

# City of Santa Clara



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



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Tuesday, May 28, 2024

5:30 PM

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

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### **Revision: Added Item 2.B to Special Order of Business**

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).

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

**5:30 PM CLOSED SESSION**

**Call to Order in the Council Chambers**

**Confirmation of Quorum**

1.     **24-430**     [Conference with Labor Negotiators \(CC\)](#)  
                          [Pursuant to Gov. Code § 54957.6](#)

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

[Employee Organization\(s\):](#)  
[Unit #9 Unclassified Miscellaneous Management](#)

**Public Comment**

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

**Convene to Closed Session (Council Conference Room)**

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

**Call to Order in the Council Chambers**

**Pledge of Allegiance and Statement of Values**

**Roll Call**

**REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS**

*May 20, 2024 and May 28, 2024*

**CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS**

**SPECIAL ORDER OF BUSINESS**

- 2.A     **24-330**     [Recognition of Santa Clara High School Student Athletes](#)
- 2.B     **24-586**     [Recognition of Wilcox High School Robotics Team](#)

- 2.C 24-440 [Recognition of the Recipients of the Second Annual Silicon Valley Power Sustainable Futures Scholarship Program in Partnership with Santa Clara University](#)
- 2.D 24-446 [Proclamation of May 2024 as Historic Preservation Month](#)
- 2.E 24-488 [Proclamation of May as Affordable Housing Month and Recognition of the Freebird Development Company for the successful Completion of the Monroe Commons Affordable Housing Development](#)

**CONSENT CALENDAR**

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

- 3.A 24-09 [Board, Commissions and Committee Minutes](#)

**Recommendation:** Note and file the Minutes of:  
Historical and Landmarks Commission - February 1, 2024  
Historical and Landmarks Commission - April 4, 2024  
Cultural Commission - April 1, 2024  
Board of Library Trustees - April 1, 2024  
Youth Commission - March 12, 2024  
Civil Service Commission - February 8, 2024

- 3.B 24-460 [Actions authorizing the County of Santa Clara to allocate up to \\$409,950 of the City's 2020 Permanent Local Housing Allocation \(PLHA\) Funds to rehabilitate and preserve the Belovida Santa Clara Senior Apartments located at 1820 Main Street.](#)

**Recommendation:** 1. Direct the County of Santa Clara (PLHA fund administrator) to allocate up to \$409,950 from the City's 2020 Permanent Local Housing Allocation (PLHA) , which includes the reallocation of \$8,000 from a PLHA homelessness activity to a PLHA rehabilitation activity to help fund repairs at the Belovida Santa Clara Senior Apartments as part of a long-term repositioning of the project. This funding commitment shall be contingent upon National Environmental Policy Act (NEPA) clearance from HUD, if required.

**3.C 24-99** [Action on Award of Purchase Order to Canon Solutions America, Inc. for Citywide Leases and Maintenance Services for Copier/Multi-Function Devices \(MFDs\)](#)

- Recommendation:**
1. Authorize the City Manager to execute a Purchase Order with Canon Solutions America Inc. for Citywide Leases and Maintenance Services for Copier/Multi-Function Devices under the Master Agreement with lead public agency University of California through OMNIA Partners for an initial five-year term through June 30, 2029, with maximum compensation not-to-exceed \$1,110,000 subject to the appropriation of funds and in a final form approved by the City Attorney;
  2. Authorize the City Manager to execute change orders for a not-to-exceed contingency amount of \$166,500 in the event additional equipment is required and/or usage increases during the initial term, subject to appropriation of funds and in a final form approved by the City Attorney; and
  3. Authorize the City Manager to execute up to five one-year options to extend the purchase order after the initial term through June 30, 2034, pursuant to the terms of the cooperative solicitation, subject to the appropriation of funds, and in a final form approved by the City Attorney.



**3.D 24-522** [Action to Authorize the City Manager to Negotiate and Execute Agreements and/or Amendments to Existing Agreements as Required to Complete Emergency Transformer Replacement at Juliette Substation and Approve Related Budget Amendment](#)

- Recommendation:**
1. Determine the proposed actions are exempt from CEQA pursuant to Sections 15301 (Class 1 -Existing Facilities) and 15302 (Class 2 - Replacement or Reconstruction) of Title 14 of the California Code of Regulations;
  2. Authorize the City Manager to negotiate and execute agreements and/or amendments to existing agreements to complete the transformer replacements at Juliette Substation with a maximum compensation of \$15,000,000, subject to approval as to form by the City Attorney;
  3. Authorize the City Manager to take any actions as necessary to implement and administer the agreements and to negotiate and execute amendments as needed to complete the Juliette Substation transformer replacements, subject to the total maximum authorization of \$15,000,000 and review and approval as to form by the City Attorney;
  4. Approve the following FY 2023/24 budget amendments:
    - A. In the Electric Utility Fund, increase the transfer to the Electric Utility Capital Fund and decrease the Unrestricted Ending Fund Balance in the amount of \$15.0 million (**five affirmative Council votes required for the use of unused balances**); and
    - B. In the Electric Utility Capital Fund, recognize a transfer from the Electric Utility Fund and increase the Juliette Substation Transformer Rerate and Installation Project in the amount of \$15.0 million (**five affirmative Council votes required to appropriate additional revenue**).

**3.E 24-38** [Action on an Agreement for Services with CRMOrbit, Inc. dba energyOrbit for a Rebate Processing System for Silicon Valley Power](#)

- Recommendation:**
1. Authorize the City Manager to execute the proposed Agreement for Services (Agreement) with CRMOrbit, Inc. dba energyOrbit for a Rebate Processing System for a three-year term beginning on or around June 1, 2024, with a maximum compensation not to exceed \$350,000, subject to the annual appropriation of funds funded by Silicon Valley Power's Public Benefit's Program in the Electric Operating Grant Trust Fund; and
  2. Authorize the City Manager to take any actions as necessary to implement and administer the Agreement and to negotiate and execute amendments to the Agreement to (a) increase the maximum compensation by up to an additional \$100,000 for a total maximum compensation not to exceed \$450,000 in the event that SVP requires additional training, licenses, or features, and (b) exercise options to extend the term to align with the term of the Agreement with the lead agency, Turlock Irrigation District, subject to the appropriation of funds and review and approval as to form by the City Attorney.

**3.F 24-222** [Action on an Agreement with Kimley-Horn and Associates, Inc. for Professional Services for the Santa Clara Vision Zero Plan](#)

- Recommendation:**
1. Authorize the City Manager to negotiate and execute an agreement with Kimley-Horn and Associates, Inc. (Agreement) to provide professional services for the Santa Clara Vision Zero Plan project with a maximum compensation not-to-exceed \$556,536 over a two-year term, in a final form approved by the City Attorney; and
  2. Authorize the City Manager to take any actions necessary to implement and administer the Agreement and negotiate and execute amendments to the Agreement to extend the term and modify the scope of services, in final forms approved by the City Attorney.

**3.G 24-521** [Action to Authorize the City Manager to Negotiate and Execute Agreements and/or Amendments to Existing Agreements as Required to Complete Unanticipated Internal Inspection and Re-rate Engineering Study for Transformer Upgrades at the Kifer Receiving Station \(KRS\) and Scott Receiving Station \(SRS\) and Approve Related Budget Amendment](#)

- Recommendation:**
1. Subject to compliance with Chapter 2.105 of the City Code, as applicable, and review and approval as to form by City Attorney, authorize the City Manager to negotiate and execute new agreements and/or amendments to existing agreements with various vendors to complete unanticipated internal inspections, and re-rate engineering studies, at the Kifer Receiving Station (KRS) and Scott Receiving Station (SRS) with a total aggregate authorization not to exceed \$500,000;
  2. Authorize the City Manager or designee to take any actions as necessary to implement and administer the agreements and to negotiate and execute further amendments to the agreements as needed to complete inspections and studies at KRS and SRS, subject to the maximum authorization of \$500,000 and approval as to form by the City Attorney; and
  3. Approve the following FY 2023/24 budget amendments:
    - A. In the Electric Utility Fund, increase the transfer to the Electric Utility Capital Fund and decrease the Unrestricted Ending Fund Balance in the amount of \$500,000 (**five affirmative Council votes required for the use of unused balances**); and
    - B. In the Electric Utility Capital Fund, recognize a transfer from the Electric Utility Fund in the amount of \$500,000, increase the KRS Rebuild and Replacement project (CIP 2453) by \$250,000, and increase the SRS Rebuild and Replacement project (CIP 2456) by \$250,000 (**five affirmative Council votes required to appropriate additional revenue**).

**3.H 24-453** [Action Authorizing the City Manager to Negotiate and Execute Agreement\(s\) with Vendor\(s\) for the Purchase of High Voltage Disconnect Switches, Station Service Voltage Transformers, Voltage Transformers and Capacitive Voltage Transformers, and Combination Revenue Metering Transformers to be Funded by the Electric Utility Capital Fund](#)

- Recommendation:**
1. Subject to compliance with Chapter 2.105 of the City Code, review and approval as to form by the City Attorney, and appropriation of funds, authorize the City Manager or designee to negotiate and execute agreement(s) or purchase order(s) with vendors for the four purchases listed below, subject to a total maximum aggregate compensation amount of \$17,400,000 plus a fifteen percent (15%) contingency (\$2,610,000) for a total not to exceed amount of \$20,100,000, as follows:
    - (a) High Voltage Disconnect Switches for an approximately three-year agreement term and a two-year warranty period;
    - (b) Station Service Voltage Transformers for an approximately three-year agreement term and a two-year warranty period;
    - (c) Voltage Transformers and Capacitive Voltage Transformers for an approximately three-year agreement term and a two-year warranty period;
    - (d) Combination Revenue Metering Transformers for an approximately three-year agreement term and a two-year warranty period; and
  
  2. Authorize the City Manager or designee to (a) take any actions as necessary to implement and administer the agreement(s) and/or purchase orders, and (b) negotiate and execute amendments to the agreement(s) and/or purchase order(s) for (i) design changes, (ii) any unanticipated issues, (iii) extensions of the term, or (iv) the purchase of additional High Voltage Disconnect Switches, Station Service Voltage Transformers, Voltage Transformers and Capacitive Voltage Transformers, and Combination Revenue Metering Transformer, up to the \$20,100,000 amount and subject to the review and approval as to form by the City Attorney.

**3.I 24-384** [Action to Authorize the Use of City Electric Forces for New Dark Fiber Installations at 6001 America Center Drive - 3080 Raymond Street](#)

- Recommendation:**
1. Determine the proposed action is exempt from CEQA pursuant to Section 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations; and
  2. Declare and determine in accordance with Section 1310 of the City Charter that the public works located at 6001 America Center Drive to 3080 Raymond Street are better performed by the City with its own employees based on the information set forth in this Report to Council and authorize the performance of this public work consistent with this authorization.

**3.J 24-427** [Action on Recommendations from Governance and Ethics Committee to Amend Council Policy 046 entitled "Mayor and Council Public Records Policy" and Amend Email Retention from 90 days to two years for City Councilmembers](#)

- Recommendation:** Adopt a Resolution approving the recommendations from the Governance and Ethics Committee to Amend Council Policy 046 entitled "Mayor and Council Public Records Policy" to include amending email retention from 90 days to two years.

**3.K 24-436** [Action on Authorizing the Use of City Electric Forces for Public Works Projects at Various Locations](#)

**Recommendation:** 1. Determine the proposed action is exempt from CEQA pursuant to Section 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations; and

2. Declare and determine in accordance with Section 1310 of the City Charter that the public works projects proposed at 2865 Uranium Drive, 2991 Jerald Avenue, 2310 Calle Del Mundo, 3193 Cabrillo Avenue, 3345 Cabrillo Avenue, 3061 Monroe Street, 1821 Bowers Avenue, and 1962 Lafayette Street are better performed by the City with its own employees based on the information set forth in this Report to Council and authorize the performance of these public works by City electric utility forces consistent with this authorization.

**3.L 24-231** [Action on Appointing a City of Santa Clara Bicycle and Pedestrian Advisory Committee Member to Serve as the City's Representative on the Santa Clara Valley Transportation Authority Bicycle Pedestrian Advisory Committee](#)

**Recommendation:** Appoint the City of Santa Clara Bicycle and Pedestrian Advisory Committee member Betsy Megas to serve as the City's representative on the Santa Clara Valley Transportation Authority Bicycle and Pedestrian Advisory Committee.

**3.M 24-487** [Action to Approve Revisions to the Existing Staff Analyst I Class Specification; Approve a New Senior Counsel for Silicon Valley Power Class Specification; Approve a Resolution Adopting the Amended Unclassified Salary Plan](#)

**Recommendation:**

1. Approve revisions to the existing Staff Analyst I (Job Code 796) class specification to clarify the acceptable level of educational units for the position;
2. Approve the creation of the Senior Counsel for Silicon Valley Power (Job Code 179) class specification; And
3. Approve the Resolution Adopting the Amended Unclassified Salary Plan to reflect the new Senior Counsel for Silicon Valley Power position.

**SANTA CLARA STADIUM AUTHORITY BOARD CONSENT CALENDAR**

**4.A 24-364** [Informational Report on Stadium Authority and Stadium Manager Meetings for the Period of January 1 to March 31, 2024](#)

**Recommendation:**

Note and file the quarterly report on Stadium Authority and Stadium Manager staff meetings and corresponding summaries for the period of January 1 to March 31, 2024.

**4.B 24-401** [Action on Amendment No. 1 to the Agreement with KPMG LLP for Auditing and Consulting Services for the Santa Clara Stadium Authority](#)

**Recommendation:**

Authorize the Executive Director or designee to execute an Amendment No. 1 to the Agreement with KPMG LLP for audit and consulting services to increase the compensation by \$100,000 from \$754,554 to \$854,554 in a final form approved by the City Attorney.

**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 (COUNCIL/STADIUM AUTHORITY BOARD)**

5.      24-201      [Public Hearing: Action on Resolutions Approving Water, Sewer and Recycled Water Amended Rates to be Effective July 1, 2024](#)

**Recommendation:** Alternative 1: Adopt the Proposed Resolutions Establishing Water Rate Schedule 2024-01, Recycled Water Rate Schedule 2024-02 and Sewer Rate Schedule S-24



6. 24-578 [Action on Amendment No. 2 to the Ground Lease, and Amendment No. 1 to the Restated and Amended Stadium Lease, to Implement the Settlement Agreement and Mutual Release \(Buffet and Public Safety Cost Arbitration\) with Forty Niners SC Stadium Company LLC and Forty Niners Stadium Management Company LLC, and Approve Related Budget Amendments](#)

**Recommendation:**

1. Authorize the City Manager, on behalf of the City, and the Executive Director, on behalf of the Stadium Authority, to execute a First Amendment to the Ground Lease with the Santa Clara Stadium Authority to in substantially the form presented, in final forms approved by Agency Counsel/City Attorney.
2. Authorize the Executive Director to execute a First Amendment to the Amended and Restated Stadium Lease Agreement with Forty Niners SC Stadium Company, LLC to in substantially the forms presented, in final forms approved by Agency Counsel/City Attorney.
3. Authorize the City Manager, on behalf of the City, and Executive Director, on behalf of Stadium Authority, to negotiate and execute modifications to such other agreements as may be necessary to implement the terms of the Settlement Agreement, in final forms approved by Agency Counsel/City Attorney.
4. Approve the following FY 2024/25 net budget amendments in the Santa Clara Stadium Authority Operating Budget:
  - a. Increase the revenue estimate and corresponding payment to the City for Senior and Youth fees by \$35,000, and
  - b. Increase the Performance-Based Rent expense to the City by \$9,600,000, increase the Public Safety Cost expense by \$6,473,000, increase the transfer to the City's General Fund by \$3,073,000, increase the SBL Complementary Buffet expense by \$900,000, offset by the elimination of Legal Contingency Reserves in the

amount of \$14,747,526 and a decrease to the Renovation/Demolition Reserve by \$5,298,474.

7. 24-549 [Action on an Initial Grant Funding Agreement with Forty Niners SC Stadium Company LLC to Provide \\$200,000 Annually in Grant Funding for an Initial Three Years to the Santa Clara Community and Santa Clara Organizations and Approve the Related Budget Amendments](#)

**Recommendation:**

1. Authorize the City Manager to enter into an Initial Grant Funding Agreement with Forty Niners SC Stadium Company LLC (StadCo) to provide for 1) the distribution of \$200,000 annually over three years (Years 1-3) to non-profit organizations and community projects serving the Santa Clara community, as further described in the report and agreement, and 2) a process to develop a program, to be formalized through subsequent funding agreement(s) with StadCo, for the remaining grant distribution, in the amount of \$200,000 annually for the subsequent years during StadCo's 20-year commitment term, in a final form approved by the City Attorney; and
2. Approve the FY 2023/24 budget amendments in the General Fund to recognize other revenue in the amount of \$200,000 and increase the Non-Departmental Community Grants Program allocation in the amount of \$200,000 (**five affirmative Council votes required to appropriate additional revenue**).

**REPORTS OF MEMBERS, SPECIAL COMMITTEES AND COUNCILMEMBER 030 REQUESTS**

**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

8. 24-579 [Update on the George F. Haines International Swim Center \(ISC\)](#)

**Recommendation:** It is recommended that the City Council:

1. Note and file the report.

**ADJOURNMENT**

The next regular scheduled meeting is on Tuesday, June 4, 2024 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](http://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.



# City of Santa Clara

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

## Agenda Report

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24-430

Agenda Date: 5/28/2024

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### SUBJECT

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

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

Employee Organization(s):  
Unit #9 Unclassified Miscellaneous Management



## Agenda Report

24-330

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Recognition of Santa Clara High School Student Athletes

#### BACKGROUND

Santa Clara High School is part of the Santa Clara Unified School District, located at 3000 Benton Street. The Santa Clara High School Athletics program offers sports throughout the year, giving students the opportunity to hone their athletic abilities in a collaborative environment.

The Santa Clara High School Girls' Varsity Basketball team had a strong 2023-24 season. Coached to victory by Coach DeeDee Kiyota and Assistant Coaches John Smith, Mickie Ferrer, and Mark Azul, the team of thirteen girls won their division title in February 2024. Two of the athletes scored their 1,000<sup>th</sup> career points during this season.

Additionally, Angelinah Sky De Leon made Santa Clara High School history this season with Coach Nicholas Garcia when she placed 1<sup>st</sup> in Wrestling in the CCS Division and 2<sup>nd</sup> at the State Meet.

#### DISCUSSION

During the May 28, 2024 City Council meeting, the City Council is honored to recognize the athletic achievements of the Santa Clara High School Bruins in basketball and wrestling.

#### ENVIRONMENTAL REVIEW

This is an informative 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

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.

Reviewed by: Fiona Kirby, Management Analyst, City Manager's Office

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-586

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Recognition of Wilcox High School Robotics Team

#### BACKGROUND

Wilcox High School is part of the Santa Clara Unified School District, located at 3250 Monroe Street. The Wilcox High School Robotics Team was founded by Councilmembers Karen Hardy and Suds Jain and has been operating for 10 years. This is the first year since its inception that the Robotics team has been able to attend the World Championship FIRST Tech Challenge Robotics Competition. The event is held annually in Houston, Texas. This year, it took place on April 17-20, 2024.

There are two teams at Wilcox High School, and the "Robopocalypse" team of fifteen students attended this year's World Championship. There were multiple awards presented, and "Robopocalypse" received the THINK and Inspire prizes in the competition.

#### DISCUSSION

During the May 28, 2024 City Council meeting, the City Council is honored to recognize the Wilcox High School Robotics Team.

#### ENVIRONMENTAL REVIEW

This is an informative 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

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.

Reviewed by: Fiona Kirby, Management Analyst, City Manager's Office

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-440

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Recognition of the Recipients of the Second Annual Silicon Valley Power Sustainable Futures Scholarship Program in Partnership with Santa Clara University

#### BACKGROUND

The Silicon Valley Power Sustainable Futures Program provides scholarships and fellowships to up to 35 future leaders in sustainability, clean energy, climate action and related fields. On May 28, 2024, the City Council will recognize the Silicon Valley Power Sustainable Futures Program fellows from Santa Clara University.

#### DISCUSSION

On June 7, 2022, the City of Santa Clara City Council unanimously approved the Silicon Valley Power Sustainable Futures Program, which will provide scholarships and fellowships to up to 35 future leaders in sustainability, clean energy and related fields. The goal of the program is to develop a pipeline of strong, diverse future leaders in sustainability and clean energy sectors.

The innovative, five-year program is funded by a \$375,000 grant from Silicon Valley Power (SVP). Selected students will use the funds to attend and receive advanced opportunities at Santa Clara University and its award-winning environmental and sustainability curriculum.

The program is designed to improve students' skill sets to compete for emerging green jobs. The skill requirements are expanding rapidly, particularly in the Bay Area, where energy, sustainability and climate drivers are leading the way in accelerating this field.

In this inaugural year of the SVP Sustainable Futures Program, the City had the pleasure to collaborate with three exemplary fellows. The fellows have prepared summaries of the projects they have been working on this year to share with the City Council. The City Council will recognize and hear from the following SVP Sustainable Futures Program Santa Clara University fellows:

- Sally Walsh is a senior studying Psychology, Sustainability, and Environmental Studies. As a fellow, she has been conducting research on Santa Clara's active transportation access, specifically with cycling, to identify resident's motivations and reduce inequities.
- Emil Chaia is a junior studying Finance, International Business, and Innovation & Design Thinking. As a fellow, he is working to analyze existing financial securities, such as green bonds and credits, supporting Northern California's decarbonization initiatives.
- Chrislyn Brandon is a junior studying Political Science and Psychology. As a fellow, she is

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researching how the city can provide more support to improve food security, including leveraging food waste as a resource to enhance food recovery.

### 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. Accordingly, 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

Funding for this project was authorized on June 7, 2022 under Council item 22-655 and funds are budgeted in SVP's Electric Utility Fund in the advertising and community promotion operating budget.

### 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.

Reviewed by: Michelle Templeton, Acting Assistant City Manager, City Manager's Office

Approved by: City Manager's Office





## Agenda Report

24-446

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Proclamation of May 2024 as Historic Preservation Month

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

Every year in May, local preservation groups, state historical societies, and business and civic organizations across the country celebrate Preservation Month through events that promote historic places and heritage tourism, and that demonstrate the social and economic benefits of historic preservation.

Preservation Month began as National Preservation Week in 1973. In 2005, the National Trust extended the celebration to the entire month of May and declared it Preservation Month to provide an even greater opportunity to celebrate the diverse and unique heritage of our country's cities and states.

The first National Preservation Week was celebrated on May 6-12, 1973. At the annual meeting on October 27, 1972, in Washington, D.C., Donald T. Sheehan, a member of the Trustees Advisory Committee on Membership & Public Relations, proposed the idea of the National Preservation Week as a "means of relating local and state preservation progress to the national effort for the mutual benefits of both." The National Trust chose the second week of May because it coincided with the organization's annual award luncheon, then in its third year.

The Historical and Landmarks Commission (HLC) is pleased to announce the launch of the 2024 Historical and Landmarks "Art meets History" Banner project for the month of May in honor of National Preservation Month. It's a first for the HLC Commission. The new initiative will celebrate historic preservation and showcase the heritage, events and landmarks that define our area. For this year, HLC chose to start on the state's first highway, El Camino Real, between Lafayette and Scott Boulevard.

Residents and visitors are encouraged to take a stroll along El Camino Real to admire the banners-a fantastic way to engage the community with its own history. Each banner visually contributes to the future conversations about historic preservation of our heritage.

By celebrating our history, cherishing our landmarks, and working together to preserve our community's essence, together we are fostering a sense of pride and connection among residents for generations to come

The “Art meets History” Banner project is showcased on the City’s website on the [HLC webpage. <https://www.santaclaraca.gov/our-city/government/boards-commissions/historical-landmarks-commission/art-meets-history-banner-project>](https://www.santaclaraca.gov/our-city/government/boards-commissions/historical-landmarks-commission/art-meets-history-banner-project)

#### DISCUSSION

On May 28, 2024 the City of Santa Clara will proclaim May as Historic Preservation Month and recognize the Community Development Department and Historical and Landmarks Commission for their contributions to this effort

#### 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.

#### COORDINATION

This report has been coordinated with the City Attorney’s Office, City Manager’s Office, Community Development, and the Mayor and Council 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.

Reviewed by: Reena Brilliot, Acting Director of Community Development

Approved by: Jovan D. Grogan, City Manager

#### ATTACHMENTS

1. Draft Proclamation - May 2024 as Historic Preservation Month
2. HLC Banner Project

*City of Santa Clara*  
**Proclamation**

- WHEREAS,** Historic Preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride, and maintaining community character while enhancing livability; and
- WHEREAS,** Historic Preservation encourages and promotes community reinvestment, saving resources and socially, culturally, and economically rich communities; and
- WHEREAS,** Historic Preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life, and all ethnic backgrounds in telling our individual, city, state, and national story; and
- WHEREAS,** it is important and valuable to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and
- WHEREAS,** *"People Saving Places"* is the theme for National Preservation Month 2024, and serves to shine a spotlight on everyone doing the work of saving places, in big ways and small.

**NOW, THEREFORE, I, LISA M. GILLMOR,** by virtue of the authority vested in me as Mayor, and on behalf of the entire City Council, do hereby proclaim the month of May 2024, as

**Historic Preservation Month**

in the City of Santa Clara and call upon the people of Santa Clara to join in recognizing and participating in this special observance.

Given under my hand and the Seal of the City of Santa Clara, California, this 28<sup>th</sup> day of May, 2024.

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

## **New “Art meets History” HLC Project Celebrates National Historic Preservation Month**

Historical and Landmarks Commission (HLC) is pleased to announce the launch of the 2024 Historical and Landmarks “Art meets History” Banner project for the month of May in honor of National Preservation Month. It’s a first for our Commission. The new initiative will celebrate historic preservation and showcase the heritage, events and landmarks that define our area. For this year, we chose to start on the state’s first highway, El Camino Real, between Lafayette and Scott Boulevard.

With the blessings of HLC, the dedication of our HLC “Art meets History” subcommittee Commissioners Kirby, Romano and Chair Vargas-Smith, and collaboration of artist Cameryn Baker, we were able to successfully launch this new project to support HLC educational priorities for 2024. These collective efforts have brought the history of our community to life through captivating public artwork in the colorful style reminiscent of FDR’s 1939 (WPA) Working Progress Administration Federal Arts Project. This HLC project will continue to add 10 images per year to the “Art meets History” Collection, and expand the installations to Great America Parkway by next year.

We are encouraging residents and visitors to take a stroll along El Camino Real to admire the banners—a fantastic way to engage the community with its own history. Each banner visually contributes to the future conversations about historic preservation of our heritage. HLC is looking forward to feedback

HLC chose properties based on their historic status. For the month of May, each week the City of Santa Clara will share a bit of history about each on social media. Stay tuned!



1. The Train Depot circa 1863
2. JJ Montgomery SC First Aviator circa 1903
3. The Harris Lass House Museum circa 1864
4. Jack London's Call of the Wild circa 1910
5. Mission City 1852
6. Santa Clara Valley Orchard circa 1750
7. The Adobe Berryessa circa 1840
8. Santa Clara Post Office circa 1935
9. The Morse Mansion circa 1892
10. The S.E.S. Portuguese Hall circa 1896

By celebrating our history, cherishing our landmarks, and working together to preserve our community's essence, together we are fostering a sense of pride and connection among residents for generations to come. To learn more about each property listed visit our city website: [Historic Properties | City of Santa Clara \(santaclaraca.gov\)](https://www.santaclaraca.gov/historic-properties)

#SantaClara #PreservationMonth #CommunityPride #LocalHistory #Landmarks #Artistry #siliconvalley



**About the Artist:** Cameryn Baker is a creative based in San Francisco. Native to Los Angeles County, she graduated from the University of Southern California in 2022 and made the switch to NorCal shortly after. She has worked in a handful of unexpected places, including film sets in Los Angeles and Alcatraz Island in the San Francisco Bay. Photography, illustration, and written work can be found on her website, [camerynbaker.com](https://www.camerynbaker.com).



## Agenda Report

24-488

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Proclamation of May as Affordable Housing Month and Recognition of the Freebird Development Company for the successful Completion of the Monroe Commons Affordable Housing Development

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

Housing affordability continues to be a top concern in Santa Clara and throughout the region. In March 2024, the median price for a single-family home in Santa Clara was \$1,950,000 and over 40% of renters in Santa Clara pay more than 30% of their income on housing. In addition, over 375 people were counted in the City as being unsheltered in 2022. Over the next seven years, the City's regional housing goal is to facilitate the construction of over 2,872 new extremely low and very low-income housing units by 2031.

In recent years, Santa Clara has contributed greatly to increasing housing at all income levels. The City paved the way for a large amount of development through the completion of several specific plans. The City has also been successful at leveraging \$86 million of the County's Measure A Housing Bond to funding 489 units, which is 155% of the Measure A's funding goal for the City. In addition, according to the Metropolitan Transportation Commission (MTC), the City of Santa Clara was the 8<sup>th</sup> largest producer of affordable housing, out of 101 cities, in the nine County Bay Area between 2018-2022.

The City's current pipeline includes over 650 units of 100% affordable housing and potential for an additional 466 low- and moderate-income rental units and 88 affordable for-sale units from projects that are subject to the City's Affordable Housing Ordinance.

While the City has done a lot to boost affordable housing production, more is needed. To make meaningful progress, the City will need new sources of funding, new partnerships, and community support for new affordable housing.

Each year communities around the country organize events in recognition of Affordable Housing Month. The purpose of these events is to invite a wide range of stakeholders to discuss housing related needs and solutions. Participants often include neighbors, advocates, renters, homeowners, landlords, people experiencing homelessness, housing developers, lenders, service providers, government agencies, and others. The intention of Affordable Housing month is to raise awareness about housing related issues and solutions and to build support for continued efforts and resources. These events provide information about best practices and generate support to produce affordable housing, the preservation of affordable housing, and for the protection of residents from housing



discrimination, and displacement.

### DISCUSSION

In Santa Clara County, the nonprofit SV @ Home organizes a calendar with a range of event types hosted by various organizations. This year events included but were not limited to the following:

- Grand openings for new affordable housing projects
- Project tours
- New ways to prevent displacement
- Home repair and safety modification workshops
- Affordable Housing Finance 101
- How Homelessness Impacts Older Adults
- Creating opportunities for a diverse workforce
- Visions sessions for possible new affordable housing projects
- Fair Housing Workshops
- Discussions about how racial equity in affordable housing
- Connections between housing and health services
- Networking events
- First time homeownership workshops

A recent local success to highlight during Affordable Housing Month, was effective public-private partnership to bring to fruition Monroe Commons (2330 Monroe Street), which is a recently completed affordable rental housing project. Following an extensive community outreach process, the City issued a Request for Proposals (RFP) for the development of an affordable housing project on a vacant City owned site. Freebird Development Company was selected and worked closely with the City to design a project that addressed community concerns related to privacy, density, and parking.

The project used a combination of funding sources including tax credits, multi-family housing revenue bonds, State Multifamily Housing Program funds, County funds, and debt to leverage the City's initial gap loan of \$6,500,000 and a separate City loan of \$5,200,000 associated with the ground lease. The City later increased the gap loan from \$6,500,000 to \$9,500,000 to fund the construction of an upgraded water main. The resulting project created 64-units of extremely low, very low, and low-income affordable housing with a mix of one, two, and three-bedroom apartments for individuals and families. Monroe Commons is especially unique because it reserved one quarter of the apartments for persons with intellectual or developmental disabilities.

In recognition of Affordable Housing Month and for the completion of Monroe Commons, Mayor Gillmor will present a Proclamation and a Mayoral Certification to Freebird Development Company. Robin Zimble, President of Freebird Development Company, will receive both ceremonial items.

### ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

**FISCAL IMPACT**

There is no fiscal impact other than staff time.

**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.

Reviewed by: Reena Brilliot, Acting Director of Community Development

Approved by: Jovan Grogan, City Manager

**ATTACHMENTS**

1. Draft Proclamation - Affordable Housing Month 2024
2. Draft Mayoral Certification - Freebird Development Company - Monroe Commons



*City of Santa Clara*

# *Proclamation*

**WHEREAS,** there is an urgent need in Santa Clara County and the Bay Area to increase housing choices and the production of truly affordable housing; and

**WHEREAS,** the City of Santa Clara partners with agencies and the community in May to recognize Affordable Housing Month and to advance solutions so people with a range of incomes can call Santa Clara home; and

**WHEREAS,** in March 2024, the median price for a single-family home in Santa Clara was \$1,950,000 and over 40% of renters in Santa Clara are cost burdened paying more than 30% of their income on housing; and

**WHEREAS,** in 2022, over 375 unsheltered persons were counted in the City of Santa Clara; and

**WHEREAS,** there is an acute need to increase affordable housing for special needs populations including seniors, large families, and persons with developmental disabilities; and

**WHEREAS,** the City's General Plan includes goals to create and maintain high quality and diverse housing stock, designate suitable land for development, increase special needs housing, promote a variety of housing types, and to increase access to opportunity and reduce displacement; and

**WHEREAS,** the City of Santa Clara's regional housing goal is to facilitate the construction of over 2,872 new extremely low and very low income housing units by 2031 and in the last five years, the City has approved, and in some cases funded, the construction of over 300 new affordable housing units; and

**WHEREAS,** the City of Santa Clara recognizes that true progress on addressing the region's housing crisis will require ongoing community education, support, and partnerships.

**NOW, THEREFORE, I, LISA M. GILLMOR,** by virtue of the authority vested in me as Mayor, and on behalf of the entire City Council, do hereby recognize May as

## **Affordable Housing Month**

in the City of Santa Clara, and during this month, I encourage all residents to engage with and learn about the various affordable housing programs in our City and County.

Given under my hand and the Seal of the City of Santa Clara, California, this 28<sup>th</sup> day of May 2024.

*City of Santa Clara*

*Certificate of Special  
Mayoral Recognition*

*On behalf of the Santa Clara City Council, this certificate is presented to*

**Freebird Development Company**

*in honor of the grand opening of Monroe Commons in Santa Clara,  
providing 65 units of affordable housing for extremely low, very low, and low income households  
including apartments for households with intellectual or developmental disabilities*

*on this 28<sup>th</sup> day of May 2024.*



**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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24-09

Agenda Date: 5/28/2024

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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 - February 1, 2024

Historical and Landmarks Commission - April 4, 2024

Cultural Commission - April 1, 2024

Board of Library Trustees - April 1, 2024

Youth Commission - March 12, 2024

Civil Service Commission - February 8, 2024



# City of Santa Clara

## Meeting Minutes

### Historical & Landmarks Commission

02/01/2024

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 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

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:**

Please follow the guidelines below when participating in a Zoom Webinar:

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

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

Chair Vargas-Smith called the meeting to order at 6:04 p.m.

- Present** 6 - Commissioner Michael Celso , Commissioner Amy Kirby, Commissioner Patricia Leung, Vice Chair Kathleen Romano, Commissioner Ed Stocks, and Chair Ana Vargas-Smith
- Absent** 1 - Commissioner Yvonne Inciarte

**A motion was made by Commissioner Celso, seconded by Commissioner Stocks, to excuse Commissioner Inciarte.**

- Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Vice Chair Romano, Commissioner Stocks, and Chair Vargas-Smith

- Absent:** 1 - Commissioner Inciarte

### **CONSENT CALENDAR**

**A motion was made by Commissioner Celso, seconded by Commissioner Kirby, to approve the Consent Calendar.**

- Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Vice Chair Romano, Commissioner Stocks, and Chair Vargas-Smith

- Excused:** 1 - Commissioner Inciarte

[24-1613](#) Historical and Landmarks Commission Minutes of December 7, 2023

**Recommendation:** Approve the Historical and Landmarks Commission Minutes of December 7, 2023.

### **PUBLIC PRESENTATIONS**

#### **GENERAL BUSINESS**

[24-1415](#) Consideration of the Addition of Names to the City Street Name List

**Recommendation:** Recommend that the Historical and Landmarks Commission recommend approval of the addition of six names to the City Street Name List to the City Council.

Public Speakers:

Sergeant Greg Deger, Santa Clara Police Department

**A motion was made by Commissioner Leung, seconded by Commissioner Stocks, to approve the addition of six names to the City Street Name List with the addition of William Kelly for a total of seven.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Vice Chair Romano, Commissioner Stocks, and Chair Vargas-Smith

**Excused:** 1 - Commissioner Inciarte

[24-66](#) Historical and Landmarks Commission Planning Session in Preparation for Upcoming Joint City Council Dinner Meeting on February 6, 2024

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

The Commission prepared for their presentation to the City Council. No action was taken.

**STAFF REPORT**

Berryessa Adobe Maintenance

**TRAINING AND TRAVEL REQUESTS**

**COMMISSIONERS REPORT**

Subcommittee Reporting - 20 minutes

The Banner Subcommittee provided an update on the cost and process for installing streetlight banners to commemorate Historic Preservation Month in May.

**Board/Committee**

**Lead/Alternate**

Santa Clara Arts and Historic Consortium  
Historic Preservation Society of Santa Clara  
Old Quad Residents Association  
Development Review Hearing  
BART/ High Speed Rail/ VTA BRT Committee  
El Camino Real Specific Plan Community Advisory Committee  
Downtown Precise Plan  
Santa Clara Station Area Task Force

Vargas-Smith / Romano  
Vargas-Smith / Leung  
Leung  
Romano /Vargas-Smith  
Vargas-Smith/ Leung  
Leung  
Vargas-Smith/Stocks  
Leung/Stocks

**ADJOURNMENT**

The meeting was adjourned at 7:55 p.m.

**A motion was made by Commissioner Leung, seconded by Commissioner Romano, to adjourn the meeting.**

**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

04/04/2024

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 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

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.

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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 Vargas-Smith** called the meeting to order at 6:01 p.m.

**Commissioner Kirby** arrived at 6:02 p.m.

**Present** 6 - Commissioner Michael Celso , Commissioner Amy Kirby, Commissioner Patricia Leung, Commissioner Ed Stocks, Chair Ana Vargas-Smith , and Commissioner Yvonne Inciarte

**Absent** 1 - Vice Chair Kathleen Romano

**A motion was made by Commissioner Leung, seconded by Commissioner Inciarte to excuse Commissioner Romano.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Absent:** 1 - Vice Chair Romano

**CONSENT CALENDAR**

1. [24-335](#) Historical and Landmarks Commission Meeting Minutes of March 7, 2024

**Recommendation:** Approve the Historical and Landmarks Commission Meeting Minutes of the March 7, 2024 Meeting.

**A motion was made by Commissioner Leung, seconded by Commissioner Inciarte to approve Staff Recommendation.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

**PUBLIC PRESENTATIONS**

None.

**GENERAL BUSINESS**

2. [24-312](#) Consideration of a Historical Preservation Agreement (Mills Act Contract) for 1059 Madison Street (Continued from the March 7, 2024 HLC Meeting)

**Recommendation:** Staff recommends that the Historical and Landmarks Commission determine the project to be exempt from CEQA pursuant to CEQA Section 1561(b)(3) and find that the Mills Act Application and associated 10-Year Plan for restoration and maintenance accomplish the intent of preserving and maintaining the historical significance of the property; and therefore, recommend City Council approval of a Mills Act Contract, and the adoption of a 10-Year Restoration and Maintenance Plan associated with the Historical Preservation Agreement for the property located at 1059 Madison Street.

**Associate Planner Daniel Sobczak** presented the item and answered questions by the Commissioners.

**Public Speakers:**

Homeowners Adalbert Wysocki and Lin Koh

**A motion was made by Commissioner Leung, seconded by Commissioner Inciarte to close public hearing.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

**A motion was made by Commissioner Leung, seconded by Commissioner Kirby to recommend approval to Council and to approve a plaque for property.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

3. [24-323](#) Action on the Request for Proposed Historic District Designation for Park Court Neighborhood

**Recommendation:** Recommend that the Commission hear testimony, discuss, and take action to demonstrate support of the neighborhood's request.

**Public Speakers:**

Mark Hoag  
Mark Kelsey

**A motion was made by Commissioner Leung, seconded by Commissioner Inciarte, to close public hearing.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

**A motion was made by Commissioner Leung, seconded by Commissioner Inciarte to create subcommittee to draft memo to support effort to establish historic district.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

4. [24-351](#) Historical Preservation Month Banners Project Funding

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

Chair Vargas-Smith provided updates on the banner project and that an alternate printer was necessary to complete the project. The approved budget included design, printing and installation for a total of \$2,300. The preferred printer would increase the cost of the banner project by \$389 to a total of \$2,689.

**A motion was made by Commissioner Leung to increase the budget for the banner project to \$2,689, seconded by Commissioner Kirby.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

**STAFF REPORT**

Berryessa Adobe Maintenance

No staff update provided.

Budget Update

Staff provided budget updates.

**TRAVEL AND TRAINING REQUESTS**

Update on California Preservation Foundation Annual Conference, May 29 - June 1, 2024

**Chair Vargas-Smith** informed commissioners attending CPF conference that certain events are not included in the registration. Staff described the daily events, emphasizing that the paid registration covered events for two days, while the other two days had events that were not included in the registration. Commissioners will update staff regarding travel plans.

**COMMISSIONERS REPORT**

Subcommittee Reporting - 20 minutes

Commissioners provided updates on various items, meetings, and groups that they are involved with.

Board/Committee

Lead/Alternate

Santa Clara Arts and Historic Consortium  
Historic Preservation Society of Santa Clara  
Old Quad Residents Association  
Development Review Hearing  
BART/ High Speed Rail/ VTA BRT Committee  
El Camino Real Specific Plan Community Advisory Committee  
Downtown Precise Plan  
Santa Clara Station Area Task Force

Vargas-Smith / Romano  
Vargas-Smith / Leung  
Leung  
Romano /Vargas-Smith  
Vargas-Smith/ Leung  
Leung  
Vargas-Smith/Stocks  
Leung/Stocks

Announcements and other items

No announcements.

**ADJOURNMENT**

The meeting adjourned at 7:46 p.m.

**Motion to adjourn was made by Commissioner Leung, seconded by Commissioner Inciarte.**

**Aye:** 6 - Commissioner Celso, Commissioner Kirby, Commissioner Leung, Commissioner Stocks, Chair Vargas-Smith, and Commissioner Inciarte

**Excused:** 1 - Vice Chair Romano

The next regular scheduled meeting is Thursday, May 2, 2024 at 6 p.m.

**MEETING DISCLOSURES**

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# City of Santa Clara

## Meeting Minutes

### Cultural Commission

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04/01/2024

7:00 PM

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

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

Via Zoom:

<https://santaclaraca.zoom.us/j/98272283531>

Meeting ID: 98272283531

Or join by phone: 669-900-6833

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

Chair Diaz called the meeting to order at 7:03 p.m. She reported that April is Jazz Appreciation and National Poetry Month.

**Present** 6 - Commissioner Louis Samara, Vice Chair Debra von Huene, Chair Candida Diaz, Commissioner Jonathan Marinaro, Commissioner Paul McNamara, and Commissioner Neetu Garg

#### **CONSENT CALENDAR**

1.A [24-290](#) Action on Cultural Commission Regular Minutes of March 4, 2024

**Recommendation:** Approve the Cultural Commission Regular Meeting Minutes of March 4, 2024

**A motion was made by Commissioner Marinaro, seconded by Vice Chair von Huene, that the consent calendar be approved. The motion passed with the following vote:**

**Aye:** 6 - Commissioner Samara, Vice Chair von Huene, Chair Diaz, Commissioner Marinaro, Commissioner McNamara, and Commissioner Garg

#### **PUBLIC PRESENTATIONS**

There were no public presentations.

#### **GENERAL BUSINESS**

2. [24-300](#) Discussion and Possible Action on Cultural Commission Work Plan Goals and Activities for FY 2023/24

**Recommendation:** Discuss the Cultural Commission Work Plan Goals and Activities for FY 2023/24.

Commissioners reported the following on the Cultural Commission Work Plan Goals and Activities for FY 2023/24:

**GOAL #1: Host and enhance multicultural events to encourage and acquaint Santa Clara residents with cultural diversity.**

**Plan for Summer Concerts in FY 2023/24- Commissioner Samara** reported there was no update to the following schedule: There will be five (5) Concerts- Four (4) at Central Park and one (1) at Live Oak Park:  
June 14 @ Live Oak Park-Houserockers  
June 28 @ Central Park-The Peelers  
July 12 @ Central Park-The Megatones  
July 26 @ Central Park-Orquesta Borinquen  
Aug.16 @ Central Park-Pop Ficton

**Street Dance-** Date: Aug. 2, 2024. Chosen band is Neon Velvet. Staff will ask the Police Dept. about possible closure of Monroe St. for easy access to Franklin Square.

**Plan and Host Friday Night Live Events-** No update.

**Secure sponsors for Cultural Commission special events in FY 2023/24-** The Sponsorship Packet is completed and posted on the City's website. Commissioners are encouraged to email the packet to companies. CEFCU, Swim Club, EdgeCore Digital, and Parade of Champions are secured. Monetary amounts are in the Work Plan.

**GOAL #2: Develop and encourage interactive art opportunities to provide temporary, performing, cultural, and public art in the City.**

**Advise and recommend public art to City Council-** The Commission is requesting a funding allocation for Temporary Art. Commissioners discussed a recommendation for artist Adrian Landon's giant Metal Sculpture, a Mechanical Pegasus to be placed at the Triton Museum. Staff will add it to the agenda next month and check with the City Attorney.

**Identify available utility boxes in the City for Artist Utility Box Program (alternate years with Sculpture Exhibition)-** No updates. Project on hold.



**Host Sculpture Exhibition-** The Call for Artists was extended and twenty (20) submissions were received. Five (5) judges will judge the submissions on April 5. Artists will be notified April 21, and art will be displayed on May 21.

**Host Halloween Home & Holiday Home Decorating Contest and Recognition-** Commissioners discussed that City Council wants to have the winners present at a City Council Meeting. Group entries were discussed for the 2024 contests, in addition to individual entries by District and Best of the Best Awards.

**Update and maintain City interactive web-based public art map-** No updates.

**GOAL #3: Raise the visibility of commemorative months.**

**Update Coloring Book to honor Commemorative Months according to Federal Calendar-** Twelve (12) of twelve (12) pages have been completed. Commissioners discussed recycling the current pages and allocating the funds to another event.

**Promote monthly commemorative months through social media and special events to raise awareness and cultural competency-** Vice Chair von Huene posted the April Coloring Book Page.

**GOAL #4: Enhance communication and media strategy to increase community awareness of the Cultural Commission.**

**Commissioners to attend the Americans for the Arts Conference-** On hold for FY 2023/24. April is National Arts Month. Commissioners may wish to participate in 2025 California for the Arts.

**Present regularly to City Council-** The Commission presented to City Council on March 19 at the Joint Dinner.

**Develop, maintain, and grow partnerships and collaborations with external organizations-**No updates.

**GOAL #5: Prepare for Citywide Arts Master Plan Process.**

**Develop private/public partnerships to invest and promote the Arts in Santa Clara-** No updates.

**Develop, promote, and implement Citywide Arts Master Plan**

**alongside the City Council-** The Next Council Goal Setting Session is on April 3. The Master Plan was presented and City Council will determine if it is a priority.

**GOAL #6: Identify and expand on Arts Education in the City of Santa Clara.**

**Identify potential partnerships with schools/local organizations to expand arts and art education-**Commissioner McNamara met with staff from the Santa Clara Unified School District. Prop 228 is for new programs in the arts. He is waiting for the outcome of the arts audit. He will provide an update in May.

**STAFF REPORT**

**Recreation Manager, Castro** mentioned that April 3 is the next Council Priority Setting Session. City of Milpitas is starting their Arts Master Plan. She attended a Municipal Liaison Meeting hosted by SV Creates last week. They will host a meeting for commissioners next. She mentioned that **Recreation Supervisor, Susan Diate** is retiring in May.

**COMMISSIONERS REPORT**

**Vice Chair von Huene** attended a Creative Writing Workshop through Esalen Institute in Big Sur. The Workshop ended early as everyone was evacuated due to the "Slip Out" Southbound Highway 1 (parts of the highway crumbled and fell off the cliff). She enjoyed the workshop and benefited from it.

**Commissioner Garg** spoke to someone from Sewa International at one of their events. They would like to partner with Commission in 2025. She is interested in adding it to the Work Plan.

**Commissioner Marinaro** went to several galleries in San Jose to inform them of the upcoming Sculpture Exhibition. He recommended Commissioners view art at the Kaleid Gallery or the SJ Opera. He mentioned there are a lot of venues that feature Jazz music.

**Commissioner McNamara** mentioned the Silicon Valley Open Studios is in May. He encouraged the Commission to attend. He discovered a website: Google Arts & Culture for virtual exhibitions or watercolor, photography, etc.

**ADJOURNMENT**

**A motion was made by Commissioner Marinaro, seconded by Commissioner McNamara, that the meeting be adjourned at 7:55 p.m. The motion passed with the following vote:**

**Aye:** 6 - Commissioner Samara, Vice Chair von Huene, Chair Diaz, Commissioner Marinaro, Commissioner McNamara, and Commissioner Garg

**MEETING DISCLOSURES**

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# City of Santa Clara

## Meeting Minutes

### Board of Library Trustees

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04/01/2024

6:00 PM Hybrid Meeting, Margie Edinger Room Central Park  
Library, 2635 Homestead Rd, Santa Clara, CA 95051

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

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

Meeting ID: 858 6425 7230 or

- o Phone: 1(669) 900-6833

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

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

**CALL TO ORDER AND ROLL CALL**

**Chair Evans** called the meeting to order at 6:03 PM.

**Management Analyst James** announced that **Trustee Tryforos** would be participating remotely under the provision of AB 2449 due to illness.

**A motion was made by Vice Chair Hintermeister, seconded by Trustee Ricossa, to excuse Trustee Broughman.**

**A motion was made by Vice Chair Hintermeister, seconded by Trustee Ricossa, to approve Trustee Tryforos participating remotely under the Just Cause clause of AB 2449.**

**Aye:** 4 - Trustee Tryforos, Vice Chair Hintermeister, Trustee Ricossa, and Chair Evans

**Excused:** 1 - Trustee Broughman

**CONSENT CALENDAR**

1      [24-315](#)      Action on the Board of Library Trustees Meeting Minutes of March 4, 2024

**Recommendation:** Approve the Board of Library Trustees Meeting Minutes of March 4, 2024

**A motion was made by Vice Chair Hintermeister, seconded by Trustee Ricossa to approve Staff Recommendation.**

**Aye:** 4 - Trustee Tryforos, Vice Chair Hintermeister, Trustee Ricossa, and Chair Evans

**Excused:** 1 - Trustee Broughman

**PUBLIC PRESENTATIONS**

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**GENERAL BUSINESS**

- 2      [24-316](#)      Discussion and Action on Santa Clara City Library Draft Strategic Plan

**Recommendation:** Review and recommend revisions to the vision and mission statements and general content of the Santa Clara City Library Draft Strategic Plan.

The **Board** engaged in discussion with **Amanda Standerfer** of **Fast Forward Libraries**, the consultants working with the Library to develop a Strategic Plan. The **Board** reviewed and drafted language for the Vision and Mission statements.

- [24-318](#)      Discussion on Connecting with other City of Santa Clara Boards and Commissions

**Recommendation:** Discuss and identify Boards and Commissions to connect with.

The **Board** held discussion on opportunities to connect with other Boards and Commissions. **Trustee Tryforos** volunteered to attend the next **Youth Commission** meeting, **Vice Chair Hintermeister** volunteered to connect with the **Youth Commission**, and **Trustee Ricossa** to connect with the **Parks and Recreation Commission**. **City Librarian Wong** indicated she would coordinate connecting the **Board** members to the appropriate contact from those commissions.

DRAFT

**STAFF REPORT**

**City Librarian Wong** introduced a member of the public attending the meeting who expressed interest in one of the upcoming vacant positions on the **Board**. **Salim Muhammad** introduced himself and shared that he had applied to be a member of the **Board**. Another member of the public asked for more information about how to apply. **Chair Evans** provided information about the recruitment and how to apply.

**City Librarian Wong** informed the **Board** that two library staff members will be attending the City of Santa Clara Leadership Academy for professional development, **Patricia Zeider** and **Nicole Jarvis**. The **Board** was invited to view the Smithsonian BIAS Exhibit being presented at **Santa Clara University**, and reminded of the service for **Former City Manager Sparacino**. Her role in supporting the building of the **Central Park Library** and supporting the **Mission Branch Library** renovations was acknowledged.

Information about the upcoming second **City Council** Priority Setting session was shared with the **Board**. **Vice Chair Hintermeister** was thanked for speaking on the importance of the library at the first priority setting session, and the **Board** was informed about several callers from the community who brought up the importance of the library.

Information was shared about the upcoming Librarpalooza fundraising event being held at the Triton Museum on May 11, 2024, as well as about Comic Con, scheduled for October 2024.

**City Librarian Wong** reminded the **Board** about the Proclamation for National Library Week being presented at **City Council** on April 9th, and invited them once more to attend.



**TRUSTEES REPORT**

**Vice Chair Hintermeister** shared information on the Triton Tequila Tasting fundraiser for the **Triton Museum**.

**Vice Chair Hintermeister** asked about an upcoming Patrick Henry meeting and the status of Library inclusion in the plan.

**Vice Chair Hintermeister** shared that he took notes from the **Board/City Council** dinner, and raised the question if the **Board** might want to assign the role of secretary in the future. It was decided to add this as a question to address at a future meeting.

**ADJOURNMENT**

The meeting was adjourned at 8:13 PM.

**A motion was made by Trustee Ricossa, seconded by Trustee Tryforos to adjourn the meeting in memory of Jennifer Sparacino, former Santa Clara City Manager for 25 years.**

**Aye:** 4 - Trustee Tryforos, Vice Chair Hintermeister, Trustee Ricossa, and Chair Evans

**Excused:** 1 - Trustee Broughman

The Board of Library Trustees Meeting is adjourned to May 6, 2024, at 6:00 PM.

**MEETING DISCLOSURES**

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# City of Santa Clara

## Meeting Minutes

### Youth Commission

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03/12/2024

6:00 PM

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

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#### CALL TO ORDER AND ROLL CALL

The meeting was called to order by **Chair Maben** at **6:04 pm**.

**Present** 10 - Commissioner Simren Garg (6:20pm), Commissioner Namita Gaidhani, Commissioner Khadeejah Khan, Commissioner Kira Liang, Commissioner Keith Maben, Commissioner Samaira Mehta, Commissioner Hiranya Parekh, Commissioner Sudeepthi Ravipati, Commissioner Samarth Suresh, and Commissioner Sarah Zuo

**Absent** 5 - Commissioner Aarav Gupta , Commissioner Fatimah Ismail, Commissioner Maryam Ismail, Commissioner Ryan Kim, and Commissioner Malia Martin

**A motion was made by Commissioner Gaidhani, seconded by Commissioner Parehk to excuse Commissioner Gupta, Commissioner Fatimah Ismail, Commissioner Maryam Ismail, Commissioner Kim, and Commissioner Martin from the March 12, 2024 meeting. The motion carried by the following vote:**

**Aye:** 10 - Commissioner Garg, Commissioner Gaidhani, Commissioner Khan, Commissioner Liang, Commissioner Maben, Commissioner Mehta, Commissioner Parekh, Commissioner Ravipati, Commissioner Suresh, and Commissioner Zuo

**Absent:** 5 - Commissioner Gupta, Commissioner Fatimah Ismail, Commissioner Maryam Ismail, Commissioner Kim, and Commissioner Martin

#### CONSENT CALENDAR

**1.A**     [24-226](#)     Action on the Youth Commission Minutes of the February 13, 2024 Meeting

**A motion was made by Commissioner Maben, seconded by Commissioner Parehk, that this item be recommended for approval. The motion carried by the following vote:**

**Aye:** 10 - Commissioner Garg, Commissioner Gaidhani, Commissioner Khan, Commissioner Liang, Commissioner Maben, Commissioner Mehta, Commissioner Parekh, Commissioner Ravipati, Commissioner Suresh, and Commissioner Zuo

**Excused:** 5 - Commissioner Gupta, Commissioner Fatimah Ismail, Commissioner Maryam Ismail, Commissioner Kim, and Commissioner Martin

## **PUBLIC PRESENTATIONS**

None

## **GENERAL BUSINESS**

### **2. [24-228](#) Youth Commission FY 2023/24 Work Plan & Goals**

- **Community Building:** For the Food Spotlight, committee members visited SomiSomi & Eataly on February 23, 2024. Committee members sampled foods from these two businesses and created social media content for future posting.
- Next committee meeting will be held on April 22, 2024 at 7:00 pm on Zoom.
- **Public Outreach and Education:** Design flyer and social media content to encourage voter registration for young people.
- Follow up with Commissioners on biographies and prepare to share on social media. Next committee meeting will be held on April 16, 2024 at 6:30 pm on Zoom.
- **Youth Engagement and Empowerment:** Schedule the Santa Clara High School Health & Wellness coordinator to speak on the topic of Mental Health on an upcoming podcast. Committee members will provide an arts & crafts project at the Friday, April 12, 2024 Sunset Cinema event, held at Henry Schmidt Park.
- Next committee meeting will be held on April 4, 2024 at 7:00 pm on Zoom.

**STAFF REPORT**

**Gayle Ichiho, Recreation Supervisor:** The deadline for Youth Commission applications for the 2024-25 term passed and 40 applications were received. Interviews will be held on Saturday, March 16, 2024. At the conclusion of interviews, the panel is expected to provide recommended candidates for six (6) commissioner positions and two (2) alternate positions. At the Tuesday, May 7, 2024 City Council meeting, outgoing Youth Commissioners will be recognized for their service and recommended candidates will be presented to City Council for their consideration. The last Youth Commission meeting for the 2023-24 term will be on Tuesday, May 14, 2024 at the Youth & Teen Center.

**Jon Kawada, Recreation Coordinator:** On Saturday, March 23, 2024 Youth Commissioners will be volunteering at the Parks & Recreation Department's Breakfast with the Bunny event. Volunteers are requested to be there from 9-12 pm and will be helping in various areas of the event.

**COMMISSIONERS REPORT**

**Keith Maben, Youth Commission Chair:** For the upcoming Youth Commission interviews, **Chair Maben** will be serving on the interview panel.

**ADJOURNMENT**

**A motion was made by Commissioner Suresh, seconded Commissioner Parekh, that this meeting be adjourned at 6:22 pm. The motion was carried by the following vote:**

**Aye:** 10 - Commissioner Garg, Commissioner Gaidhani, Commissioner Khan, Commissioner Liang, Commissioner Maben, Commissioner Mehta, Commissioner Parekh, Commissioner Ravipati, Commissioner Suresh, and Commissioner Zuo

**Excused:** 5 - Commissioner Gupta, Commissioner Fatimah Ismail, Commissioner Maryam Ismail, Commissioner Kim, and Commissioner Martin

**MEETING DISCLOSURES**

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# City of Santa Clara

## Meeting Minutes

### Civil Service Commission

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02/08/2024

7:00 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 Civil Service Commission in a hybrid manner (in-person and a method for the public to participate remotely).

• Via Zoom:

<https://santaclaraca.zoom.us/j/86351228305?pwd=eFd5aDRVU0cyYUc0dFhaMjJiUWVSdz09>

Webinar ID: 863 5122 8305

Passcode: 761380

OR

Phone: 1 (669) 900-6833

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

**Chair Felizardo called the meeting to order at 7:02 PM and lead the meeting with the Pledge of Allegiance.**

**Present** 3 - Chair Franklin Felizardo, Commissioner Ron Billingsley, and Commissioner Arti Purohit

**Absent** 2 - Vice Chair Tahir Naim , and Commissioner Wesley Dudzinski

#### **CONSENT CALENDAR**

**1.A**     [24-85](#)     Action to Approve the Civil Service Commission Meeting Minutes of December 11, 2023

**A motion was made by Commissioner Purohit, seconded by Commissioner Billingsley, to Approve the Civil Service Commission Meeting Minutes of December 11, 2023.**

**Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit

**Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski

- 1.B**     [24-130](#)     Action to Approve the Civil Service Commission Meeting Minutes of December 18, 2023
- A motion was made by Commissioner Purohit, seconded by Commissioner Billingsley, to Approve the Civil Service Commission Meeting Minutes of December 18, 2023.**
- Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit
- Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski
- 1.C**     [24-119](#)     Note and File the Current Status and Requisition Report Dated January 31, 2024
- A motion was made by Commissioner Purohit, seconded by Commissioner Billingsley, to Note & File the Current Status and Requisition Report dated January 31, 2024.**
- Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit
- Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski

### **PUBLIC PRESENTATIONS**

None.

### **GENERAL BUSINESS**

- 2**        [24-83](#)        Action to Modify Various Class Specifications Listed on Attachment A to: (1) Modify the Weighting Plan, and (2) Remove the Typing Certification Requirement
- A motion was made by Commissioner Purohit, seconded by Commissioner Billingsley to modify various class specifications listed on Attachment A to: (1) Modify the Weighting Plan, and (2) Remove the Typing Certification Requirement.**
- Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit
- Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski
- 3**        [24-125](#)        Action to Extend Eligible List for Firefighter I (Job Code 487) to February 6, 2025
- A motion was made by Commissioner Billingsley, seconded by Commissioner Purohit to extend Eligible List for Firefighter I (Job Code 487) to February 6, 2025.**
- Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit
- Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski



- 4      [24-1620](#)      Action to Adjust the Examination Weighting Plan for Housing Inspector (Job Code 500) on an Ongoing Basis
- A motion was made by Commissioner Billingsley, seconded by Commissioner Purohit to adjust the Examination Weighting Plan for Housing Inspector (Job Code 500) on an Ongoing Basis.**
- Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit
- Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski
- 5      [24-127](#)      Reappoint John Sontag to the Salary Setting Commission for a Four (4) Year Term Ending December 31, 2027
- A motion was made by Commissioner Purohit, seconded by Commissioner Billingsley to reappoint John Sontag to the Salary Setting Commission for a Four (4) Year Term Ending December 31, 2027.**
- Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit
- Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski

#### **STAFF REPORT**

Staff informed the Civil Service Commission of their joint dinner with City Council on May 7, 2024 from 5:30 PM - 6:30 PM in Council Chambers.

[24-86](#)      Informational Report on Issues Relating to the Classified Recruitment Process

Annette Duerksen, president of the Santa Clara Employees' Association made several comments regarding the letter received by the Civil Service Commission on or about December 11, 2023.

**Noted and filed**

#### **COMMISSIONERS REPORT**

None.

#### **ADJOURNMENT**

**A motion was made by Commissioner Purohit, seconded by Commissioner Billingsley, to adjourn the Civil Service Commission Meeting at 5:51 PM.**

**Aye:** 3 - Chair Felizardo, Commissioner Billingsley, and Commissioner Purohit

**Absent:** 2 - Vice Chair Naim, and Commissioner Dudzinski

**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.



## Agenda Report

24-460

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Actions authorizing the County of Santa Clara to allocate up to \$409,950 of the City's 2020 Permanent Local Housing Allocation (PLHA) Funds to rehabilitate and preserve the Belovida Santa Clara Senior Apartments located at 1820 Main Street.

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

Senate Bill 2 (2017), as authorized by Health and Safety Code Section 50470, was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. One of the results was the creation of the Permanent Local Housing Allocation (PLHA) Program which uses recording fees on real estate documents to fund programs that increase the supply of affordable homes in California. PLHA allocations are based on the same formula used to award federal Community Development Block Grant (CDBG) funds to eligible communities in Federal Fiscal Year (FFY) 2017.

While actual funding amounts are determined each year, the State has estimated the City of Santa Clara's total five-year (2019-2023) PLHA allocation will be \$2,876,946. These funds are distributed in five installments over the five-year period of the agreement. The State requires jurisdictions and consortiums receiving PLHA funds to develop a five-year spending plan which identifies activities for which the funds will be used. PLHA funds may be used for any combination of the following ten activities:

- Activity #1: Construction and rehabilitation, including predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is Affordable to Extremely low-, Very low-, Low-, or Moderate-income households, including necessary operating subsidies.
- Activity #2: The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.
- Activity #3: Matching portions of funds placed into Local or Regional Housing Trust Funds.
- Activity #4: Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- Activity #5: Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.
- Activity #6: Assisting persons who are experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that

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allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.

- Activity #7: Accessibility modifications in Lower-income Owner-occupied housing.
- Activity #8: Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
- Activity #9: Homeownership opportunities, including, but not limited to, down payment assistance.
- Activity #10: Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the Project.

On December 7, 2021, the City Council adopted a resolution authorizing the City Manager to negotiate and execute a Consortium Agreement with the County of Santa Clara (County), that authorized the County to submit funding applications to the State of California on the City's behalf for the award of Permanent Local Housing Allocation (PLHA) Program funding. The resolution authorized the County to administer the City's PLHA funds in accordance with State requirements and with the Consortium Agreement.

The City initially asked the County to allocate 100% of the City's five-year PLHA funding toward predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, affordable rental housing.

On May 2, 2023 the City Council voted to commit funding for operations of the proposed Benton Lawrence interim family housing project, and the City directed the County to allocate the City's year three (2021), year four (2022), and year five (2023) PLHA funds (\$1,569,568 in total) to assist persons experiencing or at risk of homelessness. On October 24, 2023, the City Council approved an action authorizing the County of Santa Clara to Update the Five-Year Permanent Local Housing Allocation (PLHA) Plan to allocate an additional \$306,063 from the 2020 PLHA funds to further help fund operations at the proposed Benton Lawrence Interim Family Housing project. The Benton Lawrence Interim Family Housing project has not been awarded State Homekey funding. As a result, the total funding allocated to Benton Lawrence Interim Family Housing project will need to be reallocated and staff is preparing a recommendation for Council to consider.

