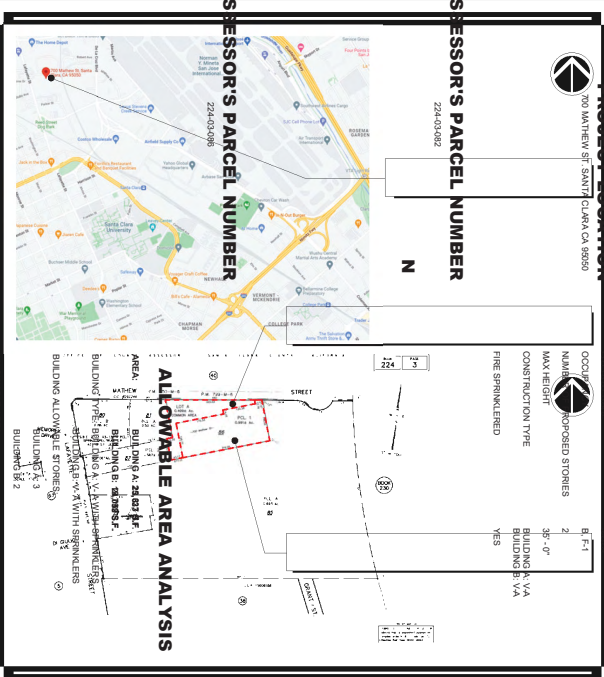
**OWNER**  
QMS Quality Metal Spinning & Machining, Inc.  
1731 Technology Drive, Santa Clara, CA 95050  
Phone: (408) 254-2491  
Email: qms@qms.com

**ARCHITECT**  
Michael Brown  
1731 Technology Drive, Santa Clara, CA 95050  
Phone: (408) 254-4529  
Email: mbrown@mrwells.com

**ENGINEER**  
Rock Steiner  
RMV Steiner & Associates, Inc.  
1620 North Main Street, Walnut Creek, CA 94598  
Phone: (925) 938-1015  
Email: rsteiner@rmvsa.com

**ELECTRICAL (FCI Reference Only)**  
Serrano Electric, Inc.  
1900 Concord Ct, Morgan Hill, CA 95037  
Phone: (408) 910-1010  
Email: dserrano@serranoec.com

QMS - Santa Clara  
700 MATHEW ST,  
SANTA CLARA, CA 95050



**ASSessor'S PARCEL NUMBER**  
224-00-092

**ASSessor'S PARCEL NUMBER**  
224-00-096

**AREA** BUILDING A 42,000 S.F. < 42,000 S.F. ALLOWABLE  
BUILDING B 23,827 S.F. < 23,827 S.F. ALLOWABLE

PL0  
REVISIONS  
SHEET TITLE  
COVER SHEET

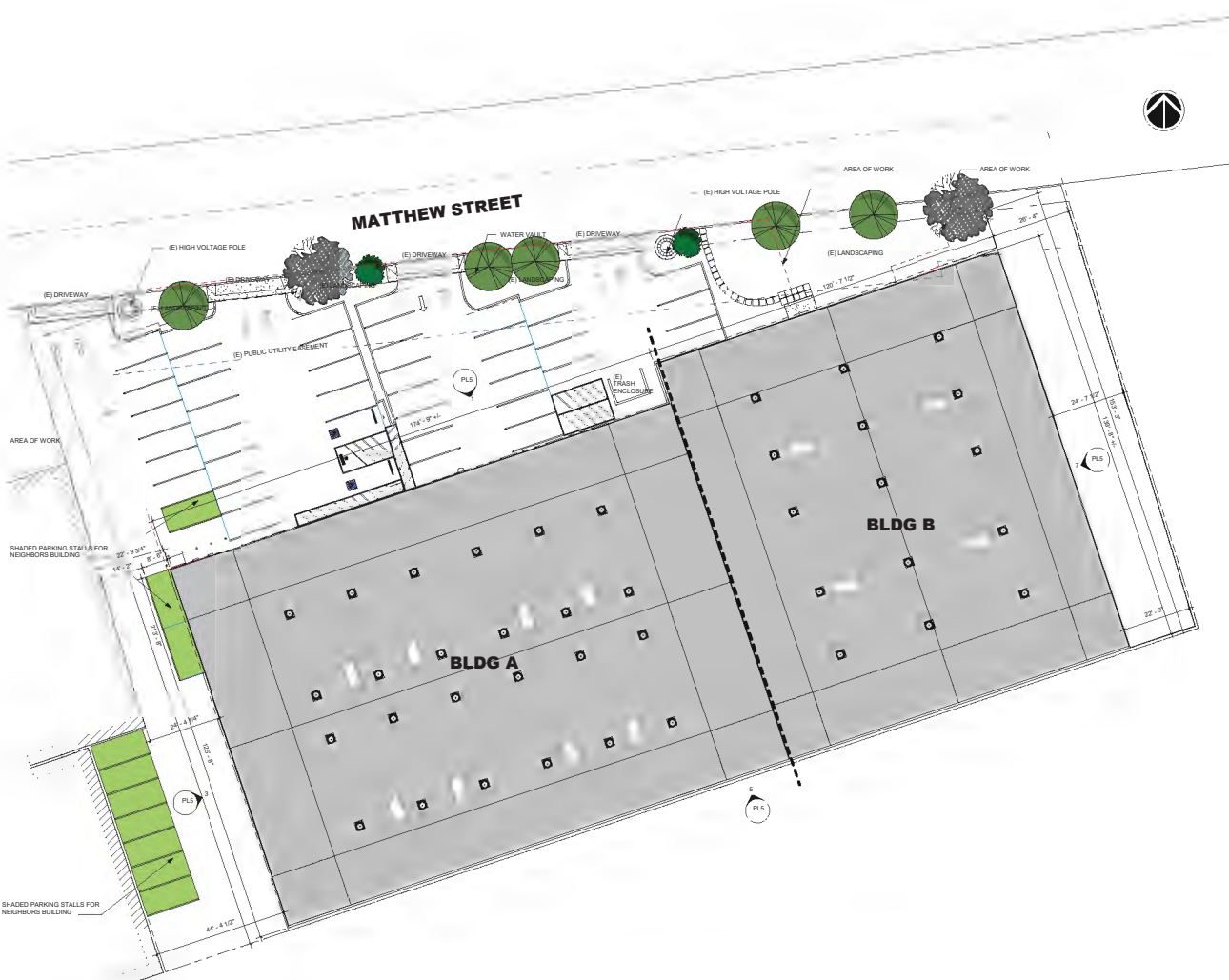


**SITE LEGEND**

- ACCESSIBLE PATH OF TRAVEL
- PLANTING AREA

**PARKING COUNTS**

USE	PARKING REQUIRED			Parking Schedule - EXISTING	
	RATIO	AREA	REQUIRED	Family	Count
INDOOR SOCCER OFFICE	12000	34,605 SF	18	Accessible Space - Standard	2
	1300	4,031 SF	14	Parking Space	39
				Grand total:	41
<b>Total SF:</b>	<b>38,536</b>	<b>TOTAL</b>	<b>32</b>		



**1 Site - Existing**  
SCALE: 1/8" = 1'-0"

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Steven M. Cox, AIA, Architect  
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408.297.5654 | www.hpc-arch.com



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700 MATHEW ST,  
SANTA CLARA, CA 95050

Job Number	22032
Date	2023.01.09
Drawn	
Author	
Sheet Title	EXISTING SITE PLAN
Scale	As Indicated
Revisions	

1 Site - Proposed  
SCALE: 1/8" = 1'-0"



**SITE LEGEND**

- ACCESSIBLE PARKING
- LANDING AREA

**PARKING COUNTS**

SITE	PARKING REQUIRED		PARKING PROVIDED	
	TOTAL	ASBN REQUIRED	TYPE	COUNT
HEAVY MANUFACTURING	1100	4244 SF	ACCESSIBLE SPACE 5.0M	1
			PARKING SPACES	28
<b>TOTAL</b>	<b>32</b>		<b>TOTAL PROVIDED</b>	<b>28</b>