However, as part of the October 24, 2023 actions, the City Council also delegated authority to the City Manager to make amendments to the PLHA Consortium Agreement and to direct the County to add or remove activities in the five-year PLHA plan on behalf of the City of Santa Clara, that are consistent with goals stated in a City Council adopted plan including but not limited to the Housing Element, the HUD Consolidated Plan, or the local homelessness response plan. City Council approval would still be required to allocate PLHA funds over \$250,000 to specific programs or projects.

On November 14, 2023 the City Council allocated up to \$455,516 in 2019 PLHA funds towards the construction of 106 affordable apartments and two manager's units at 1601 Civic Center Drive.

## DISCUSSION

Staff recommends allocating \$409,950 from the 2020 PLHA funds to the Belovida Santa Clara Senior Apartments (Belovida Santa Clara). This includes the reallocation of \$8,000 previously committed to the Benton Lawrence Interim Family Housing project to the Belovida Santa Clara. The 2020 PLHA funds have to be committed by April 30, 2025 and the City must take action in May 2024 to give the County sufficient time to process a revised plan and submit it to the state. Since this amount is over \$250,000, City Council approval is required. Staff recommends allocating these funds as part of a broader collaborative strategy to preserve and

stabilize the Belovida Santa Clara senior housing community.

Belovida Santa Clara:

City staff have been in discussions with CORE and Charities Housing regarding structural affordability challenges at the Belovida Santa Clara located at 1820 Main Street. Belovida Santa Clara is a 100% affordable project with twenty-seven 1-bedroom affordable rental units for residents ranging from 30-50% of Area Median Income. Many of the residents are extremely low income and cannot afford to pay the affordable rents that are allowed according to state income limits. The project sponsors have delayed rent increases and deferred maintenance for several years to prevent displacement of the residents. Without a long-term financial intervention, Belovida Santa Clara will need to raise rents to continue operating and this will lead to the displacement of elderly residents.

City staff have been working with Charities Housing, CORE, the County Office of Supportive Housing, Department of Veteran's Affairs, and Destination Home to structure a long-term solution to stabilize Belovida Santa Clara. The current strategy will convert seven units into permanent supportive housing for veterans using a variety of sources including VASH vouchers. The County intends to commit up to \$1,400,000 to pay off the existing senior loan and to fund other expenses. As part of the restructuring, Core will exit the general partnership; Charities (a non-profit affordable housing developer) will remain as the general partner and proceed with the buyout of the limited partnership. Charities Housing has received a reservation of seven Housing and Urban Development Veterans Affairs Supportive Housing (HUD-VASH) vouchers.

Charities Housing has received a commitment from Destination: Home for a two-year rent subsidy to eliminate the rent burden for existing elderly tenants. Destination Home intends to use this as a pilot project for addressing the growing problem of severely rent burdened seniors living in income restricted affordable housing.

Staff recommends using up to \$409,950 of the City's 2020 PLHA funds to cover deferred maintenance and repairs to ensure the project continues to be safe and livable going forward. These repairs include:

- Conversion of small unused community space to offices for the new service providers
- Replace entry fob security system
- Replace broken fire door on second floor
- Replace security camera system
- Repair or replace broken Community Room heater
- Replace air conditioning for Community Room AC
- Replace automatic ADA door opener and related hardware
- Patio irrigation drip system needs to be repaired
- Replace Mechanical Room doors and frame
- Repair 1st floor trash chute door
- Landscaping; tree trimming and conversion to drought tolerant planting
- Replace original boilers, holding tank and water softener
- Repair areas on the exterior that are deteriorated due to water intrusion/damage then recalk and paint
- Replace all interior unit carpet with hard surface flooring
- Paint interior hallways, and common areas including hallways and trash rooms
- Repair garage area leaks and repair damaged sheetrock

The following table provides an updated summary of PLHA funding that has already been allocated, and staff's recommendation for allocating this portion of the 2020 PLHA funds.

PLHA Funding Summary

| Year                        | Estimated Amount | Proposed Project                                      | Expenditure Deadline |
|-----------------------------|------------------|---|----------------------|
| 2019 (less admin)           | \$455,516        | Construction & Rehabilitation-<br>1601 Civic Ctr. Dr. | 4/30/2024            |
| 2020 (less admin)           | \$409,950        | Construction & Rehabilitation-<br>Belovida            | 4/30/2025            |
| 2020 (less admin)           | \$298,150        | Homelessness - TBD<br>Previously Benton/Lawrence      | 4/30/2025            |
| 2021 (less admin)           | \$779,148        | Homelessness - TBD<br>Previously Benton/Lawrence      | 4/30/2026            |
| 2022 (Estimated less admin) | \$395,210        | Homelessness - TBD Previously<br>Benton/Lawrence      | 4/30/2027            |
| 2023 (Estimated less admin) | \$395,210        | Homelessness - TBD Previously<br>Benton/Lawrence      | 4/30/2028            |

In conclusion, the City Council has already provided direction to use a portion of the City's 2020 PLHA funds for construction and rehabilitation activities. Staff recommends allocating these funds to stabilize and prevent displacement at the Belovida 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 City's allocation of PLHA funds is administered by the County of Santa Clara and restricted for use by the eligible uses contained in the agreement. The City directs how the City's portion of the annual PLHA allocations should be used for specific projects or programs. This action does not impact the City's budget.

COORDINATION

This report was coordinated with City Manager's Office, City Attorney's Office, Department of Finance, and Department of Community Development.

PUBLIC CONTACT

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

**RECOMMENDATION**

1. Direct the County of Santa Clara (PLHA fund administrator) to allocate up to \$409,950 from the City's 2020 Permanent Local Housing Allocation (PLHA) , which includes the reallocation of \$8,000 from a PLHA homelessness activity to a PLHA rehabilitation activity to help fund repairs at the Belovida Santa Clara Senior Apartments as part of a long-term repositioning of the project. This funding commitment shall be contingent upon National Environmental Policy Act (NEPA) clearance from HUD, if required.

Reviewed by: Reena Brilliot, Acting Director of Community Development

Approved by: Jovan Grogan, City Manager

**ATTACHMENTS**

1. PLHA Consortium Agreement with Santa Clara County

**PERMANENT LOCAL HOUSING ALLOCATION  
CONSORTIUM AGREEMENT  
BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF SANTA CLARA  
FOR THE PERIOD OF DECEMBER 15, 2021 TO JUNE 30, 2026, AND  
SUBSEQUENT AUTOMATIC RENEWALS UNLESS TERMINATED**

This Permanent Local Housing Allocation Consortium Agreement (“Agreement”), dated for reference purposes only as of December 15, 2021, is made by and between the City of Santa Clara (hereinafter referred to as “City”) and the County of Santa Clara, a political subdivision of the State of California (hereinafter referred to as “County”), acting as the lead entity for the County of Santa Clara Urban County Program, which program consists of the unincorporated areas of Santa Clara County and the cities of Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, and Saratoga (hereinafter collectively referred to as the “Urban County” and of which the seven cities only, excluding County, are hereinafter collectively referred to as “Urban County Cities”), relating to implementation of housing and homelessness activities funded by the State of California for Permanent Local Housing Allocation program funds, as defined below.

**RECITALS**

WHEREAS, in 2017 Chapter 364, Statutes of 2017 (SB 2), authorized by Health and Safety Code section 50470, which created the Building Homes and Jobs Trust Fund and the Permanent Local Housing Allocation (hereinafter referred to as “PLHA”) program, was enacted, the primary objective of which is to create a permanent source of funding available to eligible local governments in California for housing-related projects and programs that assist in addressing the unmet housing needs of their local communities; and

WHEREAS, the PLHA Final Guidelines (hereinafter referred to as the “Guidelines”), dated October 2019, implement, interpret, and make specific the PLHA program and establish the terms, conditions, and procedures for local governments to submit applications to the California Department of Housing and Community Development (HCD) for PLHA funds; and

WHEREAS, under the PLHA program, City and County are each considered an Eligible Applicant (as defined in Section 300 of the Guidelines) to receive PLHA funding under the Entitlement Formula Component, which distributes funding to metropolitan cities and urban counties that were allocated a grant for federal fiscal year 2017 pursuant to the federal Community Development Block Grant formula specified in 42 USC section 5306; and

WHEREAS, the Guidelines authorize an Eligible Applicant to delegate another Eligible Applicant to submit an application and administer on its behalf its formula allocation of PLHA funds provided that the entities enter into a legally binding agreement and the funds are expended for eligible activities consistent with PLHA requirements; and



WHEREAS, City wishes to delegate authority to County to submit an application and administer the funding on City's behalf; and

WHEREAS, County wishes to accept the delegation of authority from City to apply for and administer City's PLHA allocation and serve as the administrator (hereinafter the "Administering Local Government") responsible for all PLHA requirements; and

WHEREAS, it is the desire of City and County to enter into this Agreement and, along with the City of Cupertino and the City of Gilroy, create the Santa Clara County PLHA Consortium for the purpose of implementing the objective of addressing unmet housing needs (the City, along with the City of Cupertino and the City of Gilroy, may be referred to herein as the "Consortium Cities"); and

WHEREAS, it is the desire of City and County that this Agreement be renewed every five years.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. **RECITALS.** The above recitals are true and correct and incorporated herein.
2. **CREATION OF SANTA CLARA COUNTY PLHA CONSORTIUM.** By entering into this Agreement the City and County agree to be part of the Santa Clara County PLHA Consortium (the "PLHA Consortium") for the purpose of receiving PLHA funds and undertaking affordable housing activities within the areas served by the PLHA Consortium, which includes the City of Cupertino, Gilroy, Santa Clara and the Urban County. City understands and agrees that City will not be eligible for a separate PLHA allocation from HCD during any time City is participating in the PLHA Consortium, and City may not withdraw from the PLHA Consortium until the end of the term of this Agreement.
3. **TERM OF AGREEMENT.** The term of this Agreement shall commence on the later of December 15, 2021 and the Effective Date and shall expire on June 30, 2026 (such period hereinafter referred to as the "Initial Term"), subject to renewal for successive five-year periods pursuant to section 4 (the Initial Term and any renew thereof may be referred to as the "Term"). The Initial Term is intended to cover revenues collected under SB2 and allocated to the PLHA program by HCD during Calendar Years 2019, 2020, 2021, 2022 and 2023.
4. **RENEWAL; EXPIRATION; TERMINATION.** The Term of this Agreement shall automatically renew for subsequent periods of five years each unless either party gives the other written notice of nonrenewal at least thirty (30) days prior to expiration of the current Term.

Should City or County wish to withdraw from the PLHA Consortium and terminate this Agreement during the Term, both parties agree that termination is subject to approval by HCD and both parties agree to take necessary steps required by HCD to effectuate the termination. Should approval not be provided by HCD, City and County agree that they cannot withdraw and this Agreement cannot be terminated until the end of the current Term.

5. **AMENDMENTS.** Notwithstanding anything to the contrary in this Agreement, if amendments to this Agreement are necessary solely to meet requirements identified in any communication published and/or issued by HCD or required under the PLHA program, City and County agree that County is authorized to amend this Agreement to comply with such requirements ( herein referred to as “PLHA Amendment”) County shall provide thirty (30) days’ notice of any PLHA Amendment to City as set forth in section 11. County shall provide additional advance notice to City of any PLHA Amendment to the extent practicable. City’s failure to object to the PLHA amendment within thirty (30) days of receipt of notice shall be deemed an acceptance of the proposed amendment. Except as set forth in this section and section 15.3, all other amendments to this Agreement must be approved in writing by City and County.
  
6. **PROGRAM ADMINISTRATION.** County shall serve as the Administering Local Government, as the term is used in the Guidelines, under this Agreement. County shall assume overall responsibility for submitting applications for funding and administering PLHA programs in accordance with the Guidelines. County shall be specifically responsible for the following:

**6.1 RESPONSIBILITIES OF COUNTY**

- 6.1.1 Preparation and submission to HCD of the application in compliance with section 302(c) of the Guidelines, PLHA Plan in accordance with section 302(c)(4) of the Guidelines, and all other documents necessary for the PLHA Consortium to qualify and receive allocations of PLHA funding to carry out the purposes of this Agreement;
- 6.1.2 Preparation of amendments to the PLHA Plan, in consultation with City, pursuant to section 302(c)(5) of the Guidelines;
- 6.1.3 Execution of the Standard Agreement with HCD for PLHA funding;
- 6.1.4 Administration of the development of funding recommendations to be discussed with the PLHA Consortium and development of a set of recommendations for funding to County’s Board of Supervisors, which holds final approval responsibilities;
- 6.1.5 Contract preparation, management, and monitoring during activity implementation, affordability period, and record retention period of all activities funded with PLHA;
- 6.1.6 Financial compliance with PLHA program requirements, including compliance with all set-aside requirements; and receipt, disbursement,

and accounting of all PLHA program funds, and program income generated by activities funded;

- 6.1.7 Achieve and maintain compliance of its Housing Element as determined by HCD and submittal of Housing Element Annual Progress Reports (APRs) to HCD. Housing Element compliance and submission of Housing Element APRs are PLHA threshold requirements under section 302 of the Guidelines;
- 6.1.8 Preparation and submission of a PLHA Plan detailing proposed uses of PLHA funding for each upcoming five-year term or other subsequent document as required by HCD, in collaboration with City;
- 6.1.9 Submission of all reports, including the PLHA Annual Report on a form to be provided by HCD, and data as may be required by HCD, including but not limited to those detailed in section 503 of the Guidelines; and
- 6.1.10 Technical assistance on all aspects of the PLHA program.

7. **CITY RESPONSIBILITIES.** City shall take all actions necessary to comply with the PLHA program and applicable state laws and regulations as they relate to its activities located within the City. City shall be specifically responsible for the following:

**7.1 RESPONSIBILITIES OF CITY**

- 7.1.1 Cooperate with County, prepare and supply information to be included in the PLHA application and PLHA Plan;
- 7.1.2 Prepare and supply in a timely manner information as required by HCD on housing programs and plans within City;
- 7.1.3 Achieve and maintain compliance of its Housing Element as determined by HCD and submittal of Housing Element APRs to HCD. Housing Element compliance and submission of Housing Element APRs are PLHA threshold requirements under section 302 of the Guidelines.

8. **CONTRACT ADMINISTRATION.** The County Executive Officer or his or her designee shall be the County administrator and shall administer this Agreement on behalf of County. City's City Manager shall administer this Agreement on behalf of City.

9. **RECORDS AND REPORTS.** County shall maintain records as required by HCD. All records, including but not limited to records identified section 501 of the Guidelines, shall be open and available for inspection by auditors assigned by HCD and/or City during normal business hours of County. City shall submit such reports and information as may be necessary for County to fulfill its obligations as administrator of the PLHA Consortium.

**10. INDEMNIFICATION AND INSURANCE.**

**10.1 INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between City and County pursuant to California Government Code section 895.6, City and County agree that all losses or liabilities incurred by either City or County shall not be shared pro rata but instead City and County agree that pursuant to California Government Code section 895.4, each shall fully indemnify and hold the other, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties to this Agreement, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

**10.2 INSURANCE**

Each party shall maintain its own insurance coverage, through commercial insurance, self insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

11. **NOTICE.** Any and all notices pursuant to, or in furtherance of the purposes of, this Agreement shall be deemed delivered if personally served upon the County Executive Office of County or upon the City Manager’s Office of City or if sent via the United States Postal Service, postage prepaid:

Directed to County, addressed as follows:

Director  
Office of Supportive Housing  
County of Santa Clara  
2310 N. First Street, Suite 201  
San Jose, CA 95131

Directed to City of Santa Clara, addressed as follows:

City Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

12. **DISTRIBUTION OF FUNDS.** Funds available on an annual basis for PLHA activities will equal the amount of the annual allocation of PLHA funds to the PLHA Consortium

less 5% of the total annual allocation for administrative costs in accordance with Article V of the Guidelines.

Program income received in a Calendar Year or funding that was returned (through loan repayments, return of unused funds, or otherwise) from any prior Calendar Year may be added to the amount to be made available for PLHA-assisted activities in any given year, in compliance with the HCD-approved Program Income Reuse Plan. Notwithstanding the foregoing, County has and retains the right to reallocate uncommitted funds (that is, funds that are not allocated to an eligible activity) or funds committed to PLHA activities that are not progressing in compliance with PLHA program requirements to other activities to ensure compliance with section 300(e) of the Guidelines and ensure that the PLHA Consortium is eligible to receive annual allocations of PLHA.

There will be no guaranteed minimum nor maximum amount of funding allocated to County or any Consortium City or to activities located within County or any Consortium City.

#### **12.1 PLHA FUNDING CYCLE**

The PLHA Consortium will utilize the County's existing solicitation process to identify multifamily affordable and supportive housing rental housing and homeownership opportunities. Specifically, the over-the-counter Supportive Housing Development Program Notice of Funding Availability will be utilized to identify development proposal or consideration. All proposals must be submitted directly to the County. The County through the Office of Supportive Housing will provide a recommendation to the PLHA Consortium for consideration. Services provided to the homeless will be consistent with the 2020 – 2025 Community Plan to End Homelessness, the recommendations from the 2020 Countywide Unhoused Task Force, and the Santa Clara County Continuum of Care Quality Standards.

County will request a list of activities from the Consortium Cities every February for PLHA-assisted activities. Each Consortium City reserves the right to establish such list through a formal action or discussion at the City Council level. The County intends to establish a funding cycle calendar which delineates the steps the PLHA Consortium will take and deadlines for activities to be considered for an award of PLHA funding. County reserves the right to determine threshold eligibility of proposed activities and to work with the PLHA Consortium on developing a set of recommendations that are not administratively burdensome. To that end, the PLHA Consortium agrees to establish a minimum award of \$100,000 for any approved activity.

Prior to final approval of the funding recommendations by County's Board of Supervisors, which shall take place during a regularly scheduled Board of Supervisors meeting, County will make available for review and comment by the Consortium Cities the following information: a description of the proposed activities to be undertaken and

preliminary allocations of funding. Each Consortium City shall have 21 calendar days after the information is made available to request revisions to the funding recommendations. In the event that a revision is requested, a committee will be convened, with up to one representative from each Consortium City that chooses to participate, to discuss, determine and approve the final funding recommendations. The committee shall adhere to established funding priorities and consider threshold eligibility as well as each activity's readiness, when making final funding recommendations to the Board of Supervisors.

### **12.2 ADMINISTRATIVE FEES**

Pursuant to section 301(b) of the Guidelines, HCD permits a jurisdiction to retain up to 5% of each annual PLHA allocation for the administration of the PLHA program. County, as the Administering Local Government, will retain the administrative set-aside to offset the costs of administering the PLHA program. No administrative funds will be allocated to any Consortium City.

### **12.3 EXCLUSION OF FUNDS**

This Agreement applies only to those funds received under the PLHA program and program income generated by PLHA funds. This Agreement does not apply to or control funds other than those described in this section.

### **12.4 PLHA CONSORTIUM'S OBLIGATION TO DISTRIBUTE FUNDS**

If PLHA funds are not awarded to the PLHA Consortium by HCD or if this Agreement is terminated or suspended, County has no obligation to provide PLHA funding.

- 13. ELIGIBLE ACTIVITIES.** The PLHA Consortium recognizes the creation and preservation of affordable housing in Santa Clara County and assistance to persons who are experiencing or At-risk of homelessness as high priorities. The implementation of the programs will be determined by County upon consultation with the Consortium Cities and will depend upon the availability of funding to operate the program and the administrative capacity of County and/or subcontractor(s).

The following eligible activities under the PLHA program were selected by the City to address the lack of housing availability and affordability in Santa Clara County and are the focus of the Initial Term of the PLHA program administered by County:

Consortium Members agree to the following:

13.1 Cities may direct that all or a portion of their annual PLHA allocation be used for specific use(s) to benefit their respective city or pool their funds with other Consortium Funds to fund eligible uses countywide, provided that no one eligible use will utilize less than the lesser of the city's total allocation for that Fiscal Year, or \$100,000. As such the City of Santa Clara directs that their annual PLHA allocation be used for the following specific use(s):

13.1.i 100% of the City of Santa Clara’s annual PLHA allocation, minus the five (5%) administrative fee, will be directed to, pursuant to section 301(a)(1) of the Guidelines, the predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households (pursuant to section 101(c)(1) and (3) as of the Guidelines), including necessary operating subsidies.

13.1.ii

Cities may save or “bank” their annual allocation(s) for use in a future year for an eligible use within their city, up to a total of three years’ allocation. If, after three years of banking its funds, the City has not identified eligible use(s) for the City’s Funds; the County will work with the City to identify alternative eligible projects.

14. **PROGRAM INCOME REUSE PLAN.** As required by HCD, PLHA program income will be governed by a Program Income Reuse Plan and utilized for eligible activities as set forth in section 301 of the Guidelines. The Program Income Reuse Plan will be prepared by County and approved by HCD.

In the event the PLHA Consortium is dissolved, and County continues to manage a PLHA program, remaining program income as well as any program income subsequently received from activities undertaken by the PLHA Consortium may be used for the activities of County's PLHA program. In the event the PLHA Consortium is dissolved and County does not continue to manage a PLHA program, remaining PLHA and program income subsequently received from activities undertaken by the PLHA Consortium will be reallocated in accordance with the Program Income Reuse Plan or at the direction of HCD.

15. **NEW MEMBERS.** New members to the PLHA Consortium may be allowed upon receipt of a request made to County to join the PLHA Consortium as provided for below.

**15.1 AUTHORIZING RESOLUTIONS**

Each request to join the PLHA Consortium must be accompanied by a certified copy of the authorizing resolution by the governing body of the requesting jurisdiction.

**15.2 AVAILABILITY OF PLHA FUNDS**

PLHA funds shall not be available to a new member of the PLHA Consortium until the year in which HCD includes that jurisdiction in its calculations for distribution of PLHA funds.

**15.3 AUTHORITY TO AMEND AGREEMENT TO ADD NEW MEMBERS**

County is authorized to amend this Agreement on behalf of City and County to add a new member to the PLHA Consortium except that County shall notify City as soon as practical but no less than two months in advance of an addition of a new member, and if County receives written notice from City that such City wishes a meeting to discuss the

matter, a meeting thereupon will be held by County with regard to such potential new membership.

16. **AUTHORITY TO JOIN PLHA CONSORTIUM.** County and City each hereby certify that it is authorized to enter into this Agreement.

17. **COOPERATION IN UNDERTAKING HOUSING ASSISTANCE UNDER PLHA.** City and County agree to cooperate to undertake or to assist in the undertaking of housing assistance activities for the PLHA program.

18. **COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (U ETA). The counterparts of this Agreement may be executed and delivered by electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

**IN WITNESS WHEREOF,** City and County have executed this Agreement as of the dates set forth below.

COUNTY OF SANTA CLARA

CITY OF SANTA CLARA

DocuSigned by:  
*Consuelo Hernandez*  
By \_\_\_\_\_  
7B3319C0D83D4AC...

Consuelo Hernandez, Director

12/22/2021  
Date \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:  
*Karen Willis*  
\_\_\_\_\_

KAREN WILLIS  
Deputy County Counsel

DocuSigned by:  
*Cynthia Bojorquez*  
By \_\_\_\_\_

Name: Cynthia Bojorquez  
Title: Assistant City Manager

12/22/2021  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:  
*Sujata Reuter*  
\_\_\_\_\_

Sujata Reuter  
Office of the City Attorney

12/21/2021  
Date \_\_\_\_\_





## Agenda Report

24-99

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Action on Award of Purchase Order to Canon Solutions America, Inc. for Citywide Leases and Maintenance Services for Copier/Multi-Function Devices (MFDs)

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

On September 26, 2017, the City Council approved an agreement with Ricoh USA, Inc. (Ricoh) for Citywide Leases and Maintenance Services for Copier/Multi-Functional Devices (MFDs). The City leveraged a cooperative agreement through U.S. Communities (now OMNIA Partners). OMNIA Partners is an organization that brings together cooperative purchasing contracts for local government agencies. Currently, Ricoh provides approximately 100 Copier/Multi-Functional Devices (MFDs) located at various city facilities, along with toner replacements and repair services, used by City staff for copying, scanning, printing, and faxing.

The agreement with Ricoh has an initial term of five years plus two one-year options for a total of seven years. On August 30, 2022, the City Council approved Amendment No. 1 to exercise both options to extend the agreement through August 31, 2024.

#### DISCUSSION

In 2023, staff conducted research on cooperative agreements for copier/multifunctional devices lease and maintenance services. Their review encompassed various factors including the term of the agreements, range of services, product availability, and lease options. Staff identified cooperative purchasing agreements with OMNIA Partners that were competitively solicited and publicly awarded by the University of California (UC) system. Subsequently, staff invited the following three vendors to provide product demonstrations:

- Canon Solutions America Inc.
- Ricoh USA
- Xerox Corporation

Demonstrations were independently evaluated by a three-member evaluation team based on predetermined evaluation criteria. In addition, evaluators considered input from end users across the City who attended the demonstrations.

Staff recommends an award to Canon Solutions America, Inc. (Canon) for providing the best value including better print quality, integration with apps and onsite device management portal. This recommendation is pursuant to City Code Section 2.105.270(c) which states that the City may,

without observing formal bidding requirements, “contract with a vendor under a contract awarded using preestablished cooperative purchasing agreements, when such agreement resulted from a competitive bid process that meets or exceeds the City’s competitive bid process.” The Purchasing Division Manager has determined that the above-mentioned competitive process meets or exceeds the City’s process.

The City will issue Purchase Orders to Canon that incorporate the Master Sales and Services Agreement Contract # 2020002755 (Master Agreement) available through OMNIA Partners. The terms and conditions are established under the Master Agreement, and the City’s Purchase Order(s) will define the terms specific to the City including pricing. The Master Agreement is effective from December 16, 2020 to December 15, 2025, plus five one-year options to renew through December 15, 2030. Pursuant to the terms of the Master Agreement, all purchase orders issued and accepted by Canon may survive the expiration or termination of the Master Agreement, thus allowing participating agencies’ purchase orders to exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Therefore, the City has negotiated an initial five-year term with five additional one-year options.

Under the purchase order, the City will pay a fixed monthly lease fee for the equipment, plus a per copy charge (print usage). While the lease price is a fixed amount, usage charges can vary and are difficult to forecast accurately. Based on previous data, the City’s monthly usage costs are forecasted to be approximately \$5,000 per month. Canon has agreed to reduce their price by 6% in addition to the price listed under the OMNIA Partners agreement. The estimated monthly amount for leases is \$13,500 and print usage is \$5,000 during the initial five-year term for an amount of \$1,110,000, and a contingency of \$166,500 for a total maximum compensation of \$1,276,500. Contingency is included to account for any usage charges that go beyond the forecast amount or for any unforeseen needs for additional equipment or services in the future. Beyond the initial term, the anticipated need for each option year is \$244,200 and a contingency of \$36,630 for a total annual maximum compensation of \$280,830. The estimated amount for each option year is based on potential price increases, increased usage charges, and changes in the number of equipment, considering a maximum total increase of 10%.

### 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

The Information Technology Department’s annual operating budget includes funding for printing services and is sufficient to cover the costs of this new agreement. Any additional funding required will be considered as part of the budget process.

### 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

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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 execute a Purchase Order with Canon Solutions America Inc. for Citywide Leases and Maintenance Services for Copier/Multi-Function Devices under the Master Agreement with lead public agency University of California through OMNIA Partners for an initial five-year term through June 30, 2029, with maximum compensation not-to-exceed \$1,110,000 subject to the appropriation of funds and in a final form approved by the City Attorney;
2. Authorize the City Manager to execute change orders for a not-to-exceed contingency amount of \$166,500 in the event additional equipment is required and/or usage increases during the initial term, subject to appropriation of funds and in a final form approved by the City Attorney; and
3. Authorize the City Manager to execute up to five one-year options to extend the purchase order after the initial term through June 30, 2034, pursuant to the terms of the cooperative solicitation, subject to the appropriation of funds, and in a final form approved by the City Attorney.

Reviewed by: Gaurav Garg, Director of Information Technology/CIO

Approved by: Jovan Grogan, City Manager

### ATTACHMENTS

1. Executive Summary - OMNIA Partners and UC
2. UC Contract - Canon Solutions America, Inc.



Print Good and Services UC Systemwide  
Executive Summary

**Lead Agency:** University of California

**Solicitation:** # 001811-FEB2020

**RFP Issued:** April 21, 2020

**Pre-Proposal Date:** April 27, 2020

**Response Due Date:** September 13, 2019

**Proposals Received:** # 6

**Awarded to:** Canon Solutions America

**Agreement No.** 202000275

The University of California, Office of the President (UC) issued RFP # 00811-FEB2020 on April 21, 2020 to establish a national cooperative contract to assist UC and national participating agencies, in obtaining the best, most cost-effective and efficient procurement program for MFDs, Laser Printers, related goods, services and supplies.

The Regents of the University of California partnered with OMNIA Partners to include a national cooperative purchasing opportunity:

*The purpose of this Request for Proposal (the "RFP") is to invite qualified Printer Manufacturers ("Supplier(s)") to prepare and submit proposals to the University of California ("UC") to provide multifunction devices ("MFDs") with copy, print, scan and optional fax functionality, and/or Laser Printers, along with products and support ("Print Goods and Services") all in accordance with Federal and State of California laws and the requirements of the UC as further detailed in this RFP. The UC has partnered with OMNIA Partners to make the resultant agreement a national cooperative agreement which public agencies, across the country, will be able to utilize.*

*The overall objective of this RFP is to select a Supplier, or multiple Suppliers, to assist UC, and national participating agencies, in obtaining the best, most cost-effective and efficient procurement program for MFDs, Laser Printers, related goods, services and supplies. In addition, Qualified proposers are invited to submit proposals, based on the information provided in this RFP with the intent to establish a business alliance with UC and OMNIA Partners, that will maximize the resources of both organizations to most effectively meet national participating agencies', and the UC's, needs.*

Notice of the solicitation was sent to potential offerors, as well as advertised in the following:

- CalUSource website
- OMNIA Partners, Public Sector website
- USA Today, nationwide
- Arizona Business Gazette, AZ
- San Bernardino Sun, CA
- Honolulu Star-Advertiser, HI
- The Advocate – New Orleans, LA
- New Jersey Herald, IL
- Times Union, NY
- Daily Journal of Commerce, OR
- The State, SC
- Houston Community Newspapers, Cy Creek Mirror, TX
- Deseret News, UT
- Richmond Times, VA
- Seattle Daily Journal of Commerce, WA
- Helena Independent Record, MT
- Las Vegas Review Journal, NV
- The Herald-News, IL

On June 5, 2020 proposals were received from the following offerors:

- Canon Solutions America
- Hewlett Packard (HP)
- Konica Minolta Business Solutions
- Ricoh Americas Corporation
- Sharp Electronics
- Toshiba America Business Solutions
- Xerox Corporation

The proposals were evaluated by an evaluation committee. Using the evaluation criteria established in the RFP, the committee determined that Canon Solutions Americas demonstrated the ability to provide the products and services outlined in the solicitation while offering competitive pricing to members. UC executed a purchasing agreement on December 15, 2020.

Contract Highlights:

Canon (CSA) provides industry leading enterprise, production, and large format printing solutions, supported by exceptional professional service offerings. CSA helps companies of all sizes improve sustainability, increase efficiency, and control costs through high volume, continuous feed, digital and traditional printing, and document management solutions.

Contract includes:

CSA full catalog offering for the purchase and/or lease of multifunction devices (MFDs) with copy, print, scan, and optional fax functionality, and/or Laser Printers, along with related products as well as managed print solutions. Additional services include hard drive removal and accessory installation/maintenance.

Term:

Initial five (5) year agreement from December 16, 2020 through December 15, 2025 with the option to renew for five (5) additional one-year periods through December 15, 2030.

Pricing/Discount:

Minimum discount off MSRP for purchase. Refer to price schedule for optional lease and service cost.

OMNIA Partners, Public Sector Web Landing Page:

<https://public.omniapartners.com/suppliers/canon-solutions-america/contract-documentation#c36035>

**University of California (UC)**

**Contract # 2020002755**

*for*

Print Goods and Services

*with*

**Canon Solutions America, Inc.**

Effective: December 16, 2020

The following documents comprise the executed contract between the University of California, Office of the President and Canon Solutions, America, Inc. effective December 16, 2020:

- I. Executed Purchasing Agreement
- II. Supplier's Response to the RFP, incorporated by reference



The Agreement to furnish certain goods and services described herein and in the documents referenced herein (“Goods and/or Services”) is made by and between The Regents of the University of California, a California public corporation (“UC”) on behalf of the University of California, and the supplier named below (“Supplier”). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

Supplier: Canon Solutions America, Inc. One Canon Park, Melville, New York 11747

## 1. Statement of Work

Supplier agrees to perform the Services listed in the statement of work attached as Attachment A (“Statement of Work”) and any other documents referenced in the Incorporated Documents section herein, at the prices set forth in the Statement of Work and any other documents referenced in the Incorporated Documents section herein. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Goods and/or Services from Supplier.

## 2. Term of Agreement/Termination

- a) The initial term of the Agreement will be from **12/16/20** and through **12/15/25** (Initial Term) and is subject to earlier termination as provided below. UC may renew the Agreement for 5 (**five**) successive **1 (one)** -year periods (each, a Renewal Term), by providing Supplier with at least **15** calendar days’ written notice before the end of the Initial Term or any Renewal Term.
- b) UC may terminate the Agreement for convenience by giving Supplier at least **30** calendar days’ written notice.
- c) UC or Supplier may terminate the Agreement for cause by giving the other party at least **15** days’ notice to cure a breach of the Agreement (Cure Period). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.

## 3. Purchase Order; Advance Payments

Unless otherwise provided in the Agreement, Supplier may not begin providing Goods and/or Services until UC approves a Purchase Order for the Goods and/or Services.

## 4. Pricing, Invoicing Method, and Settlement Method and Terms

Refer to Statement of Work or Purchase Order for Pricing. For systemwide agreements, each UC Location will specify the Invoicing Method and Payment Options that will apply, taking into account the operational capabilities of Supplier and the UC Location. See UC’s Procure to Pay Standards <http://www.ucop.edu/procurement-services/files/Matrix%20for%20website.pdf> for the options that will be considered. In the case of systemwide agreements, each UC Location will specify these terms in a Statement of Work or Purchase Order, as the case may be.]

All invoices must clearly indicate the following information:

- a. California state and local sales tax as a separate line item (if applicable), including the rate employed.
- b. Purchase Order or Release Number and the Agreement Number
- c. Description and Quantity, of the Products and Support ordered
- d. Net Cost of each item
- e. Any applicable discount(s)
- f. Reference to original order and invoice number for all credit invoices issued
- g. Original order and invoice number for all credit invoices issued
- h. On invoices for impressions or overage: for each device, (1) the number of impressions and the impression rate, (2) the number of overage impressions and the impression overage rate, and (3) the taxable amount of these impressions or overage. Tax is NOT to be included for labor or technical service charges.



- i. Start and end meter counts for each device.
- 1. Maintenance charges must be invoiced on separate invoices from lease or purchase charges.
- 2. If a UC Location has an MFD/Printer Fleet management program, individual device maintenance invoices and individual device lease invoices must be consolidated into separate summary invoices.
- 3. Invoices shall NOT contain line items for training, delivery, or other charges not expressly detailed in the SOW.
- 4. Supplier will provide a designated contact for billing/invoicing questions and issues. This contact must be available 8-5 PST/PDT, Monday-Friday.
- 5. Invoices will be submitted directly to the UC Locations' Accounting Departments unless:
  - a. The MFD/Printer Fleet management program at the UC Location requests invoices from Bidder be sent directly to the program, or
  - b. The Supplier is notified otherwise by Amendment to the Agreement.
- 6. Usage billing and Meter Reading:
  - a. Meter readings may not be estimated for use in invoicing, unless approved by the end user
  - b. Service meters may not be used for invoicing, unless approved by the end user
  - c. If meters are supplied monthly by MFD/Printer Fleet management programs, these meters must be the basis for maintenance invoicing.

Supplier will submit invoices following the designated invoice method directly to UC Accounts Payable Departments at each UC Location, unless UC notifies the Supplier otherwise by amendment to the Agreement.

## 5. Notices

As provided in the UC Terms and Conditions of Purchase, notices may be given by email, which will be considered legal notice only if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the case may be, Supplier name or University of California]. If a physical format notice is required, it must be sent by overnight delivery or by certified mail with return receipt requested, at the addresses specified below.

To UC, regarding confirmed or suspected Breaches as defined under Appendix – Data Security:

|                |                        |
|----------------|------------------------|
| <b>Name</b>    | David Rusting          |
| <b>Phone</b>   | 510-987-0086           |
| <b>Email</b>   | David.rusting@ucop.edu |
| <b>Address</b> | 1111 Franklin Street   |
|                | Oakland, CA 94607      |

To UC, regarding Breaches or Security Incidents as defined under Appendix – Business Associate:

|                |  |
|----------------|--|
| <b>Name</b>    | Noelle Vidal   |
| <b>Phone</b>   | 510.987.0725   |
| <b>Email</b>   | <a href="mailto:noelle.vidal@ucop.edu">noelle.vidal@ucop.edu</a> |
| <b>Address</b> | 1111 Franklin Street   |
|                | Oakland, CA 94607  |

To UC, regarding personal data breaches as defined under Appendix – General Data Protection Regulation:

|                |  |
|----------------|--|
| <b>Name</b>    | Monte Ratzlaff   |
| <b>Phone</b>   | 51-987-0858  |
| <b>Email</b>   | <a href="mailto:Monte.ratzlaff@ucop.edu">Monte.ratzlaff@ucop.edu</a> |
| <b>Address</b> | 1111 Franklin Street   |
|                | Oakland, CA 94607  |

To UC, regarding contract issues not addressed above:

|                |  |
|----------------|--|
| <b>Name</b>    | Michael Wegmann  |
| <b>Phone</b>   | 510-987-0428   |
| <b>Email</b>   | <a href="mailto:Michael.wegmann@ucop.edu">Michael.wegmann@ucop.edu</a> |
| <b>Address</b> | 260 Cousteau Place Suite 150   |
|                | Davis, CA 95618  |

To Supplier:

|                |  |
|----------------|--|
| <b>Name</b>    | CSA Customer Care  |
| <b>Phone</b>   |  |
| <b>Email</b>   | <a href="mailto:Customercare@csa.canon.com">Customercare@csa.canon.com</a> |
| <b>Address</b> | 300 Commerce Square Blvd.  |
|                | Burlington, NJ 08016   |

Legal Notice for Canon Solutions America, Inc.

|                |  |
|----------------|--|
| <b>Name</b>    | VP, Legal  |
| <b>Phone</b>   |  |
| <b>Email</b>   | <a href="mailto:legal@csa.canon.com">legal@csa.canon.com</a> |
| <b>Address</b> | One Canon Park   |
|                | Melville, NY 11745   |

## 6. Intellectual Property, Copyright and Patents

The Goods and/or Services involve Work Made for Hire

The Goods and/or Services **do not** involve Work Made for Hire

## 7. Patient Protection and Affordable Care Act (PPACA)

Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the T&Cs.

The Services do not involve temporary or supplementary staffing, and they are not subject to the PPACA warranties in the T&Cs.

## 8. Prevailing Wages

Supplier is not required to pay prevailing wages when providing the Services.

## 9. Fair Wage/Fair Work

Supplier is not required to pay the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) when providing the Services.

## 10. Restriction Relating to Consulting Services or Similar Contracts – Follow-on Contracts

Please note a Supplier that is awarded a consulting services or similar contract cannot later submit a bid or be considered for any work “required, suggested, or otherwise deemed appropriate” as the end product of the Services (see Public Contract Code Section 10515).

## 11. Insurance

Deliver the PDF version of the Certificate of Insurance to UC’s Buyer, by email with the following text in the Subject field: CERTIFICATE OF INSURANCE –Canon Solutions America, Inc.

## 12. Cooperative Purchasing

Supplier agrees to extend for Goods and/or Services to participating agencies (public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities) registered with OMNIA Partners, Public Sector under the terms of this agreement, subject to 16(i) below, the terms of which shall be controlling. All contractual administration issues (e.g. terms and conditions, extensions, and renewals) will remain UC’s responsibility except as outlined in the above referenced Request for Proposal “RFP – Print Goods and Services- – UC Systemwide.” Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual participating agencies will be addressed, administered, and resolved by each participating agency.

## 13. Service-Specific and/or Goods-Specific Provisions

See SOW

## 14. Records about Individuals

Records created pursuant to the Agreement that contain personal information about individuals (including statements made by or about individuals) may become subject to the California Information Practices Act of 1977, which includes a right of access by the subject individual. While ownership of confidential or personal information about individuals is subject to negotiated agreement between UC and Supplier, records will normally become UC’s property, and subject to state law and UC policies governing privacy and access to files. When collecting the information, Supplier must inform the individual that the record is being made, and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in the Statement of Work.

## 15. Amendments to the UC Terms and Conditions of Purchase

15 A. *The UC Terms and Conditions of Purchase, dated 2/20/2020 are hereby amended as follows:*

i. **Article 2.D.** The last sentence is amended to read in full as follows: "In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby. Such excess costs shall be limited to replacement of substantially like or similar replaced Goods or Services."

ii. **Article 4** first sentence is amended to read in full as follows.

The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, skill and materials, and, except as otherwise provided in the Agreement, will be subject to a 10 day inspection and test by UC at all times and places.

iii. **Article 7(B), subsection 1** is amended with the following addition: "The foregoing provision governs only to the extent not directly addressed in a scope of work, software end user license agreement, or other instrument negotiated between the parties. Third party developed software is subject to its end user license and applicable maintenance agreement which shall solely govern as to the matter contained therein, and any modifications thereto must be approved by the licensor or developer."

iv. **Article 8** The first paragraph is amended as follows: "Supplier shall defend, indemnify, and hold harmless University, its officers employees, and agents, from and against all losses, expenses (including attorney's fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Supplier's performance hereunder, provided such losses, expenses, damages, and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Lessor, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Lessor's direction and control."

v. **Article 17A** is amended to read in full as follows:

Price Decreases. Supplier agrees to immediately notify UC of any manufacturer suggested retail price (MSRP) decreases from its suppliers, and to pass through to UC any price decreases based on the discount structure in the Agreement.

vi. **Additional Terms:**

a. Supplier shall not be liable (i) for bodily injury (including death) or tangible property damage except to the extent caused by supplier's negligence or willful misconduct, or (ii) for loss of revenue or profit, loss or corruption of data, or special, punitive, indirect, incidental or consequential damages, arising out of this Agreement or the performance or non-performance of any services or the use of or inability to use any products, regardless of the legal theory on which a claim may be based and even if Supplier has been advised of the possibility of such damages.

Supplier's liability on any claim arising out of or related to this Agreement and any other agreements entered into in connection therewith, regardless of the legal theory on which the claim is based, shall not exceed in an aggregate amount the sum of (a) if customer purchased any products, the total purchase price paid by customer (or the leasing company if leasing) to Supplier for the products subject to the claim, and (b) as to all other liability of Supplier, charges paid or payable by customer for the products or services subject to the claim for twelve (12) months preceding the date on which the claim is made. Should customer have prepaid any amount for services subject to the claim, such amount shall be amortized over the applicable term of said services and Supplier's liability shall be limited to twelve (12) months of such amortized payments.

15. B The UC Terms and Conditions of Equipment Lease, dated 12/15/1994 are hereby amended as follows:

- i. **Article 2** first sentence is amended to read in full as follows: The rest of the Article remains the same.  
The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, skill and materials, and, except as otherwise provided in the Agreement, will be subject to a 10-day inspection and test by UC at all times and places.
- ii. **Article 5**
  - a. The first paragraph is amended by adding the following: "In order to terminate the Agreement or an order there under due to funding non-appropriation, University must provide Supplier with written notice of the insufficient funding. The notice must certify that the canceled equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year. In addition, the University will be required to return the equipment to Supplier with transportation costs borne by Supplier. The University will then be released from its obligation to make any further payments beyond those through the end of the last fiscal year for which funds have been appropriated."
  - b. The third paragraph is amended by adding the following: "In addition, upon UC's default, UC would be responsible for all amounts owed at the time of termination, plus the balance of lease payments"
- iii. **Article 11** is amended to read in full as follows: "Should the Goods and/or Services become, or in Lessor's opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Lessor will provide written notice to UC of the circumstances giving rise to such claim or likely claim. In the event that UC receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, UC will provide Lessor with notice of such claim or threat. Following receipt of such notice, Lessor will either (at Lessor's sole election) (i) procure for UC the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods and/or Services' functionality. If none of the foregoing options is reasonably acceptable to UC, UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation."
- iv. **Article 15** last sentence is amended to read in full as follows: "Service penalties associated with equipment maintenance and corresponding equipment downtime shall be as set forth in the Scope of Work."
- v. **Article 17** is amended in full to read as follows: "During the period of time that property covered by this order is in the possession of University, University (and its customers, if installed on University's customers' premises) shall take good care of the property and University shall be responsible for any loss of or damage to the property while in its possession and control, unless such damage or loss is a consequence, directly or indirectly of intentional or negligent acts or omissions of Lessor or Lessor's agents."
- vi. **Article 18** is amended with the following addition:  
"Additional end of term Options – Supplier shall provide notice to UC departments at ninety (90) days and again at thirty (30) days prior to end of the initial lease term that the end of term is imminent. Except in the

case of a lease schedule containing a \$1.00 purchase option, University shall, for each order (as to an individual unit or all units provided under the order) inform Supplier in writing as to its intentions regarding renewal or return of leased equipment. In the absence of the UC department's response to Supplier in writing, Supplier may seek the assistance of the University's procurement department to obtain the written notification of renewal or return of leased equipment. Each schedule renewal approved by UC will be on a month to month basis at the same payment amount and frequency unless University, at least thirty (30) days before the end of the scheduled term of the order or any renewal term, either; (i) exercises the purchase option in accordance with the terms hereof, or; (ii) sends to Lessor or Supplier written notice that University does not want to renew the order and at the end of such term returns the respective equipment as provided below. Lessor may cancel the automatic renewal term by, at least thirty (30) days before the end of any term, sending written notice that Lessor does not want the respective order to renew. Unless the order automatically renews or University purchases the equipment as provided in the agreement, shall, at the termination of the respective schedule, return the equipment to Lessor in good operating condition. University shall at the termination of the respective lease or order, make the equipment available to Lessor for pick up. The equipment shall be in good operating condition, ordinary wear and tear resulting from proper use excepted (and if not in such condition, additional fees may apply). If, for any reason, University shall fail to make the equipment available to Lessor for pick up by the last day of the applicable term, University shall pay to Lessor upon demand, one billing period's payment (as specified in the applicable order), for each billing period, or portion thereof that such delivery is delayed."

15.C. The UC Appendix Data Security is amended as follows:

**Article 1 is modified as follows:** The following is added to the end of Article 1, Subsection A:

Notwithstanding any provision in this Appendix to the contrary: (i) this Appendix only applies to the extent CSA (or "Supplier") possesses UC Institutional Information as applicable to the Goods and Services (collectively "Services") provided under the Agreement, and to CSA's IT Resources where such UC Institutional Information is stored or processed; (ii) As of the Effective Date the Goods and Services will not include the removal of UC Institutional Information from UC's Information Resources, nor the storage or processing of UC Institutional Information by CSA, and should subsequent Services include same, the parties will review this Appendix and mutually agree on its applicability prior to such new Services being provided.

## 16. Incorporated Documents

This Agreement and its Incorporated Documents contain the entire agreement between the Parties, in order of the below precedent (subject to Section 12 above), concerning its subject matter and shall supersede all prior or other agreements, oral and written declarations of intent and other legal arrangements (whether binding or non-binding) made by the Parties in respect thereof.

- a. Purchasing Agreement # 2020002755
- b. UC Terms and Conditions of Purchase Dated 2/27/20
- c. UC Terms and Conditions of Equipment Lease Dated 12/15/94
- d. UC Appendix – Data Security Dated 8/12/19
- e. UC Appendix - Business Associate (HIPAA) Dated 8/2/19
- f. UC Appendix – General Data Protection Regulation (GDPR) Dated 8/21/19
- g. UC Appendix – eCommerce dated 7/19/19
- h. Statement of Work – Attachment A
- i. OMNIA Partners Exhibit - Terms applicable to all Non-University of California Entities

j. RFP – Print Goods and Services – UC Systemwide

### 17. Entire Agreement

The Agreement and its Incorporated Documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter herein.

**This Agreement can only be signed by an authorized representative with the proper delegation of authority.**

THE REGENTS OF THE

UNIVERSITY OF CALIFORNIA

DocuSigned by:  
**Justin Sullivan**  
C51AF9F2384C40B...  
(Signature)

Justin Sullivan, Director, Strategic Sourcing

(Printed Name, Title)

12/16/2020

(Date)

Canon Solutions America, Inc.

DocuSigned by:  
*Peter Kowalczyk*  
5AABE3CE833E4B5...  
(Signature)

Peter Kowalczyk, President

(Printed Name, Title)

12/15/2020 | 6:56 PM PST

(Date)



**ARTICLE 1 – GENERAL**

The equipment, materials, or supplies (“Goods”) and/or services (“Services”) furnished by Supplier (together, the “Goods and Services”) and covered by the UC Purchase Order (“PO”) and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the “Agreement”) are governed by the terms and conditions set forth herein. As used herein, the term “Supplier” includes Supplier and its sub-suppliers at any tier. As used herein, “UC” refers to The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the UC Locations identified in the Agreement and/or the PO. UC and Supplier individually will be referred to as “Party” and collectively as “Parties.” Any defined terms not defined in these Terms and Conditions of Purchase will have the meaning ascribed to such term in any of the other documents incorporated in and constituting the Agreement. No other terms or conditions will be binding upon the Parties unless accepted by them in writing. Written acceptance or shipment of all or any portion of the Goods, or the performance of all or any portion of the Services, covered by the Agreement, will constitute Supplier’s unqualified acceptance of all of the Agreement’s terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

**ARTICLE 2 – TERM AND TERMINATION**

- A. As applicable, the term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.
- B. UC’s obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC (“Funding”). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.
- C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time. The effective date of such termination shall be consistent with any requirements for providing notice specified in the Agreement, or immediate if no such terms are set forth in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the later of the date that (i) UC provided Supplier with notice of termination or (ii) Supplier’s provision of Goods and/or Services will terminate.
- D. UC may by written notice terminate the Agreement for Supplier’s breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within five (5) business days, or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.
- E. UC’s Appendix – Data Security, Appendix – BAA, and/or Appendix – GDPR will control in the event that one or more appendices are incorporated into the Agreement and conflicts with the provisions of this Article.

**ARTICLE 3 – PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS.**

Pricing is set forth in the Agreement or Purchase Order, and the amount UC is charged and responsible for shall not exceed the amount specified in the Agreement unless UC has given prior written approval. Unless otherwise agreed in writing by UC, Supplier will use the invoicing method and payment settlement method (and will extend the terms applicable to such settlement method) set forth in UC’s Supplier Invoicing, Terms & Settlement Matrix. UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or Purchase Order number. UC will not pay shipping, packaging or handling expenses, unless specified in the Agreement or Purchase Order. Unless otherwise provided, freight is to be FOB destination. Any of Supplier’s expenses that UC agrees to reimburse will be reimbursed under UC’s Travel Policy, which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>. Where applicable, Supplier will pay all taxes imposed on Supplier in connection with its performance under the Agreement, including any federal, state and local income, sales, use, excise and other taxes or assessments. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.





**ARTICLE 4 – INSPECTION.**

The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, skill and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them at the sole cost of Supplier, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.

**ARTICLE 5 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES**

Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and materiel sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not Oagain, without UC's written permission, be assigned to provide Services. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers' compensation provisions. Supplier shall not have the power nor right to bind or obligate UC, and Supplier shall not hold itself out as having such authority. Supplier shall be responsible to UC for all Services performed by Supplier's employees, agents and subcontractors, including being responsible for ensuring payment of all unemployment, social security, payroll, contributions and other taxes with respect to such employees, agents and subcontractors.

**ARTICLE 6 – WARRANTIES**

In addition to the warranties set forth in Articles 11, 12, 17, 23, 24, 25 and 26 herein, Supplier makes the following warranties. Supplier acknowledges that failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

- A. General Warranties. Supplier represents, warrants and covenants that: (i) Supplier is free to enter into this Agreement and that Supplier is not, and will not become, during the Term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder; (ii) Supplier will comply with all applicable laws, rules and regulations in performing Supplier's obligations hereunder; (iii) the Goods and/or Services shall be rendered with promptness and diligence and shall be executed in a skilled manner by competent personnel, in accordance with the prevailing industry standards; and if UC Appendix Data Security is NOT included:(iv) Supplier has developed a business interruption and disaster recovery program and is executing such program to assess and reduce the extent to which Supplier's hardware, software and embedded systems may be susceptible to errors or failures in various crisis (or force majeure) situations; (v) if Supplier uses electronic systems for creating, modifying, maintaining, archiving, retrieving or transmitting any records, including test results that are required by, or subject to inspection by an applicable regulatory authority, then Supplier represents and warrants that Supplier's systems for electronic records are in compliance; and (vi) Supplier agrees that the Goods and/or Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.
- B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.
- C. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.
- D. Web Accessibility Requirements. As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:



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1. It complies with California and federal disability laws and regulations; and
  2. The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
  3. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;
- E. General Accessibility Requirements. Supplier warrants that:
1. It will comply with California and federal disability laws and regulations;
  2. Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and Services to conform to WCAG 2.0 AA; and
  3. Supplier agrees to promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.
- F. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right of Quiet Enjoyment in, and conveys the right of Quiet Enjoyment to UC for UC's use of, any and all intellectual property that will be needed for Supplier's provision, and UC's use of, the Goods and/or Services provided by Supplier under the Agreement.
- G. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.
- H. Debarment and Suspension. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- I. UC Trademark Licensing Code of Conduct. If the Goods will bear UC's name (including UC campus names, abbreviations of these names, UC logos, UC mascots, or UC seals) or other trademarks owned by UC, Supplier warrants that it holds a valid license from UC and complies with the Trademark Licensing Code of Conduct policy, available at <http://policy.ucop.edu/doc/3000130/TrademarkLicensing>.
- J. Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier's bid. If Supplier or its sub-supplier performs the Agreement with workers outside the United States during the life of the Agreement and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that (i) UC may terminate the Agreement without further obligation for noncompliance, and (ii) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier's bid.

### ARTICLE 7 – INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS

- A. Goods and/or Services Involving Work Made for Hire.
1. Unless UC indicates that the Goods and/or Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the "work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.
  2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC's prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
  3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC with complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
  4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
- B. Goods and/or Services Not Involving Work Made for Hire.



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1. If the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
  2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC's prior written permission.
  3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
  4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
- C. General. Should the Goods and/or Services become, or in Supplier's opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will provide written notice to UC of the circumstances giving rise to such claim or likely claim. In the event that UC receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, UC will provide Supplier with notice of such claim or threat. Following receipt of such notice, Supplier will either (at Supplier's sole election) (i) procure for UC the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods and/or Services' functionality. If none of the foregoing options is reasonably acceptable to UC, UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.
- D. UC Rights to Institutional Information. Institutional Information shall belong exclusively to UC and unless expressly provided, this Agreement shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by UC. Any right for Supplier to use Institutional Information is solely provided on a non-exclusive basis, and only to the extent required for Supplier to provide the Goods or Services under the Agreement. As used herein, "Institutional Information" means any information or data created, received, and/or collected by UC or on its behalf, including but not limited to application logs, metadata and data derived from such data.

### ARTICLE 8 – INDEMNITY AND LIABILITY

To the fullest extent permitted by law, Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control. UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

In the event Appendix DS applies to this Agreement, Supplier shall reimburse or otherwise be responsible for any costs, fines or penalties imposed against UC as a result of Supplier's Breach of Institutional Information and/or failure to cooperate with UC's response to such Breach. As used herein, "Breach" means: (1) any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) unauthorized or unlawful acquisition of information that compromises the security, confidentiality or integrity of Institutional Information and/or IT Resources; and (3) the acquisition, access, use, or disclosure of Protected Health Information or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law. "IT Resources" means IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed, or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business.



**ARTICLE 9 – INSURANCE**

Supplier, at its sole cost and expense, will insure its activities in connection with providing the Goods and/or Services and obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless UC specifies otherwise:

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
  1. Each Occurrence \$ 1,000,000
  2. Products/Completed Operations Aggregate \$ 2,000,000
  3. Personal and Advertising Injury \$ 1,000,000
  4. General Aggregate \$ 2,000,000
- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. (Required only if Supplier drives on UC premises or transports UC employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UC.)
- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence or claim with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- D. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- E. If applicable, Supplier Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of one million dollars (\$1,000,000). Supplier will endorse such policy to include a "Regents of the University of California Coverage" or "Joint Payee Coverage" endorsement. UC and, if so requested, UC's officers, employees, agents and sub-suppliers will be named as "Loss Payee, as Their Interest May Appear" in such Fidelity Bond.
- F. In the event Appendix DS applies to this Agreement, Supplier, at its sole cost and expense, will obtain, keep in force, and maintain one or more insurance policies that provide coverage for technology, professional liability, data protection, and/or cyber liability. Typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability insurance, it will cover liabilities for financial loss due to the acts, omissions, or intentional misconduct of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, in connection with the performance of this Agreement, as well as all Supplier costs, including damages it is obligated to pay UC or any third party, that are associated with any confirmed or suspected Breach or compromise of Institutional Information. In some cases, Professional Liability policies may include some coverage for data breaches or loss of Institutional Information. Regardless of the type of policy(ies) in place, such coverage will include without limitation: (i) costs to notify parties whose data were lost or compromised; (ii) costs to provide credit monitoring and credit restoration services to parties whose data were lost or compromised; (iii) costs associated with third party claims arising from the confirmed or suspected Breach or loss of Institutional Information, including litigation costs and settlement costs; (iv) any investigation, enforcement, fines and penalties, or similar miscellaneous costs; and (v) any payment made to a third party as a result of extortion related to a confirmed or suspected Breach. The following insurance coverage is based on the highest Protection Level Classification of Institutional Information identified in Exhibit 1 to Appendix DS:
  1. P1 - This insurance policy must have minimum limits of \$500,000 each occurrence and \$500,000 in the aggregate.
  2. P2 - This insurance policy must have minimum limits of \$1,000,000 each occurrence and \$1,000,000 in the aggregate.
  3. P3 and P4, less than 70,000 records - this insurance policy must have minimum limits of \$5,000,000 each occurrence and \$5,000,000 in the aggregate.
  4. P3 and P4, 70,000 or more records - this insurance policy must have minimum limits of \$10,000,000 each occurrence and \$10,000,000 in the aggregate.

Protection Level Classifications are defined in the UC Systemwide Information Security Classification of Information and IT Resources: <https://security.ucop.edu/policies/institutional-information-and-it-resource-classification.html>

- G. Additional other insurance in such amounts as may be reasonably required by UC against other insurable risks relating to performance. If the above insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement. If the above insurance coverage is modified, changed or cancelled, Supplier will provide UC with not less than fifteen (15) days' advance written notice of such modification, change, or cancellation, and will promptly obtain replacement coverage that complies with this Article.
- I. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier's liability. Supplier will furnish UC with certificates



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of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:

1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

### ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

Supplier will not use the UC name, abbreviation of the UC name, trade names and/or trademarks (i.e., logos and seals) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the UC name, abbreviations, trade names and/or trademarks or any derivation thereof on any consumer goods, products, or services for sale or distribution to the public, without UC's prior written approval. Supplier agrees to comply at all times with California Education Code Section 92000.

### ARTICLE 11 – FEDERAL FUNDS

Supplier who supplies Goods and/or Services certifies and represents its compliance with the following clauses, as applicable. Supplier shall promptly notify UC of any change of status with regard to these certifications and representations. These certifications and representations are material statements upon which UC will rely.

- A. For commercial transactions involving funds on a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:
  1. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
  2. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
  3. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
  4. FAR 52.219-8, Utilization of Small Business Concerns;
  5. FAR 52.222-17, Non-displacement of Qualified Workers;
  6. FAR 52.222-21, Prohibition of Segregated Facilities;
  7. FAR 52.222-26, Equal Opportunity;
  8. FAR 52.222-35, Equal Opportunity for Veterans;
  9. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
  10. FAR 52.222-37, Employment Reports on Veterans;
  11. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
  12. FAR 52.222-41, Service Contract Labor Standards;
  13. FAR 52.222-50, Combating Trafficking in Persons;
  14. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
  15. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
  16. FAR 52.222-54, Employment Eligibility Verification;
  17. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
  18. FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
  19. FAR 52.224-3, Privacy Training;
  20. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
  21. FAR 52.233-1, Disputes; and
  22. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.
- B. For non-commercial transactions involving funds on a federal contract, the UC Appendix titled '*Federal Government Contracts Special terms and Conditions (Non-Commercial Items or Services)*' and located at [www.ucop.edu/procurement-services/policies-forms/index.html](http://www.ucop.edu/procurement-services/policies-forms/index.html) is hereby incorporated herein by this reference.
- C. For transactions involving funds on a federal grant or cooperative agreement (federal awards governed by eCFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:





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1. Rights to Inventions. If Supplier is a small business firm or nonprofit organization, and is providing experimental, development, or research work under this transaction, Supplier must comply with the requirements of 3 CFR Part 401, "Rights to Inventions Made by nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements".
  2. Clean Air Act. Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  3. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
  4. Procurement of Recovered Materials. If Supplier is a state agency or agency of a political subdivision of a state, then Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- D. In these provisions, the term "contractor" as used therein will refer to Supplier, and the terms "Government" or "Contracting Officer" as used therein will refer to UC. Where a purchase of items is for fulfillment of a specific U.S. Government prime or subcontract, additional information and/or terms and conditions may be included in an attached supplement. By submitting an invoice to UC, Supplier is representing to UC that, at the time of submission:
1. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
  2. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
  3. Any Supplier representations to UC about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete.
  4. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

### ARTICLE 12 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION

Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will comply with 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **"This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability."** With respect to activities occurring in the State of California, Supplier agrees to adhere to the California Fair Employment and Housing Act. Supplier will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Supplier will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.

### ARTICLE 13 – LIENS

Supplier agrees that upon UC's request, Supplier will submit a sworn statement setting forth the work performed or material furnished by sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under the Agreement, will upon UC's request submit to UC a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify UC in writing, of any claims, demands, causes of action, liens or suits brought to its attention that arise out of the Agreement. UC will not make final payment until Supplier, if required, delivers to UC a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof, as UC may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish a bond satisfactory to UC to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Supplier will refund to UC all monies that UC may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.



**ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED**

- A. Cleaning Up. Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.
- B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the Goods and/or Services may be issued at UC's discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC's premises at Supplier's request and will not engage any unfit or unskilled person to provide the Goods and/or Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Goods and/or Services are being provided in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.
- C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

**ARTICLE 15 – LIABILITY FOR UC - FURNISHED PROPERTY**

Supplier assumes complete liability for any materials UC furnishes to Supplier in connection with the Agreement and Supplier agrees to pay for any UC materials Supplier damages or otherwise is not able to account for to UC's satisfaction. UC furnishing to Supplier any materials in connection with the Agreement will not, unless otherwise expressly provided in writing by UC, be construed to vest title thereto in Supplier.

**ARTICLE 16 – COOPERATION**

Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will so provide the Services that other cooperating suppliers will not be hindered, delayed or interfered with in the progress of their work, and so that all of such work will be a finished and complete job of its kind.

**ARTICLE 17 – ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS**

The terms in this Article have special application to the furnishing of Goods:

- A. Price Decreases. Supplier agrees immediately to notify UC of any price decreases from its suppliers, and to pass through to UC any price decreases.
- B. Declared Valuation of Shipments. Except as otherwise provided in the Agreement, all shipments by Supplier under the Agreement for UC's account will be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading will so note.
- C. Title. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC's right to reject upon inspection.



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- D. **Changes.** Notwithstanding the terms in Article 34, Amendments, UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured Goods, place of delivery, method of shipment or packing of the Agreement by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC's written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished.
- E. **Forced, Convict and Indentured Labor.** Supplier warrants that no foreign-made Goods furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year. This warranty is in addition to any applicable warranties in Articles 6 and 11.
- F. **Export Control.** Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods' export classification if any of the Goods is export-controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), the Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list. Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification if Supplier will be providing information necessary for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing of the Goods that is beyond a standard user manual (i.e. "Use" technology as defined under the EAR 15 CFR § 772.1), or "Technical Data" (as defined under the ITAR 22 CFR § 120.10).

### ARTICLE 18 – CONFLICT OF INTEREST

Supplier affirms that, to the best of Supplier's knowledge, no UC employee who has participated in UC's decision-making concerning the Agreement has an "economic interest" in the Agreement or Supplier. A UC employee's "economic interest" means:

- A. An investment worth \$2,000 or more in Supplier or its affiliate;
- B. A position as director, officer, partner, trustee, employee or manager of Supplier or its affiliate;
- C. Receipt during the past 12 months of \$500 in income or \$440 in gifts from Supplier or its affiliate; or
- D. A personal financial benefit from the Agreement in the amount of \$250 or more.

In the event of a change in these economic interests, Supplier will provide written notice to UC within thirty (30) days after such change, noting such changes. Supplier will not be in a reporting relationship to a UC employee who is a near relative, nor will a near relative be in a decision making position with respect to Supplier.

### ARTICLE 19 – AUDIT REQUIREMENTS

The Agreement, and any pertinent records involving transactions relating to this Agreement, is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to five (5) years after final payment under the Agreement. UC, and if the underlying grant, cooperative agreement or federal contract so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier's pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of five (5) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement.

### ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION

- A. **Prohibition on Access, Use and Disclosure of Institutional Information.** Supplier will not access, use or disclose Institutional Information, other than to carry out the purposes for which UC disclosed the Institutional Information to Supplier, except as required by applicable law, or as otherwise authorized in writing by UC prior to Supplier's disclosure. Supplier shall have the limited right to disclose Institutional Information to Supplier's employees provided that: (i) Supplier shall disclose only such Institutional Information as is necessary for the Supplier to perform its obligations under this Agreement, and (ii) Supplier informs such employees of the obligations governing the access, use and disclosure of Institutional Information prior to Supplier's disclosure. Supplier shall be liable





for any breach of this Agreement by its employees. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Institutional Information and any information derived therefrom. For the avoidance of doubt, the sale of Institutional Information is expressly prohibited.

- B. Compliance with Applicable Laws and Industry Best Practices. Supplier agrees to comply with all applicable state, federal, and foreign laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Institutional Information. Supplier agrees to protect the privacy and security of Institutional Information according to all applicable laws and industry best practices, and no less rigorously than it protects its own information, but in no case less than reasonable care.
- C. Confidential Institutional Information. Supplier agrees to hold UC's Confidential Institutional Information, and any information derived therefrom, in strict confidence. Confidential Institutional Information shall be defined as any Institutional Information which is (i) marked as "Confidential" at the time of disclosure; (ii) if disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as "Confidential" within thirty (30) days of such oral disclosure; and (iii) if not marked as "Confidential," information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Confidential Information will not be considered confidential to the extent that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. For the avoidance of doubt, as applicable to Supplier's Services, Confidential Institutional Information may include any information that identifies or is capable of identifying a specific individual, including but not limited to:
1. Personally identifiable information,
  2. Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 C.F.R. § 160.103),
  3. Medical information as defined by California Civil Code § 56.05,
  4. Cardholder data,
  5. Student records, or
  6. Individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to:
    - a. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*);
    - b. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
    - c. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
    - d. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 *et seq.*);
    - e. The Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), and
    - f. Applicable international privacy laws, including, but not limited to the General Data Protection Regulation.
- D. Required Disclosures of Institutional Information. If Supplier is required by a court of competent jurisdiction or an administrative body to disclose Institutional Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give UC an opportunity to oppose or otherwise respond to such disclosure. To the extent Supplier still required to disclose Institutional Information, Supplier will furnish only that portion that is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Confidential Institutional Information.
- E. No Offshoring. Supplier's transmission, transportation or storage of Institutional Information outside the United States, or access of Institutional Information from outside the United States, is prohibited except with prior written authorization by UC.
- F. Conflict in Terms. UC's Appendix – Data Security, Appendix – BAA, and/or Appendix GDPR will control in the event that one or more appendices is incorporated into the Agreement and conflicts with the provisions of this Article.
- G. Acknowledgement. Supplier acknowledges that remedies at law would be inadequate to protect UC against any actual or threatened breach of this Section by Supplier, and, without prejudice to any other rights and remedies otherwise available to UC, Supplier agrees to the granting of injunctive relief in UC's favor without proof of actual damages.

#### ARTICLE 21 – UC WHISTLEBLOWER POLICY

UC is committed to conducting its affairs in compliance with the law, and has established a process for reporting and investigating suspected improper governmental activities. Please visit <http://www.ucop.edu/uc-whistleblower/> for more information.



**ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES**

Supplier will conduct business using environmentally, socially, and economically sustainable products and services (defined as products and services with a lesser or reduced effect on human health and the environment, and which generate benefits to the University as well as to society and the economy, while remaining within the carrying capacity of the environment), to the maximum possible extent consistent with the Agreement, and with the University of California Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>) and the University of California Sustainable Procurement Guidelines:

(<https://www.ucop.edu/procurement-services/files/sustainableprocurementguidelines.pdf>).

In accordance with the University of California Sustainable Practices Policy, Supplier will adhere to the following requirements and standards, as applicable. Supplier acknowledges that failure to comply with any of the sustainability standards and requirements in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

- A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet UC recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission’s (FTC) Green Guides.
- B. Electronic Transfer of Supplier Information. Suppliers, when interacting with the UC, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to UC staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative.
- C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, UC requires that all packaging meet at least one of the criteria listed below:
  - 1. Uses bulk packaging;
  - 2. Uses reusable packaging (e.g. totes reused by delivery service for next delivery);
  - 3. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
  - 4. Maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines;
  - 5. Uses locally recyclable or certified compostable material.
- D. Foodservice Foam Ban. As of 2018, the University no longer allows packaging foam or expanded polystyrene (EPS) for takeaway containers or other food service items, in any University-owned or -operated food service facility.
- E. Product Packaging Foam Ban. Beginning January 1st, 2020, the University will prohibit all contracted and non-contracted suppliers from selling or distributing packaging foam (other than that utilized for laboratory supply or medical packaging) to UC campuses. Packaging foam is defined as any open or closed cell, solidified, polymeric foam used for cushioning or packaging, including but not limited to: low-density polyethylene foam, polypropylene foam, polystyrene foam (i.e. expanded polystyrene (EPS)), polyurethane foam, polyethylene foam, polyvinyl chloride (PVC) foam, and microcellular foam. Not included in this ban are easily biodegradable, plant-based foams such as those derived from corn or mushrooms.
- F. E-Waste Recycling Requirements. All recyclers of UC electronic equipment must be e-Steward certified by the Basel Action Network (BAN).
- G. Hosted and Punch-out Catalog Requirements. Suppliers enabled with eProcurement hosted catalog functionality must clearly identify products with UC-recognized certifications, as defined by the UC Sustainable Procurement Guidelines, in both hosted and punch-out catalog e-procurement environments.

**ARTICLE 23 – PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) EMPLOYER SHARED RESPONSIBILITY**

If the Services involve Supplier furnishing UC with temporary or supplementary staffing, Supplier warrants that:

- A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):
  - 1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
  - 2. Supplier’s cost of enrolling such employees in Supplier’s health plan is factored into the fees for the Services; and
  - 3. The fees for the Services are higher than what the Services would cost if Supplier did not offer health coverage to such full-time employees.



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- B. If Supplier is not an Applicable Large Employer (as defined above):
1. Supplier offers group health coverage to its full-time employees who are performing Services for UC and such coverage is considered Minimum Essential Coverage (as defined under Treasury Regulation Section 1-5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or
  2. Supplier's full-time employees who are performing services for UC have individual coverage and such coverage satisfies the PPACA requirements for mandated individual coverage.

Supplier acknowledges that UC is relying on these warranties to ensure UC's compliance with the PPACA Employer Shared Responsibility provision.

### ARTICLE 24 - PREVAILING WAGES

Unless UC notifies Supplier that the Services are not subject to prevailing wage requirements, Supplier will comply, and will ensure that all sub-suppliers comply, with California prevailing wage provisions, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6. For purposes of the Agreement, the term "sub-supplier" means a person or firm, of all tiers, that has a contract with Supplier or with a sub-supplier to provide a portion of the Services. The term sub-supplier will not include suppliers, manufacturers, or distributors. Specifically, and not by way of limitation, if apprenticeship occupations are involved in providing the Services, Supplier will be responsible for ensuring that Supplier and any sub-suppliers comply with Labor Code Section 1777.5. Supplier and sub-supplier may not provide the Services unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 and 1771.1. Notwithstanding the foregoing provisions, Supplier will be solely responsible for tracking and ensuring proper payment of prevailing wages regardless if Services are partially or wholly subject to prevailing wage requirements. In every instance, Supplier will pay not less than the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) for Services being performed at a UC Location (defined as any location owned or leased by UC).

The California Department of Industrial Relations (DIR) has ascertained the general prevailing per diem wage rates in the locality in which the Services are to be provided for each craft, classification, or type of worker required to provide the Services. A copy of the general prevailing per diem wage rates will be on file at each UC Location's procurement office, and will be made available to any interested party upon request. Supplier will post at any job site:

- A. Notice of the general prevailing per diem wage rates, and
- B. Any other notices required by DIR rule or regulation.

By this reference, such notices are made part of the Agreement. Supplier will pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Supplier in providing the Services. Supplier will cause all subcontracts to include the provision that all sub-suppliers will pay not less than the prevailing rates to all workers employed by such sub-suppliers in providing the Services. The Services are subject to compliance monitoring and enforcement by the DIR. Supplier will forfeit, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any portion of the Services provided by Supplier or any sub-supplier. The amount of this penalty will be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the amounts due under the Agreement. If there are insufficient funds remaining in the amounts due under the Agreement, Supplier will be liable for any outstanding amount remaining due. Supplier will also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Services, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment will be made pursuant to California Labor Code section 1742.

### ARTICLE 25 – FAIR WAGE/FAIR WORK

If the Agreement is for Services that will be performed at one or more UC Locations, does not solely involve furnishing Goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in Articles 11, 12 and 14 herein, and that Supplier pays its employees performing the Services no less than the UC Fair Wage. Supplier agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC's sole discretion. Supplier agrees to post UC



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Fair Wage/Fair Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services.

For Services rendered (actual spend) not subject to prevailing wage requirements in excess of \$100,000 in a year (under the Agreement or any combination of agreements for the same service), Supplier will (i) at Supplier's expense, provide an annual independent verification (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>) performed by a licensed public accounting firm (independent accountant) or the Supplier's independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) in compliance with UC's required verification standards and procedures (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>), concerning Supplier's compliance with this provision, and (ii) ensure that in the case of a UC interim audit, its independent accountant/independent internal auditor makes available to UC its UC Fair Wage/Fair Work work papers for the most recent verification period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work verification annually, in a form acceptable to UC, no later than ninety days after the end of the 12-month period in which \$100,000 in spend is reached.

The Fair Wage Fair Work annual independent verification requirement does not extend to contracts for professional services or consulting for which pre-certification has been provided to UC (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>). Please see the UC Procurement/Supply Chain Management Policy BUS-43 (<https://www.ucop.edu/procurement-services/policies-forms/business-and-finance/index.html>) for the definition of professional services and consulting.

### ARTICLE 26 – MEDICAL DEVICES

This Article applies when the Goods and/or Services involve UC purchasing or leasing one or more medical devices from Supplier, or when Supplier uses one or more medical devices in providing Goods and/or Services to UC.

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration ("FDA") and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals, or (iii) intended to affect the structure or any function of the body of humans or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

Supplier warrants that prior to UC's purchase or lease of any Medical Device or Supplier's use of any Medical Device in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable; (ii) perform security scans to detect malware on any software embedded within any Goods and/or Services or Medical Device, as applicable, in order to verify that the software does not contain any known malware; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that any Good or Medical Device is compliant with FDA's most current guidance or regulation for the quality system related to the cybersecurity and the Management of Cybersecurity in Medical Devices, and that Supplier will maintain compliance with any updates to such guidance or regulations.

Throughout Supplier's performance of this Agreement, Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for any Medical Device provided to UC, and any other Medical Device used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier's sub-supplier, whichever is earlier.

Supplier warrants that all software and installation media not specifically required for any Medical Device used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods and/or Services or Medical Device following installation, and that all hardware ports and drivers not required for use or operation of such Goods and/or Services or Medical Device will be disabled at time of installation. In addition, Medical Devices must be configured so that only Supplier-approved applications will run on such Medical Devices.



Supplier agrees that UC may take any and all actions that it, in its sole discretion, deems necessary to address, mitigate and/or rectify any real or potential security threat, and that no such action, to the extent such action does not compromise device certification, will impact, limit, reduce or negate Supplier's warranties or any of Supplier's other obligations hereunder.

Supplier warrants that any Medical Device provided to UC, and any other Medical Device used in the course of providing such Goods and/or Services, meet and comply with all cyber-security guidance and similar standards promulgated by the FDA and any other applicable regulatory body.

If the Goods and/or Services entail provision or use of a Medical Device, Supplier will provide UC with a completed Manufacturer Disclosure Statement for Medical Device Security (MDS2) form for each such Medical Device before UC is obligated to purchase or lease such Medical Device or prior to Supplier's use of such device in its performance of Services. If Supplier provides an MDS2 form to UC concurrently with its provision of Goods and/or Services, UC will have a reasonable period of time to review such MDS2 form, and if the MDS2 form is unacceptable to UC, then UC in its sole discretion may return the Goods or terminate the Agreement with no further obligation to Supplier.

#### **ARTICLE 27 – FORCE MAJEURE**

Neither Party will be liable for delays due to causes beyond the Party's control (including, but not restricted to, war, civil disturbances, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather).

#### **ARTICLE 28 – ASSIGNMENT AND SUBCONTRACTING**

Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC's written consent. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

#### **ARTICLE 29 – NO THIRD-PARTY RIGHTS**

Nothing in the Agreement, express or implied, is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

#### **ARTICLE 30 – OTHER APPLICABLE LAWS**

Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations will be deemed to be incorporated herein.

#### **ARTICLE 31 – NOTICES**

A Party must send any notice required to be given under the Agreement by overnight delivery or by certified mail with return receipt requested, to the other Party's representative at the address specified by such Party.

#### **ARTICLE 32 – SEVERABILITY**

If a provision of the Agreement becomes, or is determined to be, illegal, invalid, or unenforceable, that will not affect the legality, validity or enforceability of any other provision of the Agreement or of any portion of the invalidated provision that remains legal, valid, or enforceable.

#### **ARTICLE 33 – WAIVER**

Waiver or non-enforcement by either Party of a provision of the Agreement will not constitute a waiver or non-enforcement of any other provision or of any subsequent breach of the same or similar provision.

#### **ARTICLE 34 – AMENDMENTS**

The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties' authorized representatives. In the event there is a Material Change to the Agreement, the parties agree to meet and confer in good faith in order to modify the terms of the Agreement. A Material Change as used herein refers to:



- A. A change to the scope of Goods and/or Services to be provided by Supplier, as agreed to by UC;
- B. A change in the Institutional Information Supplier is required to create, receive, maintain or transmit in performance of the Agreement, such that the Protection Level Classification of such Institutional Information changes;
- C. Changes in the status of the parties;
- D. Changes in flow down terms from external parties; and
- E. Changes in law or regulation applicable to this Agreement.

Each party shall notify the other party upon the occurrence of a Material Change.

**ARTICLE 35 – GOVERNING LAW AND VENUE**

California law will control the Agreement and any document to which it is appended. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in the county in the State of California in which the UC Location is located or, where the procurement covers more than one UC Location, the exclusive venue is Alameda County, California.

**ARTICLE 36 – ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

Supplier will make itself and its employees, subcontractors, or agents assisting Supplier in the performance of its obligations reasonably available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of investigations, or proceedings against UC, its directors, officers, agents, or employees relating to the Goods or Services.

**ARTICLE 37 – SUPPLIER TERMS**

Any additional terms that Supplier includes in an order form or similar document will be of no force and effect, unless UC expressly agrees in writing to such terms.

**ARTICLE 38 – SURVIVAL CLAUSE**

Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS; INDEMNITY AND LIABILITY; USE OF UC NAMES AND TRADEMARKS; LIABILITY FOR UC-FURNISHED PROPERTY; COOPERATION; TERMS APPLICABLE TO THE FURNISHING OF GOODS; AUDIT REQUIREMENTS; PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION; GOVERNING LAW AND VENUE, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY, APPENDIX–BAA, and/or APPENDIX-GDPR.

**ARTICLE 39 – CONTRACTING FOR COVERED SERVICES**

Covered Services, for the purpose of this Agreement, are defined as work customarily performed by bargaining unit employees at the University in the categories of services described in Regents Policy 5402, and American Federation of State, County, and Municipal Employees (AFSCME) Collective Bargaining Agreement Article 5. Covered Services include, but are not necessarily limited to, the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; grounds keeping; building maintenance (excluding skilled crafts); transportation and parking services; and security services.

Unless UC notifies Supplier that the Services are not Covered Services, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in in other Articles of the Agreement. In accordance with Regents Policy 5402 and AFSCME Collective Bargaining Agreement Article 5, Supplier also warrants that it pays its employees performing the Covered Services at UC locations the equivalent value of the wages and benefits – as determined in the Wage and Benefit Parity Appendix – received by UC employees providing similar services at the same, or nearest UC location.

Supplier agrees UC may conduct such compliance audits as UC reasonably requests, and determined at UC’s sole discretion. Supplier agrees to post UC Contracting for Covered Services notices, in the template supplied by UC, in a prominent and accessible place (such as break rooms and lunch rooms) where it may be easily seen by workers who perform Covered Services. The term "Supplier" includes Supplier and its Sub-Suppliers at any tier. Supplier also agrees to:





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## Terms and Conditions of Purchase

- (a) upon UC's request, provide verification of an independent audit performed by Supplier's independent auditor or independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) and at Supplier's expense; and
- (b) ensure that, in the case of a UC interim audit, Supplier's auditor makes available to UC its Contracting for Covered Services work papers for the most recently audited time period. Supplier agrees to provide UC requested verification, in a form acceptable to UC, no later than ninety days after receiving UC's request.



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## TERMS AND CONDITIONS OF EQUIPMENT LEASE

ARTICLE 1 - GENERAL. For the purpose of these terms and conditions, the terms "University", "Lessor" and "Order" shall hereinafter be defined as follows:

- A. University: The Regents of the University of California.
- B. Lessor: The grantor of the use of personal property by lease.
- C. Order: A straight lease or rental agreement, with or without option to purchase, as indicated on the purchase order.

The equipment, supplies and services covered by this order shall be furnished by Lessor subject to all the terms and conditions set forth in this order including the following, which Lessor, in accepting this order agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies or the performance of all or any portion of the services covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent it specifies the equipment, supplies and services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

ARTICLE 2 - INSPECTION. The equipment, supplies and services furnished shall be exactly as specified in this order, free from all defects in manufacturer's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and testing by University at all times and places. If, prior to final acceptance, any equipment, supplies or services are found to be defective or not as specified, University may reject them, require Lessor to correct them without charge, or require delivery of such equipment, supplies, or services at a reduction in price which is equitable under the circumstances. If Lessor is unable or refuses to correct such items within a time deemed reasonable to University, University may terminate the order in whole or in part. Lessor shall bear all risks as to rejected equipment, supplies and services and, in addition to any costs for which Lessor may become liable to University under other provisions of this order, shall reimburse University for all transportation costs, other related costs incurred, or payments to Lessor in accordance with the terms of this order for unaccepted equipment, supplies and services. Notwithstanding final acceptance and payment Lessor shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE 3 - TERMS OF USE. Except as otherwise provided on the face of this order, the specified rental payments shall entitle University to unlimited use and operation of said equipment at any time and any place and for any period of time at the convenience of University (exclusive of the time required for preventive and remedial maintenance) and shall not be restricted to consecutive hours, length of personnel shifts, or any other restrictions.

ARTICLE 4 - CHANGES. No change to the lease shall be allowed without written approval of University. Any claim of Lessor for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt notification of such change unless University waives this condition in writing. Nothing in the Article shall excuse Lessor from proceeding with performance of the order as changed hereunder.

ARTICLE 5 - TERMINATION. University may at its option, by written notice stating the extent and effective date, terminate this order at the anniversary date of the lease or at the end of any fiscal year in whole or in part in the event the funding agency does not appropriate sufficient funds to continue the lease payments.

University may by written notice terminate this order for Lessor's default, in whole or in part, at any time, if Lessor refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of said equipment or supplies or perform the services within the time specified or any written extension thereof.

In the event University defaults in the payment of any amount due or to become due under the terms of the lease or defaults in the performance of any of the terms and conditions hereof, all the University's rights hereunder as to use and possession of the equipment shall, at the option of Lessor, terminate and Lessor shall become entitled to retain all rentals and to take possession of the property, provided however, that in such event neither Lessor nor University shall have the right to rent said equipment to any third party so long as it remains on the premises of University.

ARTICLE 6 - TITLE. Lessor covenants that it is the sole owner of said property, and that no other person, party, firm or corporation has any right, title, interest in or to same and that during the term of this lease said Lessor will not sell or encumber said property, or any interest therein, except subject to the rights given University by virtue of the lease. Title to said property, including any accessories and devices furnished by Lessor except those subsequently purchased by University, vests in Lessor, and said property may be removed by Lessor at or after termination of this Agreement unless purchased by University pursuant to its Purchase Option, if any.

ARTICLE 7 - PAYMENT. Unless otherwise provided for in this order, lease charges shall be invoiced in arrears and shall be payable thirty (30) days after the end of the period for which the charges accrue or thirty (30) days after University's receipt of invoice whichever is later.

ARTICLE 8 - TAXES. Lessor alone shall pay any license fees, assessments, sales, use and other taxes lawfully imposed during the term hereof upon the equipment, supplies or services furnished pursuant to this order.

ARTICLE 9 - PROPERTY TAX EXEMPTION. Lessor agrees to cooperate with University and do all acts reasonably necessary and appropriate to secure and maintain tax exemption of the property leased hereunder pursuant to Article 13, section 3 of the California Constitution. Lessor agrees to apply the amount of any reduction of tax resulting from such exemption as a credit against rental payments otherwise due by University to Lessor hereunder.

ARTICLE 10 - WARRANTY. Lessor warrants that said equipment, including accessories, will be in good operating condition when installed and that any subsequent defects in design, materials or workmanship during the term of this Lease will be corrected by Lessor at its sole expense. Lessor will inform University of the terms and conditions of





# UNIVERSITY OF CALIFORNIA

any manufacturer's warranty in effect on the commencement date of this lease. In the event of defect in design, material, or workmanship during the term of the lease, the Lessor will assert any Manufacturer's Warranty in effect between Lessor and the Manufacturer at the time the defect becomes apparent.

**ARTICLE 11 - PROPRIETARY RIGHTS INDEMNITY.** Lessor shall indemnify, defend, and hold harmless University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Lessor's furnishing or supplying University with parts, goods, components, programs, practices, or methods under this order or University's use of such parts, goods, components, programs, practices, or methods supplied by Lessor under this order constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The foregoing shall not apply unless University has informed Lessor as soon as practicable of the suit or action alleging such infringement. Lessor shall not settle such suit or action without the consent of University. University retains the right to participate in the defense against any such suit or action.

**ARTICLE 12 - TRANSPORTATION AND INSTALLATION.** Unless otherwise provided for in this order, Lessor will be responsible for all transportation and handling costs related to the shipment to and from University of the leased equipment. Should the equipment require specialized installation, Lessor will provide the required technical assistance at no charge.

**ARTICLE 13 - ASSIGNMENT.** This order is not assignable by Lessor, except as to any payment due hereunder, without the written approval of University.

**ARTICLE 14 - EQUAL OPPORTUNITY AFFIRMATIVE ACTION.** Lessor shall not maintain or provide racially segregated facilities for employees at any establishment under its control. Lessor agrees to adhere to the requirements set forth in Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair Employment and Housing Act (Government Code section 12900 et seq.). Expressly, Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition (as defined by California Code section 12925[f]), marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or because he or she is a disabled veteran or veteran of the Vietnam era. Lessor shall further specifically undertake affirmative action regarding the hiring, promotion and treatment of minority group persons, women, the handicapped, and disabled veterans and veterans of the Vietnam era. Lessor shall communicate this policy in both English and Spanish to all persons concerned within its company, with outside recruiting services, and the minority community at large. Lessor shall provide the University on request a breakdown of its labor force by groups, specifying the above characteristics within job categories, and shall discuss with the University its policies and practices relating to its affirmative action programs.

**ARTICLE 15 - SERVICE AND MAINTENANCE.** In the event this order includes service and maintenance of said equipment, Lessor will provide such service and maintenance required to keep said equipment in good working condition throughout the term of lease. The service and maintenance will consist of not less than: (1) periodic cleaning, and adjustments in the mechanisms and replacing unserviceable parts, and

(2) emergency repair service, including replacement of unserviceable parts. In order to perform maintenance service hereunder Lessor shall have reasonable access to the leased equipment to the extent practical in consonance with operational requirements. Lessor agrees that its failure to provide service and maintenance to keep the equipment in good operating condition shall result on a credit of 1/30th of the monthly lease payments for every twenty-four (24) hour period or portion thereof following the first twenty-four (24) hours after notification to Lessor that the equipment is inoperative.

**ARTICLE 16 - ALTERATIONS.** University or its authorized agents may make alterations or install attachments to the equipment and the Lessor shall be so notified. In the event that such changes substantially increase the cost of maintenance, mutually agreeable arrangements for additional maintenance service shall be made on an individual installation basis. Such alterations or attachments which are not the property of Lessor shall be removed immediately after discontinuation of lease (unless University elects to exercise its Purchase Option) and the equipment restored to the prior configuration (ordinary wear and tear only excluded) at University's expense. Lessor shall inform University of any provisions in the manufacturer's warranty which may cause the warranty to be affected by any such alterations or attachments.

**ARTICLE 17 - RISK OF LOSS.** During the period of time that property covered by this order is in the possession of University, University (and its customers, if installed on University's customers' premises) shall take good care of the property and University shall be responsible for any loss of or damage to the property caused by University while in its possession and control, unless such damage or loss is a consequence, directly or indirectly of intentional or negligent acts or omissions of Lessor or Lessor's agents.

**ARTICLE 18 - OPTION TO PURCHASE.** University is hereby given the option (provided University is not in default in the performance of any of its obligations hereunder) to purchase any or all of said property at the times and for the amounts set forth in this order. As of the date of exercise of the option, University's Standard Terms and Conditions of Purchase shall be substituted for the terms and conditions applicable to this lease. Said terms and conditions of purchase shall be those in effect as of the date the property was installed, provided that the period of manufacturer's warranty set forth therein shall be deemed to have commenced as of the date the Lease Terms commenced, and University shall be entitled to the remaining portion, if any, of said warranty period.

University shall exercise such option to purchase said property by notifying Lessor in writing of its intention to do so. Such notice may be delivered to Lessor's office or may be mailed to Lessor at the address specified by Lessor. Such notice shall be given by University to Lessor not less than thirty (30) days before the expiration of the current year of the lease. Lessor shall keep University advised of any change of Lessor's address for the purpose of such notice.

## **ARTICLE 19 - LESSOR'S LIABILITY AND INSURANCE REQUIREMENTS**

**A. INDEMNIFICATION.** Lessor shall defend, indemnify, and hold harmless University, its officers, employees, and agents, from and against all losses, expenses (including attorney's fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Lessor's performance hereunder, provided such losses, expenses, damages, and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Lessor, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Lessor's direction and control.





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## ARTICLE 1. PURPOSE AND INTRODUCTION

- A. In the course of providing the Goods and/or Services contemplated by the Agreement, Supplier may gain access to the University of California's (UC) Institutional Information and/or IT Resources (both defined below). In such an event, UC and Supplier desire to appropriately protect Institutional Information and IT Resources. The purpose of this Appendix-Data Security is to specify Supplier's cybersecurity and risk management responsibilities when Supplier has access to Institutional Information and/or IT Resources.
- B. Any capitalized terms used here have the meaning ascribed to such terms as set forth in the Agreement or Incorporated Documents.
- C. Supplier must provide commercially acceptable cybersecurity and cyber risk management to protect Institutional Information and/or IT Resources. This must include, but is not limited to the Supplier:
  1. Developing and documenting a plan that protects Institutional Information and IT Resources.
    - Supplier must responsibly execute this plan.
    - Supplier's approach must conform to a recognized cybersecurity framework designed for that purpose.<sup>1</sup>
    - Supplier's information security plan must be supported by a third-party review or certification. Supplier may only use an alternative to a third-party review if approved by the responsible UC Information Security Officer.
  2. Conducting an accurate and thorough assessment of the potential risks to and vulnerabilities of the security of the Institutional Information and/or IT Resources. Supplier must mitigate anticipated risks effectively. This includes implementing commercially acceptable security policies, procedures, and practices that protect Institutional Information and/or IT Resources.
  3. Updating its plan to effectively address new cybersecurity risks.
  4. Complying with pertinent contractual and regulatory responsibilities.
  5. Providing UC with evidence of compliance with Supplier's information security plan.
  6. Keeping UC informed with timely updates on risks, vulnerabilities, Security Incidents, and Breaches.
  7. Keeping UC informed of any measures UC must perform to ensure the security of Institutional Information and IT Resources.

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<sup>1</sup> Examples include the latest versions of PCI DSS, NIST CSF, CIS Critical Security Controls, ISO 27002, NIST SP 800-53 and NIST SP 800-171.

- D. If, in the course of providing the Goods and/or Services under the Agreement, Supplier engages in transactions with UC affiliated individuals (including but not limited to: students, staff, faculty, customers, patients, guests, volunteers, visitors, research subjects, etc.), as a benefit and result of the Agreement, Supplier must treat any data about UC affiliated individuals that Supplier creates, receives, and/or collects in the course of those transactions with the same level of privacy and security protections and standards as required of Institutional Information by this Appendix.
- E. Supplier agrees to be bound by the obligations set forth in this Appendix. To the extent applicable, Supplier also agrees to impose, by written contract, the same terms and conditions contained in this Appendix on any sub-supplier retained by Supplier to provide or assist in providing the Goods and/or Services to UC.
- F. To the extent that a requirement of this Appendix conflicts with those of any other UC Agreement or Incorporated Document, the most stringent requirement (including but not limited to: least risk to UC, shortest time, best practice, etc.) will apply.

## ARTICLE 2. DEFINED TERMS

- A. **“Breach”** means: (1) Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of Institutional Information and/or IT Resources; or (3) The acquisition, access, use, or disclosure of protected health information (PHI) or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law.
- B. **“Illicit Code”** means: (1) Any code UC would not reasonably expect to be present or operating; (2) Hidden software or functionality with adverse or undesired actions or consequences; (3) Code that replicates or transmits Institutional Information or activates operating systems or other similar services without the express knowledge and approval of UC; (4) Code that alters, damages, or erases any Institutional Information or software without the express knowledge and approval of UC; or (5) Code or apparatus that functions in any way as a: key lock, node lock, time-out, “back door,” “trap door,” “booby trap,” “dead drop device,” “data scrambling device,” or other function, regardless of how it is implemented, which is intended to alter or restrict the use of or access to any Institutional Information and/or IT Resources.
- C. **“Institutional Information”** means: Any information or data created, received, and/or collected by UC or on its behalf, including but not limited to: application logs, metadata, and data derived from such data.
- D. **“IT Resource”** means: IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business. IT Resources include, but are not limited to: personal and mobile computing systems and devices,

mobile phones, printers, network devices, industrial control systems (including but not limited to: SCADA, PLCs, DPC, Operational Technology, etc.), access control systems, digital video monitoring systems, data storage systems, data processing systems, backup systems, electronic and physical media, biometric and access tokens, Internet of Things (IoT), or any other device that connects to any UC network.

E. **“Major Change”** means: The implementation of a change that could have an effect on the security of an IT Resource or Institutional Information. The scope includes changes to architectures, processes, tools, metrics, and documentation, as well as changes to IT services and other configuration items. These include changes related to:

1. Technology upgrades or migrations.
2. Responses to Security Incidents.
3. Modifications of scope (data elements, features, location of Institutional Information, etc.).
4. Regulatory guidance.
5. Law and legal regulations.
6. Responses to risk assessments.
7. Addressing vulnerabilities.
8. Material updates or shifts in technologies used by Supplier.

F. **“Security Incident”** means: (1) A material compromise of the confidentiality, integrity, or availability of Institutional Information; (2) A single event or a series of unwanted or unexpected events that has a significant probability of compromising UC business operations or threatening Institutional Information and/or IT Resources; (3) Any event involving a cyber intrusion; or (4) A material failure of Supplier’s administrative, technical, or physical controls that resulted or could have resulted in an adverse impact to the confidentiality, integrity, or availability of Institutional Information or IT Resources.

### ARTICLE 3. ACCESS TO INSTITUTIONAL INFORMATION AND IT RESOURCES

A. Supplier must limit its access to, use of, and disclosure of Institutional Information and IT Resources to the least invasive degree necessary required to provide the Goods and/or Services.

1. Supplier may not access or use Institutional Information and IT Resources for any purpose except to provide the Goods and/or Services.
2. For the avoidance of doubt, Supplier may not access, use, or disclose Institutional Information and IT Resources outside the scope of the Agreement for purposes of, including but not limited to: marketing, advertising, research, sale, or licensing unless expressly approved in writing by UC.

B. In the event that Goods and/or Services include the review of a specific Security Incident or a threat to or anomaly in Institutional Information or IT Resources, Supplier must limit inspection to the least invasive degree necessary required to perform the investigation.

ARTICLE 4. SUPPLIER'S INFORMATION SECURITY PLAN AND RESPONSIBILITIES

- A. Supplier acknowledges that UC must comply with information security standards as required by law, regulation, and regulatory guidance, as well as by UC's internal security program that protects Institutional Information and IT Resources.
- B. Supplier must establish, maintain, comply with, and responsibly execute its information security plan.
- C. Supplier's initial information security plan is attached as Exhibit 2 and incorporated by reference.
- D. Updates to Exhibit 2 will occur as follows:
  - 1. On an annual basis, Supplier will review its information security plan, update it as needed, and submit it upon written request by UC.
  - 2. In the event of a Major Change, Supplier will review its information security plan, update it as needed, and submit it to UC as detailed herein.
- E. If Supplier makes any material modifications to its information security plan that will affect the security of Institutional Information and IT Resources, Supplier must notify UC within seventy-two (72) calendar hours and identify the changes.
- F. Supplier's Information Security Plan must:
  - 1. Ensure the security (including but not limited to: confidentiality, integrity, and availability) of Institutional Information and IT Resources through the use and maintenance of appropriate administrative, technical, and physical controls;
  - 2. Protect against any reasonably anticipated threats or hazards to Institutional Information and IT Resources;
  - 3. Address the risks associated with Supplier having access to Institutional Information and IT Resources;
  - 4. Comply with applicable regulations and/or external obligations listed in Exhibit 1;
  - 5. Comply with all applicable legal and regulatory requirements for data protection, security, and privacy;
  - 6. Clearly document the cybersecurity responsibilities of each party;
  - 7. Follow UC records retention requirements outlined in the Statement of Work (SOW) or in UC's Terms and Conditions;
  - 8. Prevent the sharing of passwords or authentication secrets that provide access to Institutional Information and/or IT Resources;
  - 9. Prevent the use of passphrases (passwords) or other authentication secrets that are common across customers or multiple unrelated UC sites or units;
  - 10. Prevent unauthorized access to Institutional Information and IT Resources;
  - 11. Prevent unauthorized changes to IT Resources;
  - 12. Prevent the reduction, removal, or turning off of any security control without express written approval from UC;



13. Prevent the creation of new Supplier accounts to access Institutional Information and IT Resources without express written approval from UC;
14. Prevent the storing, harvesting, or passing through of UC credentials (username, password, authentication secret, or other factor); and
15. Prevent the use or copying of Institutional Information for any purpose not authorized under the Agreement or any associated Statement of Work (SOW).

#### ARTICLE 5. REQUESTS FROM UC AND EVIDENCE OF COMPLIANCE

- A. Supplier must provide UC with evidence that demonstrates to UC's reasonable satisfaction Supplier's adherence to its information security plan (including but not limited to: third-party report, attestation signed by an authorized individual, attestation of compliance by a qualified assessor, or a mutually agreed upon equivalent) upon execution of the Agreement, upon reasonable request (including but not limited to: annually, after Major Changes, and/or as a result of a Security Incident), or as required by any applicable regulatory or governmental authority.
- B. Supplier must respond to UC's reasonable questions related to cybersecurity controls, Security Incidents, or Major Changes, newly published vulnerabilities, and/or risk assessments within ten (10) business days.
- C. UC may request and perform a security audit using a qualified third party or a mutually agreed upon alternative annually or as a result of a Breach.

#### ARTICLE 6. NOTIFICATION OF MAJOR CHANGES AND VULNERABILITY DISCLOSURES

- A. Within twenty (20) business days, Supplier must notify UC regarding changes in Supplier's security posture or IT infrastructure. Such notices must occur:
  1. When Major Changes happen.
  2. When Supplier becomes aware of a vulnerability that warrants a CVE<sup>2</sup> rating of "High" or "Critical," based on the latest CVE version, for which a patch is not yet available or for which Supplier will delay application of an available patch.
- B. Supplier must use commercially acceptable efforts to remediate, within twenty (20) business days, any vulnerability rated as CVE High or Critical.
- C. In response to Major Changes, Supplier must update its information security plan no later than fifteen (15) days into the next calendar quarter and must provide updated evidence of compliance with the information security plan.

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<sup>2</sup> Common Vulnerabilities and Exposures (CVE) is a dictionary-type list of standardized names for vulnerabilities and other information related to security exposures maintained by The MITRE Corporation. CVE aims to standardize the names for all publicly known vulnerabilities and security exposures. The goal of CVE is to make it easier to share data across separate vulnerability databases and security tools. The CVE list can be found at: [cve.mitre.org](http://cve.mitre.org)

## ARTICLE 7. RETURN AND DISPOSAL OF INSTITUTIONAL INFORMATION

- A. Within thirty (30) calendar days of the termination, cancellation, expiration, or other conclusion of the Agreement, Supplier must return all Institutional Information to UC and then dispose of the Institutional Information in possession of Supplier as detailed herein. This provision also applies to all Institutional Information that is in the possession of sub-suppliers or agents of Supplier.
- B. Such disposal will be accomplished using the methods described in UC's Institutional Information Disposal Standard (<https://security.ucop.edu/policies/institutional-information-disposal.html>) or an alternative approved by UC.
- C. Supplier will certify in writing to UC that such return and/or disposal has been completed.
- D. If Supplier believes that return and/or disposal of Institutional Information is technically impossible or impractical, Supplier must provide UC with a written statement explaining the reason for this conclusion. If UC determines that return and/or disposal is technically impossible or impractical, Supplier will continue to protect the Institutional Information in accordance with the terms of this Appendix for as long as the Institutional Information is in Supplier's possession.

## ARTICLE 8. NOTIFICATION OF CORRESPONDENCE CONCERNING INSTITUTIONAL INFORMATION

- A. Supplier agrees to notify UC promptly, both orally and in writing, but in no event more than seventy-two (72) calendar hours after Supplier receives correspondence or a complaint that relates to a regulation, contractual obligation, Breach, or material risk concerning Institutional Information. For purposes of this Article 8.A, a correspondence or complaint may include, but is not limited to, any communication that originates from law enforcement, regulatory or governmental agencies, government investigators, corporations, or an individual, but excludes normal customer service correspondence or inquiries.

## ARTICLE 9. COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS

- A. **Reporting of Breach or Security Incident:** If Supplier reasonably suspects or confirms a Breach and/or a Security Incident impacting Institutional Information and/or IT Resources, Supplier must promptly notify UC both orally and in writing using the contacts in the Agreement. Supplier must provide such notifications no later than (1) seventy-two (72) calendar hours after the initial suspicion of a Security Incident and/or Breach and (2) seventy-two (72) calendar hours after the initial confirmation of a Security Incident and/or Breach, if Supplier is able to make such a confirmation. Supplier's notification must identify:
1. Contacts for both technical and management coordination;



2. Escalation and identifying information, such as ticket numbers, system identifiers, etc.;
  3. The nature of the Breach and/or Security Incident;
  4. The Institutional Information and/or IT Resources affected;
  5. What Supplier has done or will do to mitigate any deleterious effect; and
  6. What corrective action Supplier has taken or will take to prevent future Security Incidents.
- B. Supplier will provide other information as reasonably requested by UC.
- C. In the event of a suspected Breach and/or Security Incident, Supplier will keep UC informed regularly of the progress of its investigation until the incident is resolved.
- D. **Coordination of Breach Response or Security Incident Activities:** Supplier will fully cooperate with UC's investigation of any Breach and/or Security Incident involving Supplier and/or Goods and/or Services. Supplier's full cooperation will include, but not be limited to, Supplier:
1. Promptly preserving any potential forensic evidence relating to the Breach and/or Security Incident;
  2. Remediating the Breach and/or Security Incident as quickly as circumstances permit;
  3. Promptly, but no more than seventy two (72) calendar hours after the discovery of Breach and/or Security Incident, designating a contact person to whom UC will direct inquiries and who will communicate Supplier responses to UC inquiries;
  4. As rapidly as circumstances permit, assigning/using appropriate resources to remedy, investigate, and document the Breach and/or Security Incident, to restore UC service(s) as directed by UC, and undertake appropriate response activities;
  5. Providing status reports to UC regarding Breach and Security Incident response activities, either on a daily basis or a frequency approved by UC;
  6. Coordinating all media, law enforcement, or other Breach and/or Security Incident notifications with UC in advance of such notification(s), unless expressly prohibited by law;
  7. Ensuring that knowledgeable Supplier employees are available on short notice, if needed, to participate in UC and Supplier initiated meetings and/or conference calls regarding the Breach and/or Security Incident; and
  8. Ensuring that knowledgeable Supplier employees and agents participate in after-action analysis, including root cause analysis and preventive action planning.
- E. **Breaches and Security Incidents – Corrective And Preventive Action:** As a result of a Breach and/or Security Incident impacting Institutional Information and/or IT Resources, and upon UC's request, Supplier must prepare a report detailing corrective and preventive actions. The report must include:

1. A mutually agreed upon timeline for the corrective and preventive actions based on the nature of the Breach and/or Security Incident;
  2. Identification and description of the root causes; and
  3. Precise steps Supplier will take to address the failures in the underlying administrative, technical, and/or physical controls to mitigate damages and future cyber risk.
- F. **Costs:** Supplier must reimburse UC for reasonable costs related to responding to Breaches impacting Institutional Information and IT Resources caused by Supplier. This includes all costs associated with notice and/or remediation of the Breach.
- G. **Grounds for Termination:** Any Breach may be grounds for termination of the Agreement by UC. Agreement obligations to secure, dispose, and report continue through the resolution of the Breach and/or Security Incident.

#### ARTICLE 10. ILLICIT CODE WARRANTY

- A. Supplier represents and warrants that the Goods and/or Services do not contain Illicit Code.
- B. To the extent that any Goods and/or Services have Illicit Code written into them, Supplier will be in breach of this Agreement, and no cure period will apply.
- C. Supplier agrees, in order to protect UC from damages that may be intentionally or unintentionally caused by the introduction of Illicit Code, to promptly isolate or otherwise secure and then return Institutional Information and/or IT Resources.
- D. Supplier acknowledges that it does not have any right to electronically hold Institutional Information or assert any claim against UC by withholding the Goods and/or Services using Illicit Code.
- E. Should Supplier learn of the presence of Illicit Code, Supplier will promptly provide UC with written notice explaining the scope and associated risk.
- F. Supplier represents and warrants that it will take commercially reasonable steps to promptly remove Illicit Code.
- G. Supplier represents and warrants that even if Illicit Code is unintentionally installed via any method, Supplier will never utilize the Illicit Code.
- H. This provision does not relate to malware or viruses that attack the running IT Resource. These are covered under ARTICLE 9 - COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS.

#### ARTICLE 11. BACKGROUND CHECKS

- A. Before Supplier's employee, sub-supplier, or agent may access Institutional Information and/or IT Resources classified at Protection Level 3 or Protection Level 4<sup>3</sup>, Supplier must conduct a thorough and pertinent background check. Supplier must evaluate the results prior to granting access in order to assure that there is no indication

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<sup>3</sup> See Exhibit 1.

that the employee, sub-supplier, or agent presents a risk to Institutional Information and IT Resources.

B. Supplier must retain each employee's, sub-supplier's, or agent's background check documentation for a period of three (3) years following the termination of the Agreement.



## Exhibit 1 – Institutional Information

### 1. Protection Level Classification<sup>1</sup>:

- Protection Level 1
- Protection Level 2
- Protection Level 3
- Protection Level 4

**Explanation:** [Optional, add detail if needed, may be covered in SOW]

The Protection Level determines the applicable cyber security insurance requirement in the Terms and Conditions.

### 2. Institutional Information data element descriptors:

Select all data types that apply:

- A.  Animal Research Data.
- B.  Controlled Technical Information (CTI).
- C.  Controlled Unclassified Information (CUI) – 800-171/NARA.
- D.  Defense Department: Covered Defense Information (CDI).
- E.  Federal Acquisition Regulations (FARS/DFAR) other than CUI.
- F.  GDPR personal data.
- G.  GDPR special data.
- H.  Health data – other identifiable medical data not covered by HIPAA. (Including but not limited to: occupational health, special accommodation, or services qualification, etc.)
- I.  Health Records subject to HIPAA Privacy or Security Rule (PHI).
- J.  Human Subject Research Data.
  - 1.  Identified.
  - 2.  Anonymized.
- K.  Intellectual property (IP), such as patents, copyright, or trade secrets.
- L.  ITAR/EAR-controlled data.
- M.  Payment card data (PCI, PCI DSS).
- N.  Personally identifiable information – PII.
- O.  Student data, whether or not subject to FERPA.

<sup>1</sup> For reference see: <https://security.ucop.edu/policies/institutional-information-and-it-resource-classification.html>

- P.  Other: \_\_\_\_\_
- Q.  Other: \_\_\_\_\_
- R.  Other: \_\_\_\_\_
- S.  Other: \_\_\_\_\_

3. Institutional Information Regulation or Contract Requirements:

Select all regulations or external obligations that apply to inform UC and the Supplier of obligations related to this Appendix:

**Privacy (\* indicates data security requirements are also present)**

- A.  California Confidentiality of Medical Information Act (CMIA) \*
- B.  California Consumer Privacy Act (CCPA).
- C.  California Information Practices Act (IPA).
- D.  European Union General Data Protection Regulation (GDPR)\*.
- E.  Family Educational Rights and Privacy Act (FERPA) \*.
- F.  Federal Policy for the Protection of Human Subjects (“Common Rule”).
- G.  Genetic Information Nondiscrimination Act (GINA).
- H.  Gramm-Leach-Bliley Act (GLBA) (Student Financial Aid) \*.
- I.  Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) \*.
- J.  Substance Abuse and Mental Health Services Administration SAMHSA (CFR 42 Part 2).
- K.  The Fair and Accurate Credit Transaction Act (FACTA).
- L.  The Fair Credit Reporting Act (FCRA).

**Data Security**

- M.  Chemical Facility Anti-Terrorism Standards (CFATS).
- N.  Defense Federal Acquisition Regulations (DFARS).
- O.  Export Administration Regulations (EAR).
- P.  Federal Acquisition Regulations (FARS).
- Q.  Federal Information Security Modernization Act (FISMA).
- R.  International Traffic in Arms Regulations (ITAR).
- S.  Payment card data (PCI, PCI DSS).
- T.  Toxic Substances Control Act (TSCA).
- U.  Other: \_\_\_\_\_
- V.  Other: \_\_\_\_\_
- W.  Other: \_\_\_\_\_
- X.  Other: \_\_\_\_\_

# Exhibit 2

## Supplier's Initial Information Security Plan

[Supplier to provide and update per the Appendix DS requirements.]



# UNIVERSITY OF CALIFORNIA

## Appendix – Business Associate Agreement

This Appendix - Business Associate Agreement ("Appendix BAA") supplements and is made a part of any and all agreements entered into by and between The Regents of the University of California, a California corporation ("UC"), on behalf of its University of California Health System and \_\_\_\_\_, Business Associate ("BA").

### RECITALS

- A. UC is a "Covered Entity" as defined under 45 C.F.R. § 160.103
- B. UC and BA are entering into or have entered into, and may in the future enter into, one or more agreements (each an "Underlying Agreement") under which BA performs functions or activities for or on behalf of, or provides services to UC ("Services") that involve receiving, creating, maintaining and/or transmitting Protected Health Information ("PHI") of UC as a "Business Associate" of UC as defined under 45 C.F.R. § 160.103. This Appendix BAA shall only be operative in the event and to the extent this Appendix BAA is incorporated into an Underlying Agreement between UC and BA.
- C. UC and BA desire to protect the privacy and provide for the security of PHI used by or disclosed to BA in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160, 162 and 164) (the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), California Civil Code § 56 et seq., §§1798.82 and 1798.29, and other applicable laws and regulations. The purpose of this BA Agreement is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR § 164.504(e), the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time, and similar requirements under California law.
- D. UC has designated all of its HIPAA health care components as a single component of its hybrid entity and therefore this BA Agreement is binding on all other UC health care components (collectively, the Single Health Care Component or the SHCC). This BA Agreement is effective on the date of the Underlying Agreement under which BA provides Services to UC ("Effective Date").

### 1. DEFINITIONS

Except for PHI, all capitalized terms in this Appendix BAA shall have the same meaning as those terms in the HIPAA Regulations.

PHI shall have the same meaning as "protected health information" in the HIPAA Regulations that is created, received, maintained, or transmitted by Business Associate or any Subcontractor on behalf of UC and shall also include "medical information" as defined at Cal. Civ. Code § 56.05.

## 2. OBLIGATIONS OF BA

BA agrees to:

- A. Comply with the requirements of the Privacy Rule that apply to UC in carrying out such obligations, to the extent BA carries out any obligations of UC under the Privacy Rule. BA also agrees to comply with the requirements of California state privacy laws and regulations that apply to UC in carrying out such obligations, to the extent BA carries out any obligations of UC under California Civil Code § 1798 et seq., California Civil Code § 56 et seq., and California Health & Safety Code §§ 1280.15 and 1280.18, as applicable, unless otherwise mutually agreed to by BA and UC.
- B. Not Use or Disclose PHI other than as permitted or required by the Underlying Agreement or as required by law.
- C. Use appropriate safeguards, and comply, where applicable, with 45 C.F.R. § 164 Subpart C with respect to ePHI, to prevent the Use or Disclosure of PHI other than as provided for by the Underlying Agreement(s) and the Appendix BAA.
- D. Notify UC, orally and in writing, as soon as possible, but in no event more than five (5) calendar days, after BA becomes aware of any Use or Disclosure of the PHI not permitted or required by the Appendix BAA or Underlying Agreement(s), including Breaches of unsecured PHI as required by 45 C.F.R. § 164.410 and potential compromises of UC PHI, including potential inappropriate access, acquisition, use or disclosure of UC PHI (each, collectively an “Incident”). BA shall be deemed to be aware of any such Incident, as of the first day on which it becomes aware of it, or by exercising reasonable diligence, should have been known to its officers, employees, agents or sub-suppliers. The notification to UC shall include, to the extent possible, each individual whose unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed during such Incident. BA shall further provide UC with any other available information that UC is required to include in a notification to affected individuals at the time of the notification to UC, or promptly thereafter as information becomes available. BA shall take prompt corrective action to remedy any such Incident, and, as soon as possible, shall provide to UC in writing: (i) the actions initiated by the BA to mitigate, to the extent practicable, any harmful effect of such Incident; and (ii) the corrective action BA has initiated or plans to initiate to prevent future similar Incidents.
- E. Ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such PHI.
- F. If BA maintains PHI in a Designated Record Set, BA shall make the PHI in the Designated Record Set available to UC, or if directed by UC to the Individual or the Individual’s designee, as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.524.
- G. If BA maintains PHI in a Designated Record Set, BA shall make any amendments directed or agreed to by UC pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.526.



- H. Maintain and make available the information required to provide an accounting of disclosures to UC, or if directed by UC to the Individual, as necessary to satisfy UC's obligations under 45 C.F.R. § 164.528.
- I. Make its internal practices, books, and records, relating to the Use and Disclosure of PHI available to UC, and to the Secretary for purposes of determining UC's compliance with HIPAA, HITECH and their implementing regulations.

**3. PERMITTED USES AND DISCLOSURES BY BA**

BA may only Use or Disclose the Minimum Necessary PHI to perform the services set forth in the Underlying Agreement.

**4. TERM AND TERMINATION**

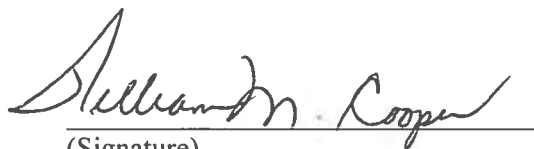
- A. Termination for Cause. UC may terminate this Appendix BAA and any Underlying Agreement(s), if UC determines BA has violated a material term of the Appendix BAA.
- B. Upon termination of this Appendix BAA for any reason, with respect to PHI received from UC, or created, maintained, or received by BA on behalf of UC, BA shall return to UC, or if agreed to by UC, destroy, all such PHI that BA still maintains in any form, and retain no copies of such PHI.

To the extent return or destruction of UC PHI is not feasible, BA shall (1) retain only that PHI which is necessary for BA to continue its proper management and administration or to carry out its legal responsibilities; and (2) continue to use appropriate safeguards for such UC PHI and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as BA retains the PHI.

- C. Survival. The obligations of BA under this Section 4.B shall survive the termination of this Appendix BAA and any Underlying Agreement(s).

The Appendix BAA is signed below by the parties' duly authorized representatives.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

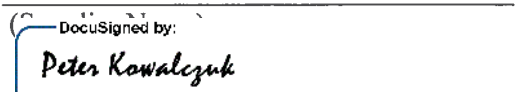
  
\_\_\_\_\_  
(Signature)

WILLIAM M. COOPER  
\_\_\_\_\_  
(Printed Name, Title)

AVP + CPO  
8/2/19  
\_\_\_\_\_  
(Date)

**BUSINESS ASSOCIATE**

Canon Solutions America, Inc.

DocuSigned by:  
  
Peter Kowalczyk  
5AABE3CE633E4B5...  
\_\_\_\_\_  
(Signature)

Peter Kowalczyk President  
\_\_\_\_\_  
(Printed Name, Title)

12/15/2020 | 6:56 PM PST  
\_\_\_\_\_  
(Date)

## Appendix - General Data Protection Regulation

During the course of providing Services to, or on behalf of, UC pursuant to the Agreement between UC and Supplier dated \_\_\_\_\_, Supplier may process personal data as defined below. The Parties agree that with respect to the processing of personal data pursuant to the Agreement or this Appendix – General Data Protection Regulation (“Appendix GDPR”), UC is the data controller (and shall hereinafter be referred to as the “Controller”), and Supplier is the data processor (and shall hereinafter be referred to as the “Processor”). The Parties have agreed that the Processor will provide the Services to the Controller pursuant to and in accordance with the terms and conditions of the Agreement and this Appendix GDPR. In the event of a conflict between the terms of this Appendix GDPR and the Agreement or any amendment or appendix thereto, the terms of this Appendix GDPR shall govern. Supplier agrees to be bound by the obligations set forth in this Appendix GDPR. To the extent applicable, Supplier also agrees to impose, by written contract, the terms and conditions contained in this Appendix GDPR on any third party retained by Supplier to provide Services for or on behalf of UC.

### A. Definitions

Capitalized terms used but not defined in this Appendix GDPR will have the meanings set forth in the Agreement. The following terms shall have the meanings set forth herein:

1. **“Data”** means all personal data processed by (or on behalf of) the Processor for the Controller under or in connection with the Agreement, including in the provision of the Services. If Appendix DS applies to this Agreement, “Data” as used herein shall also be considered UC Institutional Information as defined in Appendix DS.
2. **“Data Subjects’ Rights”** means the rights of data subjects as provided in the GDPR including, but not limited to, rights of access, rectification, erasure, restriction of processing, data portability, objection, and the right not to be subject to automated decision making (including profiling);
3. **“EEA”** means European Economic Area;
4. **“EU”** means the European Union;
5. **“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
6. **“data subject,” “personal data,” “personal data breach,” “process/processing,” “pseudonymisation,”** and **“supervisory authority,”** shall each have the meaning as in the GDPR;
7. **“Subprocessor”** means any third party: (i) who is engaged by the Processor to carry out specific processing activities relating to Data for or on behalf of the Controller; or (ii) to whom the Processor subcontracts any of its obligations in connection with the Agreement.

### B. Scope of Processing Data

1. Processor shall process Data solely for the purposes of performing the Services and for the same duration of the Agreement, except as otherwise agreed to in writing by the Parties. The scope and

further details of Processor's processing activities of Data pursuant to the Agreement and Appendix GDPR are set forth in Addendum A to this Appendix GDPR.

2. To the extent any additional information is required to be included in Addendum A pursuant to the GDPR or any other applicable EU member state, or EEA state law, or this Agreement otherwise requires amendment, the Parties will cooperate to amend this Appendix GDPR in a writing signed by both Parties.

### **C. Subprocessors**

1. Controller generally authorizes Processor to engage Subprocessor(s) to perform any of Processor's obligations in providing Services to Controller in connection with the Agreement as set forth in Addendum A and as allowed under the terms of the Agreement, except that any processing of personal data by Subprocessor(s) outside of the United States or EEA must be specifically authorized in writing prior to such processing by Controller.
2. The Processor shall give the Controller prior written notice of any intended changes concerning the addition or replacement of any Subprocessors set forth in Addendum A to allow the Controller to approve or object to such changes. Such notice shall include details of the processing activity or activities to be conducted by the applicable Subprocessor and the identity and contact details of such Subprocessor.
3. The Processor shall ensure that any Subprocessor approved by Controller in accordance with this Section C is subject to obligations in a written agreement requiring such Subprocessor to comply with the obligations of this Appendix GDPR. If any Subprocessor fails to fulfill its data protection obligations, the Processor shall remain fully liable to the Controller for the performance or non-performance of such Subprocessor.
4. Upon request, the Processor shall provide a copy of each Subprocessor agreement entered into pursuant to this Section C to the Controller.

### **D. Obligations of the Processor**

1. The Processor shall, and shall ensure that each of its employees, approved Subprocessors and any other individual acting under its authority who has access to the Data:
  - a. process Data in accordance with the terms of this Agreement, Appendix GDPR or any other written instructions of the Controller, and only to the extent and in the manner necessary to provide Services, and for no other purpose(s). In the event EU or member state law requires Processor to process in a manner not expressly authorized by this Agreement or the Controller's written instructions, the Processor shall promptly inform the Controller of the applicable legal requirement before processing, unless prohibited from doing so on important public interest grounds, consistent with EU or member state law;
  - b. keep the Data confidential and ensure that any person authorized to process the Data for or on behalf of the Processor (including but not limited to any Processor employees and staff and approved Subprocessors) has agreed to keep the Data confidential, or is otherwise under a statutory obligation to protect the confidentiality of the Data; and

- c. upon reasonable request from the Controller, provide an up-to-date copy of the Data in the format requested by the Controller.
2. In carrying out its obligations under the Agreement and this Appendix GDPR, Processor agrees to comply with all applicable state, federal and laws of other countries or jurisdictions (including, but not limited to, GDPR), as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Data.
3. In accordance with GDPR, and taking into consideration the state of the art, costs of implementation and the nature, scope, context and purposes of processing the Data pursuant to this Agreement, as well as the risks to the rights and freedoms of natural persons and the risks to processing the Data, the Processor represents and warrants that it has implemented appropriate technical and organizational security measures appropriate to such risks, including, as appropriate: (i) the pseudonymisation and encryption of the Data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability of and access to the Data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing. Upon Controller's request, Processor shall provide to Controller evidence demonstrating Processor's implementation of such technical and organizational security measures as required by GDPR.
4. The Processor shall assist the Controller in ensuring compliance with Controller's obligations as a Controller by: (a) cooperating with Controller's implementation of appropriate technical and organizational security measures to ensure the security of processing Data; (b) cooperating with Controller notifications to supervisory authorities and/or data subjects, as applicable, of any breaches of Data; (c) cooperating with Controller's conduct of data protection impact assessments, including but not limited to, any requirements to consult with a supervisory authority as required by GDPR. Processor shall also cooperate with additional obligations of Controller that may be required of it pursuant to GDPR and other applicable data protection laws.
5. In the event of any suspected or actual personal data breach, the Processor shall notify the Controller to the individual identified below immediately upon discovery, both orally and in writing, but in no event more than two (2) calendar days after Processor identifies or reasonably believes a personal data breach has or may have occurred. Processor's notification to the Controller will identify: (i) the nature of the personal data breach, including where possible, the categories and the approximate number of data subjects concerned and the categories and approximate number of personal data records concerned; (ii) a description of the likely consequences of the personal data breach; and (iii) a description of the measures taken or proposed to be taken to address the personal data breach, including where appropriate, measures to mitigate its possible adverse effects. Processor will provide such other information as reasonably requested by Controller. In the event of a suspected personal data breach, Processor will keep Controller informed regularly of the progress of its investigation until the uncertainty is resolved.

In event of suspected or actual personal data breach, the Processor shall notify:

|                |                          |
|----------------|--------------------------|
| <b>Name</b>    | See Purchasing Agreement |
| <b>Phone</b>   |                          |
| <b>Email</b>   |                          |
| <b>Address</b> |                          |

6. Processor will fully cooperate with Controller’s investigation of any personal data breach, including but not limited to making witnesses and documents available immediately upon Supplier’s reporting of the personal data breach at no cost to Controller.
7. Any personal data breach may be grounds for immediate termination of the Agreement by Controller.
8. Except for transfers of Data to the Controller, the Processor shall not process or transfer any Data to any country outside the EEA except pursuant to prior written approval of the Controller, and at all times in compliance with GDPR and other applicable data protection laws.
9. This section is only applicable if Processor’s Services include the collection of personal data directly from data subjects:

In the event Processor’s Services include the collection of personal data directly from data subjects that is to be provided to Controller, unless the parties otherwise agree, the Processor shall be responsible for ensuring that such processing of personal data complies with GDPR requirements, including, but not limited to, obtaining a lawful basis to process the personal data.

10. This section is only applicable if: (1) Processor or a Subprocessor is based in the EEA; (2) Processor’s or such EEA-based Subprocessor’s Services include the transfer of personal data from the EEA to Controller; and (3) data subjects have not explicitly consented to the transfer of their personal data to Controller in the United States:

Unless the parties otherwise agree on another transfer mechanism that satisfies GDPR requirements, transfers of personal data shall be governed by the Standard Contractual Clauses set forth in Addendum B to this Appendix GDPR.

11. Processor acknowledges that Controller is subject to U.S. federal and state laws and regulations, including but not limited to public disclosure and retention laws and regulations, that may require the retention and disclosure of information that is the subject of the Agreement.
12. Within thirty (30) days of the termination, cancellation, expiration or other conclusion of this Appendix GDPR, Processor will deliver the Data to UC unless UC requests in writing that such Data be destroyed. This provision will also apply to all Data that is in the possession of Subprocessors. Such destruction will be accomplished by “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 Guide to Media Sanitization. Processor will certify in writing to Controller that such delivery

or destruction has been completed. In the event EU, EU member state, or EEA state law requires the storage of such Data, the Processor shall promptly inform the Controller of such requirement in writing. In such instance, Processor will continue to protect the Data in accordance with the terms of this Appendix GDPR.

**E. Data Subjects' Rights**

1. Unless Section D.9 of this Agreement applies, the Controller shall be responsible for providing data subjects with any information required under GDPR at the time of collecting such data subjects' personal data, as well as any information requested by data subjects relating to the processing of their personal data.
2. The Processor shall notify the Controller (via the individual identified by UC in this Appendix GDPR) in writing (including by e-mail) of each and any request that it receives from a data subject relating to a Data Subject Right. Such written notification shall be made promptly no later than two (2) business days following receipt of the request, and shall include any information in the Processor's custody or control that may assist the Controller to respond to the request.
3. Unless otherwise required by applicable EU, EU member state, or EEA state law, the Processor shall not respond to any such requests or other communications the Processor receives from data subjects, without the prior written consent of the Controller.
4. The Processor shall assist the Controller in Controller's obligations to respond to requests for exercising Data Subjects' Rights by using appropriate technical and organizational measures, to the extent practicable given the nature of the processing of Data.

**F. Accountability**

1. Upon written request from the Controller, the Processor shall make available to the Controller all information necessary to demonstrate compliance with its obligations under this Appendix GDPR. The Processor shall make its records, documents, facilities, processes and individuals reasonably available to Controller or Controller's designee for audits or inspections to demonstrate compliance with this Appendix GDPR.
2. The Processor shall immediately inform the Controller if, in the Processor's opinion, any instruction from the Controller with respect to the processing of Data pursuant to this Agreement violates or contradicts GDPR, or other applicable EU, EU member state, or EEA state data protection laws or regulations.



### Addendum A: Scope of Processing Data

This Addendum is part of the Appendix GDPR and includes details of the processing of Data as required by the Agreement.

1. Processor is processing Data on behalf of the Controller for purposes of the performance of Services described in this Agreement. Data shall be processed for the duration of the term of this Agreement, except as otherwise specifically set forth herein.

Processor does not anticipate processing Data as defined herein. However, Processor will be selling and providing maintenance services on multifunctional copier devices (MFDs) under this Agreement, which will be operated by Controller to scan, copy, and generate protected information on Controller premises. All MFDs include encrypted hard drive where data cannot be accessed or read by Processor employees.

MFDs can be configured to erase stored data directly after each printout. Additionally, a complete deletion of the system and a return to the delivery state is even possible and can be performed simply without the help of technicians. All data is overwritten up to nine times.

As such, any access to protected personal information would be purely incidental and is not anticipated.

2. The purposes(s) of the processing of Data to be carried out by the Processor on behalf of the Controller includes:

Processor does not anticipate processing Data as defined herein. However, Processor will be selling and providing maintenance services on multifunctional copier devices (MFDs) under this Agreement, which will be operated by Controller to scan, copy, and generate protected information on Controller premises. All MFDs include encrypted hard drive where data cannot be accessed or read by Processor employees. As such, any access to protected personal information would be purely incidental and is not anticipated.

3. The Data to be processed by the Processor on behalf of the Controller in the performance of Services includes the following: TYPES OF DATA, E.G., NAME, TITLE, CONTACT INFORMATION, BIRTHDATE, AGE, IDENTIFICATION NUMBERS, ACADEMIC RECORDS, FINANCIAL DATA: the Data may also include the following sensitive data: racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health, data concerning sex life or sexual orientation, or data relating to criminal convictions or offenses, If the Processor becomes aware that additional personal data not identified above has been received from the Controller, the Processor shall immediately notify the Controller.
4. The Data to be processed by the Processor on behalf of the Controller in the performance of Services relates to the following categories of data subjects: None
5. Controller authorizes the Processor to subcontract the following processing activities to the following Subprocessors: None
6. Other than to the United States as may be required for the performance of Services, and for which the Controller has a lawful basis to transfer the Data to the United States pursuant to GDPR, the Processor may transfer Data to the following countries outside of the EEA: None

**Addendum B: Standard Contractual Clauses**

**Commission Decision C(2004)5721**

**SET II**

**Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)**

Data transfer agreement

between

[SUPPLIER] .....(name)

[ENTER ADDRESS] .....(address and country of establishment)

hereinafter “data exporter”

and

The Regents of the University of California, on behalf of its \_\_\_\_\_ location....(name)

[ENTER ADDRESS] .....(address and country of establishment)

hereinafter “data importer”

each a “party”; together “the parties”.