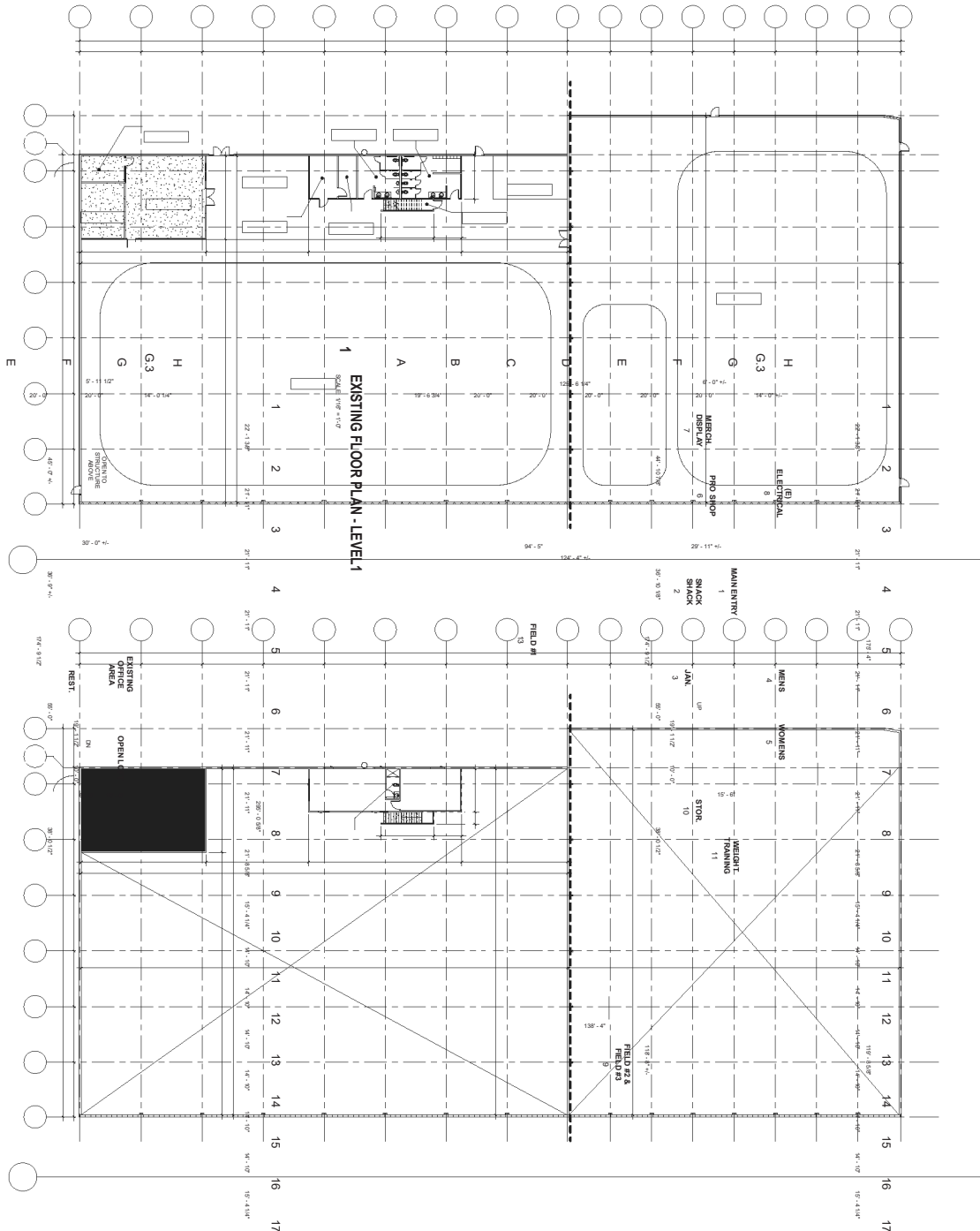
RECYCLED PAPER  
PL2

DATE: 02/21/09  
PROJECT: QMS - Santa Clara  
SHEET TITLE: PROPOSED SITE PLAN

**QMS** QUALITY METAL SPINNING  
QMS - Santa Clara  
700 MATHEW ST,  
SANTA CLARA, CA 95050

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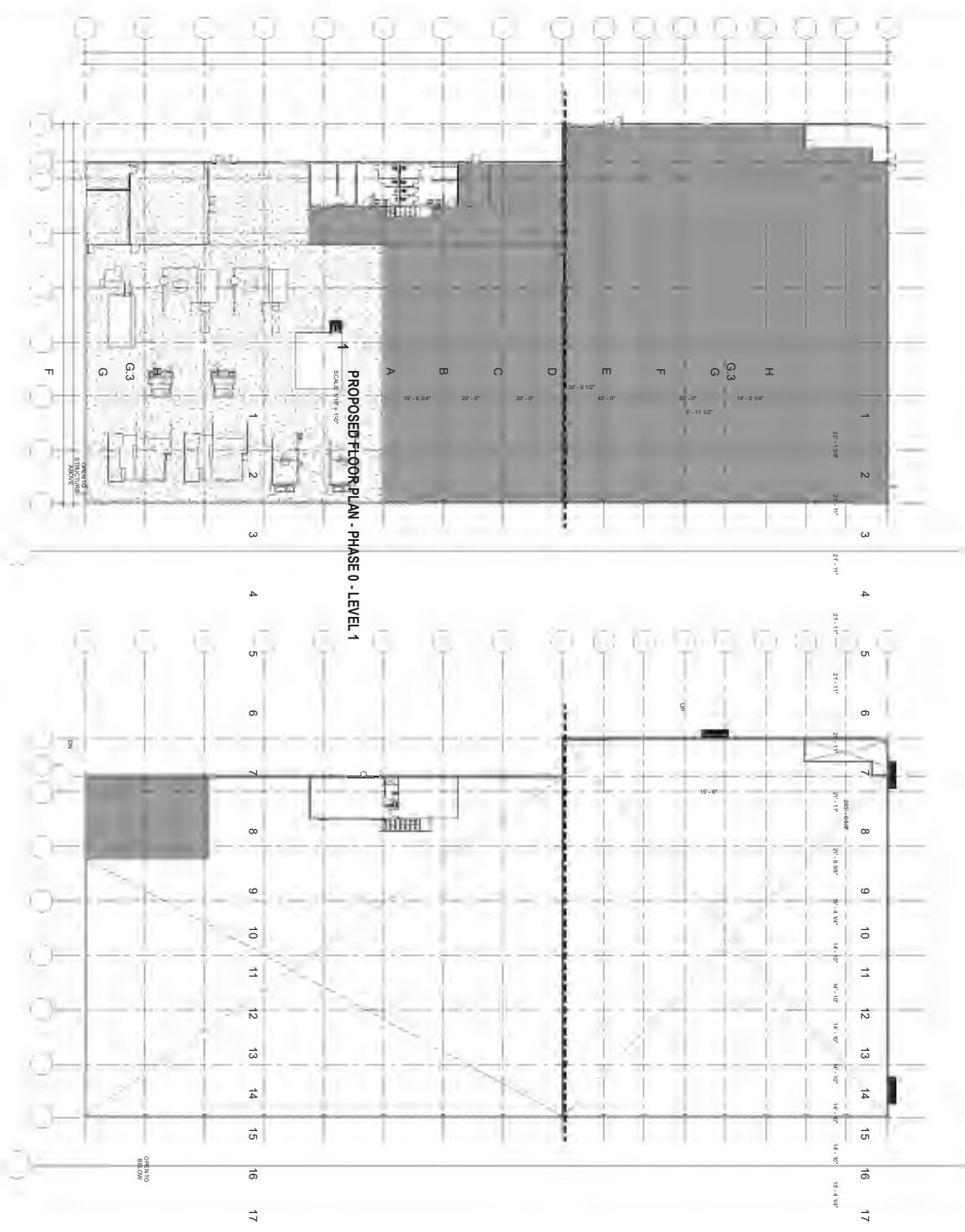
2 EXISTING FLOOR PLAN - LEVEL 2  
SCALE: 1/8" = 1'-0"

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Job Number: 22032  
Date: 2023.01.09  
Drawn: [Name]  
Sheet Title: FLOOR PLANS EASTING  
Scale: 1/8" = 1'-0"  
Revisions:

APPROVED FOR  
PROJECT MANAGER  
PL3



PROPOSED FLOOR PLAN - PHASE 0 - LEVEL 1  
SCALE: 1/8" = 1'-0"

2 PROPOSED FLOOR PLAN - PHASE 0 - LEVEL 2  
SCALE: 1/8" = 1'-0"

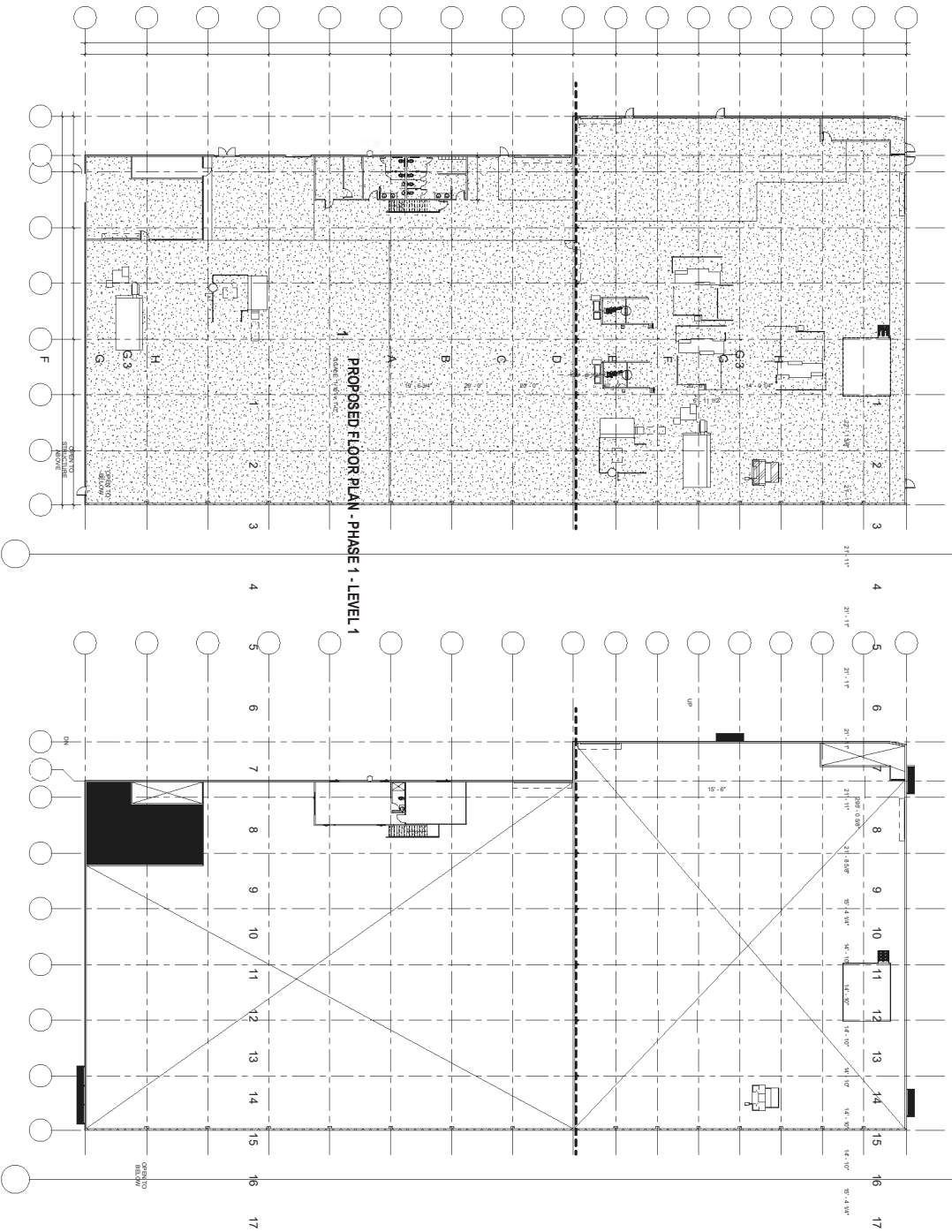
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Job Number: 22032  
Date: 2023.01.09  
Drawing: 0  
Sheet Title: FLOOR PLANS - PHASE 0 - NOT BIDDING PHASE  
Scale: 1/8" = 1'-0"  
Revisions:

APPROVED FOR  
REGISTERED ARCHITECT  
PL4-1





2 PROPOSED FLOOR PLAN - PHASE 1 - LEVEL 2  
SCALE: 1/8" = 1'-0"

A  
B  
C  
D  
E  
F

OPEN TO  
LEVEL 0

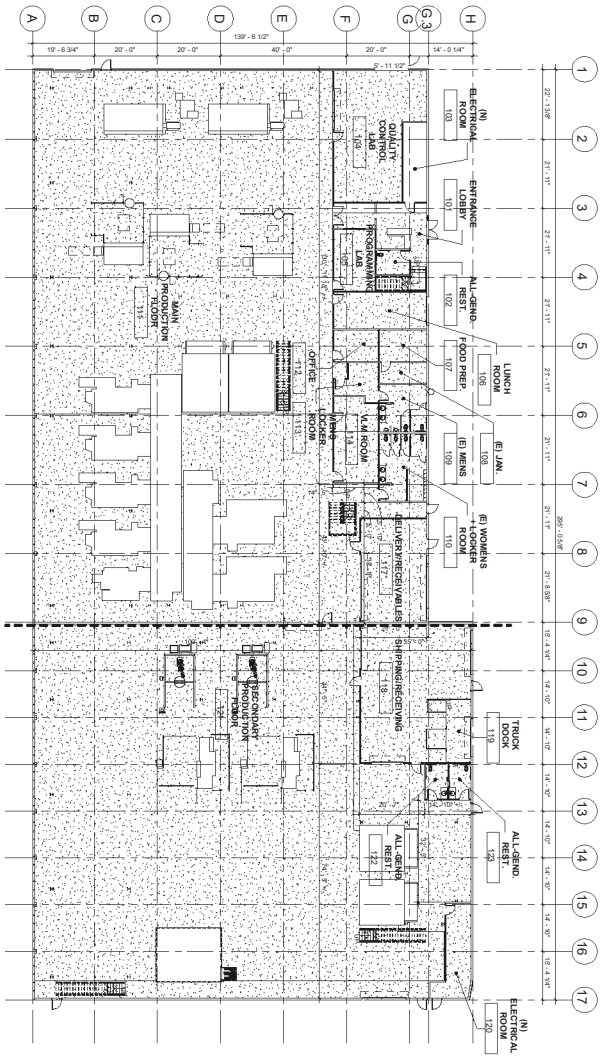
OPEN TO  
LEVEL 0

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700 MATHEW ST,  
SANTA CLARA, CA 95050

Job Number: 22032  
Date: 2023.01.09  
Drawn: [Name]  
Sheet Title: FLOOR PLANS  
PROJECT: QMS - PHASE 1  
Scale: 1/8" = 1'-0"  
Revisions:

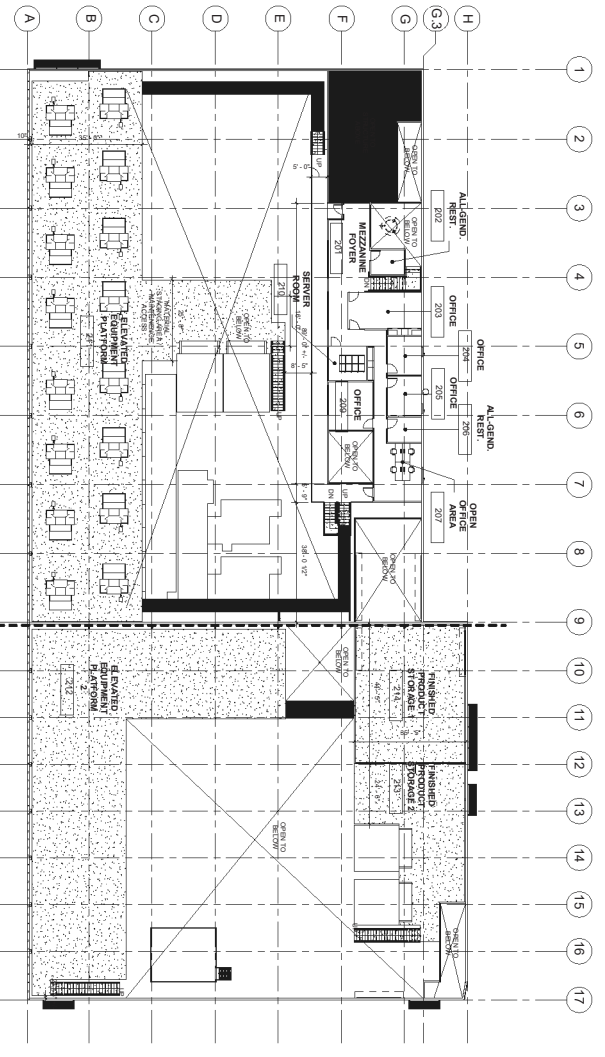
REGISTERED ARCHITECT  
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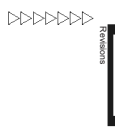


2 PROPOSED FLOOR PLAN - PHASE 2 - LEVEL 1  
SCALE: 1/8" = 1'-0"

PROPOSED SOFT AREAS			
USE	NO. OF	AREA	REMARKS
OFFICE	11000	431.8 SF	3
MECHANICAL STORAGE	11000	326.8 SF	2
HEAVY MANUFACTURING	11100	6,262.9 SF	27
TOTAL		6,991.5 SF	32



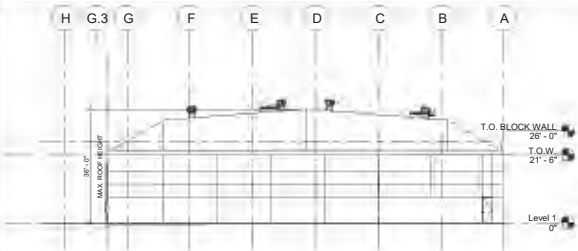
1 PROPOSED FLOOR PLAN - PHASE 2 - LEVEL 2  
SCALE: 1/8" = 1'-0"