**Definitions**

For the purposes of the clauses:

- a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) “the data exporter” shall mean the controller who transfers the personal data;
- c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;
- d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.



## **I. Obligations of the data exporter**

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## **II. Obligations of the data importer**

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.

- h) It will process the personal data, at its option, in accordance with:
  - i. the data protection laws of the country in which the data exporter is established, or
  - ii. the relevant provisions of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data, or
  - iii. the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: Annex A .....

Initials of data importer: [COMPLETE] .....

- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
  - i. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - ii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - iii. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - iv. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

**III. Liability and third party rights**

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter’s country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

**IV. Law applicable to the clauses**

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

**V. Resolution of disputes with data subjects or the authority**

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

## **VI. Termination**

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
  - i. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
  - ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
  - iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
  - iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
  - v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

## **VII. Variation of these clauses**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

## **VIII. Description of the Transfer**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated:.....

[FOR DATA IMPORTER

.....

.....]

[FOR DATA EXPORTER

.....

.....]

## ANNEX A

### DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.
8. Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
  - a)
    - i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and
    - ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.
  - or
  - b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

(To be completed by the parties)

**Data subjects**

The personal data transferred concern the following categories of data subjects:  
See Addendum A: Scope of Processing Data, Section 4.

**Purposes of the transfer(s)**

The transfer is made for the following purposes:  
See Addendum A: Scope of Processing Data, Sections 1 and 2.

**Categories of data**

The personal data transferred concern the following categories of data:  
See Addendum A: Scope of Processing Data, Section 3.

**Recipients**

The personal data transferred may be disclosed only to the following recipients or categories of recipients:  
See Addendum A: Scope of Processing Data, Section 5. If applicable, Data importer may also transfer to the data to the following types of recipients: [TO BE COMPLETED BY BUYER]

.....  
.....  
.....  
.....

**Sensitive data** (if appropriate)

The personal data transferred concern the following categories of sensitive data:  
See Addendum A: Scope of Processing Data, Section 3. ...

**Data protection registration information of data exporter** (where applicable)

[TO BE COMPLETED BY SUPPLIER]

.....  
.....  
.....  
.....

**Additional useful information** (storage limits and other relevant information)

The data will be protected as set forth in the Agreement. [ADD ADDITIONAL TERMS AS REQUESTED BY SUPPLIER.]

.....  
.....  
.....  
.....

**Contact points for data protection enquiries**

**Data importer**

[ADD PRIVACY OFFICER CONTACT]

.....  
.....  
.....

**Data exporter**

[TO BE COMPLETED BY SUPPLIER]

.....  
.....  
.....





## Appendix- Electronic Commerce

This Electronic Commerce Appendix specifies the electronic commerce requirements applicable to Supplier in providing the Goods and/or Services.

### **SECTION 1 - GENERAL TERMS**

Each UC Location offers an electronic web-based purchasing and catalog system to facilitate the purchase of Goods and/or Services from UC suppliers. UC Locations' eProcurement systems currently are provided by multiple service providers. Eight of the ten UC campuses utilize the same platform but may require separate implementations, as will the remaining campuses and/or Medical Centers. This Appendix sets forth the terms and conditions that will govern Supplier's sale of Goods and/or Services through UC's eProcurement systems.

### **SECTION 2 - DEFINITIONS**

**Catalog(s)** refers to the list of detailed product information, agreement pricing, manufacturer part numbers and/or service descriptions relating to the Goods and/or Services to be offered either as a Punch-out Catalog, a Hosted Catalog or in a combination. This may include the creation of multiple Hosted Catalogs.

**eProcurement and eCommerce** are used interchangeably to mean UC's electronic web-based purchasing and catalog systems. Each UC location has a branded eProcurement site.

**Go Live Date** means the date on which a Catalog will be active.

**Hosted Catalog** means a Catalog that is a properly formatted computer file supplied to all UC Locations through the Locations' respective eProcurement systems.

**Order** means a purchase order for Goods and/or Services placed by a User through an eProcurement system.

**Order Data** means all data and information relating to Orders, including, without limitation, the specifics of a given transaction.

**Punch-out Catalog** means a Catalog hosted by Supplier on Supplier's Site. Users may access this Punch-out Catalog via an Internet link provided by Supplier to UC that redirects a User from the Location's eProcurement system to Supplier Site.

**Supplier Mark** means Supplier's name, trade name and/or trademarks, service mark, or any derivation thereof.

**Supplier Site** means an internet site operated and maintained by Supplier that has been made subject to this Appendix.

**UC Mark** means UC's name, trade name and/or trademarks, service marks, or any derivation thereof.

**User** means an individual authorized by a UC location to use an eProcurement system.

### **SECTION 3 – RIGHT TO USE**

UC grants to Supplier the right to sell Goods and/or Services to UC through the eProcurement systems, subject to the terms of this agreement. Supplier will be responsible for any cost of operation or dispute with regard to its interface with UC's eProcurement systems.

**SECTION 4 – e-PROCUREMENT SYSTEM RESPONSIBILITIES; MAINTENANCE OF CATALOG(S); LICENSE**

**(a) e-Procurement System Responsibilities.**

Except as otherwise set forth herein, each party will be responsible, at its own expense, for: (i) developing, operating and maintaining its relevant system(s); (ii) acquiring and maintaining its server hardware and software (or obtaining third-party hosting services) for its relevant system(s); and (iii) maintaining Internet connectivity.

The supplier will enable its catalog with any UC location that requests one, as long as it is not out of the scope of the terms of the agreement or this appendix. The parties agree to electronically link the functionality of their respective systems, using commercially reasonable efforts.

Purchase Order and Invoice/Credit Memo Data will be transmitted between the systems according to the appropriate method for each University location, cXML, xCBL or EDI standards being preferred. Other methods of PO or Invoice/Credit Memo transmission will only be allowed at the discretion of each University location.

A supplier's Punch-out site (if applicable) will permit: (a) Users to access the Supplier Site when a User selects the Punch-out Catalog; (b) Supplier site to send back user selected items to Location's eProcurement system; (c) User to create an Order through the Location's eProcurement system; and (d) UC eProcurement systems to forward an Order to Supplier for confirmation and Order processing along with Order status inquiry.

Supplier must be able to accommodate orders and invoices for multiple UC locations sharing a single eProcurement platform. Supplier must be able to identify the Punch-out session and transmitted PO as being from the individual locations. If providing a Punch-out catalog, Supplier must be able to accommodate multiple UC locations on a single platform using a single Punch-out site, unless requested otherwise by UC.

**(b) Maintenance of Hosted and Punch-out Catalogs.**

Supplier will provide its Catalog(s) to UC in a file format that will interface seamlessly with UC's eProcurement systems. These Catalog files will be in compliance with each UC Location's eProcurement system.

UC makes no guarantee of a Go Live Schedule for establishment of a new catalog Systemwide, as each Location is a separate enablement and subject to resource availability. Timelines will be estimated and adjusted by UC as needed for concurrent implementations.

For Hosted Catalogs, Supplier must provide UC with updated versions of the Catalog file with, at a minimum, full descriptions and images that Supplier currently utilizes for items offered in its proprietary websites and Punch-out Catalogs. The parties will update each other regarding eCommerce specifications as needed from time to time.

Supplier must notify UC's Contract Administrator at least three (3) weeks in advance of the proposed Go Live Date if it will be requesting additions, deletions, or modifications to the Catalogs. After such advance notification, Supplier must provide UC with Catalog files containing the requested additions, deletions, or modifications with no less than the lead time specified in Section 10 of this appendix. In addition, for price file updates with a mutually agreed upon activation of January 1, Supplier must submit proposed files at least five (5) weeks prior to the first working day in January. Upon UC's approval of the new Catalog file, UC and Supplier will confirm the Go Live Date; the updated version of the Catalog file will be made effective on that Go Live date. If UC rejects a Catalog more than once because it does not meet UC's acceptance criteria, the Contract Administrator will suspend Supplier's price/content change until the date of Supplier's next acceptable contracted change.

If there is a conflict between a price in a Hosted Catalog and a Punch-out Catalog, UC will be invoiced at the lower price. Supplier must notify UC in advance when substituting items, changing SKU numbers or changing the number of items in a package in any Catalog.



Content in Supplier catalog is limited to the categories specified in this agreement, with additional categories allowed at UC's discretion. Supplier agrees that UC may block Catalog items at the category and/or SKU level.

The University will require Supplier to clearly identify products as Hazardous Materials, Radioactive, and Controlled Substances in the Supplier's catalog, whether Hosted or Punch-out. For Punch-out the identifier will be returned to the cart of the Location's eProcurement system, in a manner/field acceptable to the Location.

The University will require Supplier to clearly identify products with UC-recognized sustainability/green certifications in both hosted and Punch-out catalogs. UC's Contract Administrator will work with Supplier to ensure that contract items that meet the UC criteria for Green/Sustainable products will be prioritized in all product searches. Products that do not meet UC's minimum criteria requirements may be blocked in all hosted catalogs and Punch-out catalogs at UC's discretion.

Supplier is responsible for providing UC with Catalogs that contain accurate pricing and data in accordance with the Agreement. If UC determines there are errors in the pricing or data attributes of a Catalog, UC will notify Supplier of those errors in writing and reject the Catalog. Supplier will have no more than ten (10) business days to review and correct the errors.

(c) License.

Supplier hereby grants to UC, at no additional cost, a limited, non-exclusive, royalty-free right to link to and access the Supplier Site from the eProcurement sites, subject to the terms and conditions herein and solely for the purpose of permitting Users to access the Services. All Supplier Marks will remain the sole property of Supplier.

(d) Accessibility Requirements.

Supplier agrees that Supplier will make available Goods/Services accessible to people with disabilities and conform to the technical requirements of the relevant Revised Standards of Section 508 of the federal Rehabilitation Act. In addition, Supplier warrants that:

- i. Any catalog content provided to UC will comply with the accessibility requirements of WCAG 2.0AA.
- ii. Supplier will promptly respond to and resolve any complaint regarding accessibility of any catalog content provided to UC.

**SECTION 5 – USER SUPPORT**

(a) UC Duties. Each UC Location will provide its Users with initial contact and system support assistance on all functionality and use issues for eProcurement (including links to the Supplier Site). When known, UC will promptly notify Supplier of any such issues relating to the Catalog, the Supplier Site, and/or other Supplier materials/systems.

(b) Supplier Duties. Supplier will provide all customer support relating to the Catalog, Supplier Goods and/or Services, Invoicing/Payment/Credits, and Supplier Sites in a manner consistent with the customer support that Supplier provides to other customers, and at least as good as the customer support that Supplier provides to customers who are purchasing through any other means.

**SECTION 6 – PROPRIETARY RIGHTS**

UC's Terms and Conditions of Purchase contains provisions regarding the parties' rights and responsibilities with respect to intellectual property relating to the Goods and Services. Without altering those provisions, the parties additionally agree as follows: UC may require Supplier to "brand" Supplier's Punch-out Catalog with one or more UC Marks. If UC requires Supplier to utilize one or more UC Marks on Supplier's Punch-out Catalog, UC will provide the appropriate artwork and such artwork will be deemed to have been provided with a limited, non-exclusive, non-sub-

licensable right for Supplier to use it solely for the purpose of a UC-branded Punch-out Catalog hosted by Supplier and subject to the following terms:

- (i) Supplier may not make any additional use of the UC Marks without UC's prior written approval.

Supplier's use of the UC Marks in the Punch-out Catalog must acknowledge UC's ownership of the UC Marks. Supplier will include all notices and legends with respect to UC trademarks, trade names, or copyrights as may be required by applicable trademark and copyright laws or which may be reasonably requested by UC. Supplier agrees not to claim any title to UC Marks or any right to use UC Marks except as permitted by this Appendix. Upon termination of this Appendix or the Agreement, all rights to UC Marks conveyed by UC to Supplier will cease and Supplier will destroy or return to UC all media with UC Marks. UC specifically reserves any and all rights to UC Marks not specifically granted to Supplier.

Supplier grants to UC the right to use Supplier's trademarks, logos, trade names, and service marks for the purpose of promoting UC eProcurement sites to the UC community. UC acknowledges Supplier's right, title, and interest in and to Supplier's Marks and Supplier's exclusive right to use and license the use of Supplier Marks and agrees not to claim any title to Supplier Marks or any right to use Supplier Marks except as permitted by this Appendix. UC will include all notices and legends with respect to Supplier trademarks, trade names, or copyrights as may be required by applicable trademark and copyright laws or which may be reasonably requested by Supplier. Upon termination of this Appendix, all rights to Supplier Marks conveyed by Supplier to UC will cease and UC will destroy or return to Supplier all media with Supplier Marks. Supplier specifically reserves any and all right to Supplier Marks not specifically granted to UC.

- (ii) The licenses granted in the previous paragraphs regarding UC Marks and Supplier Marks are subject to the ongoing approval of the party owning the respective trademarks, logos, trade names, or copyrights. Such ongoing approval includes the ability to terminate – at any time, for any reason, and in the sole discretion of the owner of the respective trademarks, logos, trade names, or copyrights – the trademark licenses provided in the preceding paragraphs for any particular trademark, logo, trade name, or copyrighted work without necessarily terminating this Appendix. Each party agrees not to take any action that will adversely reflect upon or damage the goodwill, reputation, or the brand value of the other party. Each party further agrees not to take any action that is inconsistent with the other party's ownership of the respective trademarks, trade names, or copyrights. At all times (including following termination of the Agreement), Supplier agrees to comply with Section 92000 of California's Education Code.

(a) Grant of License. Supplier hereby grants UC a non-exclusive, royalty-free: (i) license to use, copy, transmit, and display the Catalog, any information contained therein and the Supplier Marks for the purposes of permitting Customers to access information about and order Supplier Goods and/or Services from a Catalog and (ii) if Supplier is using a Punch-out Catalog, right to link to and access the Punch-out Catalog on the Supplier Site, for the purposes of permitting Customers to access the Supplier Website and permitting Customers to order Supplier Goods and/or Services.

(b) Modifications. UC will not modify or remove any of the proprietary rights markings in the Catalog. UC will not modify the content of the Catalog, except as indicated by Supplier, but may require Supplier to make and submit modifications if required as part of this agreement. However, for hosted catalogs, UC reserves the right to attach flags to catalog items as an aid to shoppers in selecting preferred items, such as green or recycled. UC will not make any representations or warranties, or provide any information, to any third party regarding any Supplier Goods and/or Services (including, but not limited to, any representations or warranties of any information regarding availability, delivery, pricing, characteristics, qualifications or specifications thereof). If UC believes in good faith that any Supplier information does not conform to the requirements of the associated UC Agreement or this Appendix, UC will be entitled to withdraw the Catalog from UC eProcurement sites. In such a case, UC will promptly notify the Supplier of the actions it has taken and will work with the Supplier promptly to resolve UC's concerns. When UC's

concerns are satisfactorily resolved UC will promptly restore the Catalog, if appropriate. UC will have no liability to the Supplier or anyone else for exercising these rights.

(c) **Acknowledgment.** Each party acknowledges that the technology embodied in the other party's Site may be based on patented or patentable inventions, trade secrets, copyrights or other intellectual property or proprietary rights ("Intellectual Property Rights") owned by the other party and its applicable licensors.

(d) **UC Rights.** As between the parties, UC will be the sole owner of – or, with respect to any items licensed by UC, will retain all rights to all Intellectual Property Rights associated with UC eProcurement sites, including any modifications, updates, enhancements or upgrades to any of the foregoing, as well as any Order Data generated or collected on such site (collectively, the "UC Materials"). Except as provided herein, Supplier may not copy or use in any way, in whole or in part, any UC Materials without UC's prior written approval. Any permitted copies of such property, in whole or in part, alone or as part of a derivative work, will remain UC's sole property. Supplier agrees to reproduce and include UC's copyright, trademark and other proprietary rights notices on any permitted copies of UC Materials including, without limitation, partial copies and copied materials in derivative works. Supplier will not copy or reproduce any third-party copyrighted or trademarked materials, which appear on or are otherwise associated with any UC eProcurement site without UC's prior written consent.

### **SECTION 7 – MULTIPLE SUPPLIERS**

Supplier acknowledges that all UC eProcurement sites are intended to facilitate Users' ability to obtain Goods and/or Services from more than one supplier. Nothing in this Appendix will be construed to prevent UC from entering into similar agreements with any third parties including, without limitation, suppliers that may be in competition with Supplier.

### **SECTION 8 – WARRANTY DISCLAIMER**

UC does not warrant that access to UC eProcurement sites will be uninterrupted or that the results obtained by use of UC eProcurement sites will be error-free.

### **SECTION 9 – DISPUTES AND CHANGES IN THE SERVICES**

- (a) UC and Supplier agree to negotiate in good faith to resolve problems, questions and disputes.
- (b) Where improvements and clarifications can be made in the business processes related to eProcurement, both parties agree to incorporate such changes as long as they are mutually agreed upon.

### **SECTION 10 – ADDITIONAL CONTRACTUAL TERMS**

In addition to the provisions of Section 4, Section 10 provisions will govern the Catalogs. If the provisions of Sections 4 and 10 conflict, Section 10 will govern.

Type(s) of Catalog(s): At UC's campus discretion, Supplier is allowed to implement a [**specify hosted, Punch-out, or both**] catalog in the UC eProcurement systems. Supplier will be required to comply with UC Location e-commerce requirements on a location by location basis, which includes the decision to move forward with Punch-out or Hosted. Any deviation from the type(s) specified herein must first be agreed upon by UC's Contract Administrator.

Annual Number of Catalogs: Supplier is allowed to submit no more than [**number**] catalogs per calendar year, with changes as follows:

- Content Additions, Deletions and Other Non-pricing Edits: [**insert number of times Supplier can change its content; quarterly or biannually would be recommended**]
- Price Changes: [**insert number of times Supplier can change its price; once per year would be recommended**]

- Allowable level of price change (\$/%) will be in accordance with the terms of this agreement.
- If a price file includes both content and pricing changes, it will count toward the pricing allocation.

Lead time: Supplier must load the Catalog price file into the e-Procurement system **[insert number, 10 is the minimum]** working days prior to the planned go-live date. (Exception – for January 1 updates to enabled catalogs, Supplier must submit the price file no later than 5 weeks prior, as specified in section 4.)

**Buyer – [Choose those that apply]:**

- Number of catalog/price file versions to be supported for this agreement: **[insert number]**
- If more than one catalog/price file version is supported, please include a description/justification (e.g., special pricing for cores): **[insert description]**
- Maximum Number of SKUs allowed: **[insert number]** (optional)
- Categories allowed within Catalog: **[list specific categories]** or
- Categories blocked within Catalog: **[list specific categories]**

Attachment A - Statement of Work (SOW)

1. General

- 1.1 Description of the Scope of Services: The purpose of this Statement of Work is for Supplier to sell and/or lease to University multifunction devices (MFDs) with copy, print, scan, and optional fax functionality, and/or Laser Printers, along with related products and support, in a cost effective and efficient manner, accompanied by high standards of quality and service, aligned with University’s needs as further detailed herein.
- 1.2 Participating Locations: Supplier shall make all terms of the Agreement available to all current and future locations of the University of California.

2. Program Requirements

- 2.1 Program Manager: Supplier shall assign a Program Manager who will have the overall account management responsibility, as well as a dedicated Account Manager per UC Location.
- 2.2 Supplier’s Program Manager is listed below, is subject to UC approval, and has overall responsibility for managing the UC/Supplier relationship:

|         |  |
|---------|--|
| Name    | Dave Wetzel  |
| Phone   | 940-580-9233   |
| Email   | <a href="mailto:dwetzel@csa.canon.com">dwetzel@csa.canon.com</a> |
| Address | 12856 Interurban Ave S.,<br>Seattle, WA 98168                    |

Supplier’s Account Management Team is:

|         |  |
|---------|--|
| Name    | Hilda Martinez – Sales Manager, Southern Cal (1)                     |
| Phone   | 626-482-2570   |
| Email   | <a href="mailto:hmartinez@csa.canon.com">hmartinez@csa.canon.com</a> |
| Address | 207 Goode Ave, Ste 400<br>Glendale, CA 91203                         |

|         |  |
|---------|--|
| Name    | Chad Dorman – Sales Manager, Southern Cal (2)                      |
| Phone   | 949-231-0223   |
| Email   | <a href="mailto:chdorman@csa.canon.com">chdorman@csa.canon.com</a> |
| Address | 3900 Kilroy Airport Way, Ste 3900<br>Long Beach, CA 90806          |

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|         |   |
|---------|---|
| Name    | John Gerckens – Sales Manager, Northern Cal |
| Phone   | 516-477-0523                                |
| Email   | jgerckens@csa.canon.com                     |
| Address | 3300 North First Street                     |
|         | San Jose, CA 95134                          |

2.3 Program Administration: Supplier must provide the necessary staff, infrastructure, and other resources at a level sufficient to ensure efficient, effective, and continually improving fulfillment of its obligations under this Agreement, and as further detailed in the RFP and Supplier’s Response, including, but not limited to:

- 2.3.1 All support to be available no less than Monday – Friday, 8:00am-5:00pm (Pacific).
- 2.3.2 Provide a toll-free 800 number for Customer Service calls.
- 2.3.3 Coordinate contract/program implementation, including designating associated Project Manager.
- 2.3.4 Account management for on-going contract monitoring, maintenance and communication.
- 2.3.5 Account Representative(s) dedicated to UC Locations.
- 2.3.6 To insure customer service satisfaction, Supplier is required to call customer 3 business days after equipment installation and training. Customer shall be defined as a designated user for that location. For UC Locations with MFD/Printer Fleet Management Programs, Customer shall be defined as the designated contacts for those Programs.
- 2.3.7 Supplier’s account representative must make frequent on-site visits sufficient to effectively address and resolve issues related to the fulfillment of Suppliers obligations under the Agreement including, but not limited to: customer orders, problems, and invoice disputes; increase sales activity; advise regarding cost reduction and process improvement opportunities; assist in resolving problems; demonstrate products; provide training; and other customer services as required for the efficient operation of the program.
- 2.3.8 Coordinate all the order/installation process, inquiries regarding order status, and pricing concerns.
- 2.3.9 Regular business review meetings (frequency to be determined by each location, though no less than quarterly) between Supplier’s account manager and other representatives as needed (specialists, local representatives, management) and UC Purchasing and/or MFD/Printer Fleet Management Program at each location to review and discuss agreement purchase activity, Supplier key performance indicators (KPIs) and metrics, outstanding issues, new products and services roadmaps, and other related issues.
- 2.3.10 Maintain a customer service satisfaction level of 98% or better as evidenced by the results of regular customer survey’s conducted by supplier.
- 2.3.11 A designated contact for billing/invoicing questions and issues.
- 2.3.12 Guarantee transaction accuracy of 99% or higher.

## Attachment A - Statement of Work (SOW)

- 2.3.13 Ensure that all Supplier support staff are oriented and trained on Supplier's transaction systems and other infrastructure and processes at a level sufficient to meet University's needs and comply with Supplier's obligations under the Agreement.
- 2.4 Consistency: Supplier must provide and assure consistency across all UC Locations in the following areas:
- 2.4.1 Pricing on all Products
  - 2.4.2 Discounts on all Products
  - 2.4.3 Support offerings
  - 2.4.4 New Support offerings
  - 2.4.5 Customer Service
  - 2.4.6 Quality Control
  - 2.4.7 Ordering and Payment Processes and Systems
- 2.5 Partnering: Suppliers must establish and maintain a partner relationship with UC Location Purchasing and/or MFD/Printer Fleet Management Program with respect to MFDs and Laser Printers at each location to achieve objectives such as:
- 2.5.1 Improving Supplier performance
  - 2.5.2 Improving product and service quality
  - 2.5.3 Improving equipment utilization levels to reduce costs
  - 2.5.4 Increasing sales through product show sponsorship and other marketing assistance
  - 2.5.5 Reduction of paperwork and increased efficiency through consolidated invoicing and other methods
  - 2.5.6 Competitive pricing strategies
- 2.6 In the event of a problem, Supplier makes the following escalation process available to UC:
- 2.6.1 "Client Relationship Escalation Procedures": To effectively manage the Client relationship, Supplier shall maintain a document transformational business model and strategy that demonstrates various 'touch points' within both organizations that covers:
- Management: Allows the effective Operational Management of the contract with respect to the provision of the service and delivery of the documented Key Performance Indicators (KPIs) and Key Risk Indicators (KRIs) across all the business streams.
  - Innovation: Allows a continuous focus on innovation of existing contracted services plus a focus on new value-added propositions.
  - Review: Provides a regular Strategic review process at a senior corporate level that enables both parties to understand synergies between both organizations that will add value to the relationship through the contract period.

## Attachment A - Statement of Work (SOW)

- 2.6.2 Issue Escalation Procedures: The effective management of risk and issues is an essential component of all successful programs. At the beginning of the implementation period Supplier will develop a risk and issue log that will be jointly managed with University of California on a regular basis. The risk and issue log will ensure accountability for risks and issues together with clear action to manage and, where possible, mitigate risk and resolve issues. Equally, Supplier will agree to risk and issue thresholds with University of California to ensure the appropriate level of visibility and escalation. The escalation of risks and issues will be managed through an agreed management hierarchy based on their type and criticality.
- 2.6.3 Technical Service Escalation/Problem Resolution Process (see escalation process in Exhibit 3 Supplier UC Account Support Team. The steps for problem escalation are as follows:
- If the problem is not identified: Customer Service Engineer (CSE) contacts the Supplier Hotline to notify the Work Group Leader, who must respond within one hour.
  - If the problem remains unidentified and or unresolved: CSE re-contacts the Work Group Leader and the Supplier Field Manager for Customer Service to get further assistance and direction. This activity must transpire within 1-3 hours.
  - If Problem is still not identified or resolved: CSE contacts Work Group Leader, Customer Service Technical Specialist, and Field Manager for Customer Service to obtain further suggestions/information. This should occur within 3-4 hours.
  - If Problem is still not identified or resolved: CSE makes arrangements to receive site assistance from Work Group Leader/Customer Service Technical Specialist, and notifies the customer's decision maker on equipment status. This should occur within four to six hours.
  - If Problem is still not identified or resolved: CSE, Work Group Leader and Customer Service Technical Specialist contact Field Manager Technical Service to seek assistance outside the immediate support team. This should occur within six to eight hours.
  - If Canon is unable to correct the issue at this point, Canon Customer Satisfaction Policy states: If Customer is not satisfied with the performance of a Canon or Océ brand product, upon Customer's written request, Supplier in its sole discretion will repair or replace the product with a like unit with equivalent capabilities. Prior to replacement, Supplier shall have the opportunity to return the product to good working order in accordance with the terms of this Contract. This policy shall apply for 5 years from the date of installation or for the initial term of any Canon Financial Services, Inc. lease, if longer, provided Customer is not in default of its Customer Agreement and such maintenance services have not been canceled or terminated.



## Attachment A - Statement of Work (SOW)

- 2.7 Disaster Recovery/Business Continuity Plan: Supplier must establish, test, and maintain a Disaster Recovery/Business Continuity Plan, and deploy other systems and processes as necessary, in order to ensure efficient and timely fulfillment of its obligations under this Agreement in the event of a disaster or other service interrupting event.
- 2.8 Service Standards: During the term of this Agreement and any extension(s) of the Term, Supplier will provide the following minimum service standards:
- 2.8.1 Uptime per device – 96% measured as a quarterly average
  - 2.8.2 Response time per device (MFDs) – 4 business hours within 1 business hour acknowledging call back from technician or dispatch – starting from time of call placement, measured as a quarterly average.
  - 2.8.3 Response time per device (MFDs) – Areas beyond 20 miles from a major UC Location – Maximum 8 hours or upon mutually agreed time frame with field office or location administrator.
  - 2.8.4 Response time per device (Laser Printers) – within 2 business days
  - 2.8.5 Repair time – Average of 2 hours measured as a quarterly average.
  - 2.8.6 Delivery-equipment (new equipment) – 10 business days from Supplier receipt of order. Delivery between 8 a.m. and 12 p.m. (PST) with one-hour pre-delivery call, unless otherwise arranged.
  - 2.8.7 Delivery-replacement parts (MFDs) – within 8 business hours from Supplier receipt of order. Parts must be new unless pre-tested refurbished parts are requested by UC for a reduced cost.
  - 2.8.8 Delivery-replacement parts (Laser Printers) – within 2 business days from Supplier receipt of order. Parts must be new.
  - 2.8.9 Delivery – Supplies – within 2 business days from Supplier receipt of order
  - 2.8.10 Installation (MFDs) – upon delivery unless otherwise arranged
  - 2.8.11 Installation (Laser Printers) – if requested, within 2 business days of delivery unless otherwise arranged
  - 2.8.12 Setup – Within 4 business hours of delivery
  - 2.8.13 Training, initial customer training and IT support: Unlimited user training on features and functionality at no charge. Initial IT support at no charge.
  - 2.8.14 Return customer calls (at no cost to UC) – within 1 hour
  - 2.8.15 Resolve billing issues – within 10 business days
- 2.9 During the term of this Agreement and any extension(s) of such term, Supplier shall provide after-hours services based on the following service standards:
- 2.9.1 Response time – Average 4 hours
  - 2.9.2 Repair time – Average 2 hours
- 2.10 Maintenance services requested and performed outside Supplier's normal business hours will be charged to UC at the rates provided in Exhibit 1. Supplier shall not charge

## Attachment A - Statement of Work (SOW)

UC more than thirty (30) minutes travel time for the services performed after normal business hours.

- 2.11 Supplier agrees to provide to UC, during Supplier's normal business hours (Monday-Friday, 8:00am-5:00pm Pacific), the maintenance necessary to keep the Product in, or restore the Product to, good working order. This maintenance service includes maintenance, based upon the specific needs of individual Product, as determined by Supplier, and unscheduled, on-call remedial maintenance.

Maintenance will include, but is not limited to, lubrication, adjustments, and the replacement of maintenance parts deemed necessary by Supplier. Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of Supplier. Maintenance services provided under this Agreement does not assure uninterrupted operation of the Product. Maintenance shall not include repairs necessitated by factors other than normal use (e.g. willful or negligent acts, service provided by unapproved third parties, ambient conditions, use of parts or supplies not provided by Supplier, etc.).

Maintenance service requested and performed outside Supplier's normal business hours will be charged to UC at Supplier's applicable time and material rates and terms as provided in this Agreement.

Maintenance costs must be fixed or lowered during the term of the contract. Maintenance costs cannot increase in price during the initial term of the Agreement. Maintenance costs itemized on each individual order schedule shall be fixed for the initial term stated on the schedule, not to exceed sixty (60) months and shall be subject to annual increase thereafter.

Toner and staples ("Consumables") are provided at no additional charge for exclusive use with the Equipment. If you use the Consumables in a different manner and your toner usage exceeds by more than 10% the published manufacturer specifications for conventional office image coverage, as determined by Supplier, Supplier may invoice you for such excess usage provided, that Supplier shall not invoice you for such excess toner usage unless and until Supplier has first notified you of the excess toner usage, and until you and Supplier have consulted in good faith in an attempt to identify the reason(s) for the excess toner usage and you have had a reasonable opportunity, if practicable, to rectify the excess toner usage. Additional toner may be purchased from Supplier if required during the term. You shall bear all risk of loss, theft or damage to unused consumables, which shall remain Supplier's property and shall be returned promptly upon termination of this Agreement.

### Relocation of Copiers

During the course of this Agreement, it may be necessary for various reasons to relocate installed copiers. After initial installation, upon customer request, any multi-function copier between 20 PPM and 105 PPM may be relocated one (1) time per Customer Agreement

Attachment A - Statement of Work (SOW)

period at no additional charge. The number of relocations provided at no additional charge shall not exceed the aggregate number of units installed per member under this Customer Agreement. Any relocations in excess of this, shall be invoiced at CSA's then current rates.

2.12 Service Warranty: Supplier warrants that services will be performed in a good workmanlike manner in accordance with the applicable service description. Supplier will service during the warranty as well as during the Service Contract through its own Service Organization. It is understood and agreed by UC that Supplier retains exclusive ownership and control of any proprietary software diagnostics utilized in servicing the Products. Supplier to provide MFD and Laser Printer warranty (Parts and labor) 90 Days.

2.13 Product Warranty Supplier warrants the Canon Brand equipment it supplies will be free from defects in material and workmanship for ninety (90) days from the date of delivery. In addition, after such ninety (90) day period, Supplier will maintain such equipment in good operating order per manufacturer's specifications provided subject to normal use. Within five (5) years for purchase or the term of the lease, of original installation of any newly installed Canon brand equipment covered by the agreement, Supplier will at Customer's written request, replace such equipment with a like unit if Customer meets the following three conditions: (1) The equipment is continuously and exclusively serviced by Supplier or it's subcontractor from and including the date of original installation; (2) Customer fulfills all terms of the agreement; (3) Before requesting a replacement unit, Customer gives Supplier the opportunity to cure any service problems which Customer may have with the equipment. In the event that an item of equipment is inoperable for a period in excess of sixteen (16) consecutive business hours, Supplier will supply a loaner unit until the machine is restored to good working order. Supplier to provide MFD and Laser Printer warranty (Parts and labor) 90 Days.

2.14 Non-Performance Penalty: Supplier agrees to credit UC for not complying with the service standards specified in Section 2.8, as follows:

2.14.1 Maintenance credit - Up to one hundred (100) percent credit to individual UC Locations of monthly maintenance charge for individual MFD availability of less than ninety-six (96) percent calculated for each MFD as specified below:

| Uptime %      | Credit (off maintenance monthly charge) |
|---------------|---|
| 100% - 96.0%  | 0                                       |
| 95.9% - 95.0% | 1%                                      |
| 94.9% - 94.0% | 2%                                      |
| 93.9% - 93.0% | 4%                                      |
| 92.9% - 92.0% | 6%                                      |
| 91.9% - 91.0% | 8%                                      |

Attachment A - Statement of Work (SOW)

|                 |      |
|-----------------|------|
| 90.9% - 90.0%   | 10%  |
| 89.9% - 89.0%   | 12%  |
| 88.9% - 88.0%   | 14%  |
| 87.9% - 87.0%   | 16%  |
| 86.9% - 86.0%   | 18%  |
| 85.9% - 85.0%   | 20%  |
| 84.9% - 84.0%   | 22%  |
| 83.9% - 82.0%   | 24%  |
| 82.9% - 82.0%   | 26%  |
| 81.9% - 81.0%   | 28%  |
| 81.9% - 80.0%   | 30%  |
| Less than 80.0% | 100% |

For purposes of computing the effective performance level, accumulated hours of failure downtime for any month will be adjusted to the nearest whole of half-hour.

Credits to be calculated based on prorated share of maintenance charge to be calculated and prorated on a per equipment/unit basis.

Uptime is defined as the number of hours that each MFD is available and in good working order during Principle Period of Maintenance coverage as follows:

$$\text{Uptime Percentage} = \frac{\text{PPM} - \text{FT}}{\text{PPM}} \times 100$$

PPM - Principle Period of Maintenance (8:00am - 5:00pm, Monday through Friday, except holidays)

FT - Failure Time

For purpose of calculation, Failure Time is defined as any time during the Principle Period of Maintenance when a MFD is incapable of using any its features and functions, due to a failure of the machine mechanically or electronically. This Failure Time will be tracked and reported by Supplier.

2.14.2 Delivery credit - Up to fifteen (15) percent of the UC net purchase price and/or monthly lease charge to be calculated on a per equipment unit basis for each device as specified below. The credit for late delivery will not apply in the event Supplier provides, within required delivery time as stated in 2.8 above, a loner acceptable by UC ordering department.

|   |  |
|---|--|
| <b>Delivery Schedule</b><br>(Business Days) | <b>Credit</b><br>(Off UC purchase/lease price) |
|---|--|

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|                   |       |
|-------------------|-------|
| 10 days           | 0%    |
| 11 days           | 1.0%  |
| 12 days           | 2.0%  |
| 13 days           | 3.0%  |
| 14 days           | 4.0%  |
| 15 days           | 5.0%  |
| 16 days           | 6.0%  |
| 17 days           | 7.0%  |
| 18 days           | 8.0%  |
| 19 days           | 9.0%  |
| 20 days           | 10.0% |
| More than 20 days | 15.0% |

2.14.3 The minimum quality of service standards set forth above recognize that occasional errors are likely, however, the Supplier further agrees to use best efforts to achieve 100% of service level. Should the service levels fall below the minimum standards and the Supplier does not take corrective action within thirty (30) days following University written notification, the University reserves the right to terminate the Agreement immediately.

2.15 Delivery and Installation:

2.15.1 Supplier shall provide delivery and installation of devices, including fulfillment process from UC Purchase Order submission to delivery, all at no separate or additional charge to University. UC has the option to accept or reject all Products delivered after promised delivery time, and in addition, may hold Supplier liable to an direct damages caused by late delivery as determined and documented by UC; provided, however, in no event shall the amount of such direct damages exceed UC documented replacement substitution cost for Products ordered. Supplier will report any delivery delay whatsoever to the ordering location, as well as its cause, within two (2) days after Supplier is able to reasonably determine there will be such a delay; such report will be provided to UC by telephone, email, or facsimile. Supplier shall keep UC fully informed if late delivery is due to causes beyond the reasonable control and without the fault or negligence of Supplier, including but not limited to: acts of God, war, civil commotion, governmental action, fire, floods, unusually severe weather, explosions, earthquakes, strikes or walkouts against UC, quarantine restrictions, or other causes beyond reasonable control of Supplier.

2.15.2 Suppliers' dedicated account representative must coordinate all the delivery, installation and training processes with designated representative(s) at each UC Location.

2.15.3 Supplier will provide a written acknowledgment of equipment delivery and installation.

## Attachment A - Statement of Work (SOW)

- 2.16 Training: Supplier must provide training to UC authorized personnel sufficient to enable the proficient and productive use of Supplier's devices, systems and processes including, but not limited to:
- Initial Training (following installation)
  - Follow-up training
  - On-going training (existing and new users)
- 2.16.1 Training to be provided by Supplier at UC Locations at mutually agreed upon dates and times, at no charge to UC.
- 2.17 Sustainability: Suppliers shall comply with the University of California Sustainable Practices Policy which is the University's standard for all sustainable practices including, but not limited to:
- 2.17.1 For each device covered under the Agreement that are included in sections 8.1 and 8.2 below, Supplier must provide that device's EPEAT rating (Gold, Silver, Bronze) along with the EPEAT recorded options score. Each device must have achieved a minimum EPEAT rating of Bronze.
- 2.17.2 Provide a take back process for toner cartridges and other consumables at no additional cost to University.
- 2.17.3 Post-Consumer Waste (PCW) Paper:
- All devices shall be able to use recycled content paper up to and including 100% Post-Consumer Waste (PCW) paper with high reliability, as long as the paper in use meets standard paper categories (e.g. copy, laser, or multi-purpose paper).
  - Full duplexing using up to and including 100% PCW paper shall be guaranteed by the manufacturer to reliably accomplish 100% duplexing. Recycled paper PCW content cannot be faulted by the Supplier's service personnel for equipment malfunctions.
  - Should a condition arise in which paper is suspect in underperformance in a significant number of devices using the same paper or same paper batch numbers, further testing may be coordinated by a UC designated official with Supplier to test and determine the appropriate resolution.
- 2.17.4 Environmentally Responsible Packaging: Supplier agrees to use good faith efforts to utilize minimal packaging, environmentally responsible packaging, recycling practices, and packaging take back for reuse, to minimize the adverse effects of packaging on the environment.
- 2.17.5 Provide a process by which devices acquired under this Agreement can be taken back by the Supplier at the end of their useful life for remanufacturing, refurbishing, or recycling of parts. For MFDs, Supplier must take back devices at the end of their useful life at no cost, at University discretion.

## Attachment A - Statement of Work (SOW)

- 2.17.6 Sustainable Transportation: Supplier agrees to work towards creating a delivery and transportation model which minimizes Green House Gas (GHG) emissions and has the least impact on the environment. The purchase of the cleanest and most efficient vehicles and tires will be a Supplier goal. The use of alternative fuels will be utilized where and when appropriate.
  - 2.17.7 Sustainable Operations: Supplier agrees to implement a continuous improvement program related to sustainable operations of its facilities.
  - 2.17.8 Reporting: Supplier will report to UC during the quarterly business reviews regarding the improvements that have been made in the previous quarter and planned improvements for the upcoming quarters. Supplier will provide UC quarterly summary reports as specified in the RFP detailing purchases, incentives and the purchase of sustainable products by UC systemwide and by location.
  - 2.17.9 Supplier is required to register and participate in an assessment of their sustainability practices and procedures through the Ecovadis Corporate Social Responsibility (CSR) monitoring platform. For more information on the EcoVadis platform and costs associated with an assessment, please see the EcoVadis Supplier Solutions Website here: <https://www.ecovadis.com/us/supplier-solutions-2/>.
- 2.18 Accessibility:
- 2.18.1 Products will be accessible to people with disabilities and comply with California Building Code 2016 for "forward reach" (11B-308.2) and for "side reach" (11B-308.3).
  - 2.18.2 OCR will be available on all scanners at no additional cost to UC.
  - 2.18.3 On devices with scanning functionality, the installer or repair person will ensure that a one-page instructional flyer is posted at the device that (a) explains why OCR is critical to make PDFs accessible to people with disabilities, (b) instructs the user how to easily turn the OCR capability on/off, (c) provides information about the impact of the OCR process on file size or other document properties, emailing, uploading, and other functionality, and (d) advises that all floor-standing devices should have sufficient clearance for wheelchair access.
  - 2.18.4 Accessibility features for each product will be identified in the supplier's online Ecatalog.
- 2.19 Technical Support: Supplier must provide the following technical support to UC Locations:

## Attachment A - Statement of Work (SOW)

- 2.19.1 Initial installation and configuration of MFD hardware and software for network connectivity and full functionality of the MFD to UC Locations and their IT resources, as needed and/or requested.
- 2.19.2 Onsite equipment electrical and mechanical troubleshooting and repairs.
- 2.19.3 Dedicated technical support staff with a working knowledge of all aspects of network functionality across all platforms including, but not limited to:
- 2.19.4 Hardware installation (network cards, cabling, etc.)
- 2.19.5 LDAP
- 2.19.6 Network administration (equipment, software installation/configuration, printer driver installation/configuration/characteristics and security settings as needed and requested.)
- 2.19.7 Advice and assistance with user-settable options in display menus and submenus
- 2.19.8 Support for MFDs or Laser Printer issues with respect to 3rd party vendor software and hardware.
- 2.19.9 Full maintenance services for Laser Printers, including repair parts, software and firmware updates and labor.
- 2.19.10 Supplier's employees that will be physically present at UC Locations (i.e. delivering copiers, providing service) must conform to the following:
  - Wear proper uniform
  - Carry badges with picture ID
  - Successfully passed the following pre-employment background security checks:
    - Social security trace
    - National criminal search (including national sex offender registry)
    - County criminal search
    - Prior employer screening
    - Highest level of education (exempt only)
    - Motor vehicle record (driving roles only)
  - Bonded, or appropriately equivalent Crime Insurance coverage
- 2.19.11 The Supplier UC Account Management Team will consist of the dedicated Supplier Account Manager, Service Technicians, a dedicated Customer Relation Advocate as well as any other support personnel and resources deemed necessary at each location to ensure best in class contract monitoring, maintenance and provide UC locations with clear and concise communication.

### 3. Pricing:

- 3.1 Pricing on Exhibits 1 and 2 are expressed as a discount from Manufacturer Suggested Retail Price) MSRP. MSRP must be available on a manufacturer's published price list and be publicly available throughout the agreement term.
- 3.2 The prices of Supplier's products included in this Agreement shall not increase for the duration of this Agreement for existing Models.



## Attachment A - Statement of Work (SOW)

- 3.3 Supplier will utilize the following Value-Added Resellers to perform maintenance, service and support for all UC locations at the pricing stated in the Pricing Exhibit 1.
- 3.4 During the term of the Agreement, Supplier may add or delete contract devices introduced or removed from the market by the Supplier, provided the added device falls within the scope of the respective category. Supplier must update its dedicated contract websites and published catalogs and lists to reflect this change. New devices must be adequately described and the associated price list must be updated to reflect the new devices prices. Pricing must utilize the same pricing structure as was used for other devices falling into the same product category. The pricing structure will be dictated by the purchase price determined from the discount from Manufacturer Suggested Retail Price (MSRP) and other specified discounts listed in this RFP. Lease pricing will be dictated by the quoted leasing rates applied to the purchase price. Such additions and deletions must be approved by the UC contract administrator or their designee.

When legally or contractually allowed by the existing contract vehicle, Supplier agrees to extend the pricing terms for maintenance services and supplies included in this Agreement to Supplier's current population of Products placed at UC prior to the execution of this Agreement for models that are identical to the models in the bid. In the event that the current pricing for maintenance services and supplies is less compared to the pricing listed in Exhibit 1, the current pricing shall not change.

- 3.5 Supplier will provide an additional 1% discount on the published UC equipment portion of the price list for Outright Sale/FMV and FPO Lease (equipment price only, excluding maintenance) for orders that include multiple units (more than one) of any combination of MFD/Printer Models over \$250,000. Any/all discounts will be taken at the time of order.
- 3.6 Earned incentives: Supplier will work with UC to establish a meaningful recognition program for educational support based on the utilization of the Agreement. Both the UC and the Supplier will obtain the required approvals of their respected organizations prior to commencing the program. The program once approved will become Attachment D of this Scope of Work and may be modified from time to time with mutual agreement.

- UC MFD/Printer Fleet Management Programs: Some UC Locations (as identified in the RFP Campus Profiles) utilize established UC MFD/Printer Fleet Management Programs, or similar groups managing a large population of MFDs and/or Laser Printers for the UC Location. The value added services provided by these Fleet Management Programs may vary, but generally include:

## Attachment A - Statement of Work (SOW)

- Institutional knowledge and understanding of UC Location hierarchy, policies & procedures, and local campus geography;
- Onsite central point of contact at UC Location for first-tier service response and coordination, and centralized supplies and parts;
- Consultation and equipment needs assessment for multiple departments within the UC Location;
- Consolidation of multiple equipment orders onto single purchase orders (lease or purchase);
- Coordination for volume deliveries of equipment;
- Consolidated billing and meter reading reconciliation through a single contact at the UC Location;
- Coordination of internal campus services for: delivery access, electrical upgrades, network access, copy/print control systems, help desk troubleshooting, and service call avoidance;
- Summary invoicing, and single-contact invoice reconciliation;
- Managed mediation of customer equipment expectations and performance issues in lieu of the Supplier

In recognition of these value-added services currently in place at the UC Locations identified, and their resulting reduction in Suppliers' efforts, resources, and expenses, Suppliers will provide MFD/Printer Fleet Management Programs an additional seven and one-half percent (7.5%) discount off all pricing on Exhibit 1.

If, after the implementation of this contract, a UC Location not operating such a program as of the effective date of this Agreement determines that it is in their best interest to deploy such a program, Supplier will be notified by that UC Location's procurement office, after appropriate review and authorization. On authorization, such programs will be entitled to all benefits available to those programs currently established as detailed herein.

MFD/Printer Fleet Management Programs reserve the right to negotiate further discounts on any of Suppliers' products and/or services provided for under this RFP and its resulting contract.

At UC Locations with MFD/Printer Fleet Management Programs, Supplier will partner with these programs and direct all potential campus customers at the UC Location to the program before selling or leasing an MFD/Printer to the campus customer. Additionally, Supplier will provide marketing expertise to further the program development at the UC Location.

- 4. Reporting:** Supplier must provide electronic reports (in Microsoft Excel) or any other requested format to designated UC contacts providing a wide range of information, at both the system-wide and individual UC Location level, related to the Agreement including, but not limited to:

## Attachment A - Statement of Work (SOW)

4.1 Quarterly Report Population of MFDs and Laser Printers reports including but not limited to the following data:

- UC Location
- UC department
- UC purchase order number
- Name, phone and email for department placing the purchase order
- Equipment serial number
- Name and Model of product(s) and/or service(s) Purchased
- Quantity purchased
- Price paid, per unit and total
- Method of acquisition (lease, purchase, etc.)
- Sustainable product purchases

4.2 Monthly Reports:

- Response time
- Repair time
- Uptime
- Total service calls
- Delivery time
- Installation time
- Open leases, remaining terms, etc.

4.3 Equipment inventory report that will provide a detail listing of all products and their locations at the particular UC Location.

4.4 Annual reports comparing UC contract pricing with Supplier's other pricing available in the higher education market for similar size and scope program.

4.5 Other reports as reasonably requested by UC.

4.6 Supplier must make a commercially reasonable effort to provide reports within five (5) business days of UC's request.

## 5. Maintenance Service

5.1 Supplier agrees to provide to UC, during Supplier's normal business hours, the maintenance service necessary to keep equipment in, or restore the equipment to, good working order in accordance with Supplier's policies then in effect. This maintenance service includes maintenance based upon the specific needs of individual equipment, as determined by Supplier, and unscheduled, on-call remedial maintenance.

## Attachment A - Statement of Work (SOW)

- 5.2 Maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by Supplier. Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of Supplier. Maintenance services provided under this Agreement does not assure uninterrupted operation of the Product.
- 5.3 Supplier must coordinate all service calls through a centralized dispatch desk. All calls must be logged into a service system with a minimum of the following information:
  - 5.3.1 All relevant customer information, location, phone number(s), contact name, caller name
  - 5.3.2 A unique repair ticket number
  - 5.3.3 Time of call placement from the customer
  - 5.3.4 The customer's reported equipment malfunction or issue
  - 5.3.5 The equipment id number, model and serial number
  - 5.3.6 The equipment status operational status: operational, substandard, or inoperative
  - 5.3.7 Dispatched agent name or id number, dispatched time, location, caller, make, model, serial # and problem
- 5.4 Suppliers must further log the following information upon call completion:
  - 5.4.1 Service technician's report of actual problem and troubleshooting & repair actions conducted.
  - 5.4.2 Arrival time, End time, Total Repair time, service copies made, final call status i.e.: completed, - closed, open, pending, escalated.
  - 5.4.3 Meter readings upon service completion (i.e. print, scan, color, b/w).
- 5.5 Locations with MFD/Printer Fleet Management programs may require that the call completion information be supplied from the Supplier's repair technician to a designated MFD/Printer Fleet Management program administrator at the conclusion of the service call.
- 5.6 Repair Parts and Supplies:
  - 5.6.1 Supplier must carry in stock all common parts for no greater than next-day access by Supplier's service personnel.
  - 5.6.2 Supplier must produce or make parts and supplies available for no less than five (5) years after a model has been discontinued.
  - 5.6.3 Supplier must provide all UC Locations with the same discount for parts and supplies for the devices covered under this Agreement.

## Attachment A - Statement of Work (SOW)

- 5.7 **MFD Service and Parts:** Supplier must offer full maintenance services for MFDs, including repair parts, software and firmware updates and labor based on the following options:
- **Option 1: Cost Per Impression Charge – Zero Volume Base**  
Supplier will provide full service maintenance with supplies, excluding paper. Supplier will invoice respective UC Location on a monthly basis using a cost per impression charge applied to the actual monthly impression volume in the covered period without any minimum and/or maximum volume restrictions. Volumes will not be estimated. These rates apply to purchased and leased MFDs.
  - **Option 2: Monthly Minimum Charge**  
Supplier will provide full service maintenance with supplies, excluding paper. Supplier will charge UC a fixed monthly minimum charge, which will include a monthly impression volume allowance, with a separate cost per impression charge applied to the overage. These rates apply to purchased and leased MFDs.
  - **Option 3: T&M - Fixed Charge per Occurrence**  
Supplier will provide service repairs and maintenance using a Time and Material option. Supplier charges UC a fixed amount per occurrence and/or a fixed hourly fee, after expiration of standard or extended equipment warranties.
- 5.8 **Lemon Clause:** After the 90-day warranty period and until 36 months from the date of installation, or coterminous in the case of a longer lease, except due to operator error, for any device that fails to operate in accordance with the manufacturer's published performance specifications three times in any four week period and/or is subject to recurring related problems, Supplier shall replace that device with a new MFD or Laser Printer that meets the requirements of the same lot as the original equipment model, at no cost to the user. This will take precedence over any other warranty or service maintenance clauses associated with this contract. For purchased devices, customers must maintain an uninterrupted maintenance agreement, cost per copy, or lease agreement including parts and supplies with the contract vendor for the Lemon Clause to apply past the initial 90-day warranty period. The UC Location Purchasing and/or MFD/Printer Fleet Management Program will review user requests for the application of this clause and will make a determination regarding its use.
- If 25% or less of the device's useful life has been used up, the device must be replaced with a "new device". A "like for like" device may be used if 25% or more of the useful life of the device has been used up and the Customer agrees to the "like for like" exchange. Note: Prior to the lease or purchase of a device, awarded vendors must provide UC with the device's "Useful Life".

## 6. Data Security

- 6.1 For all MFDs/Laser Printers, Suppliers must:

## Attachment A - Statement of Work (SOW)

- 6.1.1 Disclose all default accounts, access methods, and passwords on the device at delivery.
  - 6.1.2 Certify that log-in credentials are not communicated in clear text by default, though clear text may be an option if cipher text is available as an option.
  - 6.1.3 Deliver MFDs and/or Laser Printers with the latest, fully-patched software, firmware, or other OEM software as provided for device functionality as detailed on the "Specifications" tab of Attachments B and C.
  - 6.1.4 Notify all UC Locations of all known and reported vulnerabilities, and of planned updates or mitigations to software provided for device functionality as detailed on the "Specifications" tab of Attachments B and C.
  - 6.1.5 Disclose and describe shared accounts or service accounts that Supplier technicians may or will use, and the security procedures planned by Supplier.
- 6.2 All devices must:
- 6.2.1 Provide secure login for administrator access (including username and password). Upon setup and configuration, all default device or interface passwords must be changed and communicated to the designated contacts(s).
  - 6.2.2 Provide IP and MAC address filtering to limit users' access to the device via the web interface; and
  - 6.2.3 Provide on/off (switchable) provisions for other types of access, including but not limited to telnet, rsh, SNMP, FTP, IPsec, SSL/TLS, etc. Suppliers must list all on/off provisions for all types of access in their response.
- 6.3 All MFDs/Laser Printers that are equipped with hard drives must:
- 6.3.1 Possess an "always on" security feature that overwrites the sector(s) of the hard drive used for processing copy, print, or scan data using at least 3 passes, preventing the data from remaining on the hard drive of the MFD or Laser Printer after the copy, print, or scan job is finished.
  - 6.3.2 Provide at least 128-bit AES encryption (or equivalent) as part of the storage process for any information held on the hard drive for long-term storage.
  - 6.3.3 Provide secure login for administrator access (including username and password), allowing administrators to set access levels for users who perform tasks on the device (e.g., managing address books (fax or scan addresses), or printing print, fax, or copy/scan logs). Upon setup and configuration, all default device or interface passwords must be changed and communicated to the designated contacts(s).
  - 6.3.4 Isolate any incoming FAX line from all hardware that has network access. MFDs must have no physical or data connection between the Page Memory (or Temporary Data Storage) and the FAX controller.
- 6.4 Hard Drive Data. University acknowledges that the hard drive(s) on the equipment, may retain images, content or other data that University may store for purposes of normal

## Attachment A - Statement of Work (SOW)

operation of the equipment (“HD Data”). University acknowledges that Supplier is not storing HD Data on University’s behalf and that exposure or access to the HD Data by Supplier, if any, is purely incidental to the services performed by Supplier. The equipment contains various security features that University can utilize to easily erase or dispose of stored data.

- 6.5 Provide on/off (switchable) control of read/write access to the device from portable media (e.g., SD cards, USB drives, etc.); UC System Administrator will be required to initialize the Hard Drive via the device’s local control panel utilizing the “Initialize All Data/Settings” function and additionally, Supplier will be required to initialize the Hard Drive utilizing the “Initialize All Data/Settings” function and provide certification of completion including device serial number, device name, erase mode, date and time of erasing, and firmware version to the appropriate UC System Administrator, at the end of a lease, cost-per-copy agreement, or at trade-in (or at any time, for any reason, an MFD and/or Laser Printer is removed from UC) at no additional cost to UC. From time to time, when devices are leased, Supplier may be required to remove and surrender a Hard Drive to a UC System Administrator, for a flat fee as priced in Pricing Exhibits 1.
1. If Solid State Devices (SSD) are used solely on Canon supplied devices, when the “Initialize All Data/Settings” function is invoked, the result would be equivalent to a cryptographic erasure
  2. If there will be a mix of SSD and Hard Disk Drives (HDD) used on Canon supplied devices, when the “Initialize All Data/Settings” function is invoked, the result would be equivalent to cryptographic erasure on Canon supplied SSD and purging (secure erase firmware command or cryptographic erasure) for Canon supplied HDD.
  3. See below bullets for further clarity and definitions

- Definitions Per [UC IS-3 UC Institutional Information Disposal Standard](#):

**Cryptographic Erasure** is defined as a disposal process that safely destroys all copies of the decryption key. If all data is adequately encrypted, then once the decryption key is removed, the Institutional Information is not recoverable. Note, for Cryptographic Erasure, the UC IT Workforce Member must verify that all data is adequately encrypted on the Canon device. The location of all decryption keys must be known and documented. An action that safely destroys all copies of the key must be available. The cryptographic algorithm employed must meet minimum standards, as defined by NIST FIPS 140-2.

**Purging** is defined as a disposal process that makes the media reusable but makes accessing the Institutional Information infeasible. This applies to physical or logical techniques that render Institutional Information recovery unachievable. Purge protects against laboratory attacks. Executing the secure erase firmware command on a disk drive, Cryptographic Erase and Degaussing are acceptable methods of purging.

- 6.6 Supplier will work with each University, Health Center and Laboratory System Administrator to create the appropriate standards for device security including; interface, network, port

## Attachment A - Statement of Work (SOW)

usage, authentication, key/certification, log, job and storage parameters. Prior to deliver the HDD Data Erase function will be enabled in all Canon imageRUNNER devices to overwrite at least once with NULL Data in the temporary image data storage areas. UC System Administrator can configure the device to automatically overwrite to other settings.

**7. Technology Requirements:** Suppliers' devices must have the technological capability to fulfill specific requirements of the University including, but not limited to the following required device technologies:

- 7.1 100baseT or greater Ethernet connectivity
- 7.2 Connectivity to Supplier's MFDs and/or Laser Printers by devices using the following operating systems, including universal and device-specific PPDs. Include the expected timeframe for release of PPDs after operating system upgrades:
  - 7.2.1 Windows (requirement is from Windows 10.0 and higher; Suppliers to specify versions)
  - 7.2.2 Macintosh (Suppliers to specify versions; requirement is from OSX 10.13 and higher)
  - 7.2.3 IOS (Suppliers to specify versions; requirement is from iOS 11.0 and higher)
  - 7.2.4 Android (Suppliers to specify versions; requirement is from Android OS 8.0 and higher)
- 7.3 Connectivity to Supplier's MFDs and/or Laser Printers by following communications protocols:
  - 7.3.1 POP, IMAP
  - 7.3.2 IPv4/IPv6/IPsec
  - 7.3.3 LDAPv3 or higher
  - 7.3.4 Kerberos – must include Kerberos for Windows and Macintosh Operating Systems listed in 2a-2b above
  - 7.3.5 LPR/LPD/IPP
  - 7.3.6 AirPrint
  - 7.3.7 SMTP
  - 7.3.8 SNMP v1 – v3 including authentication protocols
  - 7.3.9 TCP port 9100 direct printing (bidirectional)
  - 7.3.10 SSL/TLS
- 7.4 Printing to Supplier's MFDs and/or Laser Printers using the following printing protocols/output types:
  - 7.4.1 PostScript Level 3
  - 7.4.2 PCL 6e
  - 7.4.3 PDF
- 7.5 Effective and successful installation and set-up of Supplier's MFDs and/or Laser Printers on University network.



## Attachment A - Statement of Work (SOW)

- 7.6 Effective and successful installation and set-up of connectivity software (including, but not limited to, PPDs) to Supplier's MFDs/Laser Printers on customer computers as requested by the UC Location.
- 7.7 All Proposers' devices must be able to interface with existing third-party access control and management systems at UC locations (Equitrac, ITC, Pharos, PaperCut, PCounter, or comparable), with the following requirements to achieve reliable and accurate transactions and transactional reporting:
- 7.7.1 Embedded software and/or external hardware to enable use of the third-party system; device-specific interface cables for external hardware must be provided and installed by Supplier at no cost to UC;
  - 7.7.2 Network connectivity across a hard-wired and/or a wireless network;
  - 7.7.3 Ability to use USB proximity and/or magnetic stripe card readers for user authentication and access to the third-party system.

## 8. Product Acquisition

- 8.1 Required MFD's: During the term of the Agreement, Supplier must provide at least one model MFD that meets or exceeds UC's requirements for each of the following categories. Suppliers must provide detailed specifications for each model of MFD fulfilling the category requirements below.
- Category 1 - B/W Desktop 20+ pages per minute
  - Category 2 - B/W 20-30 pages per minute
  - Category 3 - B/W 31-40 pages per minute
  - Category 4A - B/W 41-50 pages per minute
  - Category 4B - B/W 51-60 pages per minute
  - Category 5 - B/W 61-90 pages per minute
  
  - Category 1 - Color Desktop 20+ pages per minute
  - Category 2 - Color 20-30 pages per minute
  - Category 3 - Color 31-40 pages per minute
  - Category 4A - Color 41-50 pages per minute
  - Category 4B - Color 51-60 pages per minute
  - Category 5 - Color 61-90 pages per minute
- 8.2 Required Laser Printers: During the term of the Agreement, Supplier must provide at least one model Laser Printer that meets or exceeds UC's requirements for each of the following categories. Suppliers must provide detailed specifications for each model of Laser Printer fulfilling the category requirements below. Each model MUST have the ability to perform duplex printing and have ethernet connectivity:

## Attachment A - Statement of Work (SOW)

- Category 1 - Low Volume - B/W 25-40 pages per minute
- Category 2 - Mid Volume - B/W 41-55 pages per minute
- Category 3 - High Volume - B/W 56-70 pages per minute
- Category 1 - Low Volume - Color 10-20 pages per minute
- Category 2 - Mid Volume - Color 21-35 pages per minute
- Category 3 - High Volume - Color 36-50 pages per minute

8.3 Purchase Option: Supplier agrees to sell to UC the required devices listed herein and associated products and services, if requested by UC, in accordance with the requirements set forth in this Agreement. Supplier shall warrant that the Products are new and owned by Supplier. Supplier warrants that it will repair or replace defective Products and/or parts, including labor at no cost to UC for ninety (90) days after the installation date. The title for the purchased MFDs and/or Laser Printers will be transferred to UC. In conjunction with purchased MFDs, Suppliers must offer a cost per copy (CPC) rate for service and supplies.

8.4 Lease Option: Suppliers agrees to offer to UC the required MFDs listed herein and associated products and services based on the following Full Market Value (FMV) and \$1 buyout terms:

- 36 Months
- 48 Months
- 60 Months

8.4.2 In conjunction with leased MFDs, Supplier must offer a CPC rate for service and supplies.

8.4.3 In conjunction with leased MFDs, on both FMV and \$1 buyout option, Supplier must offer a service and supply component.

8.5 Trial Units: Supplier must offer current models to UC Locations on a trial basis for thirty (30) days. UC Locations may opt to purchase or lease the trial model, request a different model for trial, or return the trial model(s) with no obligation to Supplier.

8.6 Product Certification: Supplier certifies and warrants that all products sold to UC under the Agreement:

- 8.6.1 Shall be new and genuine, except short term rentals or temporary replacements.
- 8.6.2 Shall be provided to UC in the manufacturer's original packaging unless otherwise requested by UC.
- 8.6.3 Shall be manufactured and sold or distributed to the Supplier for retail sale in the United States.

## Attachment A - Statement of Work (SOW)

- 8.6.4 Shall be sold to the Supplier from legal and reputable channels, which are understood to be the manufacturer or authorized representatives of the manufacturer.
- 8.6.5 Shall not be altered or misbranded within the meaning of the Federal and State laws applicable to such products.
  
- 8.7 Trade-ins: Supplier agrees to assist UC in obtaining the best trade-in values available for UC owned Products through Supplier's recommended Equipment Brokers. Supplier shall provide the required administrative support, including removal of UC owned products, to UC to effectively manage the trade-in transaction(s) at no cost to UC.
  
- 8.8 Leased Fleets: Lease Fleets of 50 devices or more at an individual campus. For those fleets, CSA Supplier will allow the Customer to upgrade or downgrade 5% of the cumulative installed population of machines over the term of the Customer Agreement, provided Customer has installed a minimum fleet of 100 units of Equipment [as provided to UC]. This provision excludes imageRUNNER machines with rated speeds of 110 pages per minute or greater, or imagePRESS products.