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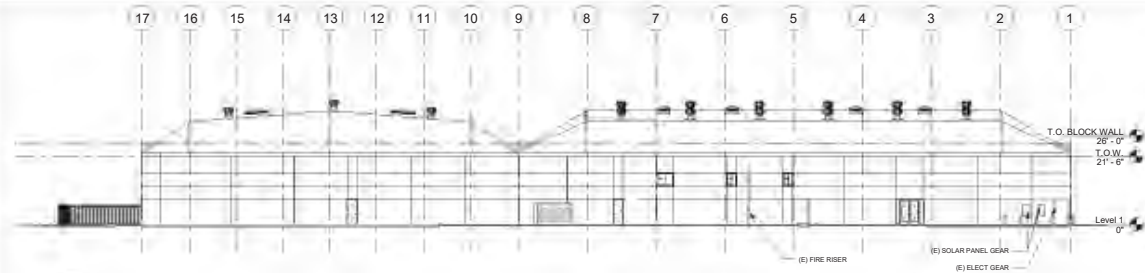
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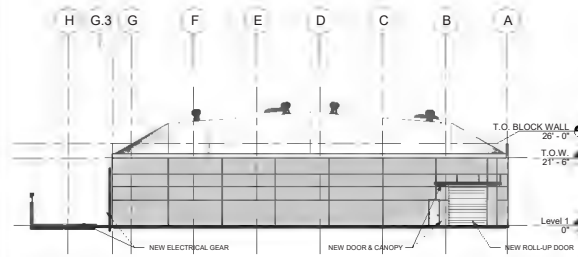
**3 West Elevation - EXISTING**

SCALE: 1/16" = 1'-0"



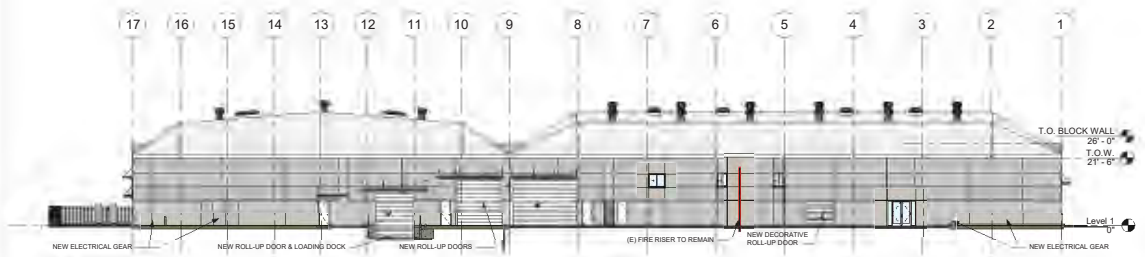
**1 North Elevation - EXISTING**

SCALE: 1/16" = 1'-0"



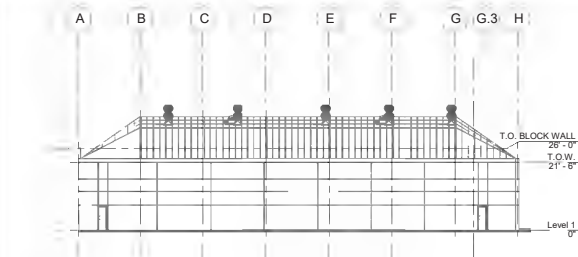
**4 West Elevation - PROPOSED**

SCALE: 1/16" = 1'-0"



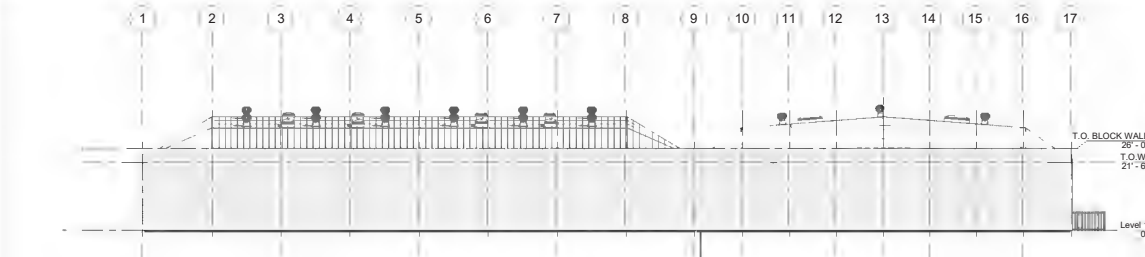
**2 North Elevation - PROPOSED**

SCALE: 1/16" = 1'-0"



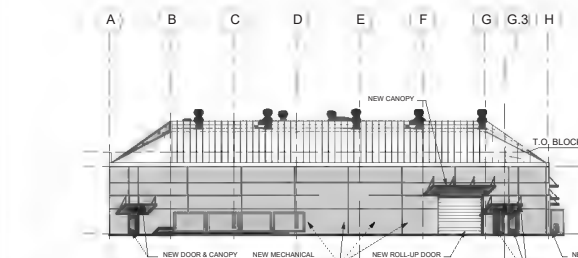
**7 EAST ELEVATION - EXISTING**

SCALE: 1/16" = 1'-0"



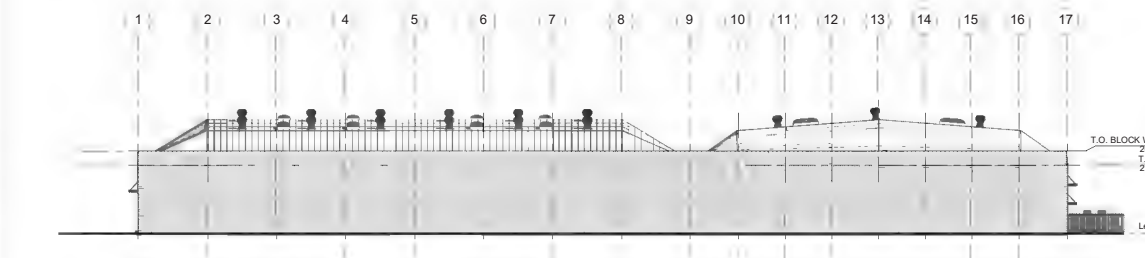
**5 SOUTH ELEVATION - EXISTING**

SCALE: 1/16" = 1'-0"



**8 EAST ELEVATION - PROPOSED**

SCALE: 1/16" = 1'-0"



**6 SOUTH ELEVATION - PROPOSED**

SCALE: 1/16" = 1'-0"

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700 MATHEW ST,  
SANTA CLARA, CA 95050



Job Number  
22032  
Date  
2023.01.09  
Drawn  
Author  
Sheet Title  
ELEVATIONS

Scale  
1/16" = 1'-0"

Revisions

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**PL5**









E1 - EXISTING STREET PERSPECTIVE FOR SITE CONTEXT



E3 - EXISTING EAST YARD AND NORTHEAST CORNER OF BUILDING 'B'



E3 - EXISTING NORTH ELEVATION OF BUILDING 'B' AND BUILDING 'A'



E4 - EXISTING NORTH ELEVATION OF BUILDING 'A'



AERIAL VIEW - EXISTING



AERIAL VIEW - PROPOSED



P1 - PROPOSED EAST YARD AND NORTHEAST CORNER OF BUILDING 'B'



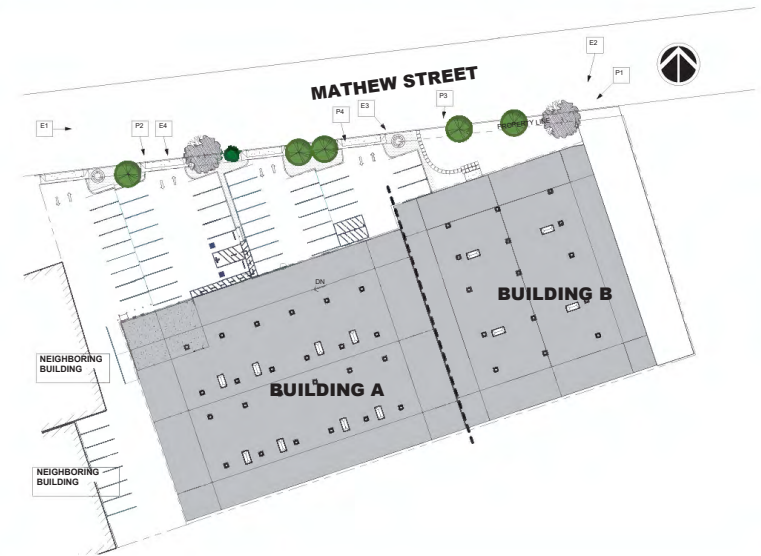
P2 - PROPOSED NORTHERN ELEVATION FOR BUILDING 'A'



P3 - PROPOSED TRUCK DOCK FOR BUILDING 'B'



P4 - PROPOSED NORTHERN ELEVATION FOR BUILDING 'A' & BUILDING 'B'



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**GMS**  
QUALITY METAL SPRING

Job Number	22032
Date	2023.01.09
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Author	
Sheet Title	EXTERIOR IMAGES & PROPOSED RENDERINGS
Scale	1" = 30'-0"

Revisions

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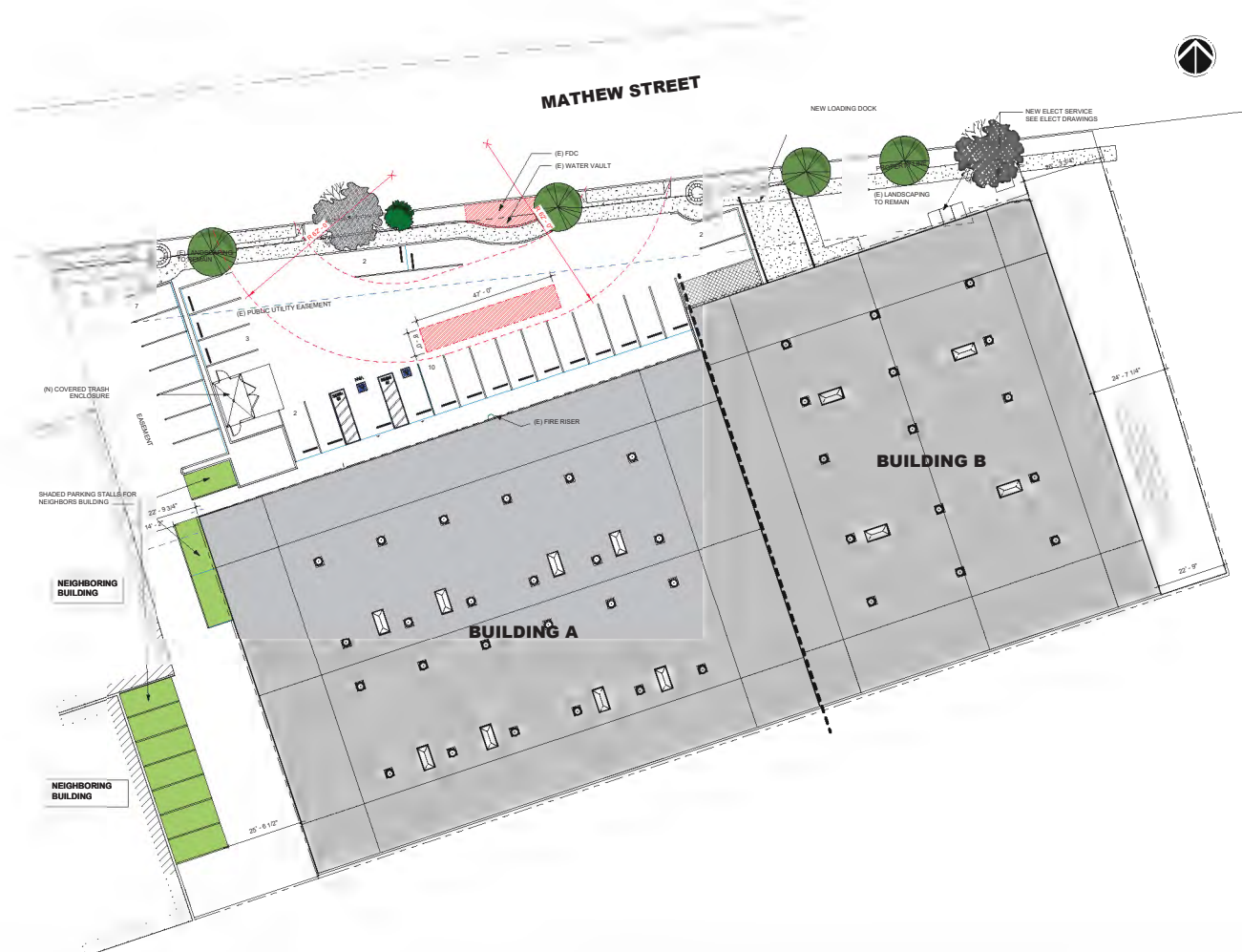
**PL7**

### SITE LEGEND

-  ACCESSIBLE PATH OF TRAVEL
-  PLANTING AREA

### PARKING COUNTS

PARKING REQUIRED				PARKING PROPOSED	
USE	RATIO	AREA	REQUIRED	TYPE	COUNT
HEAVY MANUFACTURING	1/1500	43,027 SF	29	ACCESSIBLE SPACE - VAN	1
				ACCESSIBLE SPACE - STANDARD	1
				PARKING SPACE	26
<b>TOTAL</b>			<b>29</b>	<b>TOTAL PROVIDED</b>	<b>28</b>



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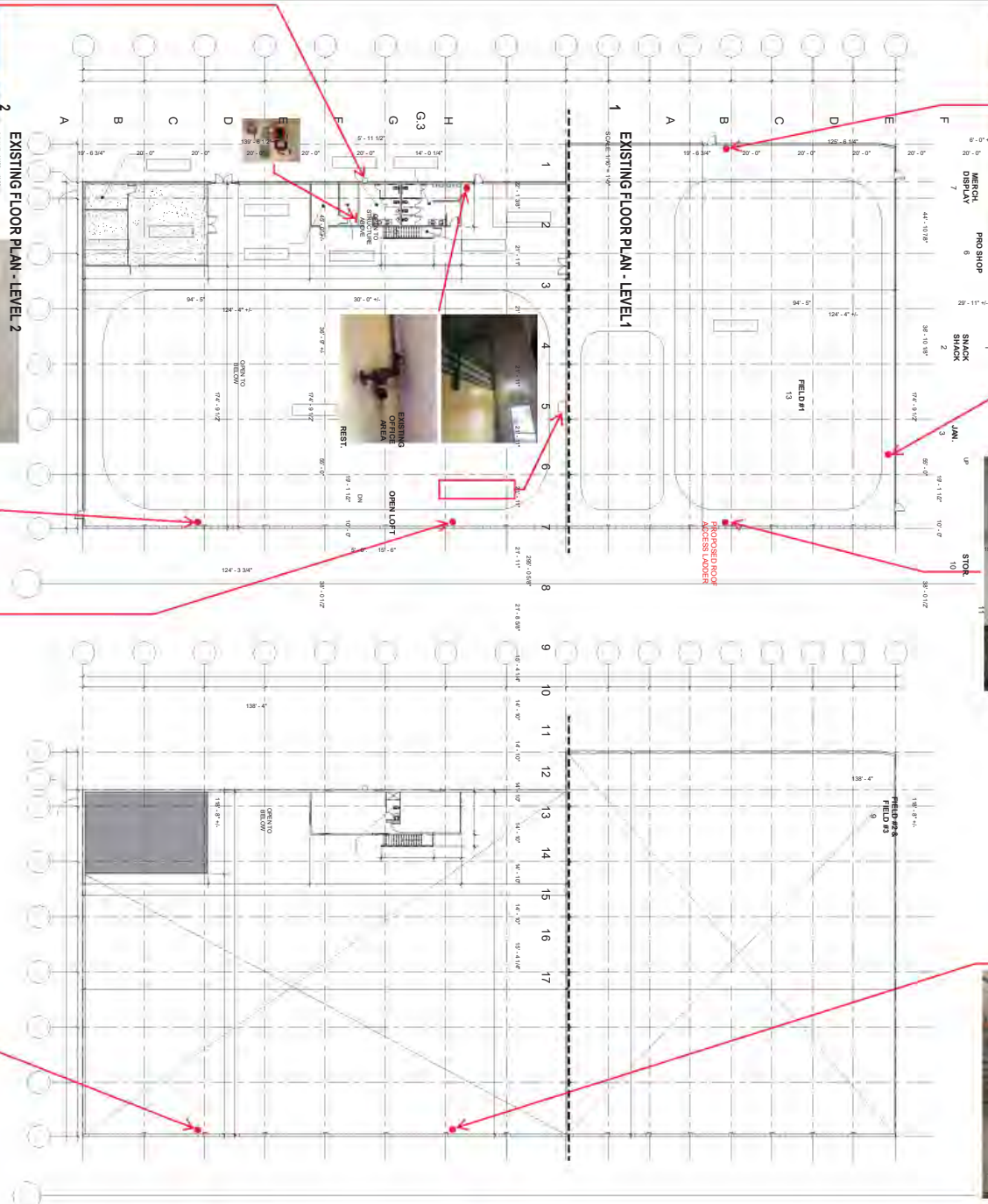


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Job Number  
 22032  
 Date  
 2023.01.09  
 Drawn  
 Author  
 Sheet Title  
 PROPOSED SITE  
 PLAN - EVA LAYOUT  
 Scale  
 As Indicated  
 Revisions

1 Site Plan - Proposed EVA Route  
 SCALE: 1/8" = 1'-0"





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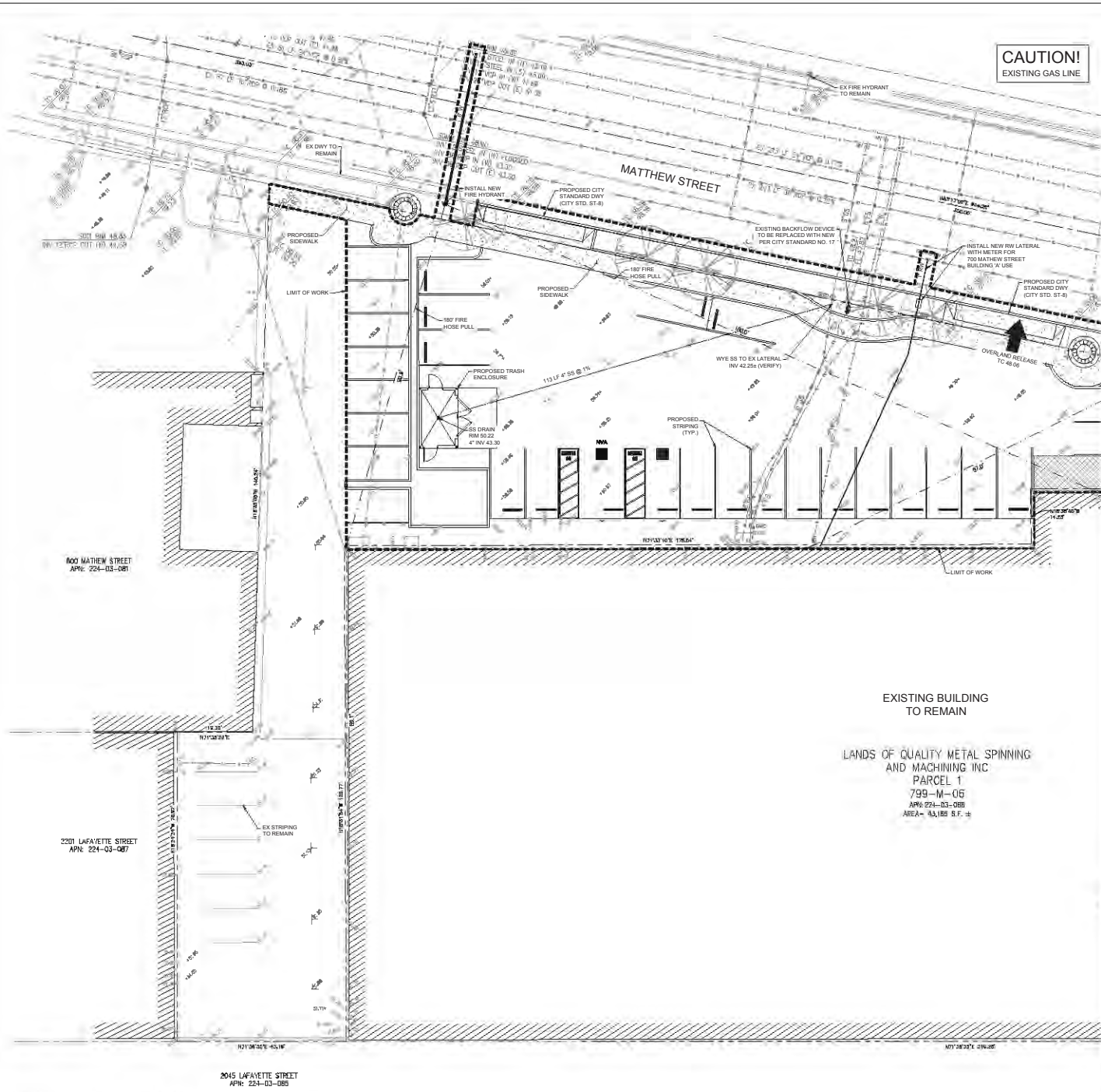
Job Number: 22032  
 Date: 2023.01.09  
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 Checked: [Name]  
 Sheet Title: FLOOR PLANS EXISTING  
 Scale: 1/8" = 1'-0"  
 Revisions:



REGISTERED ARCHITECT







**CAUTION!**  
EXISTING GAS LINE

EXISTING BUILDING  
TO REMAIN

LANDS OF QUALITY METAL SPINNING  
AND MACHINING INC  
PARCEL 1  
799-M-06  
APN: 224-03-088  
AREA - 43,185 S.F. ±

SEE SHEET C2.1



<p>INCLUDE WORKMANSHIP BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND SEAL IS NECESSARY FOR THE PLAN TO BE VALID.</p>	
<p>DATE: 1/27/2024</p>	<p>BY: JMW</p>
<p>PROJECT: 700 MATTHEW STREET</p>	
<p>SCALE: 1" = 10'</p>	
<p>IMPROVEMENT PLANS FOR 700 MATTHEW STREET PLAN 23-XXX</p>	
<p>SANTA CLARA, CALIFORNIA PROJECT NO. 2023-001 (EXHIBIT 111)</p>	
<p>1731 Technology Drive, Suite 800, San Jose, CA 95110 Tel: 408.264.6555 www.jmhw.com</p>	
<p>SHEET C2.0 2 OF 4 SHEETS</p>	











**GENERAL NOTES:**

- ALL ELECTRICAL EQUIPMENTS AND FEEDERS ARE NEW UNLESS OTHERWISE NOTED AS 'EY' FOR EXISTING. RETORQUE ALL EXISTING TERMINATIONS PER MANUFACTURER RECOMMENDATION.
- SWITCHBOARD SHOWN ON THE SINGLE LINE DIAGRAM SHALL BE 'FULLY RATED' ADEQUATE FOR THE MAXIMUM FAULT CURRENT AVAILABLE AT THE POINT OF APPLICATION, INCORPORATING THE CURRENT LIMITING DEVICES AS SPECIFIED. 'SERIES-RATING' FOR PANELLOADS IS ACCEPTABLE. PROVIDE REQUIRED MARKING AS REQUIRED PER NEC ARTICLE 110.22(B) & (C) FOR SIGNAGE AT ALL PANELS AND EQUIPMENT. IF NOT 'FULLY RATED SYSTEM' CONTRACTOR SHALL SUBMIT SHOP DRAWINGS INDICATING SERIES RATING AND INCLUDE A COPY OF ALL LABELING, INCLUDING RESPECTIVE UL LISTING, TO THE AHJ FOR REFERENCE.
- PROVIDE PHENOLIC NAMEPLATE LABELLING & TYPE WRITTEN PANEL DIRECTORY FOR ALL PANELS.
- INTERIOR METAL PIPING SYSTEM SHALL BE BONDED TO THE GROUNDING ELECTRODE SYSTEM.
- GROUND AND NEUTRAL SHALL ONLY BE BONDED AT THE SERVICE EQUIPMENT AND AT THE SEPARATELY SERVED SYSTEM.
- EQUIPMENT LINE-UP IS BASED ON SQUARE D PRODUCT. ALTERNATE MANUFACTURER IS ACCEPTABLE PROVIDED THAT IT MEETS THE DESIGN INTENT AND CLEARANCE REQUIREMENTS.
- ONLY UL LISTED EQUIPMENT SHALL BE USED.
- PROVIDE ALL NECESSARY SIGNAGE, LABELING AND PLAQUES AS REQUIRED BY CEC 23-70(B), 695 & 705.
- ELECTRICAL CONTRACTOR TO PROVIDE MAIN LUGS ADAPTOR LUGS AS NEEDED FOR CONNECTIONS AT PANEL, BOARDS AND EQUIPMENT.
- ALL METERING EQUIPMENTS SHALL BE SUBMITTED TO THE UTILITY PROVIDER FOR APPROVAL.
- INSTALL ENGRAVED BAKELITE NAMEPLATE ON SERVICE DISCONNECT SWITCH WITH SERVICE ADDRESS.
- LOAD CALCULATION FOR FUTURE TENANT IMPROVEMENT PROJECT TO BE PROVIDED UNDER PHASE 2 PACKAGE.

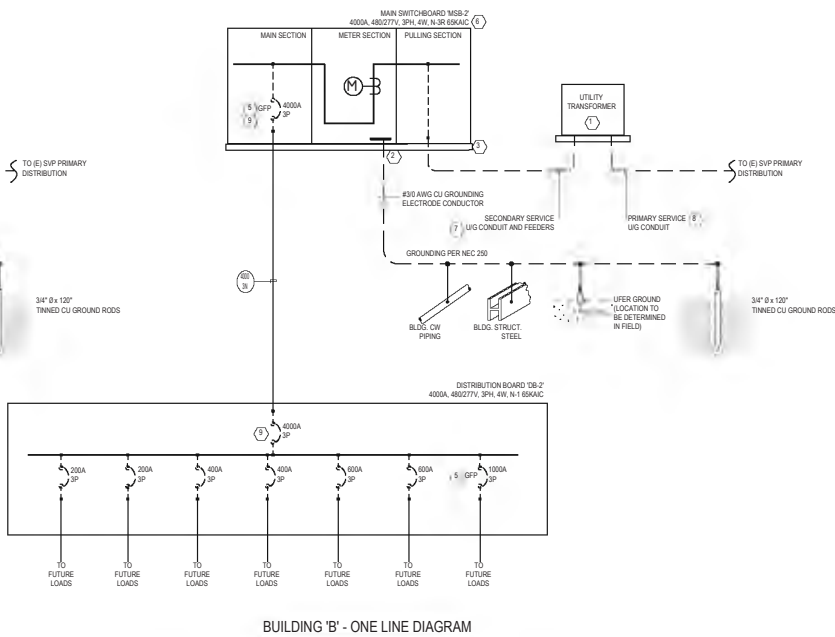
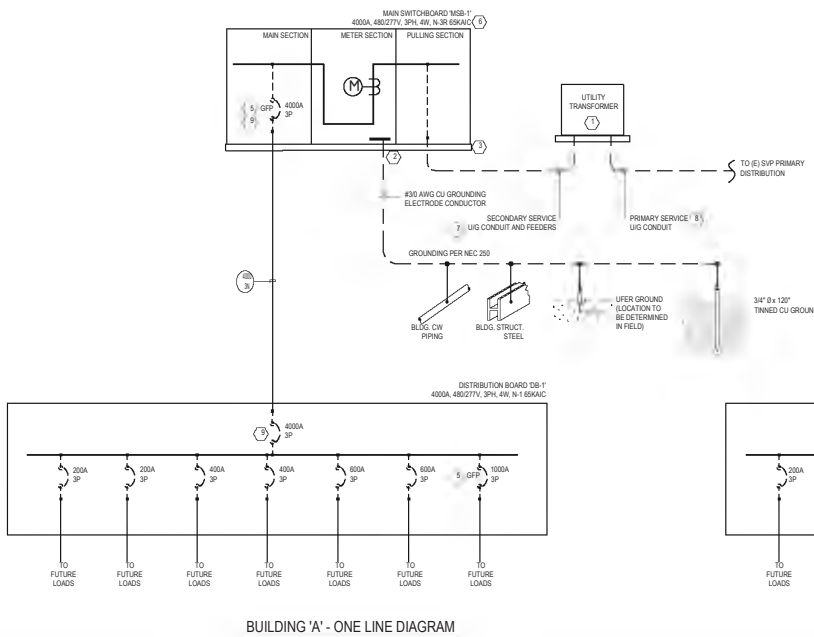
**KEY NOTES:**