Attachment A - Statement of Work (SOW)

**Exhibits to Statement of Work – Attachment A**

**Exhibit 1 REDACTED**

**Exhibit 2 OMNIA Partners Participating Agency Pricing**

**Exhibit 3 REDACTED**

## Exhibit 2 OMNIA Partners Participating Agency Pricing

All Canon Pricing

Double click on the Attachment pin to open the pricing document

 Canon National Pricing

See Separate Pricing File

University of California Purchasing Agreement # 2020002755  
OMNIA Partners Exhibit - Terms applicable to all Non-University of California Entities

PO Statements for University of California Purchasing Agreement # 2020002755

Effective Date: December 16th, 2020 – December 15th, 2025

Required Agreement PO Language

Notwithstanding any provision of this purchase order to the contrary, the use of this purchase order shall be for the Customer's administrative convenience only, and any terms and conditions in this purchase order which conflict with or vary from or modify the terms contained in Purchase Agreement # 2020002755 between Canon Solutions America, Inc. and the University of California, shall be deemed null and void.

Required Agreement Non-Po Language

Notwithstanding this Agreement, this transaction shall be governed by the terms and conditions of Purchase Agreement # 2020002755 between Canon Solutions America, Inc. and the University of California and any terms and conditions which conflict with, vary from or modify the Agreement terms shall be deemed null and void.

**1. General**

- 1.1 Description of the Scope of Services: The purpose of this Statement of Work is for Supplier to sell and/or lease to University multifunction devices (MFDs) with copy, print, scan, and optional fax functionality, and/or Laser Printers, along with related products and support, in a cost effective and efficient manner, accompanied by high standards of quality and service, aligned with University's needs as further detailed herein.
- 1.2 Participating Locations: Supplier shall make Specific terms of the Agreement available to the OMNIA Partners Participating Agencies (Participating Agencies)

**2. Program Requirements**

- 2.1 Program Manager: Supplier shall assign a Program Manager who will have the overall account management responsibility, as well as a dedicated Account Manager per Participating Agencies.
- 2.2 Supplier's Program Manager is listed below, is subject to UC approval, and has overall responsibility for managing the Participating Agencies /Supplier relationship:

University of California Purchasing Agreement # 2020002755  
OMNIA Partners Exhibit - Terms applicable to all Non-University of California Entities

Program Manager

|         |  |
|---------|--|
| Name    | Dave Wetzel  |
| Phone   | 940-580-9233   |
| Email   | <a href="mailto:dwetzel@csa.canon.com">dwetzel@csa.canon.com</a> |
| Address | 12856 Interurban Ave S.  |
|         | Seattle, WA 98168  |

Executive Sponsor

|         |  |
|---------|--|
| Name    | Paul Murphy  |
| Phone   | 847-706-3411   |
| Email   | <a href="mailto:pmurphy@csa.canon.com">pmurphy@csa.canon.com</a> |
| Address | One Canon Park Ste 300   |
|         | Melville, NY 11747   |

2.3 Program Administration: Supplier must provide the necessary staff, infrastructure, and other resources at a level sufficient to ensure efficient, effective, and continually improving fulfillment of its obligations under this Agreement, and as further detailed in the RFP and Supplier’s Response, including, but not limited to:

- 2.3.1 All support to be available no less than Monday – Friday, 8:30am-5:00pm (Local Time).
- 2.3.2 Provide a toll-free 800 number for Customer Service calls.
- 2.3.3 Coordinate contract/program implementation, including designating associated Project Manager.
- 2.3.4 Account management for on-going contract monitoring, maintenance and communication.
- 2.3.5 Account Representative(s) assigned to Participating Agencies.
- 2.3.6 To insure customer service satisfaction, Supplier is required to call customer 3 business days after equipment installation and training. Customer shall be defined as a designated user for that location. For Participating Agencies with MFD/Printer Fleet Management Programs, Customer shall be defined as the designated contacts for those Programs.
- 2.3.7 Supplier’s account representative must make frequent on-site visits sufficient to effectively address and resolve issues related to the fulfillment of Suppliers obligations under the Agreement including, but not limited to: customer orders, problems, and invoice disputes; increase sales activity; advise regarding cost reduction and process improvement opportunities; assist in resolving problems; demonstrate products; provide training; and other customer services as required for the efficient operation of the program.
- 2.3.8 Coordinate all the order/installation process, inquiries regarding order status, and pricing concerns.

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- 2.3.9 Regular business review meetings (frequency to be determined by each location, though no less than quarterly) between Supplier's account manager and other representatives as needed (specialists, local representatives, management) and Participating Agencies Purchasing representative and/or MFD/Printer Fleet Management Program at each location to review and discuss agreement purchase activity, Supplier key performance indicators (KPIs) and metrics, outstanding issues, new products and services roadmaps, and other related issues.
  - 2.3.10 Maintain a customer service satisfaction level of 98% or better as evidenced by the results of regular customer survey's conducted by supplier.
  - 2.3.11 A designated contact for billing/invoicing questions and issues.
  - 2.3.12 Guarantee transaction accuracy of 99% or higher.
  - 2.3.13 Ensure that all Supplier support staff are oriented and trained on Supplier's transaction systems and other infrastructure and processes at a level sufficient to meet Participating Agencies' needs and comply with Supplier's obligations under the Agreement.
- 2.4 Consistency: Supplier must provide and assure consistency across all Locations in the following areas:
- 2.4.1 Pricing on all Products
  - 2.4.2 Discounts on all Products
  - 2.4.3 Support offerings
  - 2.4.4 New Support offerings
  - 2.4.5 Customer Service
  - 2.4.6 Quality Control
  - 2.4.7 Ordering and Payment Processes and Systems
- 2.5 Partnering: Suppliers must establish and maintain a partner relationship with Participating Agencies Location Purchasing and/or MFD/Printer Fleet Management Program with respect to MFDs and Laser Printers at each location to achieve objectives such as:
- 2.5.1 Improving Supplier performance
  - 2.5.2 Improving product and service quality
  - 2.5.3 Improving equipment utilization levels to reduce costs
  - 2.5.4 Increasing sales through product show sponsorship and other marketing assistance
  - 2.5.5 Reduction of paperwork and increased efficiency through consolidated invoicing and other methods
  - 2.5.6 Competitive pricing strategies
- 2.6 In the event of a problem, Supplier makes the following escalation process available to Participating Agencies:



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- 2.6.1 "Client Relationship Escalation Procedures": To effectively manage the Client relationship, Supplier shall maintain a document transformational business model and strategy that demonstrates various 'touch points' within both organizations that covers:
- Management: Allows the effective Operational Management of the contract with respect to the provision of the service and delivery of the documented Key Performance Indicators (KPIs) and Key Risk Indicators (KRIs) across all the business streams.
  - Innovation: Allows a continuous focus on innovation of existing contracted services plus a focus on new value-added propositions.
  - Review: Provides a regular Strategic review process at a senior corporate level that enables both parties to understand synergies between both organizations that will add value to the relationship through the contract period.
- 2.6.2 Issue Escalation Procedures: The effective management of risk and issues is an essential component of all successful programs. At the beginning of the implementation period Supplier will develop a risk and issue log that will be jointly managed with Participating Agencies on a regular basis. The risk and issue log will ensure accountability for risks and issues together with clear action to manage and, where possible, mitigate risk and resolve issues. Equally, Supplier will agree to risk and issue thresholds with Participating Agencies to ensure the appropriate level of visibility and escalation. The escalation of risks and issues will be managed through an agreed management hierarchy based on their type and criticality.
- 2.6.3 Technical Service Escalation/Problem Resolution The steps for problem escalation are as follows:
- If the problem is not identified: Customer Service Engineer (CSE) contacts the Supplier Hotline to notify the Work Group Leader, who must respond within one hour.
  - If the problem remains unidentified and or unresolved: CSE re-contacts the Work Group Leader and the Supplier Field Manager for Customer Service to get further assistance and direction. This activity must transpire within 1-3 hours.
  - If Problem is still not identified or resolved: CSE contacts Work Group Leader, Customer Service Technical Specialist, and Field Manager for Customer Service to obtain further suggestions/information. This should occur within 3-4 hours.
  - If Problem is still not identified or resolved: CSE makes arrangements to receive site assistance from Work Group Leader/Customer Service Technical Specialist, and notifies the customer's decision maker on equipment status. This should occur within four to six hours.
  - If Problem is still not identified or resolved: CSE, Work Group Leader and Customer Service Technical Specialist contact Field Manager Technical

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Service to seek assistance outside the immediate support team. This should occur within six to eight hours.

- If Canon is unable to correct the issue at this point, Canon Customer Satisfaction Policy states: If Customer is not satisfied with the performance of a Canon or Océ brand product, upon Customer's written request, Supplier in its sole discretion will repair or replace the product with a like unit with equivalent capabilities. Prior to replacement, Supplier shall have the opportunity to return the product to good working order in accordance with the terms of this Contract. This policy shall apply for 5 years from the date of installation or for the initial term of any Canon Financial Services, Inc. lease, if longer, provided Customer is not in default of its Customer Agreement and such maintenance services have not been canceled or terminated.

2.7 Disaster Recovery/Business Continuity Plan: Supplier must establish, test, and maintain a Disaster Recovery/Business Continuity Plan, and deploy other systems and processes as necessary, in order to ensure efficient and timely fulfillment of its obligations under this Agreement in the event of a disaster or other service interrupting event.

2.8 Service Standards: During the term of this Agreement and any extension(s) of the Term, Supplier will provide the following minimum service standards:

- 2.8.1 Uptime per device – 96% measured as a quarterly average
- 2.8.2 Response time per device (MFDs) – 4 business hours within 1 business hour acknowledging call back from technician or dispatch – starting from time of call placement, measured as a quarterly average.
- 2.8.3 Response time per device (MFDs) – Areas beyond 20 miles from a major metropolitan area – Maximum 8 hours or upon mutually agreed time frame with field office or location administrator.
- 2.8.4 Response time per device (Laser Printers) – within 2 business days
- 2.8.5 Repair time – Average of 4 hours measured as a quarterly average.
- 2.8.6 Delivery-equipment (new equipment) – 10 business days from Supplier receipt of order. Delivery between 8:30 a.m. and 5:00 p.m. (Local Time) with one-hour pre-delivery call/email, unless otherwise arranged.
- 2.8.7 Delivery-replacement parts (MFDs) – within 8 business hours from Supplier receipt of order. Parts must be new unless pre-tested refurbished parts are requested by Participating Agencies for a reduced cost.
- 2.8.8 Delivery-replacement parts (Laser Printers) – within 2 business days from Supplier receipt of order. Parts must be new.
- 2.8.9 Delivery – Supplies – within 2 business days from Supplier receipt of order
- 2.8.10 Installation (MFDs) – upon delivery unless otherwise arranged
- 2.8.11 Installation (Laser Printers) – if requested, within 2 business days of delivery unless otherwise arranged
- 2.8.12 Setup – Within 4 business hours of delivery

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- 2.8.13 Training, initial customer training and IT support: Unlimited user training on features and functionality at no charge. Initial IT support at no charge.
  - 2.8.14 Return customer calls (at no cost) – within 1 hour
  - 2.8.15 Resolve billing issues – within 10 business days
- 2.9 During the term of this Agreement and any extension(s) of such term, Supplier shall provide after-hours services based on the following service standards:
- 2.9.1 Response time – Average 4 hours
  - 2.9.2 Repair time – Average 2 hours
- 2.10 Maintenance services requested and performed outside Supplier’s normal business hours will be charged to Participating Agencies at the rates provided in Exhibit 2. Supplier shall not charge Participating Agencies more than thirty (30) minutes travel time for the services performed after normal business hours.
- 2.11 Supplier agrees to provide to Participating Agencies, during Supplier's normal business hours (Monday- Friday, 8:30am-5:00pm Local time), the maintenance necessary to keep the Product in, or restore the Product to, good working order. This maintenance service includes maintenance, based upon the specific needs of individual Product, as determined by Supplier, and unscheduled, on-call remedial maintenance.

Maintenance will include, but is not limited to, lubrication, adjustments, and the replacement of maintenance parts deemed necessary by Supplier. Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of Supplier. Maintenance services provided under this Agreement does not assure uninterrupted operation of the Product. Maintenance shall not include repairs necessitated by factors other than normal use (e.g. willful or negligent acts, service provided by unapproved third parties, ambient conditions, use of parts or supplies not provided by Supplier, etc.).

Maintenance service requested and performed outside Supplier's normal business hours will be charged to Participating Agencies at Supplier's applicable time and material rates and terms as provided in this Agreement.

Maintenance costs must be fixed or lowered during the term of the contract. Maintenance costs cannot increase in price during the initial term of the Agreement. Maintenance costs itemized on each individual order schedule shall be fixed for the initial term stated on the schedule, not to exceed sixty (60) months and shall be subject to annual increase thereafter.

Toner and staples (“Consumables”) are provided at no additional charge for exclusive use with the Equipment. If you use the Consumables in a different manner and your toner usage exceeds by more than 10% the published manufacturer specifications for conventional office image coverage, as determined by Supplier, Supplier may invoice you

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for such excess usage provided, that Supplier shall not invoice you for such excess toner usage unless and until Supplier has first notified you of the excess toner usage, and until you and Supplier have consulted in good faith in an attempt to identify the reason(s) for the excess toner usage and you have had a reasonable opportunity, if practicable, to rectify the excess toner usage. Additional toner may be purchased from Supplier if required during the term. You shall bear all risk of loss, theft or damage to unused consumables, which shall remain Supplier's property and shall be returned promptly upon termination of this Agreement.

Relocation of Copiers: During the course of this Agreement, it may be necessary for various reasons to relocate installed copiers. After initial installation, upon customer request, any multi-function copier between 20 PPM and 105 PPM may be relocated one (1) time per Customer Agreement period at no additional charge. The number of relocations provided at no additional charge shall not exceed the aggregate number of units installed per member under this Customer Agreement. Any relocations in excess of this, shall be invoiced at CSA's then current rates.

- 2.12 Service Warranty: Supplier warrants that services will be performed in a good workmanlike manner in accordance with the applicable service description. Supplier will service during the warranty as well as during the Service Contract through its own Service Organization. It is understood and agreed by Participating Agencies that Supplier retains exclusive ownership and control of any proprietary software diagnostics utilized in servicing the Products. Supplier to provide MFD and Laser Printer warranty (Parts and labor) 90 Days.
- 2.13 Product Warranty Supplier warrants the Canon Brand equipment it supplies will be free from defects in material and workmanship for ninety (90) days from the date of delivery. In addition, after such ninety (90) day period, Supplier will maintain such equipment in good operating order per manufacturer's specifications provided subject to normal use. Within five (5) years for purchase or the term of the lease, of original installation of any newly installed Canon brand equipment covered by the agreement, Supplier will at Customer's written request, replace such equipment with a like unit if Customer meets the following three conditions: (1) The equipment is continuously and exclusively serviced by Supplier or it's subcontractor from and including the date of original installation; (2) Customer fulfills all terms of the agreement; (3) Before requesting a replacement unit, Customer gives Supplier the opportunity to cure any service problems which Customer may have with the equipment. In the event that an item of equipment is inoperable for a period in excess of sixteen (16) consecutive business hours, Supplier will supply a loaner unit until the machine is restored to good working order. Supplier to provide MFD and Laser Printer warranty (Parts and labor) 90 Days.
- 2.14 Non-Performance Penalty: Supplier agrees to credit Participating Agencies for not complying with the service standards specified in Section 2.8, as follows:



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functions, due to a failure of the machine mechanically or electronically. This Failure Time will be tracked and reported by Supplier.

2.14.2 Delivery credit - Up to fifteen (15) percent of the Participating Agencies net purchase price and/or monthly lease charge to be calculated on a per equipment unit basis for each device as specified below. The credit for late delivery will not apply in the event Supplier provides, within required delivery time as stated in 2.8 above, a longer acceptable by Participating Agencies ordering department.

| <b>Delivery Schedule</b><br>(Business Days) | <b>Credit</b><br>(Off UC purchase/lease price) |
|---|--|
| 10 days                                     | 0%   |
| 11 days                                     | 1.0%   |
| 12 days                                     | 2.0%   |
| 13 days                                     | 3.0%   |
| 14 days                                     | 4.0%   |
| 15 days                                     | 5.0%   |
| 16 days                                     | 6.0%   |
| 17 days                                     | 7.0%   |
| 18 days                                     | 8.0%   |
| 19 days                                     | 9.0%   |
| 20 days                                     | 10.0%  |
| More than 20 days                           | 15.0%  |

2.14.3 The minimum quality of service standards set forth above recognize that occasional errors are likely, however, the Supplier further agrees to use best efforts to achieve 100% of service level. Should the service levels fall below the minimum standards and the Supplier does not take corrective action within thirty (30) days following University written notification, the University reserves the right to terminate the Agreement immediately.

2.15 Delivery and Installation:

2.15.1 Supplier shall provide delivery and installation of devices, including fulfillment process from Participating Agencies Purchase Order submission to delivery, all at no separate or additional charge to Participating Agencies. Participating Agencies has the option to accept or reject all Products delivered after promised delivery time, and in addition, may hold Supplier liable to an direct damages caused by late delivery as determined and documented by Participating Agencies; provided, however, in no event shall the amount of such direct damages exceed Participating Agencies documented replacement substitution cost for Products ordered. Supplier will report any delivery delay whatsoever to the ordering location, as well as its cause, within two (2) days after Supplier is able to reasonably determine there will be such a delay; such report will be provided to Participating Agencies by telephone, email, or facsimile. Supplier shall keep Participating Agencies fully informed if late

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delivery is due to causes beyond the reasonable control and without the fault or negligence of Supplier, including but not limited to: acts of God, war, civil commotion, governmental action, fire, floods, unusually severe weather, explosions, earthquakes, strikes or walkouts against location, quarantine restrictions, or other causes beyond reasonable control of Supplier.

- 2.15.2 Suppliers' dedicated account representative must coordinate all the delivery, installation and training processes with designated representative(s) at each Location.
- 2.15.3 Supplier will provide a written acknowledgment of equipment delivery and installation.
- 2.16 Training: Supplier through its online portal eLearning, must provide training to authorized personnel sufficient to enable the proficient and productive use of Supplier's devices, systems and processes including, but not limited to:
- Initial Training (following installation)
  - Follow-up training
  - On-going training (existing and new users)
- 2.16.1 Key Operator training to be provided by Supplier at Participating Agencies Locations at mutually agreed upon dates and times, at no charge to Participating Agencies. "Key Operator" concept trains specifically one or more individuals in depth.
- 2.17 Sustainability: Suppliers shall comply with the University of California Sustainable Practices Policy which is the University's standard for all sustainable practices including, but not limited to:
- 2.17.1 For each device covered under the Agreement that are included in sections 8.1 and 8.2 below, Supplier must provide that device's EPEAT rating (Gold, Silver, Bronze) along with the EPEAT recorded options score. Each device must have achieved a minimum EPEAT rating of Bronze.
- 2.17.2 Provide a take back process for toner cartridges and other consumables at no additional cost to University.
- 2.17.3 Post Consumer Waste (PCW) Paper:
- All devices shall be able to use recycled content paper up to and including 100% Post Consumer Waste (PCW) paper with high reliability, as long as the paper in use meets standard paper categories (e.g. copy, laser, or multi-purpose paper).
  - Full duplexing using up to and including 100% PCW paper shall be guaranteed by the manufacturer to reliably accomplish 100% duplexing. Recycled paper PCW content cannot be faulted by the Supplier's service personnel for equipment malfunctions.



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- Should a condition arise in which paper is suspect in underperformance in a significant number of devices using the same paper or same paper batch numbers, further testing may be coordinated by a designated official with Supplier to test and determine the appropriate resolution.
- 2.17.4 Environmentally Responsible Packaging: Supplier agrees to use good faith efforts to utilize minimal packaging, environmentally responsible packaging, recycling practices, and packaging take back for reuse, to minimize the adverse effects of packaging on the environment.
- 2.17.5 Provide a process by which devices acquired under this Agreement can be taken back by the Supplier at the end of their useful life for remanufacturing, refurbishing, or recycling of parts. For MFDs, Supplier must take back devices at the end of their useful life at no cost, at University discretion.
- 2.17.6 Sustainable Transportation: Supplier agrees to work towards creating a delivery and transportation model which minimizes Green House Gas (GHG) emissions and has the least impact on the environment. The purchase of the cleanest and most efficient vehicles and tires will be a Supplier goal. The use of alternative fuels will be utilized where and when appropriate.
- 2.17.7 Sustainable Operations: Supplier agrees to implement a continuous improvement program related to sustainable operations of its facilities.
- 2.17.8 Reporting: Supplier will report to Participating Agencies during the quarterly business reviews regarding the improvements that have been made in the previous quarter and planned improvements for the upcoming quarters. Supplier will provide quarterly summary reports as specified in the RFP detailing purchases, incentives and the purchase of sustainable products by Participating Agencies systemwide and by location.
- 2.17.9 Supplier is required to register and participate in an assessment of their sustainability practices and procedures through the Ecovadis Corporate Social Responsibility (CSR) monitoring platform. For more information on the EcoVadis platform and costs associated with an assessment, please see the EcoVadis Supplier Solutions Website here: <https://www.ecovadis.com/us/supplier-solutions-2/>.

2.18 Accessibility:

- 2.18.1 Products will be accessible to people with disabilities and comply with California Building Code 2016 for "forward reach" (11B-308.2) and for "side reach" (11B-308.3).



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2.18.2 OCR will be available on all scanners at no additional cost to Participating Agencies.

2.18.3 On devices with scanning functionality, the installer or repair person will ensure that a one-page instructional flyer is posted at the device that (a) explains why OCR is critical to make PDFs accessible to people with disabilities, (b) instructs the user how to easily turn the OCR capability on/off, (c) provides information about the impact of the OCR process on file size or other document properties, emailing, uploading, and other functionality, and (d) advises that all floor-standing devices should have sufficient clearance for wheelchair access.

2.18.4 Accessibility features for each product will be identified in the supplier's online program myCSA.

2.19 Technical Support: Supplier must provide the following technical support to Locations:

2.19.1 Initial installation and configuration of MFD hardware and software for network connectivity and full functionality of the MFD to Locations and their IT resources, as needed and/or requested.

2.19.2 Onsite equipment electrical and mechanical troubleshooting and repairs.

2.19.3 Dedicated technical support staff with a working knowledge of all aspects of network functionality across all platforms including, but not limited to:

2.19.4 Hardware installation (network cards, cabling, etc.)

2.19.5 LDAP

2.19.6 Network administration (equipment, software installation/configuration, printer driver installation/configuration/characteristics and security settings as needed and requested.)

2.19.7 Advice and assistance with user-settable options in display menus and submenus

2.19.8 Support for MFDs or Laser Printer issues with respect to 3rd party vendor software and hardware.

2.19.9 Full maintenance services for Laser Printers, including repair parts, software and firmware updates and labor.

2.19.10 Supplier's employees that will be physically present at Locations (i.e. delivering copiers, providing service) must conform to the following:

- Wear proper uniform
- Carry badges with picture ID
- Successfully passed the following pre-employment background security checks:
  - Social security trace
  - National criminal search (including national sex offender registry)
  - County criminal search
  - Prior employer screening
  - Highest level of education (exempt only)
  - Motor vehicle record (driving roles only)

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- Bonded, or appropriately equivalent Crime Insurance coverage

2.19.11 Based on size and scope of the Participating Agencies MFD Fleet, the Supplier Management Team will consist of the dedicated Supplier Account Manager, Service Technicians, a dedicated Customer Relation Advocate as well as any other support personnel and resources deemed necessary at each location to ensure best in class contract monitoring, maintenance and provide locations with clear and concise communication.

### 3. Pricing:

- 3.1 Pricing on Exhibit 2 is expressed as a discount from Manufacturer Suggested Retail Price MSRP. MSRP must be available on a manufacturer's published price list and be publicly available throughout the agreement term.
- 3.2 The prices of Supplier's products included in this Agreement shall not increase for the duration of this Agreement for existing Models.
- 3.3 Supplier may utilize Value Added Resellers to perform maintenance, service and support for all Participating Agencies locations at the pricing stated in the Pricing Exhibit 2
- 3.4 During the term of the Agreement, Supplier may add or delete contract devices introduced or removed from the market by the Supplier, provided the added device falls within the scope of the respective category. Supplier must update its dedicated contract websites and published catalogs and lists to reflect this change. New devices must be adequately describe and the associated price list must be updated to reflect the new devices prices. Pricing must utilize the same pricing structure as was used for other devices falling into the same product category. The pricing structure will be dictated by the purchase price determined from the discount from Manufacturer Suggested Retail Price (MSRP) and other specified discounts listed in this RFP. Lease pricing will be dictated by the quoted leasing rates applied to the purchase price. Such additions and deletions must be approved by the UC contract administrator or their designee. From time to time Supplier will provide replacement or substitution models prior to the updating of the pricing pages for the agreement or website. When ordering, the participating agency may refer in its purchase orders or other ordering documentation the new model/item code and the corresponding legacy model price.

4. **Reporting:** Supplier must provide electronic reports (in Microsoft Excel) or any other requested format to designated Participating Agencies contacts providing a wide range of information, at both the system-wide and individual Location level, related to the Agreement including, but not limited to:

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4.1 Quarterly Report Population of MFDs and Laser Printers reports including but not limited to the following data:

- Location
- Department
- Purchase order number
- Name, phone and email for department placing the purchase order
- Equipment serial number
- Name and Model of product(s) and/or service(s) Purchased
- Quantity purchased
- Price paid, per unit and total
- Method of acquisition (lease, purchase, etc.)
- Sustainable product purchases

4.2 Monthly Reports:

- Response time
- Repair time
- Uptime
- Total service calls
- Delivery time
- Installation time
- Open leases, remaining terms, etc.

4.3 Equipment inventory report that will provide a detail listing of all products and their locations at the particular Location..

4.4 Supplier must make a commercially reasonable effort to provide reports within five (5) business days of Participating Agencies' request.

## 5. Maintenance Service

5.1 Supplier agrees to provide to Participating Agencies, during Supplier's normal business hours, the maintenance service necessary to keep equipment in, or restore the equipment to, good working order in accordance with Supplier's policies then in effect. This maintenance service includes maintenance based upon the specific needs of individual equipment, as determined by Supplier, and unscheduled, on-call remedial maintenance.

5.2 Maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by Supplier. Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of Supplier. Maintenance

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services provided under this Agreement does not assure uninterrupted operation of the Product.

- 5.3 Supplier must coordinate all service calls through a centralized dispatch desk. All calls must be logged into a service system with a minimum of the following information:
- 5.3.1 All relevant customer information, location, phone number(s), contact name, caller name
  - 5.3.2 A unique repair ticket number
  - 5.3.3 Time of call placement from the customer
  - 5.3.4 The customer's reported equipment malfunction or issue
  - 5.3.5 The equipment id number, model and serial number
  - 5.3.6 The equipment status operational status: operational, substandard, or inoperative
  - 5.3.7 Dispatched agent name or id number, dispatched time, location, caller, make, model, serial # and problem
- 5.4 Suppliers must further log the following information upon call completion:
- 5.4.1 Service technician's report of actual problem and troubleshooting & repair actions conducted.
  - 5.4.2 Arrival time, End time, Total Repair time, service copies made, final call status i.e.: completed.- closed, open, pending , escalated.
  - 5.4.3 Meter readings upon service completion (i.e. print, scan, color, b/w).
- 5.5 Locations with MFD/Printer Fleet Management programs may require that the call completion information be supplied from the Supplier's repair technician to a designated MFD/Printer Fleet Management program administrator at the conclusion of the service call.
- 5.6 Repair Parts and Supplies:
- 5.6.1 Supplier must carry in stock all common parts for no greater than next-day access by Supplier's service personnel.
  - 5.6.2 Supplier must produce or make parts and supplies available for no less than five (5) years after a model has been discontinued.
  - 5.6.3 Supplier must provide all Participating Agency's Locations with the same discount for parts and supplies for the devices covered under this Agreement.
- 5.7 MFD Service and Parts: Supplier must offer full maintenance services for MFDs, including repair parts, software and firmware updates and labor based on the following options:
- **Option 1: Cost Per Impression Charge – Zero Volume Base**

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Supplier will provide full service maintenance with supplies, excluding paper. Supplier will invoice respective Location on a monthly basis using a cost per impression charge applied to the actual monthly impression volume in the covered period without any minimum and/or maximum volume restrictions. Volumes will not be estimated. These rates apply to purchased and leased MFDs.

- **Option 2: Monthly Minimum Charge**  
Supplier will provide full service maintenance with supplies, excluding paper. Supplier will charge a fixed monthly minimum charge, which will include a monthly impression volume allowance, with a separate cost per impression charge applied to the overage. These rates apply to purchased and leased MFDs.
- **Option 3: T&M - Fixed Charge per Occurrence**  
Supplier will provide service repairs and maintenance using a Time and Material option. Supplier charges a fixed amount per occurrence and/or a fixed hourly fee, after expiration of standard or extended equipment warranties.

5.8 **Lemon Clause:** After the 90-day warranty period and until 36 months from the date of installation, or coterminous in the case of a longer lease, except due to operator error, for any device that fails to operate in accordance with the manufacturer's published performance specifications three times in any four week period and/or is subject to recurring related problems, Supplier shall replace that device with a new MFD or Laser Printer that meets the requirements of the same lot as the original equipment model, at no cost to the user. This will take precedence over any other warranty or service maintenance clauses associated with this contract. For purchased devices, customers must maintain an uninterrupted maintenance agreement, cost per copy, or lease agreement including parts and supplies with the contract vendor for the Lemon Clause to apply past the initial 90-day warranty period. The Location Purchasing and/or MFD/Printer Fleet Management Program will review user requests for the application of this clause and will make a determination regarding its use.

If 25% or less of the device's useful life has been used up, the device must be replaced with a "new device". A "like for like" device may be used if 25% or more of the useful life of the device has been used up and the Customer agrees to the "like for like" exchange. Note: Prior to the lease or purchase of a device, awarded vendors must provide Participating Agency with the device's "Useful Life".

## 6. Data Security

6.1 For all MFDs/Laser Printers, Suppliers must:

- 6.1.1 Disclose all default accounts, access methods, and passwords on the device at delivery.
- 6.1.2 Certify that log-in credentials are not communicated in clear text by default, though clear text may be an option if cipher text is available as an option.

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- 6.1.3 Deliver MFDs and/or Laser Printers with the latest, fully-patched software, firmware, or other OEM software as provided for device functionality as detailed on the “Specifications” tab of Attachments B and C.
  - 6.1.4 Notify all Locations of all known and reported vulnerabilities, and of planned updates or mitigations to software provided for device functionality as detailed on the “Specifications” tab of Attachments B and C.
  - 6.1.5 Disclose and describe shared accounts or service accounts that Supplier technicians may or will use, and the security procedures planned by Supplier.
- 6.2 All devices must:
- 6.2.1 Provide secure login for administrator access (including username and password). Upon setup and configuration, all default device or interface passwords must be changed and communicated to the designated contacts(s).
  - 6.2.2 Provide IP and MAC address filtering to limit users’ access to the device via the web interface; and
  - 6.2.3 Provide on/off (switchable) provisions for other types of access, including but not limited to telnet, rsh, SNMP, FTP, IPsec, SSL/TLS, etc. Suppliers must list all on/off provisions for all types of access in their response.
- 6.3 All MFDs/Laser Printers that are equipped with hard drives must:
- 6.3.1 Possess an “always on” security feature that overwrites the sector(s) of the hard drive used for processing copy, print, or scan data using at least 3 passes, preventing the data from remaining on the hard drive of the MFD or Laser Printer after the copy, print, or scan job is finished.
  - 6.3.2 Provide at least 128-bit AES encryption (or equivalent) as part of the storage process for any information held on the hard drive for long-term storage.
  - 6.3.3 Provide secure login for administrator access (including username and password), allowing administrators to set access levels for users who perform tasks on the device (e.g., managing address books (fax or scan addresses), or printing print, fax, or copy/scan logs). Upon setup and configuration, all default device or interface passwords must be changed and communicated to the designated contacts(s).
  - 6.3.4 Isolate any incoming FAX line from all hardware that has network access. MFDs must have no physical or data connection between the Page Memory (or Temporary Data Storage) and the FAX controller.
- 6.4 Hard Drive Data. Participating Agencies acknowledges that the hard drive(s) on the equipment, may retain images, content or other data that Participating Agencies may store for purposes of normal operation of the equipment (“HD Data”). Participating Agencies acknowledges that Supplier is not storing HD Data on Participating Agencies’ behalf and that exposure or access to the HD Data by Supplier, if any, is purely incidental to the services performed by Supplier. Participating Agencies is solely responsible for

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OMNIA Partners Exhibit - Terms applicable to all Non-University of California Entities

the HD Data. The equipment contains various security features that University can utilize to easily erase or dispose of stored data.

- 6.5 Provide on/off (switchable) control of read/write access to the device from portable media (e.g., SD cards, USB drives, etc.); Participating Agencies System Administrator will be required to initialize the Hard Drive via the device's local control panel utilizing the "Initialize All Data/Settings" function and additionally, Supplier will be required to initialize the Hard Drive utilizing the "Initialize All Data/Settings" function and provide certification of completion including device serial number, device name, erase mode, date and time of erasing, and firmware version to the appropriate Participating Agencies System Administrator, at the end of a lease, cost-per-copy agreement, or at trade-in (or at any time, for any reason, an MFD and/or Laser Printer is removed from Participating Agencies) at no additional cost to Participating Agencies. From time to time, when devices are leased, Supplier may be required to remove and surrender a Hard Drive to a Participating Agencies System Administrator, for a flat fee as priced in Pricing Exhibit 2.
1. If Solid State Devices (SSD) are used solely on Canon supplied devices, when the "Initialize All Data/Settings" function is invoked, the result would be equivalent to a cryptographic erasure
  2. If there will be a mix of SSD and Hard Disk Drives (HDD) used on Canon supplied devices, when the "Initialize All Data/Settings" function is invoked, the result would be equivalent to cryptographic erasure on Canon supplied SSD and purging (secure erase firmware command or cryptographic erasure) for Canon supplied HDD.
  3. See below bullets for further clarity and definitions
- Definitions Per [UC IS-3 UC Institutional Information Disposal Standard](#):

**Cryptographic Erasure** is defined as a disposal process that safely destroys all copies of the decryption key. If all data is adequately encrypted, then once the decryption key is removed, the Institutional Information is not recoverable. Note, for Cryptographic Erasure, the UC IT Workforce Member must verify that all data is adequately encrypted on the Canon device. The location of all decryption keys must be known and documented. An action that safely destroys all copies of the key must be available. The cryptographic algorithm employed must meet minimum standards, as defined by NIST FIPS 140-2.

**Purging** is defined as a disposal process that makes the media reusable but makes accessing the Institutional Information infeasible. This applies to physical or logical techniques that render Institutional Information recovery unachievable. Purge protects against laboratory attacks. Executing the secure erase firmware command on a disk drive, Cryptographic Erase and Degaussing are acceptable methods of purging.

- 6.6 Supplier will work with each Participating Agencies System Administrator to create the appropriate standards for device security including; interface, network, port usage,



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authentication, key/certification, log, job and storage parameters. Prior to deliver the HDD Data Erase function will be enabled in all Canon imageRUNNER devices to overwrite at least once with NULL Data in the temporary image data storage areas. Participating Agencies System Administrator can configure the device to automatically overwrite to other settings.

**7. Technology Requirements:** Suppliers' devices must have the technological capability to fulfill specific requirements of the University including, but not limited to the following required device technologies:

- 7.1 100baseT or greater Ethernet connectivity
- 7.2 Connectivity to Supplier's MFDs and/or Laser Printers by devices using the following operating systems, including universal and device-specific PPDs. Include the expected timeframe for release of PPDs after operating system upgrades:
  - 7.2.1 Windows (requirement is from Windows 10.0 and higher; Suppliers to specify versions)
  - 7.2.2 Macintosh (Suppliers to specify versions; requirement is from OSX 10.13 and higher)
  - 7.2.3 IOS (Suppliers to specify versions; requirement is from iOS 11.0 and higher)
  - 7.2.4 Android (Suppliers to specify versions; requirement is from Android OS 8.0 and higher)
- 7.3 Connectivity to Supplier's MFDs and/or Laser Printers by following communications protocols:
  - 7.3.1 POP, IMAP
  - 7.3.2 IPv4/IPv6/IPsec
  - 7.3.3 LDAPv3 or higher
  - 7.3.4 Kerberos – must include Kerberos for Windows and Macintosh Operating Systems listed in 2a-2b above
  - 7.3.5 LPR/LPD/IPP
  - 7.3.6 AirPrint
  - 7.3.7 SMTP
  - 7.3.8 SNMP v1 – v3 including authentication protocols
  - 7.3.9 TCP port 9100 direct printing (bidirectional)
  - 7.3.10 SSL/TLS
- 7.4 Printing to Supplier's MFDs and/or Laser Printers using the following printing protocols/output types:
  - 7.4.1 PostScript Level 3
  - 7.4.2 PCL 6e
  - 7.4.3 PDF



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- 7.5 Effective and successful installation and set-up of Supplier's MFDs and/or Laser Printers on University network.
- 7.6 Effective and successful installation and set-up of connectivity software (including, but not limited to, PPDs) to Supplier's MFDs/Laser Printers on customer computers as requested by the Location.
- 7.7 All Proposers' devices must be able to interface with existing third-party access control and management systems at locations (Equitrac, ITC, Pharos, PaperCut, PCounter, or comparable), with the following requirements to achieve reliable and accurate transactions and transactional reporting:
  - 7.7.1 Embedded software and/or external hardware to enable use of the third- party system; device-specific interface cables for external hardware must be provided and installed by Supplier at no cost to Participating Agency;
  - 7.7.2 Network connectivity across a hard-wired and/or a wireless network;
  - 7.7.3 Ability to use USB proximity and/or magnetic stripe card readers for user authentication and access to the third-party system.

## 8. Product Acquisition

- 8.1 Required MFD's: During the term of the Agreement, Supplier must provide at least one model MFD that meets or exceeds UC's requirements for each of the following categories. Suppliers must provide detailed specifications for each model of MFD fulfilling the category requirements below.
  - Category 1 - B/W Desktop 20+ pages per minute
  - Category 2 - B/W 20-30 pages per minute
  - Category 3 - B/W 31-40 pages per minute
  - Category 4A - B/W 41-50 pages per minute
  - Category 4B - B/W 51-60 pages per minute
  - Category 5 - B/W 61-90 pages per minute
  
  - Category 1 - Color Desktop 20+ pages per minute
  - Category 2 - Color 20-30 pages per minute
  - Category 3 - Color 31-40 pages per minute
  - Category 4A - Color 41-50 pages per minute
  - Category 4B - Color 51-60 pages per minute
  - Category 5 - Color 61-90 pages per minute
- 8.2 Required Laser Printers: During the term of the Agreement, Supplier must provide at least one model Laser Printer that meets or exceeds UC's requirements for each of the following categories. Suppliers must provide detailed specifications for each model of

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Laser Printer fulfilling the category requirements below. Each model MUST have the ability to perform duplex printing and have ethernet connectivity:

- Category 1 - Low Volume - B/W 25-40 pages per minute
- Category 2 - Mid Volume - B/W 41-55 pages per minute
- Category 3 - High Volume - B/W 56-70 pages per minute
- Category 1 - Low Volume - Color 10-20 pages per minute
- Category 2 - Mid Volume - Color 21-35 pages per minute
- Category 3 - High Volume - Color 36-50 pages per minute

8.3 Purchase Option: Supplier agrees to sell to Participating Agency the required devices listed herein and associated products and services, if requested by Participating Agency, in accordance with the requirements set forth in this Agreement. Supplier shall warrant that the Products are new and owned by Supplier. Supplier warrants that it will repair or replace defective Products and/or parts, including labor at no cost to Participating Agency for ninety (90) days after the installation date. The title for the purchased MFDs and/or Laser Printers will be transferred to Participating Agency. In conjunction with purchased MFDs, Suppliers must offer a cost per copy (CPC) rate for service and supplies.

8.4 Lease Option: Suppliers agrees to offer to Participating Agency the required MFDs listed herein and associated products and services based on the following Full Market Value (FMV) and \$1 buyout terms:

- 36 Months
- 48 Months
- 60 Months

8.4.2 In conjunction with leased MFDs, Supplier must offer a CPC rate for service and supplies.

8.4.3 In conjunction with leased MFDs, on both FMV and \$1 buyout option, Supplier must offer a service and supply component.

8.5 Trial Units: Supplier must offer current models to Participating Agencies Locations on a trial basis for thirty (30) days. Locations may opt to purchase or lease the trial model, request a different model for trial, or return the trial model(s) with no obligation to Supplier.

8.6 Product Certification: Supplier certifies and warrants that all products sold to Participating Agencies under the Agreement:

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- 8.6.1 Shall be new and genuine, except short term rentals or temporary replacements.
  - 8.6.2 Shall be provided to Participating Agencies in the manufacturer's original packaging unless otherwise requested by Participating Agencies.
  - 8.6.3 Shall be manufactured and sold or distributed to the Supplier for retail sale in the United States.
  - 8.6.4 Shall be sold to the Supplier from legal and reputable channels, which are understood to be the manufacturer or authorized representatives of the manufacturer.
  - 8.6.5 Shall not be altered or misbranded within the meaning of the Federal and State laws applicable to such products.
- 8.7 Trade-ins: Supplier agrees to assist Participating Agencies in obtaining the best trade-in values available for Participating Agencies owned Products through Supplier's recommended Equipment Brokers. Supplier shall provide the required administrative support, including removal of Participating Agency owned products, to Participating Agency to effectively manage the trade-in transaction(s) at no cost to Participating Agency.
- 8.8 Leased Fleets of 50 devices or more at an individual campus. For those fleets, Supplier will allow the Customer to upgrade or downgrade 5% of the cumulative installed population of machines over the term of the Customer Agreement, provided Customer has installed a minimum fleet of 100 units of Equipment across all locations. This provision excludes imageRUNNER machines with rated speeds of 110 pages per minute or greater, or imagePRESS products.



Canon Solutions America, Inc. ("CSA")
One Canon Park, Melville, NY 11747
(800)-613-2228

Lease Schedule ("Schedule") - Itemized (SER-700)

Terms Applicable to All Non-University of California Entities

Customer: Customer legal name

CFS App #: TBD

Salesperson:

Agreement #: TBD

Transaction #:

Order Date: 1/1/2021

Billing Information
Customer Account:
Company: Customer legal name appears here
DBA:
Address:
Address 2:
City: County:
State: Zip: Phone #: (###) ###-####
Contact: Customer contact Fax #:
Email: Customername@customeremail.com

Table with columns: Payment Information, Equipment Maintenance Information, Other Transaction Details. Includes rows for Lease Term, # of Lease Payments, Maintenance included, etc.

Table with columns: Select applicable MAINTENANCE STATUS, Maint Base Charge This Section, Covered Images Included in Maint Base Charge, Excess Per Image Charge(s)

Main table with columns: Item Code, Listed Items Description, Qty, Unit Pmt, Total, Ship To & Maintenance Billing Information. Includes fields for Shipping, Address, City, State, Zip, and various contact details.

Additional Requirements:
Notwithstanding this Agreement, this transaction shall be governed by the terms and conditions of Purchase Agreement # 2020002755 between Canon Solutions America, Inc. and the University of California and any terms and conditions which conflict with, vary from or modify the Agreement terms shall be deemed null and void.

Elevator: Y/N? Loading Dock: Y/N? # of Steps: Hrs of Operation:
Consumables: Toner only (excludes clear)
Meter Read Method - select one
For CSA USE ONLY:

THIS SCHEDULE IS ENTERED INTO PURSUANT TO, AND INCORPORATES THE TERMS OF, THE MASTER SALES AND SERVICES AGREEMENT REFERENCED AS THE AGREEMENT # ABOVE ("AGREEMENT"), INCLUDING THE MASTER LEASE TERMS SET FORTH AS RIDER G THERETO WHICH SHALL CONTROL (THE "LEASE TERMS"). TO THE EXTENT THE TERMS OF AN EXISTING CFS MASTER AGREEMENT ARE REFERENCED ON THIS SCHEDULE (THE "EXISTING MASTER CFS LEASE") AND ARE APPLICABLE TO THIS SCHEDULE, THEY SHALL CONTROL OVER THE MASTER LEASE TERMS SET FORTH AS RIDER G TO THE AGREEMENT FOR SO LONG AS THE EXISTING MASTER CFS LEASE REMAINS IN EFFECT. STANDARD TERMS AND CONDITIONS AND APPLICABLE RIDERS INCORPORATED HEREIN ARE AVAILABLE AT ESS.CSA.CANON.COM/CUSTOMERDOCUMENTS, AND SHALL APPLY TO THE EXTENT NOT MODIFIED BY THE AGREEMENT. THIS SCHEDULE CONSTITUTES A LEASE OF THE LISTED ITEMS, AND IS BINDING ON CUSTOMER UPON SIGNING BY CUSTOMER, AND IS BINDING ON CSA AND LESSOR AS PROVIDED IN THE LEASE TERMS. THIS SCHEDULE IS NON-CANCELABLE BY CUSTOMER. CUSTOMER REPRESENTS THAT EXECUTION OF THIS SCHEDULE HAS BEEN DULY AUTHORIZED. BY YOUR SIGNATURE, CUSTOMER AGREES TO LEASE THE LISTED ITEMS AND, IF SELECTED, TO PURCHASE THE MAINTENANCE SERVICES DESCRIBED HEREIN. YOU ACKNOWLEDGE RECEIPT OF A COPY OF THIS SCHEDULE.

Customer Authorized Signature: Printed Name: Title: Date:

ACCEPTANCE CERTIFICATE

To: CSA and Lessor: Customer certifies that (a) the Listed Items referred to in the above Schedule have been received, (b) installation has been completed, (c) the Listed Items have been examined by Customer and are in good operating order and condition and are, in all respects, satisfactory to the Customer, and (d) the Listed Items are irrevocably accepted by the Customer for all purposes under the Agreement. Accordingly, Customer hereby authorizes billing under this Schedule.

Authorized Signature: Printed Name: Title: Date:

For Internal Purposes Only:

CFS Authorized Signature: Printed Name: Title: Date:



Canon Solutions America, Inc. ("CSA")
One Canon Park, Melville, NY 11747
(800)-613-2228

Purchase and Maintenance Schedule (SER-500)
Order Schedule ("Schedule")

Customer: Customer legal name

Salesperson:

Agreement #: TBD

Transaction #: TBD

Order Date: 1/1/2021

Table with columns: Billing Information, Transaction Description, Equipment Maintenance Information, Amounts Due, Payment Terms, Other Transaction Details. Includes fields for Subtotal, Delivery/Install, Sales Tax, Total, Deposit, Balance Due, and Total Extended Maintenance Base Charge.

Table with columns: Select applicable MAINTENANCE STATUS, Maint Base Charge This Section, Maint Initial Term, Covered Images Included in Maint Base Charge, Excess Per Image Charge(s).

Main table with columns: Item Code, Listed Items Description, Qty, Unit Price, Total, Ship To & Maintenance Billing Information. Includes shipping and billing details for each item.

Other Invoicing Requirements
Equipment Billing Entity: Canon Solutions America, Inc.
Purchase P.O. reference for invoice: PO#
Maintenance P.O. reference for invoice: PO#

THIS SCHEDULE IS ENTERED INTO PURSUANT TO, AND INCORPORATES THE TERMS OF, THE MASTER SALES AND SERVICES AGREEMENT REFERENCED AS THE AGREEMENT # ABOVE AND APPLICABLE RIDERS ("AGREEMENT"). BY YOUR SIGNATURE BELOW, CUSTOMER AGREES TO PURCHASE OR LEASE THE LISTED ITEMS, AND/OR MAINTENANCE SERVICES AND SUPPORT, AS SPECIFIED, SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT.

Customer Authorized Signature: Printed Name: Title: Date:



Canon Solutions America, Inc. ("CSA")
One Canon Park, Melville, NY 11747
(800)-613-2228

Return Schedule, Rider B of Agreement

Customer: Customer's legal name

Salesperson: \_\_\_\_\_

Agreement #: TBD

Transaction #: \_\_\_\_\_

Order date: 1/1/2021

Customer ("You") Customer Account: TBD Service Requested:
Company: Customer's legal name Select Transaction Type - One Per Form Page
Address: Lease Information (if applicable)
City: County: Leasing company name Lease Number
State: Zip: Phone: (###) ###-####
Contact name: Customer contact
Email: customername@email.com
Alternate Contact:
Alternate Phone:

If "Buyout Reimbursement" is selected above, the following MUST be completed:

\$ \_\_\_\_\_ To be paid upon delivery / acceptance pursuant to Rider B, Section 1.

Payable to: Buyout - Select one Otherwise BLANK Reason for check issuance:

If transaction includes a Lease Upgrade or Buyout the following MUST be completed:

Select one:
[ ] Not Applicable: No Equipment pick up required
[ ] CSA will pick up the Equipment
[ ] Return Equipment to CFS
[ ] Return Equipment to CSA Original Order Date \_\_\_\_\_
[ ] You will return Equipment to leasing company according to the terms and conditions of your lease agreement
[ ] You will retain the equipment.
Will retained equipment remain under a CSA Maintenance Agreement?
[ ] No
[ ] Yes: SELECT ONE: under an Existing Contract [ ] Under New Contract [ ]

Trade in Equipment Condition: Trade In Condition - Select for Trade In ONLY or BLANK

Equipment for Trade-In, Upgrade, or Return

If transaction includes a Lease return the following MUST be completed:

Table with 8 columns: Return code, Item Code, Description, Serial #, Equipment Location, Contact Name & Phone, Email, Alt pick up date

Pick Up /Return Information:

[ ] Same Date as Delivery of Listed Items Specified on the Agreement
[ ] Other Specified Date: \_\_\_\_\_ (but no longer than 30 days after delivery of Listed Items under Agreement)

Contact Name: Phone: Email:

Hours of Operation: insert Number of Steps: ?? Elevator: Y/N? Loading Dock: Y/N?

Special Instructions: Notwithstanding this Agreement, this transaction shall be governed by the terms and conditions of Purchase Agreement # 2020002755 between Canon Solutions America, Inc. and the University of California and any terms and conditions which conflict with, vary from or modify the Agreement terms shall be deemed null and void.

THIS RETURN SCHEDULE IS ENTERED INTO PURSUANT TO, AND INCORPORATES ALL OF THE TERMS OF, THE MASTER SALES AND SERVICES AGREEMENT REFERENCED AS THE AGREEMENT # ABOVE AND THE APPLICABLE RIDER(S) ("AGREEMENT"). BY YOUR SIGNATURE BELOW, YOU AGREE TO TERMS AS SPECIFIED ABOVE, SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT. CUSTOMER REPRESENTS THAT EXECUTION OF THIS SCHEDULE HAS BEEN DULY AUTHORIZED. YOU REPRESENT THAT YOU ARE AUTHORIZED TO EXECUTE THIS SCHEDULE ON CUSTOMER'S BEHALF. STANDARD TERMS AND CONDITIONS INCORPORATED HEREIN ARE AVAILABLE AT ESS.CSA.CANON.COM/CUSTOMERDOCUMENTS, AND SHALL APPLY TO THE EXTENT NOT MODIFIED BY THE AGREEMENT. YOU ACKNOWLEDGE RECEIPT OF A COPY OF THIS RETURN SCHEDULE.

Customer's Authorized Signature: \_\_\_\_\_
Printed Name: Title: Date:



### Subscription Support Services (SLS-910) Subscription Schedule ("Schedule"), Rider D of Agreement

Canon Solutions America, Inc. ("CSA")  
One Canon Park, Melville, NY 11747  
(800)-613-2228

**Customer:** Customer legal name  
**Agreement #:** TBD

**Salesperson:** \_\_\_\_\_  
**Transaction #:** \_\_\_\_\_  
**Order date:** 1/1/2021

|                         |   |
|-------------------------|---|
| <b>Customer ("You")</b> | Customer Account: <u>TBD</u>                  |
| <b>Company:</b>         | Customer legal name                           |
| <b>Address:</b>         | x   |
| <b>City:</b>            | <b>State:</b> <b>Zip:</b>                     |
| <b>Contact:</b>         | Customer contact <b>Phone:</b> (###) ###-#### |
| <b>Email:</b>           | <u>customername@email.com</u>                 |

|                           |
|---------------------------|
| <b>Alternate Contact:</b> |
| <b>Alternate Email:</b>   |
| <b>Alternate Phone:</b>   |

#### Subscription Support Services

**Schedule Term:**  \_\_\_\_\_ Months or  Lease term     Customer P.O. Reference on invoice: \_\_\_\_\_  
**Payment terms:**  Net 30     Bill with my CFS Lease Payment     Credit Card (Requires secure credit card authorization form.)

| Ordered Qty | Item Code | Description                               | Price | Extended Price |
|-------------|-----------|---|-------|----------------|
| #           | #####     | Item description - Device and accessories | \$\$  |                |

|  |                  |  |
|--|------------------|--|
| <p>Notwithstanding this Agreement, this transaction shall be governed by the terms and conditions of Purchase Agreement # 2020002755 between Canon Solutions America, Inc. and the University of California and any terms and conditions which conflict with, vary from or modify the Agreement terms shall be deemed null and void.</p> | <b>Total</b>     |  |
|  | <b>Sales Tax</b> |  |
|  | <b>Total Due</b> |  |

| Resource Level                                    | Units / hour | Min Hrs/Engagement |
|---|--------------|--------------------|
| National Consulting and Support ("NCS") Engineers | 5            | 10                 |
| Production Analyst                                | 4            | 8                  |
| Project Mgmt or Software Development Specialist   | 4            | 4                  |
| Local Systems Analyst or Systems Engineer         | 3            | 1                  |
| Solutions Support Center Agent                    | 3            | 1                  |
| Product Trainer                                   | 2            | 1*                 |

\*1 Subject to Course minimum requirements, if applicable

THIS SUBSCRIPTION SCHEDULE IS ENTERED INTO PURSUANT TO, AND INCORPORATES ALL OF THE TERMS OF, THE MASTER SALES AND SERVICES AGREEMENT REFERENCED AS THE AGREEMENT # ABOVE AND THE APPLICABLE RIDER(S) ("AGREEMENT"). BY YOUR SIGNATURE BELOW, YOU AGREE TO TERMS AS SPECIFIED ABOVE, SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT. CUSTOMER REPRESENTS THAT EXECUTION OF THIS SCHEDULE HAS BEEN DULY AUTHORIZED. YOU REPRESENT THAT YOU ARE AUTHORIZED TO EXECUTE THIS SCHEDULE ON CUSTOMER'S BEHALF. STANDARD TERMS AND CONDITIONS INCORPORATED HEREIN ARE AVAILABLE AT ESS.CSA.CANON.COM/CUSTOMERDOCUMENTS, AND SHALL APPLY TO THE EXTENT NOT MODIFIED BY THE AGREEMENT. YOU ACKNOWLEDGE RECEIPT OF A COPY OF THIS SUBSCRIPTION SCHEDULE.

Customer's Authorized Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_



This MASTER SALES AND SERVICES AGREEMENT, INCLUDING THE CUSTOMER INFORMATION FACE PAGE, THESE GENERAL TERMS, AND ANY APPLICABLE RIDER(S), SCHEDULES AND ADDENDA (AS DEFINED BELOW) (collectively the "Agreement") is entered into by and between Canon Solutions America, Inc. ("CSA") and its customer, as named on the Customer Information Face Page ("you" or "Customer"). "Parties" shall mean Customer and CSA. All notices to CSA shall be sent as set forth in Section 18.

## GENERAL TERMS

- 1. PURCHASE OR LEASE OF LISTED ITEMS.** You and CSA agree that you will purchase or lease, as applicable pursuant to the terms and conditions of this Agreement, the equipment ("Equipment"), Equipment maintenance including supplies under a supply inclusive maintenance plan ("Maintenance"), application software licenses ("Software") which excludes Embedded Software as set forth in Rider A, "Software Subscriptions" as defined in Rider C, Software installation services ("Software Installation Services"), Software support contracts ("Software Support Contracts"), subscription support services ("Subscription Support Services"), managed print services ("MPS"), and/or other products and services incorporated by a schedule or addendum accepted by CSA (all collectively, the "Listed Items"), each as described in any rider hereto ("Rider") or any Order Schedule, Return Schedule, MPS Schedule or other schedule or order document accepted by CSA (each a "Schedule"). Each Schedule referring to this Agreement will constitute a separate agreement for the acquisition of the Listed Items described therein and shall incorporate the terms of this Agreement. "NOLI" for purposes of Rider F shall mean non-CSA Listed Items, which may include hardware, software (and specifically third party software), equipment, supplies, service, warranty, network equipment and other items not listed in CSA's price list and as designated on the Master Sales and Services Agreement. NOLI products are provided as a convenience to Customers and are not eligible for any warranty or maintenance under this Agreement and accordingly Customer waives any claim it might have against CSA for any loss, damages or expenses caused by NOLI products. "Products" shall mean Equipment, Software and Software Subscriptions, and any other products incorporated into this Agreement by a Schedule or addendum accepted by CSA ("Addendum" or "Addenda"). "Services" shall mean Maintenance, Software Installation Services, Subscription Support Services, MPS and any other services incorporated into this Agreement by a Schedule or Addendum. "Lease" shall mean the document pursuant to which you lease Listed Items from a "Leasing Company", which shall solely govern as to matters contained therein, and unless otherwise set forth on the Customer Information Face Page or any Addendum, the Leasing Company is Canon Financial Services, Inc. ("CFS"). To the extent the terms of any Rider conflict with these General Terms, the terms of the Rider shall control. Unless specifically otherwise defined in a Rider or Schedule, shall have the meaning defined in these General Terms. THE PARTIES MAY AMEND THE TERMS OF THIS AGREEMENT BY USE OF A MUTUALLY AGREEABLE ADDENDUM, EXECUTED BY YOU AND AN AUTHORIZED REPRESENTATIVE OF CSA.
- 2. TERM.** The initial term during which Services shall be provided, and for the lease of Products, unless earlier terminated as provided in these General Terms or the applicable Rider, is as set forth on the applicable Schedule. That initial term shall be subject to renewal as provided in the applicable Rider.
- 3. DELIVERY/INSTALLATION OF EQUIPMENT.** Unless otherwise set forth in a Schedule, delivery and installation of Equipment is at no additional charge, so long as no special rigging is required (in which event CSA's rates therefor will apply). For purposes of this Agreement, "special rigging" shall include, but not be limited to, the use of cranes, forklifts, or other mechanical devices; and/or the engagement of additional personnel beyond those ordinarily required for CSA to deliver Equipment via delivery van



and maneuver unimpeded into and through the loading dock, hallways, and, if necessary, stairs and/or elements of Customer's facility manually through the use of a hand truck or dolly.

- 4. PAYMENT TERMS AND CHARGES.** The total price specified in any Schedule for the Listed Items, including taxes and delivery/installation charges (if any), is due and payable within 30 days of the invoice date unless otherwise stated on the invoice. Should Maintenance or Software support not be purchased at the time of the initial delivery of the Product, or should it terminate or be suspended, additional fees to inspect the Product or otherwise to start or reinstate the Maintenance or Software support shall apply. Applicable taxes shall be added to the charges. Without limiting any of CSA's rights and remedies under applicable law, if payments are late, CSA may charge you and you agree to pay a late charge equal to the higher of five percent (5%) of the amount due or \$10 as reasonable collection fees, not to exceed the maximum amount permitted by law, and you shall pay the actual and reasonable costs and expenses of collection incurred by CSA, including the maximum attorney's fees permitted by law.
- 5. CREDIT.** CSA reserves the right to withhold shipment of the Listed Items until you (or the Leasing Company, if applicable) make full payment of the total price specified in all Schedules accepted by CSA, or to revoke any credit extended to you because of your failure to pay any amounts when due pursuant to such Schedules or the applicable CFS Lease, or for any other reason affecting your creditworthiness. If at any time prior to shipment, CSA discovers any mistake in pricing or configuration for any of the Listed Items, CSA reserves the right to notify you of the mistake in writing, and such notification will constitute the non-acceptance of this Agreement by CSA with respect to such Listed Items without liability.
- 6. LIMITED WARRANTIES AND DISCLAIMER.** Canon brand Equipment is provided with an end user limited warranty, from the manufacturer, either Canon U.S.A., Inc. ("Canon") or a Canon affiliated company. CSA is an authorized Canon service dealer and provides warranty service pursuant to the Canon limited warranties. Warranties, if any, for other Products and Services are provided by the manufacturer or developer or as may also be provided in the applicable Rider or Schedule. The use of Software is at all times subject to and governed by the applicable end user license agreement. In addition to the aforesaid manufacturer or developer warranties, CSA warrants that on completion of installation of Canon brand Equipment will be (1) in material conformance with the manufacturer's published specifications, (2) qualified for CSA's standard maintenance services and (3) free from material defects in workmanship and materials. All parts replaced under a warranty shall become the property of CSA or the manufacturer. The CSA warranty set forth herein does not apply to used or refurbished Equipment and is conditioned upon Customer giving prompt written notice to CSA of any discovered defects at the time installation is complete. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THE FOREGOING CSA WARRANTY SHALL BE TO REJECT THE EQUIPMENT AND CANCEL THE AFFECTED EQUIPMENT SCHEDULE AT THE TIME INSTALLATION IS COMPLETED. IN NO EVENT SHALL A BREACH OF THIS WARRANTY GIVE RISE TO A CLAIM FOR DAMAGES AGAINST CSA. THE WARRANTIES CONTAINED OR REFERENCED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE USE OR PERFORMANCE OF THE LISTED ITEMS, AND ALL SUCH OTHER WARRANTIES, INCLUDING ANY RELATING TO THE USE OR PERFORMANCE OF THE LISTED ITEMS OR ANY METER READ COLLECTION METHOD PROVIDED BY CSA, ARE HEREBY EXPRESSLY DISCLAIMED. YOU EXPRESSLY ACKNOWLEDGE THAT THE FURNISHING OF MAINTENANCE OR SERVICES UNDER THIS AGREEMENT DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE LISTED ITEMS.

## 7. LIMITATION OF LIABILITY.

**7.1** CSA SHALL NOT BE LIABLE (I) FOR BODILY INJURY (INCLUDING DEATH) OR TANGIBLE PROPERTY DAMAGE EXCEPT TO THE EXTENT CAUSED BY CSA'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) FOR LOSS OF REVENUE OR PROFIT, LOSS OR CORRUPTION OF DATA, OR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES OR THE USE OF OR INABILITY TO USE ANY PRODUCTS, REGARDLESS OF THE LEGAL THEORY ON WHICH A CLAIM MAY BE BASED AND EVEN IF CSA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.2** CSA'S LIABILITY ON ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY OTHER AGREEMENTS ENTERED INTO IN CONNECTION THEREWITH, REGARDLESS OF THE LEGAL THEORY ON WHICH THE CLAIM IS BASED, SHALL NOT EXCEED IN AN AGGREGATE AMOUNT THE SUM OF (A) IF CUSTOMER PURCHASED ANY PRODUCTS, THE TOTAL PURCHASE PRICE PAID BY CUSTOMER (OR THE LEASING COMPANY IF LEASING) TO CSA FOR THE PRODUCTS SUBJECT TO THE CLAIM, AND (B) AS TO ALL OTHER LIABILITY OF CSA, CHARGES PAID OR PAYABLE BY CUSTOMER FOR THE PRODUCTS OR SERVICES SUBJECT TO THE CLAIM FOR SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM IS MADE. SHOULD CUSTOMER HAVE PREPAID ANY AMOUNT FOR SERVICES SUBJECT TO THE CLAIM, SUCH AMOUNT SHALL BE AMORTIZED OVER THE APPLICABLE TERM OF SAID SERVICES AND CSA'S LIABILITY SHALL BE LIMITED TO SIX (6) MONTHS OF SUCH AMORTIZED PAYMENTS.

- 8. DATA.** You acknowledge that the hard drive(s) on the Equipment, may retain images, content or other data that you may store for purposes of normal operation of the Equipment ("HD Data"). You acknowledge that CSA is not storing HD Data on your behalf and that exposure or access to the HD Data by CSA, if any, is purely incidental to the services performed by CSA. You are solely responsible for the HD Data. The Equipment contains various security features that you can utilize. Upon your request, CSA will work with you to provide information regarding your options and offer services to assist you. Such services may result in additional charges. The terms of this Section shall solely govern as to HD Data, notwithstanding that any provisions of this Agreement or any separate confidentiality or data security or other agreement now or hereafter entered into between you and CSA that could be construed to apply to HD Data.
- 9. SECURITY.** As security for the payment of all amounts due for the acquisition of the Listed Items, you hereby grant to CSA a security interest in the Listed Items. To the extent permitted by applicable law, you hereby authorize CSA to file with the appropriate governmental authorities any and all financing statements necessary to evidence or perfect CSA's security interest in the Listed Items.
- 10. WARRANTY OF BUSINESS PURPOSE.** You represent and warrant that that the Listed Items will not be used for personal, family or household purposes.
- 11. CUSTOMER DEFAULT.** You shall be in default of this Agreement if you fail to perform any of your obligations under this Agreement, any Rider or Schedule (including making prompt payments of amounts not subject to a good faith dispute) or the CFS Lease. CSA may suspend providing Listed Items under this Agreement in whole or in part until any delinquent payment is received by CSA (or CFS as applicable), and You agree that any such suspension shall not in and of itself be deemed a termination of this Agreement. If an overdue payment under this Agreement or any Rider or Schedule is disputed in good faith within thirty (30) days after its due date, you shall pay all undisputed amounts and promptly make a good faith effort to resolve such dispute with CSA. In the event of your default, CSA may, without limiting its other rights and remedies available under applicable law and this

Agreement, require you to pay all charges then due but unpaid, including any applicable late charges and liquidated damages.