- NEW PAD MOUNTED UTILITY TRANSFORMER: CONTRACTOR TO COORDINATE WITH SUP REPRESENTATIVE FOR WORK REQUIRED. SEE ELECTRICAL PLANS FOR MORE INFORMATION.
- GROUNDING ELECTRODE SYSTEM: CONNECT TO GROUNDING ELECTRODE SYSTEM USING #6 UNDERGROUND METAL WATER PIPE WITHIN 2' OF ENTRANCE TO BUILDING. ALL METAL PIPING SYSTEM, CONTIGUOUS STRUCTURAL METAL (IF PRESENT) SHALL BE BONDED TO THE GROUNDING ELECTRODE SYSTEM IN MAIN SWITCHBOARD USING #6. PROVIDE (3) 3/4" x 12" TINNED CU GROUND ROD - MINIMUM 12' APART. USE #4 CU WIRE FOR SOLE CONNECTION TO GROUND ROD. PROVIDE ADDITIONAL GROUNDING ELECTRODE WHERE RESISTANCE TO GROUND EXCEEDS 5 OHMS.
- PROVIDE PAD TO ENSURE LEVEL WORKING CLEARANCE IN FRONT OF EQUIPMENT. SEE PLANS FOR ADDITIONAL INFORMATION.
- NOT USED.
- PROVIDE CIRCUIT BREAKER WITH GROUND FAULT PROTECTION.
- PRIOR TO PURCHASE THE EQUIPMENT, COORDINATE EXACT AVAILABLE FAULT CURRENT WITH UTILITY PROVIDER. ADJUST TO THE NEXT STANDARD SIZE IF UTILITY FAULT CURRENT IS HIGHER THAN EQUIPMENT RATING AS SHOWN.
- PROVIDE 12 SETS OF 3 1/2" x 4800 MCM, 1# 3/8" GND FOR SECONDARY SERVICE ENTRANCE CONDUCTORS.
- PROVIDE 2 1/2" EMPTY CONDUIT FOR PRIMARY SERVICE CONDUCTORS.
- PROVIDE CIRCUIT BREAKER WITH LONG TIME, SHORT TIME AND INSTANTANEOUS TRIP SETTINGS.

**FEEDER SCHEDULE**

TAG	WIRE & CONDUIT SIZE	TAG	WIRE & CONDUIT SIZE	TAG	WIRE & CONDUIT SIZE	TAG	WIRE & CONDUIT SIZE
1	3#12H + 1#12G N12TC	11	3#10H + 1#10G N10TC	21	3#6H + 1#6N + 1#10G N1TC	31	3#6H + 1#6G N1TC
2	3#10H + 1#10G N10TC	12	3#8H + 1#8G N8TC	22	3#6H + 1#6N + 1#10G N1TC	32	3#6H + 1#6G N1TC
3	3#8H + 1#8G N8TC	13	3#6H + 1#6G N6TC	23	3#6H + 1#6N + 1#10G N1TC	33	3#6H + 1#6G N1TC
4	3#6H + 1#6G N6TC	14	3#4H + 1#4G N4TC	24	3#6H + 1#6N + 1#10G N1TC	34	3#6H + 1#6G N1TC
5	3#4H + 1#4G N4TC	15	3#4H + 1#4G N4TC	25	3#6H + 1#6N + 1#10G N1TC	35	3#6H + 1#6G N1TC
6	3#4H + 1#4G N4TC	16	3#4H + 1#4G N4TC	26	3#6H + 1#6N + 1#10G N1TC	36	3#6H + 1#6G N1TC
7	3#4H + 1#4G N4TC	17	3#4H + 1#4G N4TC	27	3#6H + 1#6N + 1#10G N1TC	37	3#6H + 1#6G N1TC
8	3#4H + 1#4G N4TC	18	3#4H + 1#4G N4TC	28	3#6H + 1#6N + 1#10G N1TC	38	3#6H + 1#6G N1TC
9	3#4H + 1#4G N4TC	19	3#4H + 1#4G N4TC	29	3#6H + 1#6N + 1#10G N1TC	39	3#6H + 1#6G N1TC
10	3#4H + 1#4G N4TC	20	3#4H + 1#4G N4TC	30	3#6H + 1#6N + 1#10G N1TC	40	3#6H + 1#6G N1TC
11	3#4H + 1#4G N4TC	21	3#4H + 1#4G N4TC	31	3#6H + 1#6N + 1#10G N1TC	41	3#6H + 1#6G N1TC
12	3#4H + 1#4G N4TC	22	3#4H + 1#4G N4TC	32	3#6H + 1#6N + 1#10G N1TC	42	3#6H + 1#6G N1TC
13	3#4H + 1#4G N4TC	23	3#4H + 1#4G N4TC	33	3#6H + 1#6N + 1#10G N1TC	43	3#6H + 1#6G N1TC
14	3#4H + 1#4G N4TC	24	3#4H + 1#4G N4TC	34	3#6H + 1#6N + 1#10G N1TC	44	3#6H + 1#6G N1TC
15	3#4H + 1#4G N4TC	25	3#4H + 1#4G N4TC	35	3#6H + 1#6N + 1#10G N1TC	45	3#6H + 1#6G N1TC
16	3#4H + 1#4G N4TC	26	3#4H + 1#4G N4TC	36	3#6H + 1#6N + 1#10G N1TC	46	3#6H + 1#6G N1TC
17	3#4H + 1#4G N4TC	27	3#4H + 1#4G N4TC	37	3#6H + 1#6N + 1#10G N1TC	47	3#6H + 1#6G N1TC
18	3#4H + 1#4G N4TC	28	3#4H + 1#4G N4TC	38	3#6H + 1#6N + 1#10G N1TC	48	3#6H + 1#6G N1TC
19	3#4H + 1#4G N4TC	29	3#4H + 1#4G N4TC	39	3#6H + 1#6N + 1#10G N1TC	49	3#6H + 1#6G N1TC
20	3#4H + 1#4G N4TC	30	3#4H + 1#4G N4TC	40	3#6H + 1#6N + 1#10G N1TC	50	3#6H + 1#6G N1TC

- NOTES:
- ALL WIRE SHALL BE COPPER AND INSULATION SHALL BE THHN, THWN 2, XHHW 2.
  - H - HOT/UNGROUND CONDUCTOR; N - NEUTRAL/GROUNDED CONDUCTOR; G - GROUNDING CONDUCTOR; IG - ISOLATED GROUNDING CONDUCTOR.
  - UNLESS LISTED OTHERWISE, THE AMPACITY OF 600V OR LESS CONDUCTORS SHALL BE BASED ON THE TERMINALS NOT TO EXCEED 90 DEG C (140 DEG F) FOR CONDUCTOR SIZE #14 THROUGH #1 AWG OR 75 DEG C (167 DEG F) FOR CONDUCTOR SIZES OVER #1 AWG.
  - WHERE THE PHASE CONDUCTORS ARE INCREASED IN SIZE (E.G. FOR VOLTAGE DROP COMPENSATION), EQUIPMENT GROUNDING CONDUCTOR SHALL BE INCREASED IN SIZE PROPORTIONATELY ACCORDING TO CIRCULAR MIL AREA OF THE PHASE CONDUCTOR.



FOR REFERENCE ONLY

NO.	DESCRIPTION	DATE
1	PERMIT SET	06/27/2022



PROJECT:  
700 MATHEW ST.  
SERVICE APPLICATION  
PHASE -1  
700 MATHEW ST.  
STA. CLARA, CA 95050

SHEET TITLE:  
ELECTRICAL  
ONE LINE DIAGRAM

ELECTRICAL ONE LINE DIAGRAM

PROJECT #: \_\_\_\_\_ SHEET NO.: \_\_\_\_\_  
DATE: 06/22/2022 AS NOTED E5.0  
SCALE: \_\_\_\_\_

Building A Load Calc	AREA(SQ FT)	VA PER SQ FT	Quantity	VA per Qty	VA
Lighting per CEC 220.12	22252	5.00			111260
General Receptacle loads	22252	3.00			66756
Plumbing equipment	22252	5.00			111260
Outdoor lighting per T24	12905	1.00			12905
HVAC	22252	12.00			267824
					0
Dedicated Equipment load (CNC laser Machine Metal Spinning Lathe Machines Inspection Machine, etc)			1	350000	350000
AC unit			20	2000	40000
15HP 3phase motor			10	11400	114000
15HP 3phase motor			15	17459	261885
15HP Compressor 3phase motor			10	17459	174590
Grinding Machine			1	150000	150000
Data servers UPS			1	100000	100000
Appliance (Coffee Refrig, etc)			20	1200	24000
EV charger			12	7500	90000
					0
					0
<b>Total load</b>					<b>1589080</b>

Load Type & CEC Demand Load Formula	Quantity	VA per Qty	Load VA	CEC Demand VA
Lighting per CEC 220.12 @ 125% per CEC 220.3	22252 SF	111260	111260	X125% 139075
Receptacle @ 125% per CEC 220.14(F)	4 circuits	4800	4800	X125% 6000
Outdoor lighting @ 125% per CEC 220.3	12905	12905	12905	X125% 16131
Gen Receptacle loads (service) per CEC 220.44	9250 SF	3	27750	10000 X100% + 59750 X50% 33375
HVAC	267024	70087.5	188144	X125% + 96789 X100% 111754
Motor loads	1 lot	350000	350000	X100% 350000
Dedicated equipment load	111260	111260	111260	X100% 111260
Plumbing Equipment	22252	12	267024	X125% 333780
Electric Vehicle Charger @ 125%	20	7500	150000	X125% 187500
AC unit	20	2000	40000	X100% 40000
Data Servers UPS etc	1 lot	100000	100000	X125% 125000
Appliance (Coffee Refrig, etc)	20	1200	24000	X100% 24000
Subtotal Demand Load			2051947	
Spans for future (25%)			512987	
<b>Total Demand Load</b>			<b>2607359</b>	
<b>Total Demand Amperage @ 480277V .3PH 4W</b>			<b>3136</b>	
<b>Service Size Requested in Amps @ 480277V .3PH 4W</b>			<b>4000</b>	

BUILDING A - ELECTRICAL LOAD CALCULATION

SCALE NONE 2

Building B Load Calc	AREA(SQ FT)	VA PER SQ FT	Quantity	VA per Qty	VA
Lighting per CEC 220.12	16961	5.00			84805
General Receptacle loads	16961	3.00			50883
Plumbing equipment	16961	5.00			84805
Outdoor lighting per T24	16961	1.00			16961
HVAC	16961	12.00			203532
					0
Dedicated Equipment load (CNC laser Machine Metal Spinning Lathe Machines Inspection Machine, etc)			1	350000	350000
AC unit			20	2000	40000
15HP 3phase motor			10	11400	114000
15HP 3phase motor			15	17459	261885
15HP Compressor 3phase motor			10	17459	174590
Grinding Machine			1	150000	150000
Data servers UPS			1	100000	100000
Appliance (Coffee Refrig, etc)			20	1200	24000
EV charger			12	7500	90000
					0
					0
<b>Total load</b>					<b>1781861</b>

Load Type & CEC Demand Load Formula	Quantity	VA per Qty	Load VA	CEC Demand VA
Lighting per CEC 220.12 @ 125% per CEC 220.3	22252 SF	84805	84805	X125% 106006
Receptacle @ 125% per CEC 220.14(F)	4 circuits	4800	4800	X125% 6000
Outdoor lighting @ 125% per CEC 220.3	12905	12905	12905	X125% 16131
Gen Receptacle loads (service) per CEC 220.44	9250 SF	3	27750	10000 X100% + 59750 X50% 33375
HVAC	203532	70087.5	143444	X125% + 90407 X100% 166451
Motor loads	1 lot	350000	350000	X100% 350000
Dedicated equipment load	111260	111260	111260	X100% 111260
Plumbing Equipment	22252	12	267024	X125% 333780
Electric Vehicle Charger @ 125%	20	7500	150000	X125% 187500
AC unit	20	2000	40000	X100% 40000
Data Servers UPS etc	1 lot	100000	100000	X125% 125000
Appliance (Coffee Refrig, etc)	20	1200	24000	X100% 24000
Subtotal Demand Load			2003100	
Spans for future (25%)			500775	
<b>Total Demand Load</b>			<b>2503875</b>	
<b>Total Demand Amperage @ 480277V .3PH 4W</b>			<b>3012</b>	
<b>Service Size Requested in Amps @ 480277V .3PH 4W</b>			<b>4000</b>	

BUILDING B - ELECTRICAL LOAD CALCULATION

SCALE NONE 1

FOR REFERENCE ONLY

FOR REFERENCE ONLY

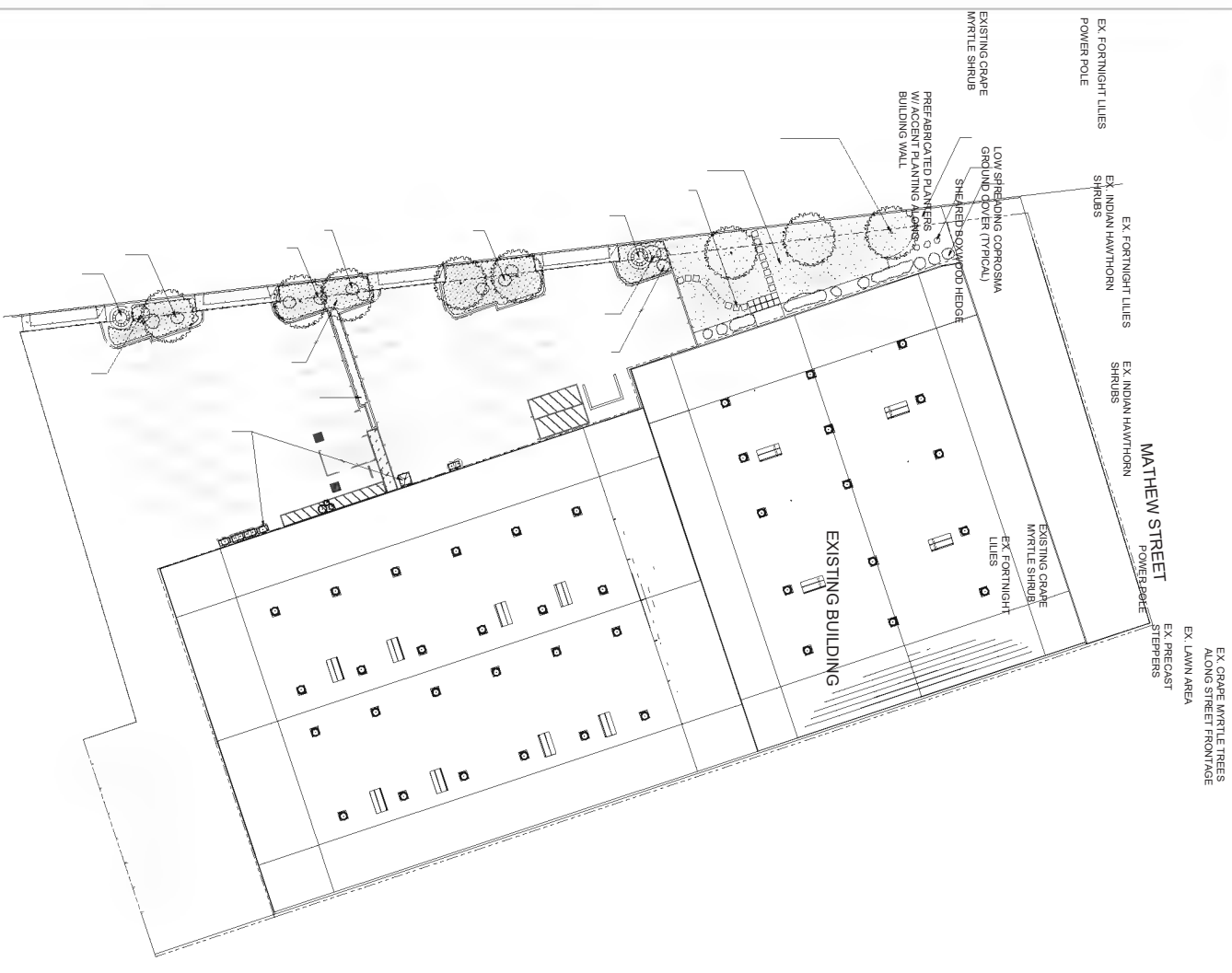
NO.	DESCRIPTION	DATE
1	PERMIT SET	06/27/2022



PROJECT:  
700 MATHEW ST.  
SERVICE APPLICATION  
PHASE -1  
700 MATHEW ST.  
STA. CLARA, CA 95050

SHEET TITLE:  
ELECTRICAL LOAD  
CALCULATION

PROJECT #: \_\_\_\_\_ SHEET NO.: \_\_\_\_\_  
DATE: 06/22/2022  
SCALE: AS NOTED **E6.0**



EXISTING GRAPE WATTLE SHRUBS  
EX FORTNIGHT LILIES  
POWER POLE

EX INDIAN HAWTHORN SHRUBS  
EX FORTNIGHT LILIES  
EX INDIAN HAWTHORN SHRUBS

MATTHEW STREET  
POWER POLE  
EX PRECAST STEPPERS  
EX LAVIN AREA

EX GRAPE WATTLE TREES ALONG STREET FRONTAGE  
EX PRECAST STEPPERS

EX BARK MULCH DRESSING  
EX CARPET TROSES  
EX SHEARED HEDGE ALONG BUILDING FOUNDATION

LOW SPREADING CORROSMA GROUND COVER (TYPICAL)  
SHEARED BOXWOOD HEDGE  
PREFABRICATED PLANTER W/ ACCENT PLANTING ALONG BUILDING WALL

EXISTING GRAPE WATTLE SHRUBS  
EX FORTNIGHT LILIES

EXISTING BUILDING



GRAPHIC SCALE

( IN FEET )  
1 inch = 10 ft

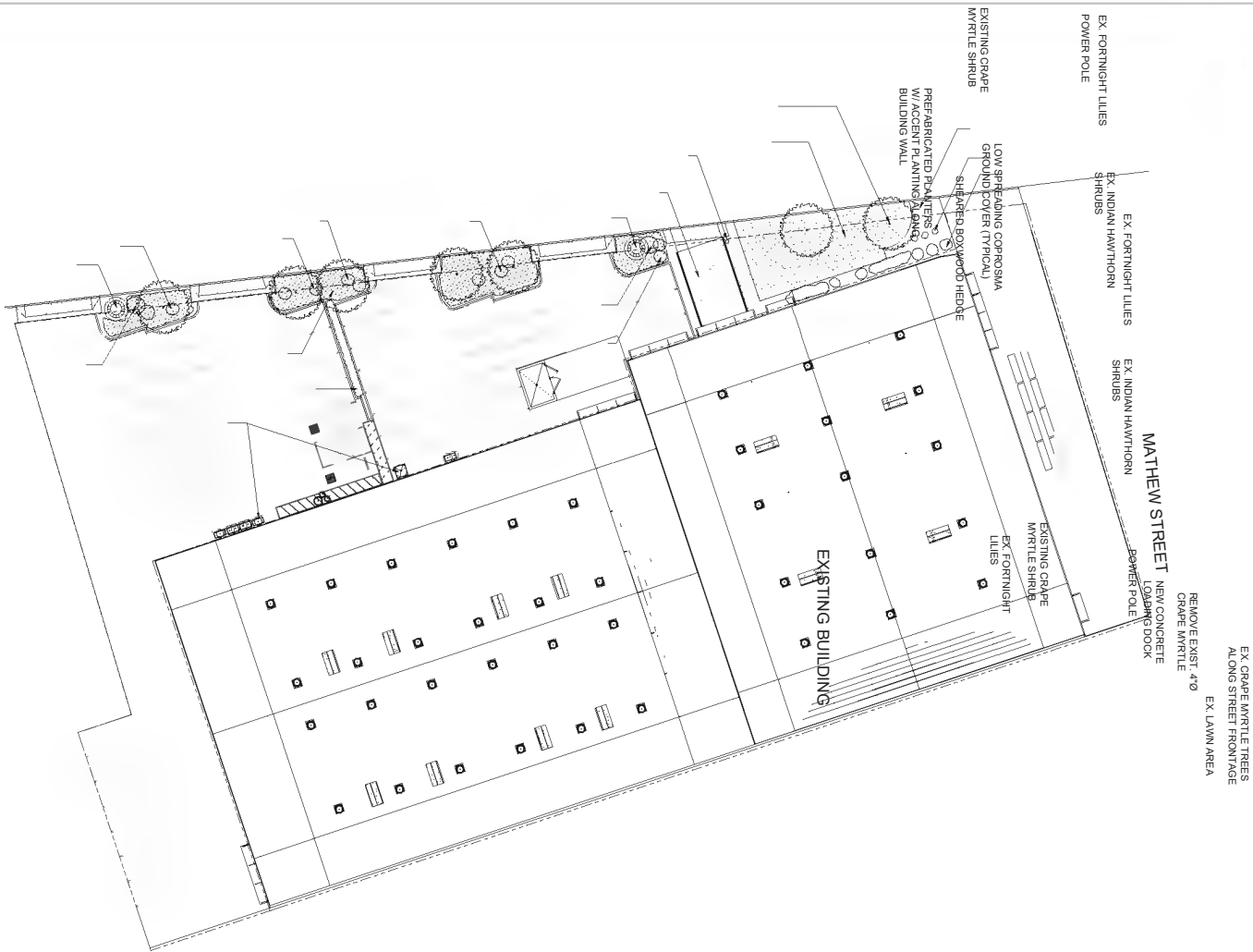
RW Stover & Associates, Inc.  
Landscape Architecture  
1000 North Main Street, Suite 4  
Menlo Park, CA 94025  
PH: 650.321.3238

1. THIS IS A PRELIMINARY PLAN AND SHOULD NOT BE USED FOR CONSTRUCTION.  
2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.  
3. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY UTILITIES INFORMATION.  
4. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY SURVEYING INFORMATION.  
5. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY GEOTECHNICAL INFORMATION.  
6. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY ENVIRONMENTAL INFORMATION.  
7. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY HISTORIC PRESERVATION INFORMATION.  
8. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY ARCHITECTURAL INFORMATION.  
9. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY ENGINEERING INFORMATION.  
10. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY LANDSCAPE ARCHITECTURE INFORMATION.

QMS - Santa Clara  
700 MATTHEW ST, SANTA CLARA, CA 95050

Job Number: 22032  
Date: 2023/01/09  
Drawn: [Name]  
Sheet Title: LANDSCAPE PLAN  
Scale:  
Revisions: 2023/01/09 0P-SB/MTTL





EX. CRANE MYRTLE TREES  
ALONG STREET FRONTAGE  
EX. LAWN AREA

MATTHEW STREET  
NEW CONCRETE  
LOADING DOCK  
POWER POLE

EX. FORTNIGHT LILIES  
EX. INDIAN HAWTHORN  
SHRUBS  
EX. FORTNIGHT LILIES  
EX. INDIAN HAWTHORN  
SHRUBS

EXISTING GRAPE  
MYRTLE SHRUB

LOW SPREADING COPROSA  
GROUND COVER (TYPICAL)  
SHEARED BOXWOOD HEDGE

PREFABRICATED PLANTERS  
W/ ACCENT PLANTING ALONG  
BUILDING WALL

EXISTING BUILDING

EXISTING GRAPE  
MYRTLE SHRUB  
LILIES

EX. BARK MULCH DRESSING  
EX. CARPET ROSES  
EX. SHEARED HEDGE ALONG  
BUILDING FOUNDATION



GRAPHIC SCALE  
1 inch = 10'

RW Stover & Associates, Inc.  
Landscape Architecture  
1000 North Main Street, Suite 4  
San Jose, CA 95128  
PH: (408) 281-2288

1. THIS SHEET IS PART OF A SET OF LANSCAPE ARCHITECTURE DRAWINGS FOR THE PROJECT DESCRIBED ABOVE.  
2. THE INFORMATION ON THIS SHEET IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE FIELD SURVEY.  
3. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS SHEET.  
4. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS SHEET.  
5. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS SHEET.  
6. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS SHEET.  
7. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS SHEET.  
8. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS SHEET.

QMS - Santa Clara  
700 MATTHEW ST, SANTA  
CLARA, CA 95050

Job Number: 22032  
Date: 2023.01.09  
Drawn: [Name]  
Checked: [Name]  
Sheet Title: PROPOSED LANDSCAPE PLAN  
Revisions: 2023.01.09 OP-SH/MT/L



## Agenda Report

23-824

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on Appointments Related to a Charter Review Committee and Direction to Study Charter Amendment Alternatives Related to the Positions of Police Chief and City Clerk for Possible Placement on a March 2024 ballot.

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

At its meeting on June 6, 2023, the City Council took action to establish a 7-member Charter Review Committee ("Committee") for the purposes of studying whether to propose an amendment to the City Charter that would change the positions of Police Chief and City Clerk from elected to appointed positions.

In doing so, the City Council also requested that the Committee consider and make a recommendation as to the appropriate appointing authority should they propose a charter change.

The City Council approved a selection process whereby each Council member was to nominate one representative from their District with one at-large member nominated by the Mayor. Names of nominees were to be submitted to the City Clerk by July 7<sup>th</sup> for purposes of validating residency with formal Council action to be taken at the July 18, 2023 City Council meeting. To allow additional time to nominate members, the deadline was extended to noon on July 12, 2023.