- 12. CHOICE OF LAW AND FORUM.** THIS AGREEMENT AND ALL CLAIMS, DISPUTES AND CAUSES OF ACTION RELATING THERETO, WHETHER SOUNDING IN CONTRACT, TORT OR STATUTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. YOU CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK UPON SERVICE OF PROCESS MADE IN ACCORDANCE WITH THE APPLICABLE STATUTES AND RULES OF THE STATE OF NEW YORK OR THE UNITED STATES. ANY AND ALL SUITS YOU COMMENCE AGAINST CSA, WHETHER OR NOT ARISING UNDER THIS AGREEMENT, SHALL BE BROUGHT ONLY IN THE STATE OR FEDERAL COURTS LOCATED WITHIN THE COUNTY OF NEW YORK. YOU HEREBY WAIVE OBJECTIONS AS TO VENUE AND CONVENIENCE OF FORUM.
- 13. LIMITATION OF ACTIONS, CLASS WAIVER AND JURY TRIAL WAIVER.** ANY SUIT, OTHER THAN ONE SEEKING PAYMENT OF AMOUNTS DUE HEREUNDER, SHALL BE COMMENCED, IF AT ALL, WITHIN ONE (1) YEAR OF THE DATE THAT THE CLAIM ACCRUES. CUSTOMER AGREES THAT ANY CLAIM IT ASSERTS AGAINST CSA SHALL BE ASSERTED ON AN INDIVIDUAL BASIS ONLY. CUSTOMER IRREVOCABLY WAIVES ANY RIGHT TO ASSERT ANY CLAIM AGAINST CSA AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OR GROUP. THE PARTIES IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUIT BETWEEN THEM UNLESS CUSTOMER RESIDES IN A STATE IN WHICH A WAIVER OF A RIGHT TO A JURY TRIAL IS UNENFORCEABLE AS A MATTER OF THAT STATE'S PUBLIC POLICY.
- 14. ENTIRE AGREEMENT; MASTER AGREEMENT AND OVERRIDING CONTRACT TERMS.** This Agreement, together with all Riders, Schedules, and Addenda now and hereafter entered into and any related CSA credit application, constitute the entire agreement between the Parties with respect to the furnishing of the Listed Items and the performance of the Services, superseding all previous proposals and agreements, oral or written; and any default by Customer under any part of this Agreement shall constitute a default of the entire Agreement. If the Customer Information Face Page references a master agreement (which may be a separate master agreement entered into between Customer, or an affiliate of Customer, and CSA), or if a Schedule references an overriding contract (an "OC" meaning a group purchasing or cooperative or governmental agreement under which Customer is an eligible participant) or a master agreement between you (or one of your affiliates) and CSA, then the terms of such OC or master agreement shall apply to the extent applicable to the transactions contemplated by this Agreement, and the terms of this Agreement shall apply only to the extent not inconsistent with the terms of such OC or master agreement.
- 15. CSA DEFAULT.** Customer may terminate its use of Products or Services in the event that CSA materially fails to perform its obligations under this Agreement, provided that any such termination shall only apply to the Products or Services subject to the default, and shall only be effective upon not less than thirty (30) days' prior written notice from Customer to CSA specifying the default, and provided that CSA has not materially cured such default or provided Customer reasonable assurance that such default shall be materially cured, prior to the effective date of termination. For the avoidance of doubt, no such termination shall affect Customer's obligations with respect to the Lease.
- 16. REPRESENTATIONS AND AMENDMENTS.** NO REPRESENTATION OR STATEMENT NOT CONTAINED ON THE AGREEMENT POSTED ON CSA'S CUSTOMER PORTAL (ESS.CSA.CANON.COM/CUSTOMERDOCUMENTS) AS OF THE DATE OF A SCHEDULE SHALL BE BINDING UPON CSA AS A WARRANTY OR OTHERWISE, NOR SHALL THIS AGREEMENT BE MODIFIED OR AMENDED, EXCEPT BY A WRITING SIGNED BY YOU AND AN AUTHORIZED

REPRESENTATIVE OF CSA. NOTWITHSTANDING THE FOREGOING, AND EXCEPT AS YOU AND CSA AND/OR CFS AGREE IN AN EXECUTED ADDENDUM, A PROVISION MAY ALSO BE AMENDED BY A WRITTEN NOTIFICATION FROM CSA TO YOU AT YOUR EMAIL ADDRESS LISTED ON THE CUSTOMER INFORMATION FACE PAGE (OR AS YOU SUBSEQUENTLY MODIFY IN WRITING), SETTING FORTH THE AMENDED PROVISION(S), WHICH SHALL BE DEEMED ACCEPTED BY YOU EFFECTIVE THIRTY (30) DAYS AFTER NOTIFICATION (OR SUCH LATER DATE SPECIFIED IN THE NOTIFICATION), UNLESS YOU ELECT, WITHIN SUCH THIRTY (30) DAY PERIOD, TO PROVIDE WRITTEN NOTICE THAT YOU OBJECT TO SUCH AMENDMENT, IN WHOLE OR IN PART, AS APPLICABLE, IN WHICH CASE THE PARTIES SHALL NEGOTIATE ANY SUCH MODIFICATION IN GOOD FAITH.

**17. GENERAL TERMS.** This Agreement shall be binding on you upon our receipt of your signature on the Customer Information Face Page and, as to each Schedule, on the date we receive your signature thereon. Each Schedule shall be binding on CSA upon delivery of the Listed Item or commencement of performance by CSA under such Schedule. Title to or licensing of (as applicable) any Listed Items shall pass or be granted to you or the Leasing Company only upon full required payment to CSA therefor. All provisions of this Agreement which by their nature can be construed to survive the expiration or termination of the Agreement shall so survive. You acknowledge that neither CSA nor any of its agents or representatives has made any promise, representation, or warranty as to the Listed Items, or anything affecting or relating to this Agreement, except as specifically set forth in this Agreement, and you acknowledge that you have not executed or authorized the execution of this Agreement in reliance upon any such promise, representation, or warranty. You expressly disclaim having relied upon any representation or statement concerning the capability, condition, operation, performance or specifications of the Listed Items, except to the extent set forth in this Agreement. No Lease between you and the Leasing Company with respect to any Listed Items shall be binding on CSA in any respect or affect your rights or CSA's obligations hereunder. ANY PURCHASE ORDER UTILIZED BY YOU (WHETHER OR NOT REQUIRED) SHALL BE FOR YOUR ADMINISTRATIVE CONVENIENCE ONLY, AND ANY TERMS THEREIN WHICH CONFLICT WITH, VARY FROM, OR SUPPLEMENT THE PROVISIONS OF THIS AGREEMENT SHALL BE DEEMED NULL AND VOID. If a court finds any provision of this Agreement (or part thereof) to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. This Agreement shall not be assignable by you without CSA's prior written consent, and any attempted assignment without such consent shall be void; except that you may assign to your Leasing Company your right to acquire the Listed Items and your warranty rights with respect thereto, but your other rights hereunder are not assignable to the Leasing Company and such assignment shall not relieve you of any of your obligations hereunder (including your obligation to pay for Listed Items). You agree that CSA may accept an electronic image of this Agreement as an original, and that electronic copies of your signature will be treated as an original for all purposes.

**18. NOTICES.** YOU ACKNOWLEDGE THAT CSA SHALL SEND NOTICES BY REGULAR MAIL TO THE PHYSICAL ADDRESS, AND/OR BY EMAIL TO THE EMAIL ADDRESS ON THE CUSTOMER INFORMATION FACE PAGE. TO BE EFFECTIVE, ALL NOTICES TO CSA CONCERNING CANCELLATION, BREACH, DEFAULT, ASSIGNMENT, INDEMNITY, NON-RENEWAL, CHANGE OF YOUR ADDRESS OR EMAIL ADDRESS FOR NOTICES, OR ANY OTHER DEMAND OR CLAIM AGAINST CSA MUST BE IN WRITING DETAILING ALL SUCH ISSUES, AND SENT TO CSA VIA COURIER OR CERTIFIED MAIL, TO: 300 COMMERCE SQUARE BLVD., BURLINGTON, NEW JERSEY 08016 ATTN: CUSTOMER SERVICE, OR SENT BY EMAIL TO CUSTOMERCARE@CSA.CANON.COM; WITH A COPY OF ANY NOTICE OF DEFAULT, BREACH, REQUEST FOR INDEMNITY, OR ANY OTHER DEMAND OR CLAIM AGAINST CSA, SENT TO CSA VIA COURIER OR CERTIFIED MAIL, TO SENIOR VICE PRESIDENT, LEGAL, CANON SOLUTIONS AMERICA, INC., ONE CANON PARK, MELVILLE, NEW YORK, 11747, OR SENT BY EMAIL TO LEGAL@CSA.CANON.COM.

## RIDER A

### CANON OFFICE DEVICES AND CUT SHEET PRODUCTION MAINTENANCE TERMS

**THE GENERAL TERMS ARE INCORPORATED HEREIN BY REFERENCE. THE TERMS OF THIS RIDER A SHALL CONTROL OVER THE GENERAL TERMS UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.**

“Equipment” for purposes of this Rider A shall mean Canon branded office devices (and not Large Format equipment covered under Rider F nor printers covered under Rider E).

#### 1. MAINTENANCE / TERM / CHARGES.

a. If Maintenance for Equipment is indicated on its Order Schedule, it shall mean that CSA will keep the Equipment in good working order subject to the terms of this Agreement. Maintenance shall include emergency break fix service, routine preventative maintenance, including inspection, adjustment, parts replacement, drums, and cleaning material required for proper Equipment operation. Maintenance shall start on the date (the “Start Date”) of installation for newly installed Equipment (inclusive of standard embedded Canon brand software) covered under toner inclusive service. For all other newly installed Equipment, the Start Date shall be at the end of the relevant Equipment warranty or 90 days from installation, whichever comes first. The Start Date is stated on the Order Schedule for all previously in place Equipment.

b. The initial term of Maintenance is set forth on the Order Schedule, and thereafter shall renew for successive 12 month renewal terms unless either party gives written notice of non-renewal at least 30 days prior to the expiration of the then-current term. The renewal charges shall be reflected on the invoice for the first billing cycle of the renewal period.

c. Unless otherwise set forth in an Order Schedule, Service Charges shall start billing and Customer shall start payment upon the completion of installation. Maintenance Base Charge(s) and Per Image Charge(s) as listed on the applicable Order Schedule (collectively “Service Charges”) are billed for full calendar month periods, with Maintenance Base Charge(s) billed in advance and Per Image Charge(s) billed in arrears.

d. The meter shall record a quantity of 1 image for each image printed on media sizes up to 13” x 19”, and two images for any larger media. For Long Sheet images, defined as images printed on media longer than 19”, there will be an additional Per Image Charge as set forth on the Order Schedule. If you are making Long Sheet images and there is no such charge on the Order Schedule, CSA will invoice you for such charges at our standard rate and you agree to pay same. For Equipment designated as Corporate Advantage, the meter shall record a quantity of 2 images for any image produced on media longer than 14”.

e. If the Order Schedule is for a Fixed Price Plan charges shall not increase during the initial term, and if for a Standard Price Plan charges are subject to an annual increase up to 10% (as determined by CSA in its sole discretion) either (i) on each anniversary of the start date or (ii) once in each calendar year if you have selected the Aggregate Coverage Plan. Notwithstanding the foregoing and for purposes of clarity, with respect to transactions where CFS invoices the Maintenance Base Charge, such annual increase shall be applied only to the Excess Per Image Charge and shall exclude the Maintenance Base Charge.

f. If the Fleet or Aggregate plan is indicated in the Equipment Maintenance Information Section on an Order Schedule, the Maintenance Base Charge and the Covered Images listed on the first page of the Order Schedule apply to all of the Equipment on that Order Schedule, unless otherwise indicated.

g. If the Listed Items on an Order Schedule are added to an existing Fleet Coverage Plan under a previous Order Schedule or contract between you and CSA, (i) the fleet shall include the equipment listed under the previous Order Schedule or contract, and all other Order Schedules or contracts for which the add to existing fleet option was selected, and (ii) the maintenance term for all Listed Items under this Agreement shall be the same as the maintenance term for all listed items under all such previous Order Schedules or contracts.



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h. If the Listed Items on an Order Schedule are added to an existing Aggregate Coverage Plan under a previous Order Schedule or contract between you and CSA, the Covered Images shall apply to all of the Equipment on the Order Schedule, unless otherwise indicated, plus the listed items under previous Order Schedule(s) or contract (s), and all other Order Schedules or contracts for which the add to existing Aggregate Coverage Plan was selected, on an aggregated basis, for so long as the maintenance term for all such listed items continues.

i. If the Per Unit is indicated in the Equipment Maintenance Information Section on an Order Schedule, the Maintenance Base Charge and the Covered Images listed in each Section of the Order Schedule shall apply on a per unit basis for the Equipment listed in that Section.

j. If image dependent service is selected, there shall be no Per Image Charges; however, the then-current term shall terminate at the end of the number of months specified on the Order Schedule or on the date when the images made exceed the maximum covered images specified on the Order Schedule, whichever event occurs sooner.

**2. CUSTOMER SATISFACTION POLICY.** If you are not satisfied with the performance of your Equipment, upon your written request, CSA in its sole discretion will repair or replace the Equipment with a like unit with equivalent capabilities. Prior to replacement, CSA shall have had the opportunity to return the Equipment to good working order in accordance with the terms of this Agreement. If a replacement unit of Equipment is provided, the replaced unit shall be removed from the Lease and the replacement unit shall be deemed a "Listed Item" under the Lease and for the Lease and all other purposes of this Agreement. This policy shall apply for 3 years from the date of installation or for the initial term of any CFS Lease, if longer, provided you are not in default of this Agreement or the Lease and such Maintenance services have not been canceled or terminated

**3. HOURS OF OPERATION AND ACCESS TO EQUIPMENT.** Maintenance shall be performed during CSA's local regular business hours (8:30 A.M. to 5:00 P.M. Monday through Friday, excluding CSA holidays). Overtime charges, at CSA's current rates, will be charged for all Maintenance service calls outside normal business hours. You shall give CSA reasonable and safe access to the Equipment and CSA shall provide labor or routine, remedial and preventive Maintenance as well as remedial parts. CSA may terminate its Maintenance obligations for any Equipment you relocate to a site outside CSA's service territory.

**4. ITEMS NOT COVERED UNDER MAINTENANCE.** Any work beyond the scope of this Agreement shall be invoiced in accordance with CSA's then current labor, parts and supply charges. The following items are NOT covered under Maintenance unless otherwise set forth in an Order Schedule:

- (a) all consumable supply items not provided as part of toner inclusive service, including, without limitation, paper, staples, other media, print heads and puncher dies;
- (b) repairs resulting from factors other than normal use including, without limitation, any willful act, negligence, abuse, accident, or misuse of the Equipment;
- (c) repairs due to the use of parts, supplies or software which are not supplied by CSA and which cause abnormally frequent service calls or service problems;
- (d) repairs to fix problems resulting from service performed by personnel other than CSA personnel;
- (e) repairs due to use of the Equipment with non-compatible hardware or software components; electrical power malfunction or heating, cooling or humidity ambient conditions;
- (f) de-installation, re-installation or relocation of Equipment;

- (g) repairs to or realignment of Equipment, and related training, necessitated by changes you made to your system configuration or network environment;
- (h) work which you request to be performed outside of CSA's regular business hours; or
- (i) repair of network/system connection device, except when listed on face page.

**5. EXCESSIVE MAINTENANCE REQUIREMENTS.** If, in CSA's opinion, any Equipment cannot be maintained in good working order through Maintenance, CSA may, at its option, (i) substitute comparable Equipment or (ii) cancel any balance of the term of Maintenance as to such Equipment and refund the unearned portion of any prepaid charges hereunder.

**6. PARTS.** You disclaim any interest in parts or Equipment replaced or removed by CSA. Such parts and Equipment shall be replaced on an exchange basis and shall become the property of CSA.

**7. CONSUMABLE INCLUSIVE (TONER ABUSE).** Consumable Supplies: All consumables are the property of CSA until used. Consumables Inclusive Maintenance includes replenishment of toner only (unless other consumables are specified on the Order Schedule and applicable to the unit of Equipment). Toner is supplied for exclusive use with the unit of Equipment for which it is provided. CSA may terminate the Maintenance under this Agreement if you use the consumables in a different manner. If your use of consumables exceeds the typical use pattern (as determined solely by CSA) for these items by more than 10% of the published manufacturer specifications for conventional office image coverage, or should CSA, in its sole discretion, determine that consumables are being misused in any fashion, CSA may invoice you for such excess usage and you agree to pay for such improper or excess use. Consumable Inclusive Maintenance is predicated upon deployment of CSA's remote reporting software (see Section 8 b. below installation and use), which includes Auto-Toner Replenishment. CSA may charge you a Supply Freight Fee to cover the cost of shipping consumables to you. You shall bear all risk of loss, theft or damage to unused consumables, which shall remain CSA's property and shall be returned promptly upon termination of Maintenance for the applicable unit of Equipment.

#### **8. BILLING / METER COLLECTION.**

a. You agree to comply with the billing procedures designated by CSA, including timely notifying CSA of the meter readings. If CSA does not receive timely meter readings from you, you agree to pay invoices that reflect CSA's estimates of meter readings. CSA reserves the right to verify the accuracy of any meter readings from time to time, and to invoice you for any shortfall in the invoice for the next periodic billing cycle. In accordance CSA's normal procedures and the meter read option selected.

b. You agree that CSA shall be entitled to acquire meter readings using CSA's remote reporting software. Unless otherwise indicated in an Order Schedule, you authorize CSA to use networked features of the Equipment and the remote reporting software to receive software updates, activate features/new licenses and transmit use and service data accumulated by the Equipment over your network by means of an HTTPS protocol and to store, analyze and use such data for purposes related to servicing the Equipment, providing reports and product improvement.

c. You may also use the myCSA website to provide meter readings, in which case you, your employees or agents shall complete CSA's registration process governing access to and use of such website, and you agree to be bound by, and comply with its Terms of Use. CSA may change your meter read options from time to time upon 60 days' notice.

**9. EMBEDDED SOFTWARE.** CSA shall make available to you from time to time upgrades and bug fixes for the software licensed as part of the Equipment ("Embedded Software"), but: (i) only if such upgrades and bug fixes are provided to CSA by the developers of such Embedded Software, (ii) availability of upgrades and bug fixes may be at additional charge, and (iii) installation of such upgrades and bug fixes by CSA if requested by

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you shall be at additional charge. You are not required to use CSA for installation of any upgrades and bug fixes, but if installation is done by anyone other than CSA, CSA shall have no responsibility for any performance or other issues that may result from such installation. CSA shall also use reasonable efforts to provide Level 1 support for the Embedded Software. Level 1 support consists of (i) providing help-line telephone assistance in operating the Embedded Software and identifying service problems and attempting to troubleshoot any such problems in the Embedded Software; (ii) escalating operating problems to the available developer of the Embedded Software as needed to rectify such problems, including facilitating contact between you and the developer of the Embedded Software as necessary; and (iii) maintaining a log of such problems to assist in tracking the same. Embedded Software as used herein does not include separately-priced application software supplied by CSA to you under Rider C.

**10. SOFTWARE AND SOFTWARE SUPPORT CONTRACTS.** If you have acquired any Software and/or Software Support Contracts, these listed items shall be governed by the terms and conditions of Rider C.

**11. DEFAULT.** In addition to the remedies set forth in the General Terms, should you default in your obligations under this Rider A or cancel Maintenance prior to the end of its initial term or any renewal term, you shall pay an early termination fee equal to three (3) times the average monthly billing to date and any excess toner charges. You agree that such charges are reasonable liquidated damages for loss of bargain and not a penalty.



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## RIDER B

### TRADE-IN, RETURN, UPGRADE AND BUYOUT TERMS

**THE GENERAL TERMS ARE INCORPORATED HEREIN BY REFERENCE. THE TERMS OF THIS RIDER B SHALL CONTROL OVER THE GENERAL TERMS UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.**

**1. BUY OUT REIMBURSEMENT:** If “Buy-Out Reimbursement” is indicated on any Return, Upgrade, Buyout, Relocation Schedule (each a “Return Schedule”) it will be paid directly to the designated party thereon (whether you or the finance or leasing company that owns the Return Equipment or Trade-in Equipment (the “Lessor”) by CSA upon installation and acceptance of the Listed Items set forth on the Order Schedule applicable thereto and payment to CSA (by you or by the Leasing Company) of the purchase price for said Listed Items. The Buy-Out Reimbursement will be paid for the sole purpose of reimbursement of early termination charges or fees and associated expenses payable for (a) early termination of the lease of the Trade-in Equipment or Return Equipment (as identified on a Return Schedule) or for other equipment being replaced by said Listed Items, (b) refinancing the lease of other equipment or (c) preparation of the site for installation of said Listed Items. You are responsible to obtain and/or confirm the Buy-Out Reimbursement amount with your Lessor, and any such amount shall include a delivery period of a minimum of thirty (30) days from the date of the installation and testing of said Listed Items and payment to CSA (by you or by the Leasing Company) of the purchase price for said Listed Items. You acknowledge and agree that CSA’s financial obligation is limited to the Buy-Out Reimbursement amount on the applicable Return Schedule, and that you are responsible for any other obligations, including any charges which are not covered by the Buy-Out Reimbursement. The above is conditioned upon you making the Trade-In Equipment or Return Equipment available for pickup by CSA on the relevant date specified on the Return Schedule.

**2. TRADE-IN EQUIPMENT OR RETURN TO LEASING COMPANY:** If Trade-In Equipment or Return to Leasing Company is indicated on a Return Schedule, you hereby authorize CSA to pick up the Trade-in Equipment or Return Equipment listed on the Return Schedule. Upon such pick-up, title to Trade-in Equipment is conveyed to CSA, and (a) you represent that CSA will receive good and marketable title to each unit of Trade-in Equipment, free and clear of any and all liens and leasehold interests, (b) you warrant that the Trade-In Equipment will be delivered to CSA (unless specified on the Return Schedule that it is provided on an “As Is” basis) in good working condition, reasonable wear and tear excepted, and (c) you shall make the Trade-In Equipment available for pickup by CSA on the relevant date specified on the Return Schedule. If you breach or fail to comply with any of the foregoing, CSA may, without limiting its other remedies under applicable law, return the Trade-In Equipment to you (at your expense both for the return and the original pickup) and rescind, or require you to refund to CSA, promptly upon receipt of CSA’s invoice, the Buy-Out Reimbursement, and the full amount of any trade-in credit reflected in the Return Schedule (which amount shall equal the fair market value of such Trade-In Equipment, as determined by CSA). Return Equipment shall be shipped to the Lessor specified on the Return Schedule by CSA’s standard shipping method, and CSA’s sole obligation is to use commercially reasonable efforts to pick-up and remove the Return Equipment, and to arrange on your behalf and at CSA’s expense, for the shipment of the Return Equipment to the Lessor.

**3. DELAY OR DAMAGE TO EQUIPMENT IN TRANSIT.** You acknowledge that neither CSA nor its shipper inspects functionality prior to transportation of Trade-in Equipment or Return Equipment and therefore makes no representation regarding functionality upon delivery. CSA shall only be responsible for obvious physical damage to the Trade-in Equipment or Return Equipment while being relocated or returned to the leasing company to the extent such damage is caused by CSA or its shipper’s negligence or willful misconduct while in their possession. You agree to pay CSA’s removal charges if, on the date indicated on the Return Schedule, Trade-in Equipment or Return Equipment is unavailable for pickup and removal

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through no fault of CSA. In the event undisclosed conditions (e.g. incorrect mileage, special rigging requirements, inaccessible location for pick up or delivery, etc.) are encountered, you agree that CSA may invoice you for additional reasonable fees as required to complete the relocation.

**4. DATA.** You acknowledge that the hard drive(s) on the Trade-in Equipment or Return Equipment, including attached devices, may retain images, content or other data that you may store for purposes of normal operation of the Trade-in Equipment or Return Equipment ("TIR Data"). You acknowledge that CSA is not storing TIR Data on behalf of you and that exposure or access to the TIR Data by CSA, if any, is purely incidental to the services performed by CSA. Neither CSA nor any of their affiliates or contractors have an obligation to return, erase or overwrite TIR Data upon pick up and return of the Trade-in Equipment or Return Equipment to CSA or any Lessor. You are solely responsible for: (i) your compliance with applicable law and legal requirements pertaining to data privacy, storage, security, retention and protection; and (ii) all decisions related to erasing or overwriting TIR Data. The terms of this section shall solely govern as to TIR Data, notwithstanding that any provisions of this Agreement or any separate confidentiality or data security or other agreement now or hereafter entered into between you and CSA could be construed to apply to TIR Data.

## RIDER C

### SOFTWARE AND SOFTWARE SUBSCRIPTION LICENSING AND SUPPORT

**THE GENERAL TERMS ARE INCORPORATED HEREIN BY REFERENCE. THE TERMS OF THIS RIDER C SHALL CONTROL OVER THE GENERAL TERMS UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.**

“Software” for purposes of this Rider C shall mean application software licensed to you and any revisions for updates related thereto, and shall exclude Embedded Software which is subject to Rider A, and software provided with Large Format equipment which is subject to Rider F.

“Software Subscription” shall mean Software which is licensed to you on a subscription basis for a term and may include the provision of basic support and new versions therefore as set forth in its end user license agreement (“EULA”), terms of service (“TOS”), or software maintenance agreement (“SMA”).

**1. LICENSING.** (a) Title to the Software and Software Subscription shall remain with the licensor or developer; and (b) Software shall be licensed to you subject to its EULA, and Software Subscription subject to its EULA or TOS, which agreements shall solely control as to the matters contained therein. With regard to any “shrink-wrap” or “click-wrap” or “click through” acceptance required for Software, You hereby authorize CSA to accept same on your behalf (e.g., by opening the package or clicking the “I ACCEPT” button), and you agree to comply with the terms of same. Software licenses can be found at <http://ess.csa.canon.com/SMA-EULA.html>, and any such terms shall solely govern as to matters contained therein.

**2. SOFTWARE INSTALLATION AND CONFIGURATION SERVICES.** Software installation and configuration services shall be provided pursuant to a statement of work between you and CSA or you and the Software developer or licensor.

**3. SOFTWARE SUPPORT / BUG FIXES / UPDATES.** Support for Software is provided directly by the respective developers or licensors thereof and is as set forth in each developer’s or licensor’s applicable Software Support Contract and is not provided by CSA under this Agreement. Support for Software may require separate purchase by you of a Software Support Contract, unless included under this Agreement as a Listed Item. The terms of Software Support Contracts for Software are available from the developers or licensor or will be provided to you by CSA upon request. Notwithstanding any provision in the Software Support Contract to the contrary, it shall automatically renew on an annual basis, subject to a price increase after the initial term.

**4. SOFTWARE SUBSCRIPTION.** You agree to accept and pay either the purchase price or the number of periodic payments for the Software Subscription indicated on the Order Schedule or in any addendum(s) hereto for the corresponding term. The Software Subscription shall automatically renew for additional one (1) year terms (each a “Renewal Term”) unless you provide written notice to CSA cancelling the Software Subscription within 30 days of your receipt of the invoice for the Renewal Term. CSA may increase pricing during each Renewal Term and may cancel Software Subscription during any Renewal Term upon written notice to you, in which case you will be refunded any unearned charges for the balance of the Renewal Term. In the event of your default, CSA may, without limiting its other rights and remedies available under applicable law, require you to pay all payments then due but unpaid, including any applicable late charges, plus an early termination fee equal to the balance of the purchase price or periodic payments for the Software Subscription owed for the term. You agree that such charges are reasonable liquidated damages for loss of bargain and not a penalty. The purchase price for the Software Subscription may be incorporated into your Lease payment. You acknowledge that CSA may assign the periodic payments to a third party, or its assigns, and agree to pay such assignees.

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**5. ADDITIONAL LIMITATION OF WARRANTY FOR SOFTWARE AND SOFTWARE SUBSCRIPTION.** CSA MAKES NO WARRANTIES OF DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKES ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SOFTWARE OR SOFTWARE SUBSCRIPTION. YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL LOOK SOLELY TO THE ENTITY LICENSING OR SUPPORTING THE SOFTWARE OR SOFTWARE SUBSCRIPTION AS TO ANY CLAIM OR CAUSE OF ACTION ARISING FROM THE SOFTWARE, SOFTWARE SUPPORT CONTRACT, OR THE SOFTWARE SUBSCRIPTION, AND THAT CSA, UNLESS IT IS SUCH ENTITY, SHALL HAVE NO OBLIGATION OR LIABILITY THEREFORE, AND YOU WAIVE YOUR RIGHTS TO BRING ANY SUCH CLAIM OR CAUSE OF ACTION AGAINST CSA. YOUR PAYMENTS AND OTHER OBLIGATIONS UNDER THIS AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE SOFTWARE SUPPORT CONTRACT OR SOFTWARE SUBSCRIPTION, OR FAILURE IN ANY WAY OF THE SOFTWARE OR SOFTWARE SUBSCRIPTION.



**RIDER D  
SUBSCRIPTION SUPPORT SERVICES**

**THE GENERAL TERMS ARE INCORPORATED HEREIN BY REFERENCE. THE TERMS OF THIS RIDER D SHALL CONTROL OVER THE GENERAL TERMS UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.**

**1. Services.** When indicated on an Order Schedule referencing this Rider D, CSA will provide to you Subscription Support Services (“Subscription Support Services”) listed in Section 3 below consisting of a) remote support and b) on-site support for CANON and select third party software and hardware solutions. Subscription Support Services will be provided by CSA at the applicable Resource Level (as detailed in Section 3 below) based upon your resource selection or description of the scope of work to be performed. Subscription Support Services will be provided during CSA’s local regular business hours (8:30 A.M - 5:00 P.M. Monday through Friday, excluding CSA holidays). Any work approved by CSA to be scheduled beyond these hours will be billed at a premium rate.

**2. Term.** The term of Subscription Support Services (the “Subscription Term”) shall continue until the earlier of (a) the units of Subscription Support Services specified on an Order Schedule (“Units”) are consumed or (b) for either the number of months indicated on an Order Schedule beginning on the Order Date, or the end of the term of the applicable CFS Lease.

**3. Effective Rates.** Subscription Support Service Units are available to you based upon the Resource Level utilized to perform the Subscription Support Services:

| Resource Level                                    | Units Per Hour | Min Hours per Engagement |
|---|----------------|--------------------------|
| National Consulting and Support (“NCS”) Engineers | 5              | 10                       |
| Production Analyst                                | 4              | 8                        |
| Project Management Specialist                     | 4              | 4                        |
| Software Development Specialist                   | 4              | 4                        |
| Local Systems Analyst                             | 3              | 1                        |
| Local Systems Engineer                            | 3              | 1                        |
| Solutions Support Center Agent                    | 3              | 1                        |
| Product Trainer                                   | 2              | 1*                       |

\* Subject to Course minimum requirements if applicable

**4. Utilization Procedure.** Subscription Support Services will be provided during the Subscription Term when requested by you through the CSA service dispatch center. CSA will determine the appropriate Resource Level(s) to be assigned based on your resource selection or description of the requested Subscription Support Services. CSA reserves the right to reject any request by you if CSA determines that such request is for work beyond the scope of the Subscription Support Services covered by this Agreement or the Resource Levels acquired and available from an Order Schedule. Units unused upon the expiration of the Subscription Term on an Order Schedule are non-refundable. If Subscription Support Service requested by you, or completion of ongoing Subscription Support Services, will require Units in excess of the unused quantity available from the applicable Order Schedule, CSA shall notify you in advance of completing the work and you shall instruct CSA to end work or you shall agree to pay for those additional Units at CSA’s then prevailing rates.

**5. Performance of Subscription Support Services.** Subscription Support Services may be performed by remote access, or by CSA, or its designee at your business locations if located within CSA's servicing area. If by remote access, you grant CSA permission to access your systems as required to perform the Subscription Support Services. If on-site at your premises, (a) such personnel shall comply with your reasonable security and other such policies of which CSA has been informed by you in writing; and (b) you will provide such personnel with appropriate workspace at no charge. In either event (a) you will provide assistance as may be reasonably required for the performance of the Subscription Support Services; and (b) you acknowledge that the performance by CSA of Subscription Support Services with respect to any non-CANON hardware or software may be dependent on assistance or cooperation from the third-party manufacturer or developer, including your requirement(s) to purchase any necessary software upgrades or licenses to operate the software.

**6. Payment.**

(a) Unless the "Bill with my Lease Payment" option is selected on the Subscription Support Services Order Schedule, the total purchase price specified on the Order Schedule is payable in full and in advance within no later than 30 days after the date of CSA's invoice therefore, and CSA shall have no obligation to provide any Subscription Services until such payment has been made.

(b) If the "Finance through my Lease" option is selected on the Subscription Support Services Order Schedule, the total purchase price specified on the Subscription Support Services Order Schedule shall be financed by the Leasing Company through the applicable Lease, as provided herein, over the initial term of the applicable lease.

**7. Non-Solicitation.** Throughout the Term and for one (1) year following the expiration or termination thereof, you agree that you will not, directly or through any third party, solicit, offer employment to, hire, interfere with or endeavor to entice away from CSA any individual who is an employee of CSA and who, at any time during the Term, was involved in providing Subscription Support Services to you hereunder. You further agree, with respect to any former employee of CSA who was involved in providing Subscription Support Services to you hereunder, that you will not, directly or through any third party, solicit, offer employment to or hire such former CSA employee at any time during the one (1) year period after he or she ceases to be an employee of CSA.

**8. ADDITIONAL LIMITATION OF WARRANTY AND LIMITATION OF LIABILITY.** CSA WARRANTS THAT IT WILL PERFORM SUBSCRIPTION SUPPORT SERVICES HEREUNDER IN A PROFESSIONAL AND COMPETENT MANNER CONSISTENT WITH THE RESOURCE LEVEL UTILIZED. OTHERWISE, CSA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBSCRIPTION SUPPORT SERVICES. IN NO EVENT SHALL CSA'S LIABILITY TO YOU HEREUNDER OR IN CONNECTION WITH THE SUBSCRIPTION SUPPORT SERVICES EXCEED THE AGGREGATE AMOUNT PAID BY YOU TO CSA PURSUANT TO THIS RIDER.

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**RIDER E**  
**MANAGED PRINT SERVICES**

**Management Print Services for printers will be provided under a separate CSA Agreement.**



## RIDER F

### LARGE FORMAT TERMS

**THE GENERAL TERMS ARE INCORPORATED HEREIN BY REFERENCE. THE TERMS OF THIS RIDER F SHALL CONTROL OVER THE GENERAL TERMS UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.**

“Equipment” for purposes of this Rider F shall mean, and only apply to Large Format models as identified in the definition of Large Format below.

“Software” for purposes of this Rider F shall mean, and only apply to software provided for use with or by Large Format models as identified in the definition of Large Format below.

“Large Format” for the purposes of this Rider F shall mean PlotWave, ColorWave, imagePROGRAF, Arizona, and Colorado Series hardware, software and accessories.

#### 1.0 LARGE FORMAT MAINTENANCE / TERM / CHARGES.

- a) Maintenance, identified as “Standard Svc Contract” in the “Service Type” section of an Order Schedule when applicable, shall commence upon installation of the Equipment or, if Maintenance is not requested at the time of initial installation, upon certification by CSA, or, at the conclusion of the warranty period, if any, as noted on an Order Schedule. Maintenance will be provided as is specifically set forth in the applicable Order Schedule.
- b) The Order Schedule shall identify the initial Maintenance term when elected and customer may not terminate Maintenance during the initial term. Maintenance shall be automatically renewed for successive one (1) year terms at CSA’s then-current charges and under the terms and conditions herein unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of any initial or renewal term. During the initial term, CSA may adjust pricing for Maintenance, or any component thereof, including supplies and other materials, by a maximum of ten percent (10%) per year. Upon renewal and upon 90 days written notice, charges are subject to an annual increase on each anniversary of the start date.
- c) (i) For the period from the Effective Date to the date that monthly (or quarterly) billing commences for the initial Base Charge Per Unit as set forth on the applicable Order Schedule (“Interim Period”), Customer shall pay CSA an amount equal to the Base Charge Per Unit divided by thirty (30), or if Maintenance Payment frequency is quarterly divided by ninety (90) and multiplied by the number of days in the Interim Period plus Excess Usage Charges (“Excess Usage Charges”). CSA shall invoice the Base Charge Per Unit in advance and shall invoice the Excess Usage Charges and other usage fees (collectively “Maintenance Service Charges”) periodically as indicated in the Order Schedule. If applicable, Customer shall provide meter readings by the last calendar day of each month showing the monthly usage by a CSA approved method. Should such meter readings not be provided in a timely fashion, Excess Usage Charges may be estimated by CSA. IN THE EVENT CSA DETERMINES AT ITS SOLE DISCRETION THAT CUSTOMER HAS ORDERED CONSUMABLES BEYOND A REASONABLE REQUIREMENT BASED ON INDUSTRY ACCEPTED CLICK VOLUME MEASUREMENTS, CSA MAY, IN ITS SOLE DISCRETION, UPON REASONABLE DEMONSTRATION OF SUCH EXCESS USE BY CUSTOMER, BILL CUSTOMER THE LIST PRICE OF THE EXCESS CONSUMABLES. In addition to Maintenance Service Charges, CSA may assess a fuel surcharge (“Fuel Surcharge”) to offset increases in fuel expenses. The Equipment may contain software that allows CSA to access the Equipment remotely (“Remote Software”). In such cases, Customer authorizes CSA to use the Remote Software to (a) receive software updates and transmit use and service data accumulated by the Equipment over



Customer's network by means of an HTTPS protocol and (b) store and analyze such data solely for CSA's own purposes related to servicing the Equipment and for product improvement. Customer hereby requests that CSA enable the Remote Software on the Equipment listed in the Order Schedule.

(ii) Unless otherwise set forth in an Order Schedule, Maintenance charges shall start billing and Customer shall start payment upon the completion of installation. Maintenance charges as listed on the applicable Order Schedule are billed at the frequency noted on the Order Schedule. with Base Charge Per Unit (s) billed in advance and Excess Usage Charges billed in arrears. If Equipment is installed on other than the first of the month, then the period from the install date to the end of the month shall be the "Interim Period". Customer shall pay CSA an amount equal to the applicable Base Charge Per Unit divided by thirty (30) days and multiplied by the number of days in this Interim Period. Excess Usage Charges shall also be invoiced according to the meter reading for this Interim Period. If there are other invoicing requirements, this may result in a longer initial term. After the Interim Period, CSA shall invoice you at the frequency noted on the Order Schedule or, if specified, on a rolling 30-day basis for the number of months indicated on the Order Schedule. For purposes of clarity and by way of example only, if Equipment is installed on December 15th, billing for a full calendar months with Interim Period shall be as follows: 12/15 -12/31, 1/1-1/31, 2/1-2/28, 3/1-3/31 and so on. Using the same installation date, rolling 30 day invoicing shall be as follows: 12/15-1/14, 1/15-2/14, 2/15 – 3/14, and so on.

### 1.1 COVERED SERVICE.

- a) CSA shall provide Customer: (i) CSA's standard preventive Maintenance services ("PM's") in accordance with CSA's standard policies, which includes labor, testing, adjusting, cleaning and replacement of components scheduled in accordance with the Equipment service specifications (the length and frequency of periods of time required for preventive Maintenance will solely be determined by CSA); and (ii) engineering changes, including safety changes, deemed necessary by CSA; all to be provided during CSA's standard business hours of Monday through Friday 8:30AM to 5:00PM, unless otherwise set forth in the Order Schedule. PMs without supplies shall be identified as "Service Only" in the Contract Type section when applicable. Service on CSA holidays is available with advance notice to CSA and CSA shall bill Customer at its then current hourly rates for holiday service. PM's performed on weekends, holidays or between 5PM and 8:00 AM (at Customer's request) will be billed at CSA's holiday rates in effect at the time of such service.
- b) Customer shall: (i) if required by CSA, allow CSA to store reasonable quantities of Maintenance equipment and/or parts on Customer's premises; (ii) provide a secure environment for the Equipment in accordance with manufacturer's requirements; (iii) report to CSA by the last calendar day of each month, the monthly usage according to the meter reading in footage or images as applicable; and (v) promptly inform CSA of any Equipment malfunctions or operating problems. CSA shall retain title to such Maintenance equipment and/or parts. Customer shall NOT interfere with the proper operation of the meter.
- c) If Customer refuses to permit installation of a safety change or removes one already installed, CSA may discontinue Maintenance for all Equipment until the hazard has been corrected. All defective parts replaced during Maintenance shall become the property of CSA. Parts used for repair may be used or remanufactured.

### 1.2 NON-COVERED SERVICE.

- a) Customer acknowledges that CSA shall not have any obligation related to:

- (i) provision and installation of optional retrofits;
  - (ii) enhancement of any feature of the Equipment;
  - (iii) services connected with Equipment relocation;
  - (iv) installation/removal of accessories, attachments, or other devices;
  - (v) exterior painting or refinishing of Equipment;
  - (vi) maintenance, installation, or removal of Equipment or devices not provided by CSA;
  - (vii) performance of normal operator functions as described in applicable CSA operator manual(s), including, but not limited to, loading of toner, inks and/or paper;
  - (viii) performance of services necessitated by accident, disaster including effects of water, wind, lightning, terrorism, or negligence;
  - (ix) performance of services necessitated by the introduction of a computer virus or other bug into the Equipment or Software;
  - (x) the use of paper or forms not in compliance with CSA's or the manufacturers specifications;
  - (xi) performance of service necessitated by any modification, alteration or any other change whatsoever of Customer's computer system into which the Equipment is integrated or otherwise connected;
  - (xii) services connected to neglect, misuse, or use of the Equipment for purposes other than for which it was designed, or failure to operate the Equipment in accordance with CSA's or manufacturer's operating instructions or within manufacturer's specifications;
  - (xiii) attachment(s) to the Equipment, including connection of devices not supplied by CSA, which cause the Equipment to malfunction, unless previously authorized in writing by CSA;
  - (xiv) use of improper, or inadequate use of or failure to use, supplies;
  - (xv) Maintenance or repair services performed by Customer or a third party without written authorization from CSA;
  - (xvi) pre or post processing Equipment disconnected from the printing system to which it was originally installed unless previously authorized in writing by CSA, or;
  - (xvii) data security, hard drive removal.
- b) If, in CSA's sole opinion, Equipment has been rendered unrepairable, then CSA may refuse to render Maintenance under the Agreement and may terminate the Agreement as to such units of Equipment. If repairs or replacements as set forth above are needed due to reasons listed above, CSA's prices to provide any repair or replacement shall be invoiced in accordance with CSA's then current labor, parts, and supply charges. All repairs will be governed by the terms of the Agreement; however, CSA reserves the right to decline to perform such services.
- c) CSA may withdraw any item of Equipment or Software from Maintenance coverage (i) if such Equipment or Software has been removed from CSA's servicing area or (ii) if CSA declares end of life for such Equipment or Software, and then only with at least ninety (90) days prior written notice. Customer may terminate Maintenance in any renewal term upon ninety (90) days prior written notice. Customer shall pay monthly service charges up to the date of termination.

### 1.3 ORDERING OF SUPPLIES AND OTHER MATERIALS.

Customer orders for supplies, staples, field replaceable units, consumables, expendables or any other materials normally purchased by Customers (a) must include a valid Customer purchase order number; (b) are shipped to Customer FOB destination; and (c) are subject to a twenty percent (20%) restocking fee if accepted for return by CSA pursuant to its Material Return Authorization (MRA) procedure. If Customer requires a carrier other than CSA's preferred carrier(s), Customer shall provide CSA with the carrier's name and Customer's account number so that delivery charges will be incurred directly by Customer. "Expedite/Emergency Orders" are any orders, regardless of the shipping method, that per Customer's request, must be shipped on the same day as ordered and such Expedite/Emergency Orders are subject

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to the actual delivery charges. Claims for defective items, item shortages and invoice discrepancies as well as notification of both lost shipments and in transit damage to items (not otherwise accepted by Customer) must be provided to CSA within ten (10) days of the earlier of (i) receipt of the item or (ii) the invoice date (whichever is applicable).

#### **1.4 SOFTWARE SUPPORT; MODIFICATIONS.**

CSA will use reasonable efforts to correct reproducible errors in any current, unaltered release of Software caused by a defect or malfunction which prevents Customer from operating the Software in a manner consistent with CSA's then current published specifications. CSA, in its sole discretion, shall choose the method to correct or replace the Software. These methods may include, but are not limited to, telephone, remote and on-site support.

#### **1.5 SOFTWARE REVISIONS.**

CSA will make Software revisions available at no charge for Software deemed by CSA as "current" release versions to Customers covered under an active CSA software Maintenance contract. Software revisions shall be defined as enhancements, modifications, updates, and improvements to the Software that CSA classifies as dot releases, meaning the Software revision code changes only in the fractional portion of the program level (i.e. v1.20 >v1.25> v1.41, etc.) ("Dot Release"). New functionality may be available with Dot Releases and will be offered to Customers at an additional cost. Installation of Dot Releases may, at CSA's sole discretion, be chargeable at CSA's then current hourly Professional Services rates with minimum charges for service time, including travel and on-site wait time. In addition, the cost of any server hardware modifications/upgrades required to run the Dot Releases are the Customer's sole responsibility.

#### **1.6 NEW SOFTWARE RELEASES.**

CSA will make "new" Software releases available to Customers covered under an active CSA software Maintenance contract at an additional cost. New Software releases are defined as those enhancements, modifications, updates, new functionality and improvements that CSA classifies as a "version release", meaning the whole number portion of the Software version changes (i.e. v1. xx >v2.xx>v3.xx etc.) ("Version Release"). Installation of Version Releases may, at CSA's sole discretion, be chargeable at CSA's then current hourly Professional Services rates with minimum charges for service time, including travel and on-site wait time. In addition, the cost of any server hardware modifications/upgrades required to run the Version Release are the Customer's sole responsibility. CSA will provide support services for (a) the latest Software Version Release (e.g.v5) following the date it is made generally available and (b) for the immediately prior Version Release (e.g. v4) during the twelve (12) month period following the date the latest Software Version Release (v5) is generally available. Software support shall terminate if CSA declares end of life for such Software, and then only with at least ninety (90) days prior written notice.

#### **1.7 ITEMS NOT COVERED UNDER SOFTWARE SUPPORT.** Support does not include:

- a. administration of servers or database products;
- b. support of Software installed on equipment using "beta" or operating systems not supported by CSA;
- c. resolution of network errors not directly related to Software;
- d. installation, setup or support of third-party products not supported by CSA or software not acquired from CSA; or
- e. updates, upgrades and new releases or versions of third-party products sold with or used in conjunction with CSA Software.

#### **1.8 CUSTOMER SOFTWARE RESPONSIBILITIES.**

It is the responsibility of Customer to make and maintain adequate backups of data and configuration of Software. CSA shall not be liable for any losses (of data or productivity or of any other kind) resulting from

rebuilding or reconfiguring Software to the original, factory configuration. Reloading, rebuilding and reconfiguring of server software may, at CSA's sole discretion, be chargeable at CSA's then published hourly Professional Services rates with minimum charges for service time, including travel and on-site wait time. Purchase and administration of anti-virus software is Customer's responsibility. Assistance for installing and maintaining anti-virus software is outside the scope of standard support but is available from CSA as a billable service upon request.

### **1.9 SOFTWARE HELP DESK SUPPORT** (not applicable to CSA products under 7x24 service coverage)

If Customer purchases "Remote Help Desk Support", then the following terms are applicable:

- a. CSA provides Remote Help Desk Support via telephone, to access CSA Support Specialists for operator questions, installation support, explanation of maintained software features and functionality, network connectivity questions, and other support issues ("Remote Support"). Remote Support is available Monday – Friday 8:30AM to 8:00PM ET, excluding CSA holidays. By purchasing Remote Support, Customer has unlimited access to the help desk.
- b. CSA will provide Remote Support to those Customer employees who have been issued an ID code providing email/telephone access to the CSA Software Support Center. Customer shall be responsible for controlling ID code access and for any unauthorized use of ID codes. ID codes are non-transferable.

### **1.10 SOFTWARE LICENSE**

- a. CSA grants Customer a personal, non-exclusive, non-transferable, limited license to use the Software (in compiled object code form) in the United States solely for its internal use and to use the documentation in support of Customer's authorized use of the Software for the time period set forth in the Order Schedule or, if no time period is set forth in the Order Schedule, until the Agreement is terminated in accordance with its terms or until Customer ceases using Software with the Equipment. In addition to the Software, the Equipment identified in the Order Schedule may contain other software that is used in connection with the maintenance of the Equipment (the "Maintenance Software"). Customer hereby acknowledges and agrees that the Maintenance Software has been installed for the sole purpose of use by a field engineer or technician authorized in writing by CSA to maintain the Equipment. Customer is not granted, whether by license or otherwise, any right to access or use the Maintenance Software for any purpose whatsoever, all rights to which are hereby expressly reserved by CSA. Any access or use of the Maintenance Software or any part thereof by Customer or any other person, including any person who purchases the Equipment from the Customer, is strictly prohibited. The Software license granted hereunder may not be assigned by Customer without the written consent of CSA and the payment of an additional license fee by the assignee (or subsequent licensee). No such additional license fee shall be due for Software embedded in the Equipment in the form of firmware.
- b. Software, including all results, information, ideas, data and products of any services provided by CSA (excluding Customer's data throughput) shall be the sole property of CSA or its suppliers and shall be regarded by Customer as Confidential Information of CSA. Customer shall not sell, transfer or otherwise make available the Software or documentation to any third party and shall secure and protect them from disclosure and shall take such action as is necessary with its employees (including contractors and temporary help) and other persons permitted access to them to satisfy Customer's obligations hereunder. Customer may disclose the Software and documentation to its employees (including contractors and temporary help) only to the extent (a) such disclosure is necessary to enable Customer to use the Software within the scope of the license granted herein and (b) any such parties agree that the Software is CSA's confidential information and agree to protect the Software pursuant to the terms set forth herein. Customer may make one copy of the Software in machine readable form for backup and archival purposes as may be necessary to support Customer's internal use of the Software with the Equipment on which use is licensed. Customer shall not modify, use other than for

purposes of the Agreement, reverse engineer, disassemble or decompile any Software in whole or in part. All Software is a “commercial component,” as this term is defined in 48 C.F.R. §2.101, consisting of “commercial computer software” and “computer software documentation,” as such terms are defined in 48 C.F.R. §252.227-7014(a)(1) and 48 C.F.R. §252.227-7014(a)(5), respectively, and used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable and all as amended from time to time. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire Software only with those rights set forth in the Agreement.

**2.0 EDUCATIONAL SERVICES SUPPLEMENTAL TERMS. IF CUSTOMER’S ORDER SCHEDULE REFERENCES EDUCATIONAL SERVICES, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS OF THIS RIDER F.**

- a) Educational Services are offered to Customer by CSA in the form of training sessions and are provided during CSA’s standard business hours (Monday through Friday excluding CSA holidays - 8:30 AM to 5:00 PM local time) unless Customer purchases after hour on-site training at additional cost. Training may take place at a CSA central training facility or at Customer’s site as determined by CSA and Customer. Each training session is a one-time event or a one-time visit. Customers are charged separately for each training session. The composition and duration of each training session is determined solely at CSA’s discretion.
- b) Standard CSA rates apply. CSA rates are subject to change without notice. Customer is responsible for Customer’s travel and lodging expenses. CSA will bill Customer, and Customer agrees to pay, CSA’s reasonable travel, hotel and other reasonable expenses in connection with Customer on-site training sessions.
- c) Training materials for each training session are provided to Customer and/or Customer’s registrants as set forth under CSA’s then current policy. Such training materials are CSA Confidential Information.
- d) Unless otherwise agreed in writing, Educational Services must be completed within sixty (60) days after the date of installation. In the event Educational Services are not completed within this time period and provided the delay is not due to CSA, Customer’s Educational Services shall automatically terminate with no further obligation on the part of CSA, in which case Customer shall not be entitled to a refund. Monies paid towards a training session in connection with a specific model of Equipment or Software is not transferrable to any other model of Equipment or software and may not be used by Customer to pay for any other Equipment, Maintenance, Professional Services or training offering.
- e) Cancellation/Rescheduling. (i) CSA may cancel an on-site training session by providing notice to Customer no less than five (5) business days prior to the scheduled date of training. If a training session is cancelled by CSA and CSA and Customer do not agree to reschedule such session, upon request of Customer, CSA will refund the purchase price for the cancelled training session. CSA is not responsible for any expenses incurred by Customer or Customer’s registrant in connection with such cancellation. (ii) CSA may reschedule a training session by providing notice to Customer no less than five (5) business days prior to the scheduled date of training. CSA is not responsible for any expenses incurred by Customer or Customer’s registrant in connection with such rescheduling. (iii) Upon written notice to CSA received no less than five business days prior to the date of a scheduled training session, Customer may cancel such training session and receive a full refund of Customer’s purchase price for such training session; or, Customer may reschedule such training session at a mutually agreeable time



and place. If CSA and Customer do not agree on dates and location for a rescheduled session, upon request of Customer, CSA will refund the purchase price for the cancelled training session. In the event that CSA has incurred any non-refundable costs or expenses, such as travel, lodging and related expenses, in anticipation of such training session, Customer shall reimburse CSA for such costs and expenses. (iv) Monies received for a training session, and the cancellation notice of which is received by CSA within five business days of the scheduled date for such training session, are not refundable. However, CSA may, within its sole discretion, apply such monies to a rescheduled training session. In any event, to the extent CSA has incurred any non-refundable costs or expenses, such as travel, lodging and related expenses, in anticipation of such training session, Customer shall reimburse CSA for such costs and expenses. (v) CSA is not obligated to refund any monies paid for registrants not attending any scheduled training session.

**3.0 EASYPAC II PROGRAM SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES EASYPAC II, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS OF THIS RIDER F.**

a) DEFINITIONS.

- "Excess Charges" means charges in excess of the SmartClick Allowance.
- "Program" means the EasyPac II TDS Black Toner/ PlotWave Black Toner/ ColorWave Toner Pearls Carton Program, identified as "EasyPacII" in the "Contract Type" section on an Order Schedule when applicable.
- "Scheduled Supplies" means: in connection with PlotWave® Equipment, the fixed amount of black toner to which Customer is entitled as set forth in the Agreement(s) and/or an Order Schedule
- "Supplies" means: (i) for PlotWave Equipment, Black Toner; (ii) for ColorWave Equipment, TonerPearls® cartons.
- "Supplies Entitlement" means: in connection with the ColorWave Equipment, the amount of TonerPearls cartons to which Customer is entitled as set forth in the Agreement(s) and/or an Order Schedule
- "SmartClick™" means a CSA proprietary measurement derived from (1) the amount of toner used; plus (2) the area of media used, for each application printed on the Equipment.

b) SUPPLIES PROGRAM. So long as Customer is not in default, the Program entitles Customer to the fixed amount of genuine Supplies set forth in the applicable Order Schedule, on a scheduled or entitlement basis. When applicable, the Supplies Entitlement included shall be identified in the "Ink or Toner Entitlement" Section of an Order Schedule. Scheduled Supplies for PlotWave models will be shipped directly to the Ship to address set forth in the Order Schedule during the term of such Order Schedule. Supplies for the ColorWave models will be shipped pursuant to Customer's order and subject to the Supplies Entitlement during the term of the applicable Order Schedule. Supplies may be used solely with the Equipment set forth on the Order Schedule(s). Any additional Supplies that are required beyond the Scheduled Supplies or Supplies Entitlement can be ordered directly from CSA at an additional cost to Customer.

c) SUPPLIES SHIPMENT. For PlotWave Equipment and provided Customer is not in default: Supplies shipments will be automatically shipped and will continue for the full term of the applicable Order Schedule, without Customer's request or without requiring any documentation or order confirmation from Customer. For PlotWave Equipment, one unit of Supplies is equal to one carton of Black Toner. Changes to this shipment schedule are valid only upon execution of a new amendment to the applicable Order Schedule. CSA will ship only on the periodic shipment schedule dates. CSA will not accelerate or expedite shipments unless otherwise approved by CSA. For ColorWave Equipment and provided

Customer is not in default: Supplies will only be shipped once an order has been placed by Customer. For ColorWave Equipment, one unit of Supplies is equal to one TonerPearls cartons.

- d) **PRICING.** For PlotWave Equipment: CSA will ship the Scheduled Supplies for the term of the applicable Order Schedule. Additional amounts of Supplies may be required by Customer for excess print volumes or applications based on Customer's actual usage. Customer is responsible for ordering and paying for Supplies in excess of the Scheduled Supplies. Should Customer require additional Supplies beyond the Scheduled Supplies, CSA will ship such additional quantities to Customer upon acceptance of Customer's purchase order for such additional Supplies. Customer will be invoiced separately for such additional orders over Scheduled Supplies and agrees to pay for such additional quantities. CSA reserves the right to refuse shipment of additional Supplies. This Program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.
- e) For Colorwave Equipment – SmartClick Plan: This is a fixed supplies quantity contract. Customer is responsible for ordering Supplies as needed during the term of the applicable Order Schedule. If additional Supplies are required by Customer for excess print volumes or applications based on Customer's actual usage, Customer is responsible for ordering such additional Supplies. The cost to Customer for such additional Supplies is included in the excess SmartClick Charge. If additional Supplies are ordered by Customer, CSA shall provide such additional Supplies as is reasonably required by Customer, as determined by CSA, based upon Customer's consumption and subject to CSA's approval, which shall not be unreasonably withheld. CSA reserves the right to refuse shipment of additional Supplies. This program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included. The Minimum Periodic Payment and Excess SmartClick Charges may both include a charge for toner.
- f) **TERM.** The term of the Program shall be conterminous with that of the applicable Order Schedule.
- g) **MISCELLANEOUS.** CSA may refuse shipment of Supplies if Customer is not current on payments or is in default for any other reason. Customer may order Supplies under the Program solely for its own internal use and not for resale. CSA may refuse shipment in the event that it reasonably believes Supplies are not being used for Customer's internal use. Returns of Supplies are only permitted for Supplies defects. A CSA Return Materials Authorization (RMA) is required prior to any return.

**4.0 OPTIMIZE.IT PROGRAM SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES OPTIMIZE.IT, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS OF THIS RIDER F.**

a) **DEFINITIONS.**

"Optimize.IT Program" means the Optimize.IT PlotWave Black Toner/ ColorWave Toner Pearls Carton Program.

"Scheduled Supplies" means: in connection with PlotWave® Equipment, the fixed amount of CSA Black Toner to which Customer is entitled as set forth in the Agreement(s) and/or an applicable Order Schedule.

"Supplies" means: (i) for PlotWave® Equipment, Black Toner and developer; (ii) for ColorWave Equipment, TonerPearls® cartons.

“Supplies Entitlement” means: in connection with ColorWave Equipment, the amount of TonerPearls Cartons to which Customer is entitled as set forth in the applicable Order Schedule.

“Allowance” means: in connection with the PlotWave® / ColorWave Equipment, the square footage included in each Excess Per Image Charge billing period on the applicable Order Schedule.

b) OPTIMIZE.IT PROGRAM. So long as Customer is not in default, this Supplies program entitles Customer to the fixed amount of genuine Canon Supplies as set forth in an applicable Order Schedule, on a scheduled or entitlement basis, during the term of the Agreement. When applicable, the Supplies Entitlement included shall be identified in the “Ink or Toner Entitlement” Section of an Order Schedule. Scheduled Supplies for PlotWave Equipment will be shipped to the ship to address set forth in the Agreement on a scheduled basis during the term of the Agreement. Supplies for ColorWave Equipment will be shipped pursuant to Customer’s order and subject to the Supplies Entitlement during the term of the Agreement. Changes to this Supplies program are valid only upon execution of a new OPTIMIZE.IT Program amendment.

c) SUPPLIES SHIPMENT.

(i) For PlotWave Equipment, and provided Customer is not in default: Supplies shipments will be automatically shipped and will continue for the full term of the Agreement, without Customer’s request or without requiring any documentation or order confirmation from Customer. For PlotWave Equipment, one unit of supplies is equal to one carton of Black Toner. CSA will ship only on the periodic shipment schedule dates. CSA will not accelerate or expedite shipments unless otherwise approved by CSA. If additional Supplies are required by Customer for excess print volumes or applications based on Customer’s actual usage, Customer is responsible for ordering such additional Supplies. The cost to Customer for such additional Supplies is included in the Excess Meter Charge. The Minimum Periodic Payment and Excess Usage Charges may both include a charge for toner. If additional Supplies are ordered by Customer, CSA shall provide such additional Supplies as is reasonably required by Customer, as determined by CSA, based upon Customer’s consumption and subject to CSA’s approval, which shall not be unreasonably withheld. CSA reserves the right to refuse shipment of additional Supplies. This Supplies program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.

(ii) For ColorWave Equipment – SmartClick Plan: Customer is responsible for ordering Supplies as needed during the term of the Agreement. If additional Supplies over the fixed contract quantity are required by Customer for excess print volumes or applications based on Customer’s actual usage, Customer is responsible for ordering such additional Supplies. The cost to Customer for such additional Supplies is included in the Excess SmartClick Charge. The minimum periodic payment and excess SmartClick charges may both include a charge for toner. If additional Supplies are ordered by Customer, CSA shall provide such additional Supplies as is reasonably required by Customer, as determined by CSA, based upon Customer’s consumption and subject to CSA’s approval, which shall not be unreasonably withheld. CSA reserves the right to refuse shipment of additional Supplies. This Supplies program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.

(iii) For ColorWave Equipment – Square Foot Plan: Customer is responsible for ordering Supplies as needed during the term of the Agreement. If additional Supplies are required by Customer for excess print volumes or applications based on Customer’s actual usage, Customer is responsible for ordering such additional Supplies. Customer will be invoiced separately for



such additional orders over the fixed contract quantity and agrees to pay for such additional quantities. If additional Supplies are ordered by Customer, CSA shall provide such additional Supplies as is reasonably required by Customer, as determined by CSA, based upon Customer's consumption and subject to CSA's approval, which shall not be unreasonably withheld. CSA reserves the right to refuse shipment of additional Supplies. This Supplies program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.

- d) **EXCESS CHARGES.** CSA shall periodically invoice Excess Usage Charges and other usage fees ("Service Charges"). In the event that the periodic Allowance is not achieved (the actual net usage for the period is less than the Allowance for the period), fifty percent (50%) of the unutilized Allowance will be carried forward to the next periodic Allowance.
- e) **TERM.** The term of the Optimize.IT Program shall be coterminous with the term of the applicable Lease.
- f) **MISCELLANEOUS.** Customers will be charged for all shipping and handling charges associated with expedited shipments, emergency shipments, and special delivery of any order(s) for Supplies. Damaged or short toner or TonerPearls cartons must be noted on the carrier copy of the delivery receipt and reported to Imaging Supplies Customer Service within three (3) business days of delivery in order to obtain credit. Customer is responsible for freight charges associated with returned toner or TonerPearls cartons due to Customer error. Customer must obtain a return Authorization number from Imaging Supplies Customer Service before returning any Supplies. Supplies shipped under the Agreement are for Customer's use only on equipment and may not be resold, traded or otherwise transferred to any third party without the prior written consent of CSA. CSA reserves the right not to ship product for any reason.

**5.0 ARIZONA MODELS SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES ARIZONA SERIES EQUIPMENT, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS OF THIS RIDER F.**

- a) If Customer has purchased Maintenance and such Maintenance is marked on the Order Schedule, Customer may terminate Maintenance upon ninety (90) days prior written notice to CSA. If Customer provides such notice of its intent to terminate, Customer shall be responsible for Maintenance charges, if any, for the period defined on the Order Schedule until the effective date of termination.
- b) The following consumable items for the Arizona Series are excluded from Maintenance and the warranty:
  - (i) Printheads (unless otherwise set forth on the Order Schedule)
  - (ii) Table Vacuum Overlays
  - (iii) UV Lamps & Lamp Filters
  - (iv) Ink Filters
  - (v) Printheads (unless otherwise set forth on the Order Schedule)
  - (vi) Table Vacuum Overlays
  - (vii) UV Lamps & Lamp Filters
  - (viii) Ink Filters

**6.0 ARIZONA PREMIA CLASS FIELD RECONDITIONED EQUIPMENT SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES ARIZONA PREMIA CLASS FIELD RECONDITIONED EQUIPMENT, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS OF THIS RIDER F.**

- a) Products shipped hereunder, unless otherwise specifically set forth in the Order Schedule may, in CSA's sole discretion, be New/Newly Manufactured, Factory Produced New Model, Like New, Remanufactured, Refurbished, Used or Field Reconditioned. "Field Reconditioned" means Equipment previously used by a CSA customer that has been de-installed, bagged, and crated by CSA service technicians and installed at Customer's site, where the Equipment is tested to ensure full functionality and reliability to specifications by CSA service technicians for print quality. This process involves the installation of new parts and may also include the installation of used parts at CSA's discretion. Field Reconditioned Equipment may have ink stains, dents, and printhead nozzles that do not function.
- b) With respect to Field Reconditioned Equipment, the warranty period for printheads shall be for a period of six (6) months from the date of equipment installation. The warranty set forth herein applies only to New/Newly Manufactured, Factory Produced New Models, Remanufactured, Refurbished Equipment or Field Reconditioned and is conditioned upon Customer giving prompt notice to CSA of any discovered defects; with respect to Field Reconditioned Equipment, determination of defective printhead is at the sole discretion of CSA Service Technician.

**7.0 COLORADO MODELS SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES COLORADO SERIES EQUIPMENT, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS IN THIS RIDER F.**

- a) The following consumable items for the Colorado are excluded from the warranty and/or maintenance set forth in the Agreement:
  - (i) Colorado 16xx Knife
  - (ii) Take Up Spindle
  - (iii) Unwind Spindle
  - (iv) Printhead(s)
- b) **PRINthead INCLUDED CONTRACTS.** If the Customer chooses the Printhead Included contract, the replacing of the printheads will be consistent with the current procedures for the replacement of the other parts within the Colorado. A call must be placed by the Customer to CSA's Customer Service Center and the technician will reach out to the Customer to discuss the issues and determine if there is a critical failure with the suspected head(s). If CSA determined that there is a hard code failure and the machine can no longer calibrate at 430 square feet per hour on CSA's calibration material due to misdirected or blocked nozzles, the technician will order the print head in advance and will schedule it to arrive the following business day. If the technician has the part in stock, they will schedule a visit based on priority of calls. If CSA determines during the troubleshooting of the printer that the root cause of the printhead failure is a result of Customer actions, it will be the Customer's responsibility to purchase a printhead. Once the printhead is on site, the Customer can place a service call and the Service Technician will respond and install the replacement printhead. Some but not all examples of customer related failures are head strikes (which include damage caused by media), running expired inks, improper printhead maintenance, and incorrectly calibrating media.

**8.0 COLORADO EZ PRINT PROGRAM SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES THE COLORADO EZ PRINT PROGRAM, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS IN THIS RIDER F.**

- a) **Technology Upgrade.** For any lease program that is 48 months or longer, Customer will have the option to upgrade to an updated version of Equipment, on any regularly-scheduled Lease Payment date commencing with twelve (12) or less months remaining in the lease contract, subject to sixty (60) days prior written notice to CSA. Customer shall return any and all Equipment to CSA as required to facilitate the Technology Upgrade and will do so in accordance with the terms and conditions of the Agreement.

Canon Solutions America, Inc.  
Master Sales and Services Agreement  
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- b) Service and Supplies. Equipment Service, ink, and print heads are included in the program at no additional charge. Unused Printheads and Inks are the property of CSA and will be returned at the end of the Agreement. Supplies do not include Air Filters, Integrated Knife Assembly, Maintenance Trays, Feed Media Shaft and Take-Up Media Shaft.
- c) Supplies shall be ordered by Customer when needed, and CSA shall provide such additional Supplies as is reasonably required by Customer, as determined by CSA, based upon the Equipment's consumption as indicated through the ORS Software and subject to CSA's approval, which shall not be unreasonably withheld. Supplies can only be used for the Equipment listed on the Order Schedule, and CSA may refuse shipment in the event that CSA reasonably believes Supplies are not being used solely in the Colorado Equipment set forth on the Order Schedule. This Supplies program does not include media (paper/film/vellum). Reconciliation for overuse of toner/supplies shall be invoiced to and paid by Customer at the rates in effect at the time of such reconciliation and will be calculated based on coverage/use.
- d) In the event that the periodic Allowance is not achieved (the actual net usage for the period is less than the Allowance for the period), one hundred percent (100%) of the unutilized Allowance will be carried forward to the next periodic Allowance.
- e) Replacement of Print Heads during the term of this program shall solely be determined by CSA and, or a CSA authorized service technician.
- f) ORS Software Requirement. The Equipment contains ORS software that allows CSA to access the Equipment remotely ("Remote Software"). Customer authorizes CSA to use the Remote Software to (i) receive software updates and transmit use and service data accumulated by the Equipment over Customer's network by means of an HTTPS (or other) protocol and (ii) store and analyze such data solely for CSA's own purposes related to servicing the Equipment and for product improvement.

**9.0 COLORWAVE TONER BUNDLE PROGRAM SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES THE COLORWAVE TONER BUNDLE PROGRAM, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS IN THIS RIDER F.**

- a) Definitions
  - "ColorWave Program" means the ColorWave® Equipment Toner Pearls Cartridge Supplies Program, which shall be identified as "Toner Bundle" in the Contract Type section of an Order Schedule when applicable.
  - "Supplies" means TonerPearls® cartridges.
  - "Supplies Entitlement" means the number of units of TonerPearls cartridges to which Customer is entitled as set forth in the Order Schedule.
- b) ColorWave Program. So long as Customer is not in default, the ColorWave Program entitles Customer to the fixed amount of genuine Supplies set forth in the Order Schedule on an entitlement basis. When applicable, the Supplies Entitlement included shall be identified in the "Ink or Toner Entitlement" Section of an Order Schedule. Supplies may be used solely with the ColorWave Equipment set forth on the Order Schedule. Supplies will be shipped pursuant to Customer's order and subject to the Supplies Entitlement during the term of the Agreement. Any additional Supplies that are required beyond the Supplies Entitlement can be ordered directly from CSA at additional cost to Customer.
- c) Pricing. This is a fixed supplies quantity contract. Customer is responsible for ordering Supplies as needed during the term of the Agreement. If additional Supplies are required by Customer for excess print volumes or applications based on Customer's actual usage, Customer is responsible for ordering such additional Supplies. Should Customer require additional supplies beyond the contracted quantities, CSA will ship such additional quantities to Customer upon acceptance of Customer's purchase order for such additional Supplies. Customer will be invoiced separately for such additional

orders over the fixed contract quantity and agrees to pay for such additional quantities. CSA reserves the right to refuse shipment of additional Supplies. This program does not include media (paper/film/vellum). Prices do not include applicable tax. Shipping charges to the continental USA are included.

- d) Term. The ColorWave Program shall be automatically renewed for successive one (1) year terms at CSA's then current charges, for a *pro rata* amount of the Supplies Entitlement based on the Supplies Entitlement for the initial term and under the terms and conditions of the Agreement unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of any initial or renewal term. CSA may also notify Customer ninety (90) days in advance that the Supplies covered under the Agreement will no longer be available for any subsequent renewal terms. Customer may terminate this Program in any renewal term upon ninety (90) days prior written notice. For prepaid agreements, CSA will refund or credit the pro rata price of the remaining term.
- e) Miscellaneous. CSA may refuse shipment of Supplies if Customer is not current on payments or is in default for any other reason. Customer may order Supplies under the Agreement via Order Schedule and/or amendment solely for its own internal use and not for resale. CSA may refuse shipment in the event that CSA reasonably believes Supplies are not being used for the internal use of the Customer or Customer's end user or if CSA reasonably believes Supplies are not being used solely with the ColorWave Equipment set forth on the Order Schedule.
- f) Returns. Returns of Supplies are only permitted for Supplies defects. A CSA Return Materials Authorization ("RMA") is required prior to any return.

**10.0 PROCUT EQUIPMENT SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES PROCUT EQUIPMENT, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS IN THIS RIDER F.**

a. Definitions:

- "Base Machine" means each model of the following: ProCut Table, Conveyor System, Roll-off Unit, Vacuum Generator, Automatic Router Bit Changer (ARC), ICC Camera, Integrated Tool Initialization Tool (ITI) and PC stand.
- "Consumable Parts" means cutting blades, knives, router bits, cutting underlays, scoring wheels and conveyor belts.
- "ProCut Equipment" means the following: Base Machine, the modules and tool inserts set forth herein and Consumable Parts.
- "Preventative Maintenance" means testing, adjusting, cleaning and replacement of components scheduled in accordance with the ProCut Equipment service specifications.
- "Service" means the repair and/or replacement of parts that are determined by CSA to contain manufacturing defects in order to keep the ProCut Equipment in good working order per manufacturer's written specifications provided that repairs can be performed in the field.

b) WARRANTY. CSA shall provide the limited warranty set forth in the General Terms for the term of the warranty as set forth below

c) TERM and EXCLUSIONS. The terms set forth in this Section 10.0 (c) shall apply solely to the ProCut Equipment. The warranty period for the Base Machine shall be twenty-four (24) months from the date of installation, and the warranty period for modules and tool inserts (as identified below) set forth in any Order Schedule shall be six (6) months from the date of installation. During the applicable warranty period for the ProCut Equipment, CSA shall provide Service for the ProCut Equipment. CSA shall provide such Service during its normal business hours, at no charge, as determined to be necessary upon inspection by an authorized CSA Service Representative. CSA is not obligated by this warranty to perform repairs or parts replacement for defects or damage resulting in whole or part from (i)

alteration, relocation, repairs, or use of parts, software or services not provided by CSA or its authorized representative, (ii) accident, (iii) abuse, willful misconduct, or negligence; (iv) the acts or omissions of Customer. Preventative Maintenance and the replacement of Consumable Parts are not covered by this warranty. Ground freight charges for parts covered by warranty are included. Expedited shipping charges of such warranty parts are excluded and will be invoiced to Customer separately. Service may be provided by CSA or a third party subcontracted by CSA.

The six (6) month warranty period noted above only applies to modules & tool inserts with the following descriptions/purposes:

- Routing Modules
- Universal Module
- Driven Rotary Tool
- Oscillating Cutting Tools
- Milling Spindles
- Creasing Tools
- Kiss-Cutting Tool
- V-Cut Tool
- Universal Drawing Tool with pen
- Universal Cutting Tool

- d) POST-WARRANTY PROCUT EQUIPMENT SERVICE. Upon expiration of the warranty period set forth herein, Customer may purchase Maintenance from CSA for the Base Machine by signing CSA's then-current Maintenance Agreement. Post-warranty Service is not available from CSA for the modules and tool inserts set forth above.

**11.0 TC4 SCANNER MODEL TERMS SUPPLEMENTAL TERMS. IF CUSTOMER'S ORDER SCHEDULE REFERENCES TC4 SCANNER EQUIPMENT, THE FOLLOWING ADDITIONAL TERMS SHALL APPLY TO SAME AND CONTROL OVER THE OTHER TERMS IN THIS RIDER F.**

The following consumable items for the TC4 Scanner are excluded from Maintenance and the warranty set forth in the Agreement:

| <u>Consumable Item</u>      | <u>Item Number</u> |
|-----------------------------|--------------------|
| Lamp                        | 1060023824         |
| Glass Plate                 | 2954987            |
| Reference Plate             | 1060010241         |
| Ref Plate Thick Original    | 1060050272         |
| 44" Basic Calibration Sheet | 1060021389         |





# RIDER G MASTER LEASE TERMS

CANON FINANCIAL SERVICES, INC.

14904 Collections Center Dr.

Chicago, Illinois 60693

(800) 220-0200

CFS -1133H (07/20)

THESE MASTER LEASE TERMS (the "Lease Terms") apply to any schedule incorporating these Lease Terms by reference whether designated as a "Lease Schedule- Itemized," a "Lease Schedule - Blended" or otherwise (in any case, a "Lease Schedule") entered into by and between Canon Financial Services, Inc. ("CFS") and the customer identified in such Lease Schedule ("Customer") from time to time for the lease or rental, as applicable, to Customer of the Equipment (as defined below) supplied by Canon Solutions America, Inc. ("CSA") and described in such Lease Schedule. Each Lease Schedule referring to these Lease Terms will constitute a separate agreement for the lease of the equipment described therein and shall incorporate these Lease Terms.

**1. AGREEMENT:** CFS leases to Customer and Customer leases from CFS all the equipment described in any Lease Schedule signed by Customer and accepted by CFS, together with all replacement parts and substitutions for and additions to such equipment (the "Equipment"), and licenses of software, if applicable, ("Listed Software") with such Equipment and Listed Software collectively referred to as (the "Listed Items"), upon the Lease Terms.

**2. TERM OF SCHEDULE:** Each Lease Schedule shall be effective on the date the Equipment is delivered to Customer, provided Customer executes CFS' form of acceptance ("Acceptance Certificate") or otherwise accepts the Equipment as specified herein. Any such acceptance is irrevocable. If Customer has not, within ten (10) days after delivery of such Equipment, delivered to CFS written notice of any non-acceptance, specifying the reasons therefor and specifically referencing the relevant Lease Schedule, Customer shall be deemed to have irrevocably accepted such Equipment. The term of each Lease Schedule begins on the date accepted by CFS or any later date that CFS designates, and shall consist of the payment period specified on such Lease Schedule and any renewal periods. After acceptance of the Equipment covered by any Lease Schedule, Customer shall have no right to revoke such acceptance or cancel such Lease Schedule during the term indicated thereon. The term of any Lease Schedule shall end, unless sooner terminated by CFS, when all amounts required to be paid by Customer under such Lease Schedule have been paid as provided and either (a) Customer has purchased the Equipment in accordance with the terms hereof, or (b) the Equipment has been returned at the end of the scheduled term or renewal term in accordance with the terms thereof. Customer has no right to return the Equipment to CFS prior to the end of the scheduled term of any Lease Schedule for any reason whatsoever, including, without limitation, payment of all amounts due hereunder prior to the end of the scheduled term. As between CFS and Customer only, these Lease Terms shall supersede any Customer purchase order in its entirety, notwithstanding anything to the contrary contained in any such purchase order.

**3. PAYMENTS:** Customer agrees to pay to CFS, as invoiced, during the term of each Lease Schedule, (a) the lease or rental payments specified on the respective Lease Schedule, and (b) such other amounts permitted thereunder or in these Lease Terms as invoiced by CFS ("Payments"). The amount of each Payment and the End of Term Purchase Option specified on each Lease Schedule ("Purchase Option") are based on CSA's best estimate of the cost of the Equipment and any related services and supplies, including any sales and use tax. Customer authorizes CFS to adjust such Payments and Purchase Option prices by up to fifteen percent (15%) if the actual total cost of the Equipment and any related services and supplies, including any sales or use tax, is more or less than originally estimated. If a Lease Schedule indicates a "Standard" Price Plan, CSA has the right to increase both (i) the portion of the Monthly Base Charge related to copy charges and (ii) the Per Image Charge on each anniversary of the Commencement Date in an amount not to exceed fifteen percent (15%) of such charges which were in effect immediately prior to such price increase. **Customer agrees to advise CSA of the meter readings for the Equipment upon request.** Customer shall remit all Payments hereunder directly to CFS at 14904 Collections Center Drive, Chicago, Illinois 60693, unless otherwise directed by CFS. Customer's obligation to pay all amounts due under a Lease Schedule or these Lease Terms and all other obligations thereunder and hereunder is absolute and unconditional and is not subject to any abatement, set-off, defense, or counterclaim for any reason whatsoever. If Customer fails to pay any sum to be paid by Customer to CFS under any Lease Schedule on or before the due date, Customer shall pay CFS, upon demand, an amount equal to the greater of ten percent (10%) of each such delayed Payment or twenty-five dollars (\$25) for each billing period or portion of a billing period such Payment is delayed, in each case to the extent permitted by applicable law. The amounts specified above shall be paid as liquidated damages and as compensation for CFS' internal operating expenses incurred in connection with such late payment. In addition, Customer shall reimburse CFS for all of its out-of-pocket costs and expenses incurred in exercising any of its rights or remedies under any Lease Schedule or in enforcing any of the Lease Terms or any Lease Schedule, including without limitation reasonable fees and expenses of attorneys and collection agencies, whether or not suit is brought. Customer agrees that CFS may in its sole discretion apply, but shall not be obligated to apply, any amount paid in advance to any amount due or to become due hereunder. In no event shall any amount paid in advance earn interest except where required by applicable law.

**4. NO CFS WARRANTIES:** CUSTOMER ACKNOWLEDGES THAT CFS IS NOT A MANUFACTURER, DEALER, OR SUPPLIER OF THE EQUIPMENT. CUSTOMER AGREES THAT THE EQUIPMENT IS LEASED OR RENTED "AS IS" AND IS OF A SIZE, DESIGN, AND CAPACITY SELECTED BY CUSTOMER. CUSTOMER ACKNOWLEDGES THAT CFS HAS MADE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SUITABILITY OR DURABILITY OF THE EQUIPMENT, THE ABSENCE OF ANY CLAIM OF INFRINGEMENT OR THE LIKE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS

FOR A PARTICULAR PURPOSE. So long as Customer is not in breach or default of any Lease Schedule, CFS assigns to Customer any warranties (including those agreed to between Customer and the manufacturer, dealer, or supplier) which CFS may have with respect to any item of Equipment; provided that the scope and limitations of any such warranty shall be solely as set out in any agreement between Customer and such manufacturer, dealer, or supplier or as otherwise specified in warranty materials from such manufacturer, dealer, or supplier and shall not include any implied warranties arising solely from CFS' acquisition of the Equipment. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER THE SUPPLIER NOR ANY DEALER IS AUTHORIZED TO WAIVE OR ALTER ANY LEASE TERM OR ANY LEASE SCHEDULE, OR MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASE TERMS, ANY LEASE SCHEDULE, OR THE EQUIPMENT, ON BEHALF OF CFS.

**5. USE; LOCATION; LIENS; PERSONAL PROPERTY; FINANCING STATEMENTS:** Customer shall comply with all laws and regulations relating to the use and maintenance of the Equipment. Customer shall put the Equipment only to the use contemplated by the manufacturer. The Equipment shall remain personal property regardless of whether it becomes affixed to real property or permanently rests upon any real property or any improvement to real property. Customer shall not move the Equipment from the location specified on the applicable Lease Schedule except with the prior written consent of CFS. Customer shall keep the Equipment free and clear of all claims and liens other than those in favor of CFS. Customer authorizes CFS (and any third party filing service designated by CFS) to execute and file (a) financing statements evidencing the interest of CFS in the Equipment (including forms containing a broader description of the Equipment than the description set forth in the respective Lease Schedule), (b) continuation statements in respect thereof, and (c) amendments thereto, and Customer irrevocably waives any right to notice thereof. Customer's legal name (as set forth in its constituent documents filed with the appropriate governmental office or agency) is as set forth herein. Customer shall provide CFS with written notice at least thirty (30) days prior to any change of its legal name, chief executive office address or jurisdiction of organization).

**6. INDEMNITY:** Customer shall indemnify and defend CFS, its subsidiaries, directors, officers, employees and agents from and against any and all costs, expenses, liabilities, injuries, claims, damages, losses, judgments or fees (including reasonable attorneys' fees) caused by the Equipment, including, without limitation, arising from or related to the storage, transmission or destruction of Data. This Section shall survive termination of any and all Lease Schedules.

**7. MAINTENANCE:** Customer shall keep and maintain the Equipment in good working order and shall, at Customer's expense, supply and install all replacement parts and accessories when required to maintain the Equipment in good working condition. Customer shall not, without the prior written consent of CFS, make any changes or substitutions for and to the Equipment. Any and all replacement parts, accessories, authorized changes to and/or substitutions for the Equipment shall become part of the Equipment and subject to the Lease Terms. If a Lease Schedule includes payments for service and supplies, CSA is responsible for providing the service and supplies described in the Lease Schedule in accordance with CSA's terms and conditions, of which Customer acknowledges receipt. Unless otherwise indicated on a Lease Schedule, Customer authorizes CSA to use the imageWARE Remote feature of the Equipment to receive software updates and transmit use and service data accumulated by the Equipment over Customer's network by means of an HTTPS protocol and to store, analyze and use such data for purposes related to servicing the Equipment and product improvement. Customer acknowledges that the charges set forth on the Lease Schedule are contingent on the continued use of imageWARE Remote during the term. If Customer at any time disconnects, disables or denies access to this feature, CSA may increase the charges for such items by 5% for any subsequent billing period in which such feature remains non-operational. If CSA does not receive timely meter readings from Customer, Customer shall pay invoices that reflect CSA's estimates of meter readings. CSA or CFS may verify the accuracy of any meter readings from time to time and invoice Customer for any shortfall in the next invoice. Customer shall use reasonable care in handling and operation of the Equipment. CSA shall have the right to substitute equivalent Equipment at any time during the term of a Lease Schedule in connection with any replacement of the Equipment by CSA. Customer acknowledges that CFS will not be responsible for any service, repairs, or maintenance of the Equipment, whether provided for in the Lease Terms, the applicable Lease Schedule, or in any other agreement between CSA and Customer, and that if Customer has a dispute regarding the Equipment or the maintenance thereof, Customer shall continue to pay all charges due under the applicable Lease Schedule without deducting or withholding any amounts.

**8. TAXES; OTHER FEES AND CHARGES:** CUSTOMER SHALL PAY AND DISCHARGE WHEN DUE ALL LICENSE AND REGISTRATION FEES, ASSESSMENTS, SALES, USE, PROPERTY AND OTHER TAXES, AND OTHER EXPENSES AND CHARGES, together with any applicable penalties, interest, and administrative fees now or at any time imposed upon any Equipment, the Payments, or Customer's performance or non-performance of its obligations hereunder, whether payable by or assessed to CFS or Customer. If Customer fails to pay any such fees, assessments, taxes, expenses, or charges, as required hereunder, CFS shall have the right but not the obligation to pay those fees, assessments, taxes, expenses, and charges, and Customer shall promptly reimburse CFS, upon demand, for all such payments made plus administrative fees and costs, if any. Customer acknowledges that where required by law, CFS will file any notices and pay personal property taxes levied on the Equipment. Customer shall reimburse CFS for the expense of such personal property taxes as invoiced by CFS and pay CFS a processing fee not to exceed \$50 per year per item of Equipment that is subject to such tax. Customer agrees that CFS has not, and will not, render tax advice to Customer and that the payment of such taxes is an administrative act. For each Lease Schedule commenced incorporating these Lease Terms, Customer shall pay to CFS a documentation fee in the amount of \$85.

**9. LOSS; DAMAGE; INSURANCE:** Customer shall bear the entire risk of loss, theft or damage to the Equipment from any cause whatsoever, effective upon delivery to Customer. No such loss, theft, or damage shall relieve Customer of any obligation under the Lease Terms or any Lease Schedule. In the event of damage to any item of Equipment, Customer shall immediately repair such damage at Customer's expense. If any Equipment is lost, stolen, or damaged beyond repair, Customer, at the option of CFS, will (a) replace the

same with like equipment in a condition acceptable to CFS and convey clear title to such equipment to CFS (and such equipment will become "Equipment" and be subject to the Lease Terms), or (b) pay CFS the Remaining Lease Balance. Customer, at its sole cost and expense, shall, during the term hereof obtain and maintain property and liability insurance in form, amount, and with companies satisfactory to CFS. Each policy of insurance shall name CFS as additional insured and loss payee and provide CFS thirty (30) days written notice before the policy in question shall be materially altered or canceled. The proceeds of such insurance, at the option of CFS, shall be applied to (a) replace or repair the Equipment, or (b) pay CFS the Remaining Lease Balance on the applicable Lease Schedule. The "Remaining Lease Balance" shall be the sum of: (i) all Payments then owed and outstanding; (ii) the present value of all remaining Payments; (iii) the Purchase Option price of the Listed Items indicated on the Lease Schedule plus (iv) any applicable taxes, expenses, charges, and fees. For purposes of determining present value under any Lease Schedule, Payments shall be discounted at three percent (3%) per year. Customer hereby appoints CFS as Customer's attorney-in-fact solely to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts for any loss or damage under any such insurance policy. If Customer fails to provide proof of insurance, CFS may, but is not required to obtain insurance covering CFS' interests, and charge the Customer for the costs of such insurance, and an administrative fee. CFS and any of its affiliates may make a profit on the foregoing.

**10. DEFAULT:** Any of the following events or conditions shall constitute an Event of Default under all Lease Schedules: (a) Customer defaults in the payment when due of any indebtedness of Customer to CFS, whether or not arising under any Lease Schedule, without notice or demand by CFS; (b) Customer or any guarantor of Customer's obligations hereunder ("Guarantor") ceases doing business as a going concern; (c) Customer or any Guarantor becomes insolvent or makes an assignment for the benefit of creditors; (d) a petition or proceeding is filed by or against Customer or any Guarantor under any bankruptcy or insolvency law; (e) a receiver, trustee, conservator, or liquidator is appointed for Customer, any Guarantor, or any of their property; (f) any statement, representation or warranty made by Customer or any Guarantor to CFS is incorrect in any material respect; or (g) if Customer or any Guarantor who is a natural person dies.

**11. REMEDIES:** Upon the happening of any one or more Events of Default, CFS shall have the right to exercise any one or all of the following remedies (which shall be cumulative), simultaneously, or serially, and in any order: (a) require Customer to immediately pay all unpaid Payments under any Lease Schedule (whether or not then due) and other amounts due under any and all Lease Schedules, with CFS retaining title to the Equipment; (b) to terminate any and all Lease Schedules with Customer; (c) with or without notice, demand or legal process, to enter upon the premises wherever the Equipment may be found, to retake possession of any or all of the Equipment, and (i) retain such Equipment and all Payments and other sums paid under all Lease Schedules, or (ii) sell the Equipment and recover from Customer the amount by which the Remaining Lease Balance exceeds the net amount received by CFS from such sale; or (d) to pursue any other remedy permitted at law or in equity. CFS (A) may dispose of the Equipment in its then present condition or following such preparation and processing as CFS deems commercially reasonable; (B) shall have no duty to prepare or process the Equipment prior to sale; (C) may disclaim warranties of title, possession, quiet enjoyment and the like; and (D) may comply with any applicable state or federal law requirements in connection with a disposition of the Equipment and none of the foregoing actions shall be deemed to adversely affect the commercial reasonableness of the disposition of the Equipment. If the Equipment is not available for sale, Customer shall be liable for the Remaining Lease Balance and any other amounts due under the applicable Lease Schedule. No waiver of any of Customer's obligations, conditions or covenants shall be effective unless contained in a writing signed by CFS. Failure to exercise any remedy that CFS may have shall not constitute a waiver of any obligation with respect to which Customer is in default.

**12. ASSIGNMENT:** CUSTOMER SHALL NOT ASSIGN OR PLEDGE ANY LEASE SCHEDULE IN WHOLE OR IN PART, NOR SHALL CUSTOMER SUBLET OR LEND ANY EQUIPMENT WITHOUT PRIOR WRITTEN CONSENT OF CFS. CFS may pledge or transfer any Lease Schedule. Customer agrees that if CFS transfers any Lease Schedule, the assignee will have the same rights and benefits that CFS has now and will not have to perform any of CFS' obligations which CFS will continue to perform. Customer agrees that the rights of the assignee will not be subject to any claims, defenses, or set-offs that Customer may have against CFS. If Customer is given notice of any such transfer, Customer agrees if so directed therein, to pay directly to the assignee all or any part of the amounts payable hereunder.

**13. RENEWAL; RETURN:** Except in the case of a Lease Schedule containing a \$1.00 Purchase Option, each Lease Schedule automatically renews under the same terms and conditions on a month-to-month basis if Customer fails to give CFS 60 days' prior written notice of its intent to purchase or return the Equipment before the end of any term. Unless a Lease Schedule automatically renews or Customer purchases the Equipment, Customer shall return the Equipment on the day the Lease Schedule terminates in good operating condition, ordinary wear and tear resulting from proper use excepted, at Customer's sole cost and expense to a location specified by CFS, and shall reimburse CFS for any costs incurred to place the Equipment in good operating condition. CFS may charge Customer a return fee equal to the greater of one Payment or \$250 for the processing of returned Equipment.

**14. PURCHASE OPTION:** .A) END OF TERM PURCHASE OPTION. At the end of any term, Customer shall give CFS 60 days' irrevocable prior written notice (unless the Purchase Option is \$1.00) that it will purchase all the Equipment at the Purchase Option plus any Costs. (B) PRIOR TO MATURITY PURCHASE. Customer may, at any time, upon 60 days' irrevocable prior written notice, purchase all the Equipment at a price equal to the sum of all remaining Payments plus the Fair Market Value plus Costs. "Fair Market Value" shall be CFS' retail price when Customer purchases the Equipment. Equipment purchases shall be "AS-IS WHERE-IS" without warranty, except for title.

**15. DATA:** Customer acknowledges that the hard drive(s) on the Equipment, including attached devices, may retain images, content or other data that Customer may store for purposes of normal operation of the Equipment ("Data"). Customer acknowledges that CFS is



not storing Data on behalf of Customer. Neither CFS nor any of its affiliates has an obligation to erase or overwrite Data upon Customer's return of the Equipment to CFS. Customer is solely responsible for: (A) its compliance with applicable law and legal requirements pertaining to data privacy, storage, security, retention and protection; and (B) all decisions related to erasing or overwriting Data. The Equipment contains various security features that Customer may utilize in this regard. Customer should contact CSA for further information. CSA will work with you to provide information regarding your options and offer services to assist you. Please note that such services may result in additional charges. The terms of this section shall solely govern as to Data, notwithstanding that any provisions of the Lease Terms or any separate confidentiality or data security or other agreement now or hereafter entered into between Customer, CSA and CFS applies, or could be construed to apply to Data.

**16. MAXIMUM INTEREST; RECHARACTERIZED AGREEMENT:** No Payment is intended to exceed the maximum amount of interest permitted to be charged or collected by applicable laws, and any such excess Payment will be applied to payments due under the applicable Lease Schedule, in inverse order of maturity, and any excess shall be refunded. If any Lease Schedule is recharacterized as a conditional sale or loan, Customer hereby grants to CFS, its successors and assigns a security interest in the Equipment to secure payment and performance of Customer's obligations under the Lease Terms and such Lease Schedule.

**17. UCC - ARTICLE 2A:** CUSTOMER ACKNOWLEDGES AND AGREES THAT EACH LEASE SCHEDULE IS INTENDED AS A "FINANCE LEASE" AS THAT TERM IS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE ("UCC 2A"), AND THAT CFS IS ENTITLED TO ALL BENEFITS, PRIVILEGES, AND PROTECTIONS OF A LESSOR UNDER A FINANCE LEASE. CUSTOMER WAIVES ITS RIGHTS AS A LESSEE UNDER UCC 2A SECTIONS 508-522.

**18. WAIVER OF OFFSET:** The lease created by each Lease Schedule is a net lease. If the Equipment is not properly installed, does not operate as represented or warranted, or is unsatisfactory for any reason, Customer shall make such claim solely against the dealer, supplier, or manufacturer. Customer waives any and all existing and future claims and offsets against any Payments or other charges due under each Lease Schedule and these Lease Terms and unconditionally agrees to pay such Payments and other charges, regardless of any offset or claim which may be asserted by Customer or on its behalf.

**19. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL:** EACH LEASE SCHEDULE SHALL FOR ALL PURPOSES BE DEEMED A CONTRACT ENTERED INTO IN THE STATE OF NEW JERSEY. THE RIGHTS OF THE PARTIES UNDER EACH LEASE SCHEDULE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. ANY ACTION BETWEEN CUSTOMER AND CFS SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF CAMDEN OR BURLINGTON, NEW JERSEY, OR AT CFS' SOLE OPTION, IN THE STATE WHERE THE CUSTOMER OR THE EQUIPMENT IS LOCATED. CUSTOMER, BY ITS EXECUTION AND DELIVERY HEREOF, IRREVOCABLY WAIVES OBJECTIONS TO THE JURISDICTION OF SUCH COURTS AND OBJECTIONS TO VENUE AND CONVENIENCE OF FORUM. CUSTOMER, BY ITS EXECUTION OF ANY LEASE SCHEDULE, AND CFS, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDINGS UNLESS CUSTOMER RESIDES IN A STATE IN WHICH A WAIVER OF A RIGHT TO A JURY TRIAL IS UNENFORCEABLE AS A MATTER OF THAT STATE'S PUBLIC POLICY.

**20. MISCELLANEOUS:** All notices required or permitted under the Lease Terms or any Lease Schedule shall be sufficient if delivered personally, sent via facsimile or other electronic transmission, or mailed to such party at the address set forth in an applicable Lease Schedule, or at such other address as such party may designate in writing from time to time. Any notice deposited in the mail shall be effective after it has been received. If any affiliate of Customer shall execute any Lease Schedule, all obligations to be performed by Customer and all such Affiliates shall be the joint and several liability of all such parties. Customer's representations, warranties, and covenants under each Lease Schedule shall survive the delivery and return of the respective Equipment. Any provision of the Lease Terms which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Lease Terms. No such prohibition or unenforceability in any jurisdiction shall invalidate or render unenforceable such provision in any other jurisdiction. Customer agrees that CFS may insert missing information or correct other information on a Lease Schedule including the Equipment's description, serial number, and location, and corrections to Customer's legal name; otherwise, each Lease Schedule (incorporating the Lease Terms by reference) contains the entire arrangement between Customer and CFS with respect to such Lease Schedule and no modifications thereof shall be effective unless in writing and signed by the parties. Customer agrees that CFS may accept a facsimile or other electronic transmission of any Lease Schedule or any Acceptance Certificate as an original, and that facsimile or electronically transmitted copies of Customer's signature will be treated as an original for all purposes. If the Lease Schedule references an existing master agreement between Customer and CFS (the "Existing Master CFS Lease") and to the extent applicable to the transactions contemplated by the Lease Schedule, then the terms of the Existing Master CFS Lease shall control over the Lease Terms for so long as the Existing Master CFS Lease remains in effect.

**21. APPROVED AFFILIATES AND APPROVED SUBSIDIARIES:** From time to time, affiliates and subsidiaries of Customer that meet CFS' credit underwriting standards then in effect (each, an "Approved Affiliate" or "Approved Subsidiary") may enter into Lease Schedules hereunder on the same terms and conditions as if each such Approved Affiliate or Approved Subsidiary was the Customer hereunder. Each of Customer and each Approved Affiliate or Approved Subsidiary shall be jointly and severally liable for the obligations under the Schedule(s) entered into by it pursuant to this Agreement.

**22. FISCAL FUNDING (if applicable): This Section 22 shall only apply if "Fiscal Funding" is designated on the Lease Schedule.**

Customer warrants that it has funds available to pay Payments payable pursuant to the Lease Schedule until the end of its current appropriation period and warrants that it presently intends to make Payments in each appropriation period from now until the end of the term of Lease Schedule. The officer of Customer responsible for preparation of Customer's annual budget shall request from its legislative body or funding authority funds to be paid to CFS under the Lease Terms and any Lease Schedule. If notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence, such legislative body or funding authority does not appropriate funds to be paid to CFS for the Equipment, Customer may, upon prior written notice to CFS, effective upon the exhaustion of the funding authorized for the then current appropriation period, return the Equipment to CFS, at Customer's expense and in accordance with each Lease Schedule, and thereupon, Customer shall be released of its obligation to make Payments to CFS due thereafter, provided: (1) the Equipment is returned to CFS as provided for in the Lease Schedule; (2) the above described notice states the failure of the legislative body or funding authority to appropriate the necessary funds as the reason for cancellation; and (3) such notice is accompanied by payment of all amounts then due to CFS under the Lease Schedule. In the event Customer returns the Equipment pursuant to the terms of the Lease Schedule, CFS shall retain all sums paid by Customer. Customer's Payment obligations under each Lease Schedule in any fiscal year shall constitute a current expense of Customer for such fiscal year, and shall not constitute indebtedness or a multiple fiscal year obligation of Customer under Customer's state constitution, state law or home rule charter. Nothing in the Lease Terms shall constitute a pledge by Customer of any taxes or other monies, other than as appropriated for a specific fiscal year for each Lease Schedule and the Equipment.



CANON SOLUTIONS AMERICA

Canon Solutions America, Inc. ("CSA")
One Canon Park, Melville, NY 11747
(800) 613-2228

MUNICIPAL FISCAL FUNDING ADDENDUM

Unified Lease Agreement # \_\_\_\_\_
CFS' Application Number: \_\_\_\_\_
CFS' Agreement Number: \_\_\_\_\_
Agreement Date: \_\_\_\_\_

GOVERNMENTAL ENTITY

Complete Legal Name: \_\_\_\_\_ ("Customer")

THIS MUNICIPAL FISCAL FUNDING ADDENDUM ("ADDENDUM") WILL BE OF NO FORCE OR EFFECT IF THE CUSTOMER IS NOT A STATE OR A POLITICAL SUBDIVISION OF A STATE WITHIN THE MEANING OF SECTION 103(C) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

Customer warrants that it has funds available to pay Payments payable pursuant to the Unified Lease Agreement (the "Agreement") between Customer and CSA until the end of its current appropriation period and warrants that it presently intends to make Payments in each appropriation period from now until the end of this Agreement. The officer of Customer responsible for preparation of Customer's annual budget shall request from its legislative body or funding authority funds to be paid to the Lessor under this Agreement. If notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence, such legislative body or funding authority does not appropriate funds to be paid to the Lessor for the Equipment, Customer may, upon prior written notice to CSA and the Lessor, effective upon the exhaustion of the funding authorized for the then current appropriation period, return the Equipment to the Lessor, at Customer's expense and in accordance with this Agreement, and thereupon, Customer shall be released of its obligation to make Payments to the Lessor due thereafter, provided: (1) the Equipment is returned to the Lessor as provided for in the Agreement; (2) the above described notice states the failure of the legislative body or funding authority to appropriate the necessary funds as the reason for cancellation; and (3) such notice is accompanied by payment of all amounts then due to the Lessor under this Agreement. In the event Customer returns the Equipment pursuant to the terms of this Agreement, the Lessor shall retain all sums paid by Customer. Customer's Payment obligations under this Agreement in any fiscal year shall constitute a current expense of Customer for such fiscal year, and shall not constitute indebtedness or a multiple fiscal year obligation of Customer under Customer's state constitution, state law or home rule charter. Nothing in this Agreement shall constitute a pledge by Customer of any taxes or other monies, other than as appropriated for a specific fiscal year for this Agreement and the Equipment.

The undersigned represents and warrants to CSA and the Lessor that all action required to authorize the execution and delivery of this Addendum on behalf of the above referenced Customer by the following signatory has been duly taken and remains in full force and effect. Customer agrees that CSA and the Lessor may accept a facsimile or other electronic transmission of this Addendum as an original, and that facsimile or electronically transmitted copies of Customer's signature will be treated as an original for all purposes.

ACCEPTED

Canon Solutions America, Inc.

Customer

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

## **CONSUMER DISCLOSURE**

From time to time, Canon Solutions America, Inc. (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

**How to contact Canon Solutions America, Inc.:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [msinanian@csa.canon.com](mailto:msinanian@csa.canon.com)

**To advise Canon Solutions America, Inc. of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [msinanian@csa.canon.com](mailto:msinanian@csa.canon.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from Canon Solutions America, Inc.**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [msinanian@csa.canon.com](mailto:msinanian@csa.canon.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Canon Solutions America, Inc.**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [msinanian@csa.canon.com](mailto:msinanian@csa.canon.com) and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

|                            |   |
|----------------------------|---|
| Operating Systems:         | Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X   |
| Browsers:                  | Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only) |
| PDF Reader:                | Acrobat® or similar software may be required to view and print PDF files  |
| Screen Resolution:         | 800 x 600 minimum   |
| Enabled Security Settings: | Allow per session cookies   |

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

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**OMNIA PARTNERS  
EXHIBITS – EXHIBIT A  
RESPONSE FOR  
NATIONAL  
COOPERATIVE  
CONTRACT**

## **OMNIA Partners Exhibits – Exhibit A Response for National Cooperative Contract**

### **1.0 Scope of National Cooperative Contract**

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Master Agreement or in the Administration Agreement between Supplier and OMNIA Partners.

Acknowledged.

### **1.1 Requirement**

The University of California (hereinafter defined and referred to as “Principal Procurement Agency”), on behalf of itself and the National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector (“**OMNIA Partners**”), is requesting proposals for Print Goods and Services. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal (“**Master Agreement**”) be made available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (“**Public Agencies**”), through OMNIA Partners’ cooperative purchasing program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners’ cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

All transactions, purchase orders, invoices, payments etc., will occur directly between the Supplier and each Participating Public Agency individually, and neither OMNIA Partners, any Principal Procurement Agency nor any Participating Public Agency, including their respective agents, directors, employees or representatives, shall be liable to Supplier for any acts, liabilities, damages, etc., incurred by any other Participating Public Agency. Supplier is responsible for knowing the tax laws in each state.

This Exhibit A defines the expectations for qualifying Suppliers based on OMNIA Partners’ requirements to market the resulting Master Agreement nationally to Public Agencies. Each section in this Exhibit A refers to the capabilities, requirements, obligations, and prohibitions of competing Suppliers on a national level in order to serve Participating Public Agencies through OMNIA Partners.



These requirements are incorporated into and are considered an integral part of this RFP. OMNIA Partners reserves the right to determine whether or not to make the Master Agreement awarded by the Principal Procurement Agency available to Participating Public Agencies, in its sole and absolute discretion, and any party submitting a response to this RFP acknowledges that any award by the Principal Procurement Agency does not obligate OMNIA Partners to make the Master Agreement available to Participating Procurement Agencies.

Acknowledged.

## **12 Marketing, Sales and Administrative Support**

During the term of the Master Agreement OMNIA Partners intends to provide marketing, sales, partnership development and administrative support for Supplier pursuant to this section that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis.

OMNIA Partners will assign the Supplier a Director of Partner Development who will serve as the main point of contact for the Supplier and will be responsible for managing the overall relationship between the Supplier and OMNIA Partners. The Director of Partner Development will work with the Supplier to develop a comprehensive strategy to promote the Master Agreement and will connect the Supplier with appropriate stakeholders within OMNIA Partners including, Sales, Marketing, Contracting, Training, Operations & Support.

The OMNIA Partners marketing team will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through channels that may include:

- A. Marketing collateral (print, electronic, email, presentations)
- B. Website
- C. Trade shows/conferences/meetings
- D. Advertising
- E. Social Media

The OMNIA Partners sales teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through initiatives that may include:

- A. Individual sales calls
- B. Joint sales calls
- C. Communications/customer service
- D. Training sessions for Public Agency teams

E. Training sessions for Supplier teams

The OMNIA Partners contracting teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through:

- A. Serving as the subject matter expert for questions regarding joint powers authority and state statutes and regulations for cooperative purchasing
- B. Training sessions for Public Agency teams
- C. Training sessions for Supplier teams
- D. Regular business reviews to monitor program success
- E. General contract administration

### **1.3 Estimated Volume**

The dollar volume purchased under the Master Agreement is estimated to be approximately \$50 million annually. While no minimum volume is guaranteed to Supplier, the estimated annual volume is projected based on the current annual volumes among the Principal Procurement Agency, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between Supplier and OMNIA Partners.

Acknowledged.

### **1.4 Award Basis**

The basis of any contract award resulting from this RFP made by Principal Procurement Agency will, at OMNIA Partners option, be the basis of award on a national level through OMNIA Partners. If multiple Suppliers are awarded by Principal Procurement Agency under the Master Agreement, those same Suppliers will be required to extend the Master Agreement to Participating Public

Agencies through OMNIA Partners. Utilization of the Master Agreement by Participating Public Agencies will be at the discretion of the individual Participating Public Agency. Certain terms of the Master Agreement specifically applicable to the Principal Procurement Agency (e.g. governing law) are subject to modification for each Participating Public Agency as Supplier, such Participating Public Agency and OMNIA Partners shall agree without being in conflict with the Master Agreement. Participating Agencies may request to enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in the Master Agreement (i.e. invoice requirements, order requirements, specialized delivery, diversity requirements such as minority and woman owned businesses, historically underutilized business, governing law, etc.). It shall be the responsibility of the Supplier to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the Participating Agency. It shall further be the responsibility of the Supplier to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of the Master Agreement and adjust wage rates accordingly. Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Participating Agency and the Supplier (Contract Sales are reported to OMNIA Partners).

All purchase orders issued and accepted by the Supplier may survive expiration or termination of the Master Agreement. Participating Agencies' purchase orders may exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Supplier is responsible for reporting all sales and paying the applicable administrative fee for sales that use the Master Agreement as the basis for the purchase order, even though Master Agreement may have expired.

Acknowledged.

## 15 Objectives of Cooperative Program

This RFP is intended to achieve the following objectives regarding availability through OMNIA Partners' cooperative program:

- A. Provide a comprehensive competitively solicited and awarded national agreement offering the Products covered by this solicitation to Participating Public Agencies;
- B. Establish the Master Agreement as the Supplier's primary go to market strategy to Public Agencies nationwide;
- C. Achieve cost savings for Supplier and Public Agencies through a single solicitation process that will reduce the Supplier's need to respond to multiple solicitations and Public Agencies need to conduct their own solicitation process;
- D. Combine the aggregate purchasing volumes of Participating Public Agencies to achieve cost effective pricing.

Acknowledged.

## **2.0 REPRESENTATIONS AND COVENANTS**

As a condition to Supplier entering into the Master Agreement, which would be available to all Public Agencies, Supplier must make certain representations, warranties and covenants to both the Principal Procurement Agency and OMNIA Partners designed to ensure the success of the Master Agreement for all Participating Public Agencies as well as the Supplier.

Acknowledged.

### **2.1 Corporate Commitment**

Supplier commits that (1) the Master Agreement has received all necessary corporate authorizations and support of the Supplier's executive management, (2) the Master Agreement is Supplier's primary "go to market" strategy for Public Agencies, (3) the Master Agreement will be promoted to all Public Agencies, including any existing customers, and Supplier will transition existing customers, upon their request, to the Master Agreement, and (4) that the Supplier has read and agrees to the terms and conditions of the Administration Agreement with OMNIA Partners and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency. Supplier will identify an executive corporate sponsor and a separate national account manager within the RFP response that will be responsible for the overall management of the Master Agreement.

While Supplier will utilize OMNIA as its primary go to market strategy, in no event shall Supplier be liable for any fees to OMNIA in the event that a Supplier bid is awarded a contract with an entity not utilizing OMNIA pricing or the Master Agreement, nor shall such bid or award constitute a breach of this Agreement. "Go To Market Strategy" is limited to local governmental agencies and any extension of this strategy requires further discussion.

### **2.2 Pricing Commitment**

Supplier commits the not-to-exceed pricing provided under the Master Agreement pricing is its lowest available (net to buyer) to Public Agencies nationwide and further commits that if a Participating Public Agency is eligible for lower pricing through a national, state, regional or local or cooperative contract, the Supplier will match such lower pricing to that Participating Public Agency under the Master Agreement.

Canon CSA is unable to make this representation due to the specific requirements that exist in this proposal. We welcome further discussion to clarify any concerns and/or issues.

## **2.3 Sales Commitment**

Supplier commits to aggressively market the Master Agreement as its go to market strategy in this defined sector and that its sales force will be trained, engaged and committed to offering the Master Agreement to Public Agencies through OMNIA Partners nationwide. Supplier commits that all Master Agreement sales will be accurately and timely reported to OMNIA Partners in accordance with the OMNIA Partners Administration Agreement. Supplier also commits its sales force will be compensated, including sales incentives, for sales to Public Agencies under the Master Agreement in a consistent or better manner compared to sales to Public Agencies if the Supplier were not awarded the Master Agreement.

Acknowledged.

## **3.0 SUPPLIER RESPONSE**

Supplier must supply the following information in order for the Principal Procurement Agency to determine Supplier's qualifications to extend the resulting Master Agreement to Participating Public Agencies through OMNIA Partners.

Acknowledged.

## **3.1 Company**

### **A. Brief history and description of Supplier.**

Canon Solutions America, Inc. ("CSA") is a wholly owned subsidiary of Canon U.S.A., Inc., a privately-owned subsidiary of Canon Inc., operating within the United States and part of the region called Canon Americas. CSA provides industry leading enterprise, production, and large format printing solutions, supported by exceptional professional service offerings. CSA helps companies of all sizes improve sustainability, increase efficiency, and control costs through high volume, continuous feed, digital and traditional printing, and document management solutions. Additionally, our Five Pillar Security strategy can help contribute to an organization's security posture with a comprehensive and in-depth approach to security.

CSA, a New York corporation, was incorporated in 1971. With nearly 50 years in the document management industry, CSA is staffed with highly skilled professionals to service and support the leading brand in the industry, Canon. With over 70 offices in most major metropolitan areas throughout the U.S., CSA continues to grow, providing sales, service, and support of Canon's document management technology. CSA continues to expand into cities where companies may benefit from working directly with a Canon U.S.A., Inc. sales subsidiary.

Canon Inc. is a \$33.06 billion company that pursues global diversification with regional operations in the United States, Japan, Europe, Asia, Oceania, Middle East, and Africa. In our global structure, each region handles comprehensive sales and marketing duties. Throughout the group there are 195,056 employees and 376 research, sales, and manufacturing subsidiaries.

The high priority Canon places on its Global R&D effort is evident in its devotion of more than \$2.8 billion in 2018. Canon's efforts in this area include a more regional focus in order to develop technologies that meet the specific demands encountered in the Americas, Europe, and Asia. Based upon the number of

registered U.S. patents filed by Canon, you can easily conclude that we have spent our Research & Development dollars effectively. In 2019, Canon Inc. ranked third overall in patents registered in the U.S. with a total of 3,548 patents.

In addition, national customers enjoy consistent best-in-class support for all their locations nationwide. A staff of product and software application experts is directly accessible to assist our customers with the continual task of streamlining workflow processes through innovative technology. We can help our customers to protect their workplace by expanding cybersecurity awareness for employees through our computer-based phishing simulation training solution. Furthermore, our cybersecurity partner professionals can offer consultation services for improving security frameworks, privacy regulation compliance, incident response, and virtual Chief Information Security Officer (CISO) subscription services.

As a testament to Canon's leading market position and innovative technology, Canon's office imaging products have won several prestigious Buyers Laboratory awards. BLI is the imaging industry's leading independent authority and provider of competitive intelligence, testing, and reviews on multifunction, copier, printer, scanner, and software solutions and products. In addition to BLI, Canon products are reviewed by several other esteemed independent organizations. When choosing Canon, you can be assured that you're partnering with a company that delivers outstanding technologies across a range of markets.

Given all the areas of support employed by CSA, it's easy to see why we position ourselves as a total secure information management solutions provider. Our diversified portfolio of solutions touches upon every point of the document lifecycle within an organization's workflow.

## **Brief History**

**1970-1980:** What would become Canon Business Solutions began as four independently operating organizations marketing the Canon brand of office and production equipment in New York, Philadelphia, Chicago and Los Angeles.

**1980-1999:** Canon continued to set new industry standards for black-and-white, color and fax technology. By the end of the 1990s, all four independent sales companies had been purchased by Canon U.S.A. and comprised the foundation of the Canon subsidiary sales and service network.

**2000-2010:** Under the direction of Canon U.S.A., the four foundational offices changed their marketing to come under the banner Canon Business Solutions as a means to differentiate and showcase their offerings in the Canon family. Coinciding with the name change was a national expansion to many of the top metropolitan regions within the United States.

In 2003, the New York and Philadelphia subsidiary companies merged to combine their strengths and grow throughout the East Coast, while the Chicago office would serve as the foundation for the new Central region and Los Angeles the same for the new Western region.

By 2008, the three regions officially merged to form Canon Business Solutions, Inc., a wholly-owned subsidiary of Canon U.S.A., Inc. The combined strength and shared vision of the Canon Business Solutions company would better position Canon to meet the growing demands of customers locally, regionally and nationally with a streamlined organization of enhanced systems and processes to benefit all customers.

Canon Business Solutions opened more than 50 offices across the U.S., dedicated to the business customer and designed around a mindset of superior sales and service solutions.

**2011-Present:** In 2010, a Canon U.S.A. subsidiary acquired assets of North Carolina-based Tereck Office Solutions, Inc. as a means to continue to grow Canon Business Solutions offerings specifically in North and South Carolina and the surrounding areas. The subsidiary, Canon Business Solutions-Tereck, merged into Canon Business Solutions in 2011.

In 2008, assets of San Francisco-based Newcal Industries were acquired by a Canon U.S.A. subsidiary to grow the Western footprint of Canon Business Solutions, continuing Canon's vision to be the leading document and imaging sales and services organization in the United States. The subsidiary, Canon Business Solutions-Newcal was merged into Canon Business Solutions in 2012.

On January 1, 2013, Canon U.S.A. merged Océ North America into Canon Business Solutions to form one of the largest document and imaging business-to-business sales and service organizations in the world. The merged organization was renamed CSA.

## **B. Total number and location of sales persons employed by Supplier.**

There are 806 sales persons located in over 70 offices throughout the United States employed by CSA.

## **C. Number and location of support centers (if applicable) and location of corporate office.**

Our Solutions Support Help Desk, based in the below three locations, supports all our customers in the United States:

- 3000 Commerce Square Blvd., Burlington, NJ 08016 (MFD Solutions Support)
- 1800 Bruning Dr. West, Itasca, IL 60143 (Large Format Solutions Support)
- 5600 Broken Sound Blvd., Boca Raton, FL 33487 (Production Print Solutions Support)

CSA is headquartered at One Canon Park, Melville, NY 11747.

## **D. Annual sales for the three previous fiscal years.**

CSA is the wholly owned subsidiary of Canon U.S.A., Inc. which in turn is the wholly owned subsidiary of Canon Inc., one of the world's most financially stable companies, with revenues of \$33.06 billion in 2019. CSA is not a publicly held company and its financial information is consolidated with the finances of its ultimate parent company, Canon Inc. and provided as stated below.

For a view of Canon's financial results/annual reports, please use the following website links below:

Financial Results/Statements:

<https://global.canon/en/ir/library/results.html>

Annual Reports:

<https://global.canon/en/ir/library/annual.html>

## **E. Submit FEIN and Dunn & Bradstreet report.**

CSA's FEIN is 13-2677004.



For a copy of CSA's Dun & Bradstreet Report, please see Section 2 this response.

## F. Describe any green or environmental initiatives or policies.

CSA adheres to the spirit of our parent company's corporate philosophy of kyosei—all people, regardless of race, religion, or culture, harmoniously living and working together into the future. Canon takes an approach to business that is socially responsible and economically logical. Canon seeks to be a truly excellent global corporation. For our customers, we offer the best products possible. Simultaneously, we strive to improve our relationships with local communities and to increase our respect for the environment as we contribute to the prosperity of the world and the happiness of its people.

Our company's commitment and contribution to the environment and to the world community are an integral part of Canon's management structure, product design, manufacturing, and corporate culture. This commitment has inspired many special corporate programs at both the global and regional level.

### Canon Group Environmental Charter

Canon considers environmental assurance activities to be of paramount importance in helping to address issues of global sustainability, particularly those of climate change and limited resources. In order to support such activities, Canon Inc. instituted the Canon Group Environmental Charter, which establishes overarching environmental commitments for the Canon Group. The Environmental Charter was implemented in the Canon Americas region as the Canon Americas Environmental Charter (the "Charter"). The goals of the Charter are to maximize resource efficiency from the dual approaches of environmental assurance and economic activities, consider product lifecycles, and clearly set forth environmental assurance activities for Canon Americas companies, of which CSA is one, to help meet these goals.

- **Corporate Philosophy: Kyosei** – Achieve corporate growth and development while contributing to the prosperity of the world and the happiness of humankind.
- **Environmental Assurance Philosophy** – Pursue maximization of resource efficiency and contribute to the creation of a society that practices sustainable development.
- **Fundamental Policies for Environmental Assurance** – Seek to harmonize environmental, economic, and social interests in all business activities, products, and services; offer products with lower environmental burden through innovative improvements in resource efficiency; and eliminate anti-social activities that threaten the health and safety of mankind and the environment.

### Toner Cartridge Recycling

Canon explores methods to minimize the environmental burden of its products throughout their life-cycle and promote research and development, which contribute to environmental assurance. In 1990, Canon became the first company to collect and recycle used copier toner cartridges. With the cooperation of our customers, Canon has collected more than 378,000 tons around the world.

The goal of the Toner Cartridge Recycling Program is to achieve zero landfill waste by reusing parts, recycling materials, and employing energy recovery. Because these cartridges have components that can be re-used, the environmental benefits positively offset the negative effects of shipping to our recycling facility and then on to our manufacturing sites. Returned cartridges are sorted and put through the recycling and energy recovery process, producing plastics, metals, and reconditioned parts that can be used in the manufacture of new cartridges and other products.

The Canon Cartridge Return program is easily accessible at <https://ereturn.usa.canon.com/>. Here, using the machine's serial number, customers can print a UPS label for the return of cartridges or request a multiple-cartridge return box and it will be mailed.

## **Toner Container Recycling**

To contribute to the goal of zero landfill waste, Canon is introducing a collection and recycling program for Canon plastic toner containers. Unlike Canon's all-in-one cartridges, these toner containers are made mainly of plastic material making local recycling and local energy recovery possible. Canon toner particles and plastic toner containers contain no hazardous materials and are therefore acceptable at local recycling and local energy recovery facilities.

To support local recycling and energy recovery, Canon has engraved a plastic resin code on each container. Canon toner particles and plastic toner containers are safe for local recycling and local energy recovery facilities.

In the case that Canon plastic toner containers cannot be recycled locally or sent to a local energy recovery facility, Canon asks that customers ship them to: Canon Toner Container Collection Center, 5980 Industrial Drive, Gloucester, VA 23061 at their own expense. Once received by our facility, Canon assumes the responsibility and cost for recycling to keep Canon toner containers from going into landfills. For more information, please visit:

<https://www.usa.canon.com/internet/portal/us/home/about/environment-sustainability-initiatives/toner-cartridge-return-program>

## **ENERGY STAR® Partnership**

To help you save energy and money, while making a difference for the environment, Canon has partnered voluntarily with the EPA for more than 20 years to design products that meet the high standards of its ENERGY STAR® Program. This program promotes the development and introduction of energy-efficient products to combat climate change and other environmental issues.

As an ENERGY STAR® partner, Canon has approximately 200 certified products that incorporate advanced energy-efficient technologies, without compromising features or performance, such as energy saver mode, automatic duplex settings, and low sleep mode power consumption. ENERGY STAR® certified imaging equipment, printers, scanners, and all-in-one devices reduce the amount of fossil fuels burned to produce electricity, and cause fewer greenhouse gas emissions that harm the environment and contribute to global climate change. To learn more about Canon's ENERGY STAR® certified products, please visit [ENERGYSTAR.gov](https://www.energystar.gov).

## **Awards/Recognition**

Canon has received multiple ENERGY STAR® Awards for protecting the environment through manufacturing energy-efficient products. Canon U.S.A., Inc. is a proud recipient of the United States Environmental Protection Agency's 2020 ENERGY STAR® Partner of the Year – Sustained Excellence Award. This marks the 5th consecutive year that Canon has earned an ENERGY STAR Partner of the Year Award, and the 3rd consecutive year that Canon has been honored for Sustained Excellence (2018, 2019, 2020) by the U.S. EPA. Canon U.S.A. has previously been recognized as Partner of the Year - Product Brand Owner Awards (2010, 2016, 2017, 2018, 2019) and received Excellence Awards for ENERGY STAR Promotion (2011) and Product Labeling (1996, 1997, 2001, 2002, 2003, 2005 and 2008). CSA is proud to support the ENERGY STAR® program by offering a wide range of imaging products designed to support our customers' environmental and sustainability initiatives.

## **EPEAT**

Canon offers products that are registered in accordance with EPEAT for Imaging Equipment. EPEAT is a voluntary environmental rating program developed using a grant from the U.S. EPA and managed by the Green Electronics Council. This sustainability tool provides third-party verification of the environmental attributes of imaging equipment. EPEAT considers—among other things—absence of toxic substances, use of recycled and recyclable materials, design for recycling, product longevity, energy efficiency, corporate performance, and packaging. With EPEAT, customers are able to easily identify and select environmentally preferable products. Products are rated bronze, silver, or gold depending on the number of optional points claimed. To learn more about EPEAT and to find out which Canon products are registered, please visit <https://www.usa.canon.com/epeat>.

## **LEED® Certification**

Canon U.S.A. is proud to have earned LEED® certification for three buildings: the Canon Americas Headquarters in Melville, N.Y. (which is also the headquarters for CSA), Canon's Distribution Center in Norcross, GA., and the Canon Experience Center in Costa Mesa, CA. The U.S. Green Building Council's LEED® green building program is the preeminent program for the design, construction, maintenance, and operations of high-performance green buildings including sustainable site development, water and energy efficiency, materials selection, and indoor environmental quality. Our company's commitment and contribution to the environment are an integral part of Canon's management structure, product design, manufacturing, and corporate culture. To learn more about LEED® certification, please visit <https://www.usa.canon.com/internet/portal/us/home/about/environment-sustainability-initiatives/leed-certification>.

## **ISO 14001 Certification**

The Canon Americas Headquarters and more than 700 other Canon sites worldwide are certified to the ISO 14001 standard. The ISO 14001 standard is an internationally accepted specification for environmental management systems created by the International Organization for Standardization to help organizations minimize how their operations affect the environment and comply with related laws, regulations, and requirements.

This internationally recognized standard provides organizations with a framework for developing effective Environmental Management Systems (EMS). With its EMS, Canon U.S.A. can analyze environmental aspects associated with the company's operating activities, products, and services, in order to establish objectives and targets that reduce their negative environmental impacts. Once developed, all Canon Americas sites with a certified EMS are audited by a third party to guarantee continual conformance to the standard. Canon's EMS helps monitor and improve upon a number of areas that touch on the environment, such as energy efficiency, resource conservation, waste management, chemical control, and toner cartridge recycling. As a result, the EMS is fully incorporated into business operations.

**G. Describe any diversity programs or partners supplier does business with and how Participating Agencies may use diverse partners through the Master Agreement. Indicate how, if at all, pricing changes when using the diversity program.**

At Canon, we believe that employees from different backgrounds bring different perspectives. That's why we constantly strive to improve our diversity and inclusiveness at all levels for demographic groups including, but not limited to, women, veterans and people with disabilities.

## Veterans

At Canon, we do more than respect your service. We value it. We know the teamwork, leadership and real-world training that can be gained from a career in the armed forces.

That's why we're committed to all that have made sacrifices, including veterans, reserve personnel, and military spouses. Working side-by-side with the integrity and strong work ethic you bring helps to make us all stronger. Your military experience together with our Canon values is a great match.

## Women

Strong women = stronger company. Here at Canon, we acknowledge the strength of women as leaders in their families, communities and in the workplace. To support the growth of our women employees in all the facets of their lives, we have sponsored the formation of a Business Resource Group (BRG). Our BRG, Women in Leadership Levels (WiLL) was formed with women employees in mind. Established in 2013, the WiLL steering committee includes senior representation from Canon U.S.A.'s business divisions and subsidiaries/affiliates whose interests align with engaging, enabling, and empowering women in their professional and personal development.

## Individuals with Disabilities

Canon is devoted to engaging those with disabilities both within the company and amongst our customers. Our commitment is evident in our suite of products made to enable individuals with disabilities to use our products. We have an array of products that ease the lives of our customers, including voice-activated devices for the visually impaired, flexibility position controls for those with limited mobility, and much more.

Our commitment to enable doesn't end with our product offerings. We know that our best innovations and products come from our varied and diverse work population, based on their varied and diverse perspectives. Our team members that are differently abled play a part in many of the complex day-to-day operations of our business and help us grow.

## Diversity Supplier Program

Our supplier base includes Veteran-Owned Small Business Concerns, Service-Disabled Veteran-Owned Small Business Concerns, HUBZone, Small Disadvantaged Business Concerns, Small Women-Owned Business Concerns, and Small Business Concerns. Canon tracks and reports Supplier Diversity spend to the General Service Administration annually to comply with the F.A.R. Canon makes a good faith effort to utilize Diverse Suppliers when procuring goods and services. There is no pricing change when using the diversity program.

**H. Describe any historically underutilized business certifications supplier holds and the certifying agency. This may include business enterprises such as minority and women owned, small or disadvantaged, disable veterans, etc.**

CSA is not currently certified as a small business as defined by applicable statuses.

CSA strives to utilize M/WBE vendors for our business. Our business processes and model provides limited opportunity to utilize third party (M/WBE) vendors, however, as a company, we continue to identify and contract with M/WBE vendors when possible.

As a wholly owned subsidiary of Canon U.S.A., Inc., which is headquartered in Melville, New York, we are part of our parent company's complete corporate subcontracting plan. Canon U.S.A., Inc. participates when applicable, in subcontracting with certified suppliers.

Canon U.S.A.'s subcontracting plan consists of small businesses, disadvantaged businesses, Women-Owned businesses, HUB zone small businesses and veteran-owned small business concerns. Each year, Canon U.S.A. completes a corporate Subcontracting Plan for the current year and submits it to the Federal Government for approval. All Canon U.S.A. plans have been in compliance with all requirements of the U.S. Federal Government. This represents a major initiative to expand the Supplier Diversity Program within the Canon organizations.

## I. Describe how supplier differentiates itself from its competitors.

CSA is a Canon U.S.A., Inc. company providing integrated systems technology that comprises one of the strongest solutions portfolios in the document management industry. Our unique and successful heritage is built upon an ability to offer unprecedented levels of service and support.

As a leader in the office equipment industry, CSA can show you levels of productivity and performance that once seemed unattainable. Whether it's through our world-renowned networked office systems, graphic systems, copiers, printers, scanners, or fax machines, we provide the technology and the support you need to move into the future.

CSA stands apart from the competition for a number of reasons:

- **Single Source Solution Provider** – Our hardware, software, and third-party enablers combine for one of the most diverse portfolios in the industry. With a sales and service footprint incorporating enterprise, large format, production, and vertical industry solutions, along with the expert knowledge of our people and a culture of providing excellent support and service nationally, we are uniquely positioned to meet the growing demands of today's world.
- **Canon U.S.A. Company** – We are a Canon U.S.A. sales and service subsidiary, able to provide National Account Management, equipment service, and preventative maintenance in support of Canon's state-of-the-art copying, printing, and scanning technologies. As a sales and service subsidiary of Canon U.S.A., our solutions are supported by a service organization whose break-fix capability continues to achieve better than industry results against key performance indicators. Our comprehensive support structure allows our customers to enjoy a blanket of technical service coverage that ensures ongoing satisfaction of their devices. Beyond our technical professionals in the field, there is a web of Canon-authorized service professionals who provide best-in-class technical support to our growing base of customers.
- **Onsite Consultation** – Our onsite consultation and ongoing analysis of your paper and digital data flow and document requirements enables us to recommend the solutions that are best adapted to meet your needs as they change. Our goal is to capture your vision and deliver solutions that drive results. We offer strategies designed to provide the highest quality service and the best technology available while maintaining a privacy-aware and secure environment, all in a cost-effective package.
- **Best-in-Class Technology** – Canon technology draws upon a large area of expertise as it is the most diversified of all the manufacturers in the industry. Known for technological innovation,

Canon is consistently at the top of the list for Research and Development investments and patent awards compared to its competitors. Canon is able to consistently break new ground and bring to the market productivity enhancing technologies year after year. Canon also receives numerous awards and recognition from top industry analysts and holds leadership positions in key segments of the office imaging market. When choosing Canon, you can be assured that you are partnering with a company that delivers leading technologies across a range of markets to help ensure your success for today and tomorrow.