The purpose of this item is to present the names of proposed nominees (Attachment 1) for City Council consideration and to seek direction from the City Council as to any additional scope of work for the Committee

#### DISCUSSION

The nominees are as follows:

At-Large: Joyce Davis  
District 1: Satish Chandra  
District 2: Chiragkumar Patel  
District 3: Christine Koltermann  
District 4: Daniel Huynh\*  
District 5: Jeff Houston  
District 6: Clysta Seney

\*Nomination documentation received after the deadline.

Each nominee met the requirement of being a registered voter and resident of the City of Santa Clara. Each submitted proof of residency and voter registration verification was done through the Registrar of Voters Office.

#### Next Steps

Should the City Council decide to proceed with calling for a March 2024 election, the appropriate paperwork must be submitted to the Registrar of Voters no later than November 27, 2024. In order to meet this timeline, staff has prepared a tentative schedule for the Committee which is enclosed as Attachment 2. This schedule will allow for an initial meeting of the Committee to select a Chair and Vice Chair, Review the Scope of Work as defined by the City Council and finalize the dates/times of the proposed meetings. This meeting would be followed by two public hearings to take public comment, followed by two public meetings for the Committee to draft and finalize their recommendations. Staff would then prepare a report to Council to transmit the recommendations of the Committee and present to the City Council at the November 7 Council meeting. This schedule would then allow the City Council to consider whether to call for a March election at its November 14, 2023 meeting.

#### **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 15478(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**

There is no fiscal impact associated with this action to appoint Committee members other than the related staff time. However, on July 18, 2023, the City Council will consider a written petition submitted by Councilmember Jain to establish a budget to support the work of the Charter Review Committee as well as other ballot measure costs which could have a fiscal impact of up to \$430,455. That item will be brought forward as RTC 23-913.

#### **COORDINATION**

This report has been coordinated with the City Clerk’s office and the City Attorney.

#### **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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**ALTERNATIVES**

1. Appoint nominees to serve as members on the Santa Clara Charter Review Committee for the purpose of studying whether to propose an amendment to the City Charter that would change the positions of Police Chief and City Clerk from elected to appointed positions.
2. Other action or direction to the Charter Review Committee as deemed appropriate by the City Council

**RECOMMENDATION**

Alternative : Staff makes no recommendation

Reviewed by: Cynthia Bojorquez, Assistant City Manager

Approved by: Jōvan Grogan, City Manager

**ATTACHMENTS**

1. Nomination Forms
2. Proposed Committee Schedule

THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, Maays Gillmore, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

CITY OF SANTA CLARA  
2023 JUL 12 AM 11:09

**Nominee Information:**

Name: Joyce Davis

Address: \_\_\_\_\_

City: Santa Clara

State: CA Zip Code: 95050

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: n/a

Are you a resident of the City of Santa Clara?  Yes  No

(Must be a resident at time of application – Provide 2 proofs of residency: i.e. License/ID, Utility Bill or passport)

Are you a registered voter of the City of Santa Clara?  Yes  No

(Must be a registered voter at time of application)

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?  Yes  No

Would you be willing to abstain from voting if such a conflict arises?  Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature: Joyce Davis

Date Signed: 7/12/23

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023

THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, KathyWatanabe, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

**RECEIVED**

JUL 10 2023

City Clerk's Office  
City of Santa Clara

**Nominee Information:**

Name: Satish Chandra

Address: \_\_\_\_\_

City: Santa Clara

State: California Zip Code: 95054

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: \_\_\_\_\_

Are you a resident of the City of Santa Clara?  Yes  No  
(Must be a resident at time of application – Provide 2 proofs of residency: i.e. License/ID, Utility Bill or passport)

Are you a registered voter of the City of Santa Clara?  Yes  No  
(Must be a registered voter at time of application)

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?  Yes  No

Would you be willing to abstain from voting if such a conflict arises?  Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature: 

Date Signed: July 8, 2023

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023



THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, Raj Chahal, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

**RECEIVED**

JUL 10 2023

**Nominee Information:**

Name: Chiragkumar Patel

Address: \_\_\_\_\_

City: Santa Clara

State: CA

Zip Code: 95050

City Clerk's Office  
City of Santa Clara

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: \_\_\_\_\_

Are you a resident of the City of Santa Clara?

(Must be a resident at time of application – Provide 2 proofs of residency: i.e. License/ID, Utility Bill or passport)

Yes  No

Are you a registered voter of the City of Santa Clara?

(Must be a registered voter at time of application)

Yes  No

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?

Yes  No

Would you be willing to abstain from voting if such a conflict arises?

Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature: CN Patel

Date Signed: 07/10/2023

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023

THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, Karen Hardy, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

**RECEIVED**

JUL 10 2023

City Clerk's Office  
City of Santa Clara

**Nominee Information:**

Name: Christine Koltermann

Address: \_\_\_\_\_

City: Santa Clara

State: CA

Zip Code: 95051

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: \_\_\_\_\_

Are you a resident of the City of Santa Clara?  
(Must be a resident at time of application – Provide 2 proofs  
of residency: i.e. License/ID, Utility Bill or passport)

Yes  No

Are you a registered voter of the City of Santa Clara?  
(Must be a registered voter at time of application)

Yes  No

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?

Yes  No

Would you be willing to abstain from voting if such a conflict arises?

Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature:

*Christine Koltermann*

Date Signed: 7/10/23

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023



THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, Kevin Park, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

**RECEIVED**

JUL 13 2023

City Clerk's Office  
City of Santa Clara

**Nominee Information:**

Name: Daniel Huynh

Address: \_\_\_\_\_

City: Santa Clara

State: California Zip Code: 95051

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: \_\_\_\_\_

Are you a resident of the City of Santa Clara?  Yes  No  
(Must be a resident at time of application -- Provide 2 proofs of residency: i.e. License/ID, Utility Bill or passport)

Are you a registered voter of the City of Santa Clara?  Yes  No  
(Must be a registered voter at time of application)

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?  Yes  No

Would you be willing to abstain from voting if such a conflict arises?  Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature: Daniel Huynh

Date Signed: 7/13/23

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023

THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, Sudhanshu Jain, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

**RECEIVED**

JUL 8 2023

**Nominee Information:**

Name: Jeff Houston

City Clerk's Office  
City of Santa Clara

Address: \_\_\_\_\_

City: Santa Clara

State: CA

Zip Code: 95050

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: n/a

Are you a resident of the City of Santa Clara?  
(Must be a resident at time of application – Provide 2 proofs  
of residency: i.e. License/ID, Utility Bill or passport)

Yes  No

Are you a registered voter of the City of Santa Clara?  
(Must be a registered voter at time of application)

Yes  No

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?

Yes  No

Would you be willing to abstain from voting if such a conflict arises?

Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature: **Jeff Houston**  
Digitally signed by Jeff Houston  
Date: 2023.07.02 16:34:13  
-07'00'

Date Signed: 7/2/23

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023

THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, Anthony Becker, hereby nominate the following individual to serve on the 2023 Charter Review Committee:  
Mayor/Councilmember

**RECEIVED**

JUL 06 2023

**Nominee Information:**

Name: Clysta Seney (registered as Clysta ES McLemore)

City Clerk's Office  
City of Santa Clara

Address: \_\_\_\_\_

City: Santa Clara

State: CA Zip Code: 95050

E-mail Address: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_

Secondary Phone Number: NA

Are you a resident of the City of Santa Clara?  
(Must be a resident at time of application - Provide 2 proofs  
of residency: i.e. License/ID, Utility Bill or passport)

Yes  No

Are you a registered voter of the City of Santa Clara?  
(Must be a registered voter at time of application)

Yes  No

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee?

Yes  No

Would you be willing to abstain from voting if such a conflict arises?

Yes  No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

Signature: Clysta Seney

Date Signed: July 6, 2023

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov)

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023

## 2023 Charter Review Committee

### Proposed Schedule

Committee appointments confirmed	Tuesday, July 18, 2023
Initial Meeting of the Committee <ul style="list-style-type: none"><li>• Selection of Chair/Vice Chair</li><li>• Review of Scope of Work/ Timelines/Meeting Schedule</li><li>• Identification of Research Required</li></ul>	7 pm, Thursday, August 10, 2023
Public Hearing #1 – City Hall	7 pm, August 24, 2023
Public Hearing #2 – Central Park Library	7 pm, Thursday, September 14, 2023
Initial Draft of Committee Recommendations <ul style="list-style-type: none"><li>• Police Chief</li><li>• City Clerk</li></ul>	7 pm, Thursday, September 21, 2023
Final Draft of Committee Recommendations	7 pm, Thursday, October 5, 2023
Staff Report Issued	Thursday, November 2 or Friday, November 3rd
Presentation to Council	Tuesday, November 7, 2023; time TBA
Call for Election if Appropriate	Tuesday, November 14, 2023



## 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:

<b>Initial Process</b>	<b>Sole Proprietor</b>	<b>Company with Employee(s)</b>
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
<b>TOTAL</b>	<b>\$460</b>	<b>\$460, plus \$194 per employee</b>
<b>Renewal Process</b>	<b>Sole Proprietor</b>	<b>Company with Employee(s)</b>
Application Renewal	\$149	\$149 for the company, plus \$149 per employee
Business License Tax	\$45	\$45 for the owner, plus \$45 per employee
<b>TOTAL</b>	<b>\$194</b>	<b>\$194, plus \$194 per employee</b>

*\*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.

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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) <<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



## 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) <<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."	<i>Not Enforceable, unless for HSW</i>	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

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(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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- 3.40.140 Business tax constitutes debt to City – Collection of unpaid taxes.**
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- 3.40.270 Violations.**
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- 3.40.320 Application of fees schedule in SCCC 3.40.310 to certain business within City.**
- 3.40.330 Business subject to fixed tax.**
- 3.40.340 Business without a fixed place of business in city.**
- 3.40.350 Rental units.**
- 3.40.360 Rental unit – Surcharge.**
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**3.40.440 Entertainment tax certificate.**

**3.40.450 Class I entertainment tax.**

**3.40.460 Class II entertainment tax.**

**3.40.470 Class III entertainment tax.**

**3.40.480 Procedure.**

**3.40.490 Transferability.**

**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 <a href="#">5.15.030</a> )	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 <a href="#">5.45.010</a> )	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 <a href="#">5.30.020</a> )	150.00

Peddler (as defined in SCCC <a href="#">5.05.010</a> )	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 <a href="#">5.15.030</a> )	150.00
Seasonal item sales lot (as defined in SCCC <a href="#">5.15.030</a> )	150.00
Secondhand dealer (as defined in SCCC <a href="#">5.30.020</a> )	150.00
Solicitor (as defined in SCCC <a href="#">5.05.010</a> )	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<br>including, but not limited to<br>pinball machines, video<br>display games, electronic<br>amusement devices, and peep<br>show devices, per machine,<br>per year | \$60.00                |
| (b) Juke boxes, per machine, per<br>year  | \$30.00                |
| (c) Billiard and pool tables<br><br>Maximum   | \$ 8.00<br><br>\$80.00 |
| (d) Bowling or tenpin lanes (non-<br>coin-operated), per lane, per<br>year<br><br>Maximum   | \$ 8.00<br><br>\$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<br>hundred (500) seats shall pay,<br>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).

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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**

Sections:

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- 5.05.010 Definitions.**
- 5.05.020 Permit requirements and exemptions.**
- 5.05.030 Responsibility of supplier – Goods to be peddled.**
- 5.05.040 Permit application.**
- 5.05.050 Fingerprints required.**
- 5.05.060 Background investigation fees.**
- 5.05.070 Application review and permit issuance.**
- 5.05.080 Identification and photograph required.**
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- 5.05.240 Congestion restriction for motor vehicle-based and mobile unit peddlers.**
- 5.05.250 Inspections of motor vehicle-based and mobile units.**
- 5.05.260 Approved location permit terms and conditions.**
- 5.05.270 Limitations on approved locations.**
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## **Article III. Operating Regulations and Permit Conditions for Ice Cream Trucks**

- 5.05.300 Definitions.**
- 5.05.310 Permit required.**
- 5.05.320 Conditions of permit.**
- 5.05.330 Operating regulations.**
- 5.05.340 Noise restrictions.**
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- 5.05.360 Vehicle inspections – Certification.**

## 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).

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## 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).

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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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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](#).

## 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

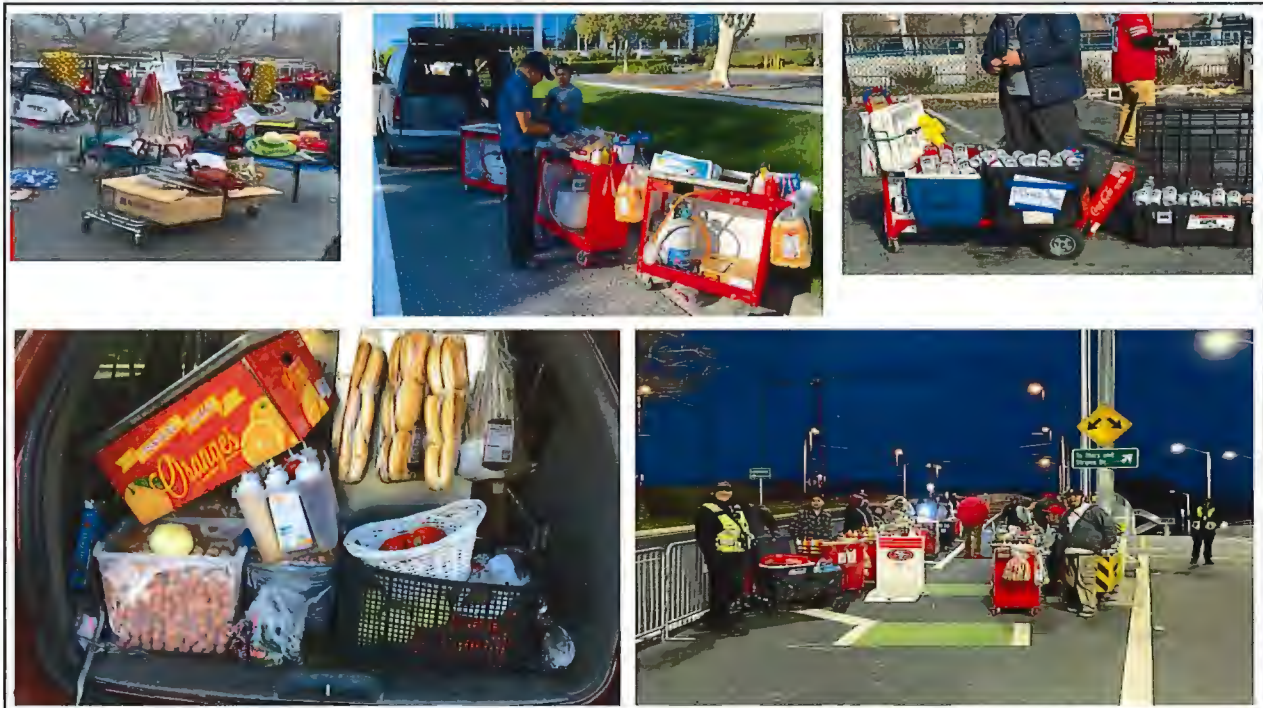
4



## 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

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## 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.

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## 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.**

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## 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





Levi's  
STADIUM

FOOT 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.



## 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 18<sup>th</sup> 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





## Agenda Report

23-913

Agenda Date: 7/18/2023

### REPORT TO COUNCIL

#### SUBJECT

Action on a Written Petition (Council Policy 030) Submitted by Councilmember Jain to Appropriate Funds to Support the Work of the Charter Review Committee as well as Strategic Policy Analysis, Voter Research, Community Engagement and Other Related Costs Associated with Election Activities and Potential Ballot Measures in 2024

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

At its meeting of July 11, 2023, the City Council took action to consider the 030 Written Petition submitted by Councilmember Jain to establish a budget for the Charter Review Committee as well as funding for research, community engagement, and other costs associated with the potential placement of measures on the ballot in March 2024. In considering this petition, the City Council requested that staff return on July 18, 2023 with a proposed budget amendment to fund these, and other related outreach efforts, in support of potential election activities for 2024.

The purpose of this report is to provide the City Council with an overview of the projected costs as well as related budget amendment information should the City Council wish to take that action.

#### DISCUSSION

On July 6, 2023, the City Council voted to establish a Charter Review Committee ("Committee") for the purposes of evaluating and recommending whether an amendment to the City Charter to change the positions of Police Chief and City Clerk from elected to appointed positions should be placed before the voters on a March 2024 ballot.

At its July 11, 2023 meeting, the City Council voted to consider a written petition from Councilmember Jain to prepare a budget amendment that would establish funding to support the work of the Committee as well as other outreach and election costs related to the possible placement of two measures before the voters in March 2024. As part of its discussion, the Council also requested that staff include costs for similar expenses for the November 2024 election.

#### **Election Costs**

The Santa Clara County Registrar of Voters is responsible for projecting the costs for placement of items on the ballot. Should the City decide to proceed with an election in March 2024 to amend the City Charter, that election would be considered a special election.

As noted in the July 6, 2023 staff report (RTC 23-748), the ROV has estimated the cost for two

measures on the March 5, 2024 ballot to be approximately \$362,000. In addition to this amount, the City would incur approximately \$60,000-70,000 for costs associated with printing, translation services, the publication of notices, another other related costs for a total of approximately \$432,000.

The Adopted FY 2023/24 Budget includes funding in the amount of \$360,000 to support election costs. Based on the preliminary information provided by the Registrar of Voters, an additional \$72,000 will be needed should the Council decide to place two measures on the March 2024 ballot. It is important to note that the costs of a special election tend to be higher as there are fewer agencies with whom costs are shared. It is also important to note that the projected cost of \$432,000 is a preliminary estimate subject to change should other agencies choose to place items on a March ballot.

For the November 2024 regular election, costs will be shared among a greater number of agencies. While the Registrar of Voters has not yet provided an estimate of costs for a November 2024 ballot, the cost for the City’s November 2022 ballot which included Mayoral and Council elections, two ballot measures and related legal publications was \$398,137. The Adopted FY2024/25 Budget includes funding in the amount of \$420,000 which should be sufficient to cover the November 2024 election-related costs.

**Outreach, Engagement & Policy Analysis**

During deliberations on the proposed budget, the Council indicated a desire to consider revenue measures on the November 2024 ballot. In the fall, a study session will be held to provide the City Council with updated information on unfunded needs as well as various policy options should the Council wish to pursue potential revenue measures on the November 2024 ballot.

Given the Council’s prior direction to ensure that there is sufficient funding to conduct the strategic policy analysis, voter research, and the community engagement necessary to ensure the proper vetting of proposed ballot measures as well as the current request to consider a budget amendment to support the work of the Charter Review Committee, the following table provides a summary of potential costs for Council’s consideration.

It is important to note that the proposed schedule of costs for the November ballot measures includes costs for a follow-up voter research poll that is not included in the projected costs for a March election. This is based on the assumption that an initial poll may be needed to evaluate community preferences on revenue options and a follow-up survey to evaluate the need for additional voter education once specific revenue measures have been identified.

<b>Expense</b>	
Strategic consulting services for elections	\$93,840
<b>Subtotal</b>	<b>\$93,840</b>
<b>March Election*</b>	
Voter Research Initial Polling	\$67,850
Community Engagement	\$28,750

Graphic Design/Other Services	\$11,500
<b>Subtotal</b>	<b>\$108,100</b>
<b>November Election*</b>	
Voter Research Initial Polling	\$67,850
Voter Research Follow-Up Poll - If Needed	\$48,415
Community Engagement	\$28,750
Graphic Design/Other Services	\$11,500
<b>Subtotal</b>	<b>\$156,515</b>
<b>Total</b>	<b>\$358,455</b>

\*Actual costs will depend on future decisions by the City Council on voter polling and final decisions to place measures on the March and/or November ballots.

The line item funding is based on the expenses incurred in the most recent voter education and outreach efforts, escalated by 15% to allow for both increased cost and a contingency should additional services be required.

**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**

Should the Council wish to appropriate funding to place two measures on a March 2024 ballot, an additional \$72,000 should be appropriated. In addition, should the Council wish to appropriate funding for the outreach, engagement and policy analysis activities noted above, an additional \$358,455 should also be appropriated. With this in mind, a total budget amendment in the amount of \$430,455 would be needed. Funding is available in the General Fund FY 2023/24 Budget Balancing Reserve for this purpose.

**Budget Amendment  
FY2023/2024**

	Current	Increase/ (Decrease)	Revised
<b>General Fund (001)</b>			
<u>Expenditures</u>			
City Clerk’s Office	\$1,947,261	\$72,000	\$2,019,261
City Manager’s Office	\$5,410,204	\$358,455	\$5,768,659
FY 2023/24 Budget Balancing Reserve	\$911,944	(\$430,455)	\$481,489

## COORDINATION

This item has been coordinated with the Finance Department and the offices of the City Clerk and City Attorney.

## 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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

## ALTERNATIVES

1. Provide direction, and approval of a FY 2023/24 budget amendment in the General Fund, if appropriate, to increase the City Clerk's Office budget by \$72,000, increase the City Manager's Office budget by \$358,355, and decrease the FY 2023/24 Budget Balancing Reserve by \$430,455 to support strategic policy analysis, voter research, community engagement (including support for the Charter Review Committee) as well as related costs for potential March and November 2024 ballot items. **(five affirmative Council votes required for the use of unused balances).**
2. Provide direction on a proposed FY 2023/24 General Fund budget amendment from the FY 2023/24 Budget Balancing Reserve solely to increase the City Clerk's FY2023-24 budget appropriation for election related costs from \$360,000 to \$432,000. This alternative would not provide funding for outreach, engagement or policy analysis. **(five affirmative Council votes required for the use of unused balances).**
3. Take no budget amendment action.
4. Other action as deemed appropriate by Council.

## RECOMMENDATION

1. Alternative 1: Provide direction, and approval of a FY 2023/24 budget amendment in the General Fund, if appropriate, to increase the City Clerk's Office budget by \$72,000, increase the City Manager's Office budget by \$358,355, and decrease the FY 2023/24 Budget Balancing Reserve by \$430,455 to support strategic policy analysis, voter research, community engagement (including support for the Charter Review Committee) as well as related costs for potential March and November 2024 ballot items. **(five affirmative Council votes required for the use of unused balances).**

Reviewed by: Cynthia Bojorquez, Assistant City Manager

Approved by: Jōvan D. Grogan, City Manager





# City of Santa Clara

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Santa Clara, CA 95050  
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## Agenda Report

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23-922

Agenda Date: 7/18/2023

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### REPORT TO COUNCIL

#### SUBJECT

Tentative Meeting Agenda Calendar (TMAC)

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND AND DISCUSSION

The purpose of the TMAC is to provide the public advanced notifications of tentative dates of Council Study Sessions, Joint Council/Commission meetings, as well as Council Public Hearing and General Business agenda items. It is important to note that the TMAC is a Tentative Calendar planning tool and reports listed are subject to change due to Public Hearing publication requirements and agenda management.



# City of Santa Clara

## Tentative Meeting Agenda Calendar

*Note: These proposed dates are tentative and subject to change based on staff capacity, meeting management, and deferred items by Council requiring other items to free up agenda meeting time.*

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**COUNCIL RECESS JULY 19 – AUGUST 21, 2023**

**Tuesday, August 22, 2023 – Joint Council and Authorities Concurrent and Stadium Authority Meeting**

**Study Session**

**23-786** Study Session on the Zoning Code Update

**Special Orders of Business**

**23-828** Recognition of Outgoing Commissioners on the Civil Service Commission, Historical and Landmarks, Parks and Recreation Commission, Planning Commission, and the Senior Advisory Commission

**23-846** Proclaim August 2023 as American Muslim Appreciation and Awareness Month

**23-850** Presentation from Santa Clara Sister Cities and Students for Recent Visit to Izumo, Japan

**Public Hearing/General Business**

**23-492** Adopt a Resolution to Modify Parking Regulations on Lafayette Street related to the Lafayette Street Class IV Bikeway Project

**23-793** Review and Recommendation on Design Professional Services for the Bowers Park Building and Sarah Fox Mausoleum Roof Rehabilitation Project

**23-810** Action on an Environmental Impact Report, General Plan Amendment, Rezone, and Tentative Subdivision Map for the Property Located at 906-950 Monroe Street and 1341 Homestead Road (CEQA: An Environmental Impact Report (EIR) was Prepared for the Project)

**23-767** Adoption of Resolutions Approving an Installment Sale Financing and Authorizing the Execution, Delivery and Sale of Wastewater Revenue Certificates of Participation and related Agreements in a Principal Amount not to Exceed \$35 million to Finance and Refinance Capital Costs of the San José-Santa Clara Regional Wastewater Facility

**23-856** Action on Membership for the El Camino Real Specific Plan Community Advisory Committee

**Tuesday, August 29, 2023 – Council and Authorities Concurrent and Meeting**

**Special Order of Business**

**23-277** Proclamation of September 2023 as Community Preparedness Month

**Public Hearing/General Business**

**23-1349** Action on the Waiver of the First Reading and Introduction of an Ordinance Approving Rules and Regulations for the Mission City Memorial Park (Cemetery and Authorization of the City Manager to Prudently Manage the Cemetery Operations and Maintenance Including the Endowment Care Fund

**23-852** Action on Council Policy on Operational Tours and Special Access Areas for Designated Officials

**Tuesday, September 12, 2023 – Council and Authorities Concurrent and Meeting**

**Joint Dinner**

**23-743** Joint Dinner Meeting with Senior Advisory Commission

**Special Orders of Business**

**23-851** Proclaim Hispanic Heritage Month from September 15-October 15, 2023

**Public Hearing/General Business**

**23-208** Action on the Introduction of a Resolution to Modify the Files Management Manual for the City of Santa Clara

**23-853** Update on Super Bowl LX

**23-897** Action on the Revised El Camino Real Specific Plan Land Use Plan

**23-899** Public Hearing: Action to Waive Second Reading and Adopt Supplemental Ordinance No. XXXX Amending Chapter 15.60 of the Santa Clara City Code (“Santa Clara Municipal Fire and Environmental Code”) to Adopt the 2022 California Fire Code, as Amended

**Tuesday, September 19, 2023 – Joint Council and Authorities Concurrent and Stadium Authority Meeting**

**Study Session**

**23-665** Study Session - Parks Acquisition, Development, Maintenance and Rehabilitation Funding Strategies, Sources and Use

**Public Hearing/General Business - TBD**

**Tuesday, October 10, 2023 – Council and Authorities Concurrent and Meeting**

**Public Hearing/General Business - TBD**

**23-134** Public Hearing: Receive Silicon Valley Power Quarterly Update

**Tuesday, October 24, 2023 – Joint Council and Authorities Concurrent and Stadium Authority Meeting**

**Public Hearing/General Business**

**23-585** Public Hearing to Adopt the Comprehensive Zoning Code Update