- **Customized Industry Solutions** – Canon and its partners offer industry-leading solutions designed to meet a wide range of challenges. To help maximize the potential of our customer's investments in office technology, Canon offers Professional Services: a team of engineers, project managers, and solutions consultants who can help your organization implement and integrate the right technology to meet your operational goals. Canon brings together advisors who can examine your current situation, offer recommendations, and implement plans to help secure and optimize your paper and digital document processes.
- **Diverse Range of Input to Output Technology** – Devices will continue to converge and information will be managed in entirely new ways on entirely new platforms from now and into the future. Canon is a technology leader and is well positioned in the document management industry. Canon's robust portfolio and levels of support we provide our customers lends to being a more compelling offering in comparison to other providers in the industry. Our technology is widely accepted as an easier-to-use device with better copy quality and reliability, which has helped Canon Inc. lead the industry.
- **National Technology Solutions Center** – Our state-of-the-art National Technology Solutions Call Center (Help Desk) can assist you with a wide spectrum of hardware, software, network connectivity, application, and workflow issues. The Help Desk is our customers' one-stop problem resolution center for all Canon and third-party enabling solutions, and is positioned in the United States. CSA's Solutions Support Center has proudly achieved HDI Support Center Certification, the industry's leading certification program for technical support centers.
- **The CSA Five Pillars of Security**. We are committed to offering solutions and services that enable our customers to maintain a comprehensive and in-depth approach to workplace security in five key areas: device security, printing security, document security, information security, and cybersecurity. The Five Pillars of Security are founded upon the preservation of the fundamental NIST security principles of confidentiality, integrity, and availability.
- **Financial Strength** – CSA offers its customers the financial backing of Canon Inc., one of the world's most financially stable companies, with revenues of \$33.06 billion in 2019.
- **Commitment to Excellence and Social Responsibility** – Through its corporate philosophy of *Kyosei*, Canon is committed to dedicating itself to social and environmental responsibilities, as well as contributing to the prosperity of people in local communities and around the world.
- **Certified Training and Support** – CSA service technicians average 15 years' experience and are factory trained on Canon's equipment as well as the network support systems and software that drive its sophisticated technology. Our primary service objective is to resolve the problem on our first visit and eliminate the need for additional calls for the same problem.



- **Genuine Canon Parts and Supplies** – Canon puts its name on its parts and supplies because it stands behind their quality and performance. Each of the parts and supplies Canon makes for its office equipment products is a key part of the whole, carefully designed machine, which has been expertly engineered to provide top performance, reliability, and optimum output. Using genuine Canon parts and supplies is your best insurance against equipment damage, and possibly voiding your equipment warranty.
- **Commitment to Quality** – Commitment to Research and Development (R&D) is a clear indication of Canon's dedication to developing leading-edge technology. The high priority Canon places on its Global R&D effort is evident in its devotion of more than \$2.8 billion in 2018. A large portion of Canon's R&D investment goes toward the development of software technology and peripheral utilities, which embrace Canon's core business – print engine technology. Canon also focuses R&D efforts on standard device architecture, network management, network productivity, and total cost of ownership.
- **Commitment to Innovation** – From device technology and workflow solutions to our support and services options, we are poised to help you bring innovation to your environment. No matter what technology the future brings, you can count on CSA to help lead the way. Our Cloud for Business portfolio offers a wide array of solutions that can provide the type of agility that can make innovation a much easier task.
- **Benchmark Value from a Financial Perspective** – CSA is a full-service solutions provider, designed to be your single-source for technology recommendations, training, service, and systems support. We will show you levels of productivity and performance that once seemed unattainable. Whether it's through our world-renowned networked office systems, graphic systems, copiers, printers, scanners, or fax machines, we will provide UC a with the technology and support you need to move into the future. With our cost-effective solutions, benefits, and value-added services, it makes CSA the right technology partner for UC.
- **Forward Thinking Program Management** – Canon has developed a comprehensive program that supports implementation goals by educating end users regarding device features that minimize both their environmental impact and decrease costs. Additionally, with our quarterly business reviews, your dedicated CSA Account Executive meets face-to-face with you on a quarterly basis to review customer care quality metrics and fleet performance metrics, and to strategize opportunities for change management or improvement. Meeting one on one allows us to stay constantly in the loop with your environment so we can address any rightsizing opportunities and review all metrics.
- **Discovery Capability** – Quarterly business reviews and monitoring UC's usage will give UC and CSA the ability to continually improve productivity and savings within your organization. Savings will mostly be achieved through rightsizing the equipment; providing departments with the proper equipment and education on what is the most cost-effective device to use for larger projects. This can be monitored on a granular level all the way down to the application that the end user utilized to print. Reviewing UC's existing printer fleet can also help expose which device(s) is not cost effective and productive, and possibly providing a multifunctional device or even consolidating the unit, to further generate cost savings. CSA will work closely with UC to ensure we develop cost savings within your organization.



Given all of the areas of support employed by CSA, it's easy to see why we position ourselves as a total document management solutions provider. Our diversified portfolio of solutions touches upon every point of the document cycle within a company's workflow. Trust CSA to help you streamline and secure business processes, reduce costs, and improve productivity. Let us provide the technology, support, and service you need to create a seamless workflow for your business operations.

**J. Describe any present or past litigation, bankruptcy or reorganization involving supplier.**

CSA is subject to litigation from time to time, however, there is no pending litigation that will impair CSA's performance with respect to a mutually acceptable contract that may be negotiated upon award.

CSA has not been declared bankrupt or made a voluntary or involuntary assignment in bankruptcy.

**K. Felony Conviction Notice: Indicate if the supplier**

- a. is a publicly held corporation and this reporting requirement is not applicable;
- b. is not owned or operated by anyone who has been convicted of a felony; or
- c. is owned or operated by and individual(s) who has been convicted of a felony and provide the names and convictions.

b. is not owned or operated by anyone who has been convicted of a felony

**L. Describe any debarment or suspension actions taken against supplier**

None.

## 3.2 Distribution, Logistics

**A. Describe the full line of products and services offered by supplier.**

CSA has the benefit of the strength, innovation, and longevity of the world-renowned Canon brand. Our portfolio of solutions is one of the most robust in the industry. With a sales and service footprint incorporating enterprise, large format, production, and vertical industry solutions, along with the expert knowledge of our people and a culture of providing excellent support and service nationally, we are uniquely positioned to meet the growing demands of today's world.

Canon technology continues to set the bar for innovation, quality, productivity, reliability, and energy efficiency, and we are proud to be part of that heritage. We are committed to upholding the excellence of the Canon brand.

### **Our Solutions**

Our talented team of experts, analysts, and representatives will work with you to craft a solution that is unique to your specific needs. We are always thinking of innovative ways to maximize your uptime, your return on investment, and your efficiency.

### **Device Technology**

- Multifunctional Devices
- Production Systems
- Large Format Printers
- Print Servers
- Scanners

- Single Function Printers

## Software Technology

- Scanning
- Archiving
- Security
- Distribution
- Processing
- Job Submission
- Fleet Management
- Cost Tracking

## Workflow Solutions

- Customized Industry Applications
- Data Security
- Cost Control
- Workflow Management
- Output Management
- Web-to-Print Applications
- Business Communications
- Information Management
- Document Distribution
- Data Loss Prevention (DLP)
- Enterprise Digital Rights Management (EDRM)

Our integrated solutions can adapt to your pre-existing workflow, regardless of the composition of your print environment. We can help your organization re-engineer your processes, if necessary, without having to revamp your entire infrastructure.

## Services

As a sales and service subsidiary of Canon U.S.A., Inc., CSA is part of a larger support network and can provide extensive support to you. Our service and support division is the backbone of our company's success. At CSA, we take great pride in our comprehensive support structure which allows our customers to enjoy a blanket of technical service coverage that ensures their ongoing satisfaction.

Trust CSA to help you streamline processes, reduce costs, and increase productivity. Let us provide the technology, support, and service you need to create a seamless workflow for your business operations. We offer:

- Workflow Analysis
- Implementation Support
- Remote Technical Support
- Business Services
- Managed Print Services
- Professional Services
- On-Site Training
- Outsourcing/Insourcing
- Remote Diagnostics

- National Help Desk
- Cybersecurity Consultation and Threat Mitigation Services
- Virtual Chief Information Security Officer (vCISO)
- Security Awareness Training
- Device Hardening

## Professional Services

Professional Services helps you get the most out of your technology investment by providing you with support along the way, starting with consulting and implementation services, through project management, training and education, and then ongoing help desk support as needed.

## Managed Services / Business Services

Managed Services helps your organization gain added control of your workflow and output management through tracking print usage, optimization of your fleet, quarterly account reviews, and more. Business Services can help you save time and money when you outsource areas of your organization that are outside of your core business.

## Technical Services

When you look beyond our outstanding products, you will find a dedication to service and support unsurpassed in our industry. It is our mission to recognize and respond to our customer needs effectively and efficiently. CSA stands ready to support our customers' needs by providing a host of professionals who are uniquely qualified to deliver uncompromising support. Our service and support division is literally the backbone of our company's success. At CSA, we take great pride in our comprehensive support structure which allows our customers to enjoy a blanket of technical service coverage that ensures their ongoing satisfaction.

The following is a list of various support services that CSA provides to our customers:

- Service Maintenance Agreements
- National Consulting Services (NCS)
- Dispatch Department
- Help Desk Call Center
- Account Management
- Supplies Replenishment
- Customer Care Center
- Device Hardening

## Service Maintenance Agreements

Once you have made an investment in Canon technology, you will want to protect that technology and maximize its usefulness with certified technical support. A CSA service agreement is the most cost-effective approach to maintaining the highest level of quality. The advantages to a Service Contract include:

- One fee for contract – no unexpected charges
- Minimal downtime
- Peak performance levels
- Maximum quality
- Fewer work interruptions

- Faster service
- Minimal waste

## Security Services

### Device Hardening

Cybersecurity professionals will tell you that open and unprotected MFDs and printers in an organization of any size are the low hanging fruit for malicious cybercriminals looking for a way to compromise a company infrastructure. The Canon imageRUNNER ADVANCE systems all contain a wide array of security features that, when enabled, can help reduce exposure to the outside threats that prevail today.

CSA can “harden” your devices against these threats. This service is an optional professional service that complements the standard on-board security components, such as hard disk erase, Trusted Platform Encryption Module, Verify Start Up bios scanning for secure booting of the device, etc.

### Cybersecurity Services

CSA is aligned with an industry leading cybersecurity firm who can provide a variety of world class services. Agile Cybersecurity Solutions (ACS) is an elite organization of top line security practitioners who routinely service the DoD, Department of Homeland Security, the U.S Intelligence agencies, and the private sector.

These Cyber SEALS, as they are known, can provide the following services:

- Consulting for Security Framework Development, Risk Assessments, Security Policy Development, GDPR Prep, and More
- Vulnerability Assessments (network, applications and web)
- Penetration Testing (network, applications and web)
- Incident Response
- Cyber Forensics for Investigations
- Customized Training including Workshops and Boot Camps for IT Staff
- Virtual CISO (annual subscription services for remote and onsite cybersecurity support)
- Red Team Testing

### Genuine Parts and Supplies

Canon Inc. has poured all the know-how of its extraordinary history of developing innovative office machines into each of its copiers, printers, and networked office systems. The same superiority of design and manufacture goes into all of the Canon-branded consumable imaging supplies and parts for this equipment. Naturally, no-one makes better parts and supplies for Canon products than Canon.

Canon puts its name on its parts and supplies because it stands behind their quality and performance. Each of the parts and supplies Canon makes for its office equipment products is a key part of the whole, carefully designed machine, which has been expertly engineered to provide top performance, reliability, and optimum output.

Using genuine Canon parts and supplies is your best insurance against equipment damage, and possibly voiding your equipment warranty. Here are some more reasons to rely on genuine Canon toner, parts, and supplies:

- Canon has decades of manufacturing expertise
- Canon products are evaluated and tested under extreme conditions

- All machines and consumables produced by Canon are constantly being redesigned and improved
- Canon genuine supplies enhance the quality and performance of your Canon equipment, resulting in a longer life for your Canon equipment, higher yields, superior performance, high-quality output, and minimal equipment jamming or malfunctioning

All Canon brand Copier toner and Copier toner containers are manufactured worldwide solely by Canon Inc. and its corporate affiliates. Canon Inc. does not outsource this manufacture or sell or license its technology for Copier toner and Copier toner containers, to third parties on an OEM basis or otherwise. As such, the only genuine Canon Copier toner or Copier toner containers are those manufactured by Canon Inc. and its corporate affiliates. By using Canon genuine supplies, you can enhance the quality and performance of your Canon equipment, experiencing:

- Longer life for your Canon equipment
- High yields
- Superior performance
- Highest quality output
- Minimal jamming or malfunctioning of equipment

## Canon Awards and Recognition

Canon has received numerous awards and recognition from top industry analysts and holds leadership positions in key segments of the office imaging market. When choosing Canon, you can feel confident that you're partnering with a company that delivers outstanding technologies across a range of markets.

### BLI Line of the Year Award

Canon's imageRUNNER ADVANCE Series has been recognized as the 2020 Copier MFP "Line of the Year" from Keypoint Intelligence – Buyers Laboratory Inc. (BLI). Every year, this award recognizes the vendor whose product line is deemed best overall based on rigorous laboratory evaluations. 2020 marks the 4<sup>th</sup> time in the last five years that Canon has received this accolade.

Over the past year, the Buyers Lab team tested copier/MFP models from manufacturers across the entire industry. Following this extensive testing, Canon's A3 imageRUNNER ADVANCE lineup was named 2020 Copier MFP "Line of the Year" for its:

- Easy maintenance procedures and proactive device management
- Ease of use with universal capabilities and features across the entire line.
- Well-designed touchscreen, which can be customized in many ways to suit individual users' preferences
- Simple mobile pairing capability for printing and scanning.
- Outstanding software lines (Canon's MEAP platform, uniFLOW and uniFLOW Online Express, and Universal Login Manager, among others) that boost security and help control costs

The 2020 Copier MFP "Line of the Year" award is yet another proof point reinforcing the imageRUNNER ADVANCE series' success in the A3 monochrome and color market. In addition to this accolade, Buyer's Laboratory LLC. (BLI) has honored the imageRUNNER ADVANCE line with 5 PaceSetter Awards for MFP Accessibility, Document Imaging Security, Mobile Print, Outstanding Serviceability, and Ease of Use.

In 2019, for the second year in a row, the imageRUNNER ADVANCE line received the Gold Award from American Security Today (AST) for “Best Access Control & Authentication System” in tandem with uniFLOW and imageWARE Secure Audit Manager.

The Third Edition of the imageRUNNER ADVANCE line continues to be the standard-bearer for excellent integrated security, workflow efficiency and quality and reliability featuring:

- Numerous standard security features out of the box
- McAfee Embedded control combined with Verify System at Startup and SIEM Integration
- Quick buttons and standardized user interface for seamless change management
- MEAP App integration with a multitude of existing Line of Business applications
- Remote diagnostics through imageWARE Remote that enable Auto Toner replacement, automatic meter reads and predictive maintenance
- A Unified Firmware Platform that is regularly updated to reflect the latest security and workflow enhancements

### **Energy Star Partner of the Year Award**

Canon U.S.A. has received the 2020 ENERGY STAR® Partner of the Year - Sustained Excellence Award for continued leadership and significant partnerships with ENERGY STAR. The ENERGY STAR Partner of the Year-Sustained Excellence Award is the highest honor among ENERGY STAR Awards. The U.S. Environmental Protection Agency (EPA) presents the Sustained Excellence Award to partners that have already received ENERGY STAR Partner of the Year recognition for a minimum of two consecutive years and have exceeded the criteria needed to qualify for recognition. This marks the third consecutive year Canon has received the Sustained Excellence Award (2018, 2019 and 2020). This is also the fifth consecutive year Canon has been recognized as a Partner of the Year.

For more than 20 years, Canon has collaborated with ENERGY STAR to save energy and money while promoting the development of energy-efficient products to help combat climate change and other important environmental issues. As part of the partnership, Canon offers over 175 ENERGY STAR certified products, each incorporating advanced energy-efficient technologies without compromising on features or performance. Energy-efficient technologies implemented within the full range of Canon products include energy-saver mode, automatic duplex settings and low-sleep power consumption.

### **BenchmarkPortal Awards**

The Canon U.S.A., Inc. Technical Support Center has earned the “Center of Excellence” certification from BenchmarkPortal for 11 consecutive years. Contact centers achieved the Center of Excellence distinction based on best-practice metrics drawn from the world’s largest database of objective and quantitative data that’s audited and validated by researchers from BenchmarkPortal.

To achieve certification as a Center of Excellence, a company must undergo a rigorous benchmarking process, which compares the organization’s operational metrics to those of its peers using the world’s largest database of contact center metrics. During this process, BenchmarkPortal experts audit and verify key data from the contact center applying for certification.

### **HDI Support Center Certification**

In addition to the awards that the Canon products we offer have received, CSA’s Solutions Support Center has achieved HDI Support Center Certification. HDI is a part of UBM Tech, a division of UBM LLC, and is the global professional association for technical service and support professionals and the premier

certification body for the industry. HDI offers the industry's leading certification program for technical support centers. This certification, valid for two years, was first achieved by the Solutions Support Centers in 2015, and was renewed in 2017 and 2019.

To verify the Solutions Support Centers' compliance with the HDI Support Center Certification Standard, CSA has successfully undergone thorough on-site renewal audits. Driven by a core belief in continuous improvement, every support agent, supervisor, and manager in the Solutions Support Centers strived to not only maintain the standards of the HDI Certification, but to exceed the results that merited the 2015 accreditation. Notably, our continued audits have in fact indicated significant improvement in the areas of Customer Satisfaction, Process and Procedures, and Performance—an impressive 12.8% overall score increase from the initial audit. This signifies our commitment to excellence, efficiency, and service quality based on the HDI Support Center Standard.

### **Innovative Technology**

In 2019, Canon Inc., was granted 3,548 patents by the US Patent and Trademark Office and maintained its third place ranking for patents granted according to IFI CLAIMS Patent Services, a leading producer of global patent databases. Last year Canon, Inc. became the only company in the world to be ranked in the top five U.S. patent holders for 34 consecutive years. These patents continue to demonstrate Canon's contribution to science and technology which are used to develop fundamental technologies designed to drive innovation and support customer and business needs.

### **Industry Awards and Honors**

- Canon is ranked 7<sup>th</sup> in the World's Most Reputable Companies
- Fortune Magazine's 2020 "World's Most Admired Companies" Ranked 5<sup>th</sup> in Computer Category
- Recognized as one of the 2019 World's Most Ethical Companies by the Ethisphere Institute
- 2019 Best Japan Brands Ranked 4<sup>th</sup>

## **B. Describe how supplier proposes to distribute the products/service nationwide. Include any states where products and services will not be offered under the Master Agreement, including U.S. Territories and Outlying Areas.**

CSA provides geographic coverage in major metropolitan areas throughout the United States. Each region is supported by a comprehensive web of service professionals who provide best-in-class technical support to our growing base of customers. Beyond these critical regions, a network of Canon-authorized service companies stands ready to support your needs.

CSA requires all Canon-authorized service companies to adhere to the same stringent standards and best practices that we commit to as an organization and must be fully certified to provide technical assistance on your Canon product. For each of our client engagements, CSA's account team is responsible for communicating specific requirements and expectations that are detailed in the contract with the subcontractor. The account team is also responsible for monitoring and measuring the subcontractor's performance and escalating any areas of non-compliance along with an action plan to either improve performance or terminate poor performing subcontractors.

CSA follows the following best practices when engaging a subcontractor:

- Identify the team who is responsible for subcontractor performance management.
- Train the team in the technical aspects of the subcontractor's responsibilities, performance expectations, and measurement criteria.



- Train the team in all aspects of compliance expectations and contractual requirements.
- Identify Key Performance Indicators, outline reporting requirements, and communicate expectations to subcontractors.
- Develop a Statement of Work for all subcontractors that clearly details all job requirements, penalties, and measurement criteria.
- Provide a framework for regular inspections, feedback, and remediation planning.
- Implement corrective action plans and weekly risk reporting for subcontractors who are not meeting expectations.

Our support personnel are measured to a high standard and held accountable for providing a superior service delivery to CSA's customers.

The strength of the Canon service delivery program is the over 1,000 locations across the United States who are all certified to meet Canon standards. There are over 7,500 factory-trained technicians who help solve technical and equipment problems wherever your site may be. All authorized service centers are required to submit a detailed business plan describing prospective territory and staffing plans as well as financials. They must agree to use only genuine Canon parts, and they must consent to unscheduled observations by Canon management.

**C. Describe how Participating Agencies are ensure they will receive the Master Agreement pricing; include all distribution channels such as direct ordering, retail or in-store locations, through distributors, etc. Describe how Participating Agencies verify and audit pricing to ensure its compliance with the Master Agreement.**

CSA has extensive history of supporting cooperative agreements and insuring coverage and utilization. From time to time Participating Agencies have asked for and received certified pricing to validate historical transactions.

**D. Identify all other companies that will be involved in processing, handling or shipping the products/service to the end user.**

CSA uses commercially available companies for products, parts and supplies. For delivery of pre-configured product CSA uses regional specialized carriers.

**E. Provide the number, size and location of Supplier's distribution facilities, warehouses and retail network as applicable.**

Please see Section 3 Current Distribution Model.

### **33 Marketing and Sales**

**A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to immediately implement the Master Agreement as supplier's primary go to market strategy for Public Agencies to supplier's teams nationwide, to include, but not limited to:**

- i. Executive leadership endorsement and sponsorship of the award as the public sector go-to-market strategy within first 10 days
- ii. Training and education of Supplier's national sales force with participation from the Supplier's executive leadership, along with the OMNIA Partners team within first 90 days

CSA will use the Agreement with UC and OMNIA Partners as a fully endorsed program by our Executive Leadership.

Based on the last 10 years of history, CSA is in a very fortunate position for the Marketing and Sales of cooperative agreements. We have the tools, training and process to implement an aggressive launch of a new agreement. Additionally, we have been able to have year over year growth with the legacy agreements.

**B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement to current Participating Public Agencies, existing Public Agency customers of Supplier, as well as to prospective Public Agencies nationwide immediately upon award, to include, but not limited to:**

**i. Creation and distribution of a co-branded press release to trade publications**

We will work with OMNIA Partners to create and deliver co-branded press releases, and content specifically geared around the agreement, to publications and associations.

**ii. Announcement, Master Agreement details and contact information published on the Supplier's website within first 90 days**

We will provide agreement information on our internal website at the onset of the agreement and periodically update when appropriate.

**iii. Design, publication and distribution of co-branded marketing materials within first 90 days**

Working with OMNIA Partners, we will take a complete review of the design, content and strategies for the co-branded marketing materials. The expectation is to provide the Participating Agencies with useful and compelling information.

**iv. Commitment to attendance and participation with OMNIA Partners at national (i.e. NIGP Annual Forum, NPI Conference, etc.), regional (i.e. Regional NIGP Chapter Meetings, Regional Cooperative Summits, etc.) and supplier-specific trade shows, conferences and meetings throughout the term of the Master Agreement**

**v. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by OMNIA Partners for partner suppliers. Booth space will be purchased and staffed by Supplier. In addition, Supplier commits to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum, as directed by OMNIA Partners.**

**vi. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement**

**vii. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, promotions, etc.)**

As a member of the NIGP Business Council for the past 10 years we understand the value of working with association on a national, regional and national basis. We will continue to grow our engagement with and support of their association and trade shows. Please see Section 4 Commitment to the Government and Education Sectors.

viii. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:

- OMNIA Partners standard logo;
- Copy of original Request for Proposal;
- Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier;
- Summary of Products and pricing;
- Marketing Materials
- Electronic link to OMNIA Partners' website including the online registration page;
- A dedicated toll-free number and email address for OMNIA Partners

Based on past experience, CSA has directed Participating Agencies directly to the OMNIA Partners' website to minimize any conflicts. We will review this based on OMNIA Partners' request.

C. Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement available nationally through OMNIA Partners. Include a list of current cooperative contracts (regional and national) Supplier holds and describe how the Master Agreement will be positioned among the other cooperative agreements.

During the past OMNIA Partners Agreement, we were able to convert the majority of Public Agency agreement to the use of the OMNIA Partners Master Agreement. There are a few legacy agreements that will become available with the awarding of the agreement. Additionally, we have used the legacy in lieu of a formal response to several RFPs.

D. Acknowledge Supplier agrees to provide its logo(s) to OMNIA Partners and agrees to provide permission for reproduction of such logo in marketing communications and promotions. Acknowledge that use of OMNIA Partners logo will require permission for reproduction, as well.

CSA requires reasonable limitations to be placed on usage of the Canon logo.

E. Confirm Supplier will be proactive in direct sales of Supplier's goods and services to Public Agencies nationwide and the timely follow up to leads established by OMNIA Partners. All sales materials are to use the OMNIA Partners logo. At a minimum, the Supplier's sales initiatives should communicate:

- i. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency
  - ii. Best government pricing
  - iii. No cost to participate
  - iv. Non-exclusive
- Acknowledged and Agreed.

F. Confirm Supplier will train its national sales force on the Master Agreement. At a minimum, sales training should include:

- i. Key features of Master Agreement
- ii. Working knowledge of the solicitation process
- iii. Awareness of the range of Public Agencies that can utilize the Master Agreement through OMNIA Partners
- iv. Knowledge of benefits of the use of cooperative contracts

Acknowledged and Agreed.

G. Provide the name, title, email and phone number for the person(s), who will be responsible for:

- i. Executive Support
- ii. Marketing
- iii. Sales
- iv. Sales Support
- v. Financial Reporting
- vi. Accounts Payable
- vii. Contracts

Acknowledged and Agreed.

H. Describe in detail how Supplier's national sales force is structured, including contact information for the highest-level executive in charge of the sales team.

CSA is a direct sales subsidiary of Canon U.S.A. With over 100 offices in most major metropolitan areas throughout the U.S., CSA continues to grow, providing sales, service and support of Canon's document management technology. CSA continues to expand into cities where companies may benefit from working directly with a Canon U.S.A., Inc. sales subsidiary.

We have both dedicated vertical markets account executives and general territory representatives selling to the government and education markets. They are trained and are successful providing the Participating Agencies products and services using UC's Agreement through OMNIA Partners.

Presently, OMNIA Partners has the contact information for the highest-level executive in charge of the sales team.

I. Explain in detail how the sales teams will work with the OMNIA Partners team to implement, grow and service the national program.

We currently work closely with OMNIA Partners team as a strategic supplier holding the County of DuPage contract. Our weekly and monthly correspondence at both the local and national levels (i.e. Regional Managers, Vice-Presidents, and Partner Development) will continue in a similar fashion with an emphasis on launching and growing this UC contract.

While Supplier will utilize OMNIA as its primary go to market strategy, in no event shall Supplier be liable for any fees to OMNIA in the event that a Supplier bid is awarded a contract with an entity not utilizing

OMNIA pricing or the Master Agreement, nor shall such bid or award constitute a breach of this Agreement.

**J. Explain in detail how Supplier will manage the overall national program throughout the term of the Master Agreement, including ongoing coordination of marketing and sales efforts, timely new Participating Public Agency account set-up, timely contract administration, etc.**

CSA will build on the past successes of managing the OMNIA Partners Master Agreement. Moving forward we will continue to focus on achieving the target revenue for this agreement. To that extent, we have a dedicated marketing resource to oversee the marketing and communication related activities with the OMNIA Partners. On a national basis, we have aligned both government and education within one team's responsibility. This team is led by the Major Accounts and Vertical Market Vice President who is responsible for the development and execution of the OMNIA Partners Marketing Plan. Over the past two years we have built specific market knowledge resources for sharing with our clients. This work will continue to be used to support the Participating Agencies.

**K. State the amount of Supplier's Public Agency sales for the previous fiscal year. Provide a list of Supplier's top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each.**

We generated in excess of \$240 million in Public Agency Sales for fiscal 2019. We will provide a list of our top 10 Public Agencies upon request in a non-public format.

**L. Describe Supplier's information systems capabilities and limitations regarding order management through receipt of payment, including description of multiple platforms that may be used for any of these functions.**

Presently, we are using a customized version of Oracle as our ERP system and are capable of managing all related data/details needed to support the national program.

**M. REDACTED**

**N. Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement.**

**i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners).**

- ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as Contract Sales to OMNIA Partners under the Master Agreement.
- iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners).
- iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal.

**Detail Supplier's strategies under these options when responding to a solicitation.**

While we will utilize the OMNIA Partners as our primary go-to-market strategy, in no event shall we be liable for any fees to OMNIA Partners in the event that we bid or are awarded a contract with any entity not utilizing the OMNIA Partners pricing or the Master Agreement, nor shall such bid or award constitute a breach of this Agreement.





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**CANON SOLUTIONS  
AMERICA, INC.'S DUN &  
BRADSTREET REPORT**



LIVE REPORT

**Currency:** Shown in USD unless otherwise indicated 

## CANON SOLUTIONS AMERICA, INC.

Trade Names: (SUBSIDIARY OF CANON U.S.A., INC., MELVILLE, NY)

ACTIVE
HEADQUARTERS (SUBSIDIARY)
**D-U-N-S Number:**

07-161-9878

**Company:**

CANON SOLUTIONS AMERICA, INC.

### Summary

|                        |  |                            |                            |
|------------------------|--|----------------------------|----------------------------|
| <b>D&amp;B Address</b> |  | <b>Added to Portfolio:</b> | 09/17/2013                 |
| <b>Address:</b>        | ONE CANON PARK<br>MELVILLE, NY, US - 11747               | <b>Endorsement:</b>        | aemery@solutions.canon.com |
| <b>Location</b>        | HEADQUARTERS (SUBSIDIARY)                                | <b>Last View Date:</b>     | 05/18/2020                 |
| <b>Type:</b>           |  |                            |                            |
| <b>Phone:</b>          | 631-330-5000   |                            |                            |
| <b>Fax:</b>            |  |                            |                            |
| <b>Web:</b>            | <a href="http://www.csa.canon.com">www.csa.canon.com</a> |                            |                            |

### Company Summary

#### SCORE BAR

|  |   |                     |  |
|--|---|---------------------|--|
| <b>D&amp;B Rating</b>                      |   | <b>1R3</b>          | 1R indicates 10 or more Employees, Credit appraisal of 3 is fair |
| <b>PAYDEX®</b>                             | ↓ | <b>72</b>           | Paying 12 days past due  |
| <b>Financial Stress Score Class</b>        | ↑ | <b>3</b>            | Moderate Risk of severe financial stress                         |
| <b>Commercial Credit Score Class</b>       | ↑ | <b>2</b>            | Low to Moderate Risk of severe payment delinquency               |
| <b>Highest Credit</b>                      |   | <b>700,000.00</b>   | Highest credit granted in the past 24 months.                    |
| <b>Credit Limit - D&amp;B Conservative</b> |   | <b>1,000,000.00</b> | Based on profiles of other similar companies.                    |
| <b>Credit Limit - D&amp;B Aggressive</b>   |   | <b>1,000,000.00</b> | Based on profiles of other similar companies.                    |
| <b>Years In Business</b>                   |   | <b>49</b>           |  |

**Lien Found**

N

**Judgment Found**

N

**Out of Business Indicator**

N

**Bankruptcy Found**

N

**SIC Code - D&B**

5044

Office equipment

#### D&B 3-MONTH PAYDEX®

**D&B 3-month PAYDEX® : 73** ⬇️

Low Risk (100) ; High Risk (1)

**When weighted by amount, Payments to suppliers average 11 Days Beyond Terms**

#### D&B PAYDEX®

**D&B PAYDEX® : 72** ⬇️

Low Risk (100) ; High Risk (1)

**When weighted by amount, Payments to suppliers average 12 days beyond terms**

#### D&B COMPANY OVERVIEW

This is a headquarters (subsidiary) location

**Branch(es) or Division(s) exist**

Y

**Chief Executive**

YOROKU ADACHI, CHB

**Age (Year Started)**

49 years (1971)

**Employees**

6600 (125 Here)

**History Status**

CLEAR

**Financing**

SECURED

**SIC**

5044 ,7389

**Line of business**

Whol office equipment, business services

**NAICS**

423420

## PUBLIC FILINGS

The following data includes both open and closed filings found in D&B's database on this company.

| Record Type  | Number of Records | Most Recent Filing Date |
|--------------|-------------------|-------------------------|
| Bankruptcies | 0                 | ---                     |
| Judgments    | 0                 | ---                     |
| Liens        | 0                 | ---                     |
| Suits        | 1                 | 03/26/2020              |
| UCCs         | 22                | 12/11/2019              |

The public record items contained herein may have been paid, terminated, vacated or released prior to today's date.

## COMMERCIAL CREDIT SCORE CLASS

**Commercial Credit Score Class : 2** 

Low Risk:1 ; High Risk:5

## FINANCIAL STRESS SCORE CLASS

**Financial Stress Score Class : 3** 

Low Risk:1 ; High Risk:5

## PAYDEX® TREND CHART

### Predictive Scores

## D&B VIABILITY RATING SUMMARY

The D&B Viability Rating uses D&B's proprietary analytics to compare the most predictive business risk indicators and deliver a highly reliable assessment of the probability that a company will go out of business, become dormant/inactive, or file for

bankruptcy/insolvency within the next 12 months. The D&B Viability Rating is made up of 4 components:

### Viability Score

#### Compared to All US Businesses within the D&B Database:

- Level of Risk: **Low Risk**
- Businesses ranked **3** have a probability of becoming no longer viable: **3 %**
- Percentage of businesses ranked **3**: **15 %**
- Across all US businesses, the average probability of becoming no longer viable: **14 %**

### Portfolio Comparison

#### Compared to All US Businesses within the same MODEL SEGMENT:

- Model Segment : **Established Trade Payments**
- Level of Risk: **Low Risk**
- Businesses ranked **3** within this model segment have a probability of becoming no longer viable: **3 %**
- Percentage of businesses ranked **3** with this model segment: **11 %**
- Within this model segment, the average probability of becoming no longer viable: **5 %**

### Data Depth Indicator

#### Data Depth Indicator:

- ✓ Rich Firmographics
- ✓ Extensive Commercial Trading Activity
- ✓ Basic Financial Attributes

Greater data depth can increase the precision of the D&B Viability Rating assessment.

To help improve the current data depth of this company, you can ask D&B to make a personalized request to this company on your behalf to obtain its latest financial information. To make the request, click the link below. Note, the company must be saved to a folder before the request can be made.

### Request Financial Statements

Reference the FINANCIALS tab for this company to monitor the status of your request.

### Company Profile:

#### Company Profile Details:

- Financial Data:
- Trade Payments:
- Company Size:
- Years in Business:

Z

Subsidiary

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## CURRENT DISTRIBUTION MODEL

## Current Distribution Model

CSA is the direct sales subsidiary of Canon U.S.A. The two entities share several facilities across the United States. Some of the facilities are corporate operations and regional warehouses.

CSA and Canon U.S.A. distribute the majority of products, part and supplies through twelve warehouse facilities.

### Warehouse Locations

| State | City                             | Address   | Zip   |
|-------|----------------------------------|---|-------|
| IL    | Woodridge                        | 10350 Beaudin Boulevard                               | 60517 |
| IL    | Itasca                           | 1800 Bruning Drive West                               | 60143 |
| OH    | Lockbourne (Columbus)            | 2525 Rohr Road Ste D                                  | 90810 |
| TX    | Irving                           | 3200 Regent Boulevard                                 | 97217 |
| NJ    | Monroe Township (3PL-CUSA/Menlo) | 24 Englehard Drive                                    | 32809 |
| NY    | NY                               | 5 West 37th Street Suite 1001 (Midtown Parts)         | 10018 |
| FL    | Orlando                          | 7803 Southland Boulevard Suite 202 (Parts Warehouse)  | 08831 |
| VA    | Alexandria                       | 6464 General Greenway Beltway Business Center Suite E | 93003 |
| CA    | San Pedro (3PL-CUSA/Nippon)      | 300 Westmont Drive                                    | 43137 |
| CA    | Livermore (Dublin)               | 161 S Vasco Road Suite E                              | 75063 |
| OR    | Portland                         | 6650 N. Basin, Building # 4, Suite D                  | 95134 |
| UT    | Salt Lake City                   | 930 W 3160 S (CSA, C/O Precision Equipment Placement) | 84119 |

### Branch Office Locations

| State | City                        | Address   | Zip        |
|-------|-----------------------------|---|------------|
| IL    | Burr Ridge                  | 1333 Burr Ridge Parkway Suite 175                         | 60527      |
| IL    | Chicago                     | 225 West Washington Suite 600                             | 60606-6604 |
| IL    | Itasca                      | 1800 Bruning Drive (1/2 WH)                               | 60143      |
| IL    | Itasca (LFS only)           | 100 Park Boulevard  | 60143      |
| IL    | Schaumburg                  | 425 North Martingale Rd Suite 100, 300,1400,1600 and 1650 | 60173      |
| IN    | Carmel (Indianapolis)       | 630 W Carmel Drive, Suite 130                             | 46032      |
| IN    | Fort Wayne                  | 6915 Innovations Blvd 3rd Unit                            | 46825      |
| IN    | South Bend                  | 2420 Viridian Drive Suite A & B                           | 46628      |
| KS    | Overland Park (Kansas City) | 7300 W 110th Street Suite 100                             | 66202      |
| KS    | Topeka                      | 1131 Southwest Winding Road Suite Space F                 | 66615      |
| KS    | Wichita (Regus)             | 801 East Douglas Avenue, 2nd floor Room 217               | 67202      |
| KY    | Lexington                   | 2285 Executive Drive Suite 110                            | 40505      |
| KY    | Louisville                  | 10200 Forest Green Blvd., Suite 112                       | 40223      |



## Current Distribution Model

Canon Solutions America, Inc.

|    |                            |   |            |
|----|----------------------------|---|------------|
| MI | Grand Rapids               | 330 East Beltline Ave NE Suite 201                              | 49506      |
| MI | Novi (Detroit)             | 39555 Orchard Hill Place Suite 190                              | 48375      |
| MN | Eagan (Minneapolis)        | 880 Blue Gentian Road Suite 100                                 | 55121      |
| MO | Coeur Creve (St. Louis)    | 6 CltyPlace Drive Suite 100                                     | 63141      |
| NE | Lincoln (La Vista)         | 3701 O Street   | 68510      |
| NE | Omaha (also La Vista)      | 9300 Underwood Avenue, Suite 160                                | 68114      |
| OH | Cleveland (Independence)   | 6100 Oak tree Blvd Suite 150                                    | 44131      |
| OH | Dublin (Columbus)          | 5200 Upper Metro Place Suite 150                                | 43017      |
| OH | Mason (Cincinnati)         | 4900 Parkway Drive Suite 170                                    | 45040      |
| OH | Maumee (Toledo)            | 1724 Indian Wood Circle Suite F                                 | 43537      |
| PA | Moon Township (Pittsburgh) | 500 Lindbergh Drive Suite 550                                   | 15108      |
| TX | Austin                     | 12515 Reasearch Blvd Bldg 7 Suite 110                           | 78759      |
| TX | Beaumont                   | 7510 Calder Avenue  | 77706      |
| TX | Houston                    | 2930 W Sam Houston Pkwy N Suite 125                             | 77043      |
| TX | San Antonio                | 17115 San Pedro Ave, Suite 100                                  | 78232      |
| WI | Waukesha (Milwaukee)       | Crossroads Corporate Center II 20800 Swenson Drive Suite 110    | 53186      |
| CT | East Hartford              | 100 Prestige Park Road Bay 10 (OBS and Parts only)              | 06108      |
| CT | Rocky Hill                 | I-91 Tech Center Bldg 2 845 Brook Street                        | 06067      |
| DE | Wilmington                 | 200 Bellevue Pkwy Suite 101                                     | 19809      |
| MA | Boston                     | 40 Broad Street Suite 102                                       | 02109      |
| ME | South Portland             | 75 John Roberts Road, Building B, Suite 12B                     | 04106      |
| NH | Bedford                    | 15 Constitution Drive   | 03110      |
| NJ | Burlington                 | 300 Commerce Square Blvd  | 08016      |
| NJ | Cranford                   | 11 Commerce Drive Suite 204                                     | 07016      |
| NJ | Jamesburg                  | 100 Ridge Road  | 08831      |
| NJ | Mount Laurel               | 8000 Midlantic Drive, Suite 110N                                | 08054      |
| NJ | Paramus                    | 115 West Century Road, Country Club Plaza, Ste. 370             | 07652      |
| NY | Albany                     | 18 Corporate Woods Blvd   | 12211      |
| NY | East Meadow                | 90 Merrick Avenue Suite 204                                     | 11554      |
| NY | Melville                   | One Canon Park  | 11747      |
| NY | New York                   | 125 Park Ave (9th & 10th flrs)                                  | 10017      |
| NY | White Plains               | 1133 Westchester Avenue, Suite N140                             | 10604      |
| PA | Horsham                    | 800 Enterprise Drive Suite 105                                  | 19044      |
| PA | Mechanicsburg (Harrisburg) | 5020 Ritter Rd Suite 111  | 17055      |
| PA | Philadelphia               | 1650 Market Street One Liberty Place Suite 360                  | 19103      |
| RI | Warwick/ Providence        | 117 Metro Center Blvd Suite 1003                                | 02886      |
| VT | Williston                  | 520 Avenue D  | 05495-7136 |
| AL | Birmingham                 | 1030 London Drive Suite 200                                     | 35211      |
| AL | Dothan                     | 217 Graceland Drive, Suite 1                                    | 36305      |
| AL | Mobile                     | 3059 Dauphin Square Connector                                   | 36607      |
| AL | Montgomery                 | 250 Commerce Street   | 36104      |
| AR | Little Rock                | 1401West Capital Ave, Suite 230                                 | 72201      |
| FL | Boca Raton                 | Boca Raton Innovation Campus, 4560 Communication Ave, Suite 100 | 33431      |



CANON SOLUTIONS AMERICA



## Current Distribution Model

Canon Solutions America, Inc.

|    |  |  |                |
|----|--|--|----------------|
| FL | Fort Myers                                   | 9160 Forum Corporate Parkway, Suite 350<br>(Virtual Office Only)       | 33905          |
| FL | Jacksonville                                 | 10401 Deerwood Park Blvd., Suite 2110<br>Building II                   | 32256          |
| FL | Maitland/ Orlando                            | 2600 Maitland Center Pkwy Suite Suite 170                              | 32751          |
| FL | Miami Lakes                                  | 7975 NW 154th St, Suite 350 (Grand Corp<br>Center)                     | 33016          |
| FL | Tallahassee                                  | 113 South Monroe St. (Virtual Office Only)                             | 32301          |
| FL | Tampa  | 7650 Courtney Campbell Causeway, Suite<br>100                          | 33607          |
| GA | Atlanta                                      | 1170 Peachtree Street, Suite 1200<br>(Executive Suite)                 | 30309          |
| GA | Norcross (Atlanta)                           | 5625 Oakbrook Parkway (first floor<br>Canon/CBS Facility)              | 30093          |
| GA | Savannah                                     | 7001 Chatham Center Dr., Suite 2300                                    | 31405          |
| LA | Baton Rouge                                  | 11115 Industrial Plex Blvd Suite 300                                   | 70809-<br>1982 |
| LA | Houma  | 4752 Highway 311, Suite 104  | 70360          |
| LA | Lake Charles                                 | Capital One Tower Building, One Lake<br>Shore Drive, Suite 1260        | 70629          |
| LA | Metairie (New Orleans)                       | 3850 N. Causeway Blvd, Suite 110                                       | 70002          |
| MD | Ellicott City (Baltimore)                    | 6011 University Blvd, Suite 460  | 21043          |
| MS | Gulfport                                     | Seaway Business Park, 14231 Seaway Rd.<br>Building C, Suite 5 (1/2 WH) | 39503          |
| MS | Ridgeland                                    | Market Ridge Road, Building 119 Suite A                                | 39157          |
| NC | Charlotte                                    | 8720 Red Oak Blvd Suite 502  | 28217          |
| NC | Durham                                       | 4319 South Alston Ave Suite 101  | 27713          |
| SC | Columbia                                     | 1320 Main Street, Suite 300 (Executive<br>Suite)                       | 29201          |
| TN | Knoxville                                    | 4707 Papermill Road Suite 101  | 37909          |
| TN | Nashville                                    | 402 BNA Drive Suite 360 building 100                                   | 37217          |
| VA | Falls Church                                 | 3190 Fairview Park Drive Suite 1000                                    | 22042          |
| VA | Richmond                                     | 3901 Westerre Parkway Suite 110  | 23233          |
| VA | Virginia Beach                               | 192 Ballard Court Suite 101  | 23462          |
| AZ | Scottsdale (Pheonix)                         | 1475 North Scottsdale Rd Suites 130 & 400                              | 85257          |
| CA | El Centro                                    | 203 S Waterman Ave Suite C   | 92243          |
| CA | Glendale (Los<br>Angeles/Wilshire/Calabasas) | 207 Goode Avenue, Suite 400 (& Suite 110)                              | 91203          |
| CA | Irvine                                       | 15975 Alton Parkway  | 92618          |
| CA | Long Beach                                   | 3900 Kilroy Airport Way, Suite 300                                     | 90806          |
| CA | Ontario                                      | 3237 E. Guasti Road Suite 200  | 91761          |
| CA | Sacramento                                   | 3835 North Freeway Blvd Suite 110                                      | 95834          |
| CA | San Diego                                    | 10509 Vista Sorrento Parkway Suite 116                                 | 92121          |
| CA | San Francisco                                | 201 California Street Suite 100  | 94111          |
| CA | San Jose (South Bay)                         | 3300 North First Street (first floor<br>Canon/CBS facility)            | 95134          |
| CA | Walnut Creek                                 | 1350 Treat Blvd Suite 150  | 94597          |
| CO | Centennial (Denver)                          | 7002 South Revere Pkwy Suite 80  | 80112          |
| CO | Englewood                                    | 14 Inverness Drive East Suite G-140                                    | 80112          |
| HI | Honolulu                                     | 841 Bishop Street, Suites, #156 (Davies<br>Pacific Center)             | 96813          |

**Canon**

CANON SOLUTIONS AMERICA

## Current Distribution Model

Canon Solutions America, Inc.

|    |                      |                                       |       |
|----|----------------------|---------------------------------------|-------|
| NM | Albuquerque          | 2420 Camanche Road NE                 | 87107 |
| NM | Farmington           | 2222 East 20th Street, Suite A        | 87401 |
| NV | Las Vegas            | 731 Pilot Road Suite J                | 89119 |
| OR | Beaverton (Portland) | 9401 SouthWest Nimbus Ave             | 97008 |
| OR | Medford              | 3539 Heathrow Way, Suite 108          | 97504 |
| UT | Salt Lake City       | 298 Mercer Way                        | 84115 |
| WA | Keenewick            | 8601 W Clearwater Ave                 | 99336 |
| WA | Spokane              | 10102 E Knox Suite 300                | 99206 |
| WA | Tukwila (Seattle)    | 12856 Interurban Avenue South, Bldg 1 | 98168 |
| WA | Yakima               | 901 W. Yakima Ave., Suite 1B          | 98902 |



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## COMMITMENT TO THE GOVERNMENT AND EDUCATION SECTORS



### Commitment to the Government and Education Sectors



Over the past 10 years, CSA has had an extremely good relationship with the NIGP. We have been supportive of the association and board. Beyond attending the annual Forum we have provided subject matter experts and speaker for the local chapters. Over the past four years we have witnessed the transformation of the association through the restructuring of the governance board NIGP 2.0. This transformation has increased participation by the members and member value.

We will remain a proud supporter of the NIGP.

The education from NIGP and the interaction with the nation's top public procurement professionals has helped us understand the true value of a strong piggybackable agreement, vetted by a top lead agency and managed by a national cooperative. Understanding the covenants that the CPPB or CPPO need to keep for their constituents provides guidance that assists our engagements with public entities.

Our sales representatives are equipped with the knowledge of cooperatives and the impact on cost reduction and the speed to implementation by leveraging a well-constructed agreement.



**Connecting Suppliers with the Public Procurement Community** – NIGP's Business Council comprised of representatives from each company participating in the Institute's Enterprise Sponsor Program. Enterprise Sponsors are leaders in their respective industries and have demonstrated a shared commitment to NIGP's values of: Accountability, Ethics, Impartiality, Professionalism, Service, and Transparency. We have been an established and active member and participant since 2008, and are considered

subject matter experts regarding NIGP's Business Council and their activities. The mission of the Business Council is to... Serve the NIGP membership and procurement profession through the sharing of resources and expertise in support of NIGP's educational, research and advocacy mission. In essence, the Business Council connects the supplier's perspective with the public procurement community and is dedicated to improving the buyer/supplier relationship. For the past four years Paul Murphy, VP Major Accounts and Vertical Markets has provided guidance as the Chair.

CSA has invested in research and established relationships with the leading associations within the Educational Market. Print still plays a critical role in education from the youth entering organized education to the graduates of the most prestigious higher education institutions.

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Canon Solutions America, Inc. as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Canon Solutions America, Inc. during the course of my relationship with you.

**OMNIA PARTNERS EXHIBITS  
EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS**

**FEDERAL CERTIFICATIONS  
ADDENDUM FOR AGREEMENT FUNDED BY U.S. FEDERAL GRANT**

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**TO WHOM IT MAY CONCERN:**

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. This form should be completed and returned.

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**DEFINITIONS**

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**Contract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward

**Contractor** means an entity that receives a contract as defined in Contract.

**Cooperative agreement** means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;
- (b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.
- (c) The term does not include:
  - (1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
  - (2) An agreement that provides only:
    - (i) Direct United States Government cash assistance to an individual;
    - (ii) A subsidy;
    - (iii) A loan;
    - (iv) A loan guarantee; or
    - (v) Insurance.

**Federal awarding agency** means the Federal agency that provides a Federal award directly to a non-Federal entity

**Federal award** has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or
- (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.
- (b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
- (c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).
- (d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

**Non-Federal entity** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

**Nonprofit organization** means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (b) Is not organized primarily for profit; and



**OMNIA PARTNERS EXHIBITS  
EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS**

(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

**Obligations** means, when used in connection with a non-Federal entity's utilization of funds under a Federal award, orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

**Pass-through entity** means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

**Recipient** means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

**Simplified acquisition threshold** means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

**Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Subrecipient** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**Termination** means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

The following certifications and provisions may be required and apply when Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

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**APPENDIX II TO 2 CFR PART 200**

**(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does offeror agree? YES \_\_\_\_\_ **PK** Initials of Authorized Representative of offeror

**(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)**

Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract.

Does offeror agree? YES \_\_\_\_\_ **PK** Initials of Authorized Representative of



OMNIA PARTNERS EXHIBITS

EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS

offeror

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does offeror agree to abide by the above? YES PK Initials of Authorized Representative of offeror

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with 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.

Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

(E) 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.

Pursuant to Federal Rule (E) above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small

**OMNIA PARTNERS EXHIBITS**

**EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS**

**Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.**

Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)**

Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

**(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the Executive Office of the President Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.**

Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency, the offeror will notify the Participating Agency.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.**

Pursuant to Federal Rule (I) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term and after the awarded term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, 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 a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) 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 grant or cooperative agreement, the undersigned shall

**OMNIA PARTNERS EXHIBITS**

**EXHIBIT F - FEDERAL FUNDS CERTIFICATIONS**

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

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**RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS**

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When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

---

**CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

---

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does offeror agree? YES PK Initials of Authorized Representative of offeror

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**CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

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To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

---

**CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336**

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Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

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**CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS**

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Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

---

**Offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.**

Offeror's Name:

**Canon Solutions America, Inc.**

Address, City, State, and Zip Code:

**Corporate Headquarters: One Canon Park, Melville, NY 11747**

OMNIA PARTNERS EXHIBITS  
Canon Solutions America, Inc.



*Pete Kavalyn*

6.3.20



**OMNIA PARTNERS EXHIBITS**  
**EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

**NEW JERSEY BUSINESS COMPLIANCE**

Suppliers intending to do business in the State of New Jersey must comply with policies and procedures required under New Jersey statutes. All offerors submitting proposals must complete the following forms specific to the State of New Jersey. Completed forms should be submitted with the offeror's response to the RFP. Failure to complete the New Jersey packet will impact OMNIA Partners's ability to promote the Master Agreement in the State of New Jersey.

- |        |   |
|--------|---|
| DOC #1 | Ownership Disclosure Form   |
| DOC #2 | Non-Collusion Affidavit   |
| DOC #3 | Affirmative Action Affidavit                                      |
| DOC #4 | Political Contribution Disclosure Form                            |
| DOC #5 | Stockholder Disclosure Certification                              |
| DOC #6 | Certification of Non-Involvement in Prohibited Activities in Iran |
| DOC #7 | New Jersey Business Registration Certificate                      |

New Jersey suppliers are required to comply with the following New Jersey statutes when applicable:

- all anti-discrimination laws, including those contained in N.J.S.A. 10:2-1 through N.J.S.A. 10:2-14, N.J.S.A. 10:5-1, and N.J.S.A. 10:5-31 through 10:5-38;
- Prevailing Wage Act, N.J.S.A. 34:11-56.26, for all contracts within the contemplation of the Act;
- Public Works Contractor Registration Act, N.J.S.A. 34:11-56.26; and
- Bid and Performance Security, as required by the applicable municipal or state statutes.

**OMNIA PARTNERS EXHIBITS  
EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

DOC #1

**OWNERSHIP DISCLOSURE FORM  
(N.J.S. 52:25-24.2)**

Pursuant to the requirements of P.L. 1999, Chapter 440 effective April 17, 2000 (Local Public Contracts Law), the offeror shall complete the form attached to these specifications listing the persons owning 10 percent (10%) or more of the firm presenting the proposal.

**Company Name:** Canon Solutions America, Inc.

**Street:** Corporate Headquarters: One Canon Park

**City, State, Zip Code:** **LIEBHERR**

Confidentiality and Non-Disclosure Agreement

**Complete as appropriate:**

I \_\_\_\_\_, certify that I am the sole owner of \_\_\_\_\_ **9. Entire Agreement**, that there are no partners and the business is not incorporated, and the provisions of N.J.S. 52:25-24.2 do not apply.

9.1 This Agreement encompasses ~~OR~~ the entire understanding between the Parties with respect to the matter of this Agreement, and there are no representations, warranties, covenants, agreements or understandings, oral or otherwise, express or implied, affecting this instrument that are not expressly set forth here. This Agreement supersedes any and all prior agreements, written or oral, heretofore made between the Parties with respect to the subject matter of this Agreement. ~~OR~~ I certify that the understanding set forth in this Agreement is the entire understanding between the Parties with respect to the subject matter of this Agreement. ~~OR~~ I further certify that the understanding set forth in this Agreement is the entire understanding between the Parties with respect to the subject matter of this Agreement.

9.2 This Agreement may not be ~~OR~~ modified or amended except by a writing duly executed by a ~~OR~~ authorized representative of the respective Parties.

**I Peter Kowalzek**, a corporation, do hereby certify that the following is a list of the names and addresses of ~~OR~~ each Party hereto has caused this Agreement to be duly executed by its respective duly authorized representative as follows: ~~OR~~ I further certify that if as follows more of such stockholders is itself a corporation or partnership, that there is also set forth the names and addresses of the stockholders holding 10% or more of the corporation's stock or the individual partners owning a 10% or greater interest in that partnership.

(Note: If there are ~~OR~~ stockholders owning 10% or more interest, in **Canon Solutions America, Inc.**)

Name "Liebhe

**Canon U.S.A., Inc**  
By: [Signature]

Name: Dr. N

Title: Contr  
I further certify that the state  
my knowledge and belief  
Date: 27<sup>th</sup> N

6.3.20  
Date

[Signature: Peter Kowalzek]



OMNIA PARTNERS EXHIBITS  
EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE

DOC #2

NON-COLLUSION AFFIDAVIT

Company Name: Canon Solutions America, Inc.

Street: Corporate Headquarters: One Canon Park

City, State, Zip Code: Melville, NY 11747

State of New York

County of Suffolk

I, Peter Kowalczuk of the Melville  
Name City

in the County of Suffolk, State of New York  
of full age, being duly sworn according to law on my oath depose and say that:

I am the President of the firm of Canon Solutions America, Inc.  
Title Company Name

*the Offeror making the Proposal for the goods, services or public work specified under the attached proposal, and that I executed the said proposal with full authority to do so; that said Offeror has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above proposal, and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that relies upon the truth of the statements contained in said proposal and in the statements contained in this affidavit in awarding the contract for the said goods, services or public work.*

*I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by*

Canon Solutions America, Inc.  
Company Name

Peter Kowalczuk President  
Authorized Signature & Title  
Peter Kowalczuk

Subscribed and sworn before me

this 3<sup>rd</sup> day of June, 2020

Pamela Marino

Notary Public of New York

My commission expires June 19, 2023



Requirements for National Cooperative Contract

PAMELA MARINO  
NOTARY PUBLIC, State of New York  
No. 01MA5C45376  
Qualified in Suffolk County  
Commission Expires June 19, 2023



OMNIA PARTNERS EXHIBITS  
EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE

DOC #3

AFFIRMATIVE ACTION AFFIDAVIT  
(P.L. 1975, C.127)

Company Name: Canon Solutions America, Inc.  
Street: Corporate Headquarters: One Canon Park  
City, State, Zip Code: Melville, NY 11747

**Proposal Certificate** **LIEBHERR** Confidentiality and Non-Disclosure Agreement

Indicate below company's compliance with New Jersey Affirmative Action regulations. Company's proposal will be accepted even if company is not in compliance at this time. No contract and/or purchase order may be issued, however, until all Affirmative Action requirements are met.

**Required Affirmative Action Evidence:**

9.1 ~~This Agreement is the entire understanding between the Parties with respect to the subject matter of this Agreement, and there are no representations, warranties, covenants, agreements, understandings, oral or otherwise, express or implied, affecting this instrument that are not expressed herein. This Agreement supersedes any and all prior agreements, written or oral, heretofore made between the Parties with respect to the subject matter of this Agreement.~~  
Procurement, Professional Services, or Construction (PSC) based on this Agreement.  
Vendors must submit with proposal:  
1. A photocopy of their Federal Letter of Affirmative Action Plan Approval.

OR  
9.2 This Agreement may not be modified or amended except by a writing duly executed by the representatives of the respective Parties.  
2. A photo copy of their Certificate of Employee Information Report

Each Party hereto has caused this Agreement to be duly executed by its respective duly authorized representative as follows:  
OR  
3. A complete Affirmative Action Employee Information Report (AA302)

Public Work – Over \$50,000 Total Project Cost:  
*Liebherr*

OMNIA PARTNERS  
Canon Solutions America, Inc.

A. No approved Federal or New Jersey Affirmative Action Plan (AA201-A) upon receipt of this proposal.  
By: [Signature]  
Name: Dr. N

I further certify that the statements made herein are true and correct to the best of my knowledge and belief.  
Title: Contract Manager  
Date: 6.3.20 27<sup>th</sup> M  
          
Date

[Signature]  
CANON SOLUTIONS LEGAL  
APPROVED AS TO FORM  
DATE

CANON SOLUTIONS LEGAL  
KN  
APPROVED AS TO FORM  
6/1/2020  
DATE

Requ

**OMNIA PARTNERS EXHIBITS  
EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

DOC #3, continued

**P.L. 1995, c. 127 (N.J.A.C. 17:27)  
MANDATORY AFFIRMATIVE ACTION LANGUAGE**

**PROCUREMENT, PROFESSIONAL AND SERVICE  
CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, employment, **LIEBHERR** Such action shall include, but not be limited to the following: recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, **Entire Agreement** color, national origin, ancestry, marital status, sex, affectional or sexual orientation.


The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. **9.1 This Agreement encompasses the entire understanding between the Parties with respect to the subject matter of this Agreement and there are no representations, warranties, covenants, agreements or understandings, oral or otherwise, express or implied, affecting this instrument that are not expressly herein. This Agreement supersedes any and all prior agreements, written or oral, heretofore made between the Parties with respect to the subject matter of this Agreement.**

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor **9.2 This Agreement may not be modified, amended, or terminated except by a writing duly executed by the representatives of the respective Parties.** This Agreement may not be modified, amended, or terminated except by a writing duly executed by the representatives of the respective Parties. P.L.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals, determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2. **Each Party hereto has caused this Agreement to be duly executed by its respective duly authorized representative as follows.**

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices. **Liebherr-America, Inc. Canon Solutions America, Inc. OMNIA PARTNERS EX**

The contractor or subcontractor testing conforms with the requirements of the Affirmative Action Office of the State of New Jersey and as follows:

The contractor or subcontractor agrees to ensure that all such actions are consistent with the Affirmative Action Office of the State of New Jersey and as follows:  
By:   
Name: Dr. N  
Title: sub Contr

The contractor or subcontractor may be requested by the office of the Affirmative Action Office of the State of New Jersey to furnish such information for an investigation pursuant to Subchapter 17:27-5.2







Certification 23820

**CERTIFICATE OF EMPLOYEE INFORMATION REPORT  
RENEWAL**

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of **15-FEB-2019** to **15-FEB-2022**

**CANON SOLUTIONS AMERICA  
ONE CANON PARK  
SUFFOLK NY 11747**



*Elizabeth M. Muoio*

ELIZABETH MAHER MUOIO  
State Treasurer

**OMNIA PARTNERS EXHIBITS**  
**EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

DOC #4

**C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM**  
**Public Agency Instructions**

This page provides guidance to public agencies entering into contracts with business entities that are required to file Political Contribution Disclosure forms with the agency. **It is not intended to be provided to contractors.** What follows are instructions on the use of form local units can provide to contractors that are required to disclose political contributions pursuant to N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271, s.2). Additional information on the process is available in Local Finance Notice 2006-1 ([http://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)). Please refer back to these instructions for the appropriate links, as the Local Finance Notices include links that are no longer operational.

1. The disclosure is required for all contracts in excess of \$17,500 that are **not awarded** pursuant to a “fair and open” process (N.J.S.A. 19:44A-20.7).
2. Due to the potential length of some contractor submissions, the public agency should consider allowing data to be submitted in electronic form (i.e., spreadsheet, pdf file, etc.). Submissions must be kept with the contract documents or in an appropriate computer file and be available for public access. **The form is worded to accept this alternate submission.** The text should be amended if electronic submission will not be allowed.
3. The submission must be **received from the contractor and** on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.
4. The contractor must disclose contributions made to candidate and party committees covering a wide range of public agencies, including all public agencies that have elected officials in the county of the public agency, state legislative positions, and various state entities. The Division of Local Government Services recommends that contractors be provided a list of the affected agencies. This will assist contractors in determining the campaign and political committees of the officials and candidates affected by the disclosure.
  - a. The Division has prepared model disclosure forms for each county. They can be downloaded from the “County PCD Forms” link on the Pay-to-Play web site at <http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#12>. They will be updated from time-to-time as necessary.
  - b. A public agency using these forms **should edit them to properly reflect the correct legislative district(s)**. As the forms are county-based, **they list all legislative districts** in each county. **Districts that do not represent the public agency should be removed from the lists.**
  - c. Some contractors may find it easier to provide a single list that covers all contributions, regardless of the county. These submissions are appropriate and should be accepted.
  - d. The form may be used “as-is”, subject to edits as described herein.
  - e. The “Contractor Instructions” sheet is intended to be provided with the form. It is recommended that the Instructions and the form be printed on the same piece of paper. The form notes that the Instructions are printed on the back of the form; where that is not the case, the text should be edited accordingly.
  - f. The form is a Word document and can be edited to meet local needs, and posted for download on web sites, used as an e-mail attachment, or provided as a printed document.
5. It is recommended that the contractor also complete a “Stockholder Disclosure Certification.” This will assist the local unit in its obligation to ensure that contractor did not make any prohibited contributions to the committees listed on the Business Entity Disclosure Certification in the 12 months prior to the contract (See Local Finance Notice 2006-7 for additional information on this obligation at [http://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)). A sample Certification form is part of this package and the instruction to complete it is included in the Contractor Instructions. NOTE: This section is not applicable to Boards of Education.

**OMNIA PARTNERS EXHIBITS**  
**EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

Doc #4, continued **C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM**

**Contractor Instructions**

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a “fair and open” process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee\*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an “interest” ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, “a contribution by that person’s spouse or child, residing therewith, shall be deemed to be a contribution by the business entity.” [N.J.S.A. 19:44A-20.26(b)] The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor’s responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor’s submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

\* N.J.S.A. 19:44A-3(s): “The term “legislative leadership committee” means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures.”





**OMNIA PARTNERS EXHIBITS  
EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

**List of Agencies with Elected Officials Required for Political Contribution Disclosure  
N.J.S.A. 19:44A-20.26**

**County Name:**

State: Governor, and Legislative Leadership Committees

Legislative District #s:

State Senator and two members of the General Assembly per district.

**County:**

Freeholders

{County Executive}

County Clerk

Surrogate

Sheriff

Municipalities (Mayor and members of governing body, regardless of title):

**USERS SHOULD CREATE THEIR OWN FORM, OR DOWNLOAD  
FROM THE PAY TO PLAY SECTION OF THE DLGS WEBSITE A  
COUNTY-BASED, CUSTOMIZABLE FORM.**



**OMNIA PARTNERS EXHIBITS  
EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

DOC #5

**STOCKHOLDER DISCLOSURE CERTIFICATION**

**Name of Business:**

I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

**OR**

I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**

Partnership

Corporation

Sole Proprietorship

Limited Partnership

Limited Liability Corporation

Limited Liability Partnership


Subchapter S Corporation

**Sign and notarize the form below, and, if necessary, complete the stockholder list below.**

Stockholders:

|  |               |
|--|---------------|
| Name: <b>Canon U.S.A., Inc.</b>                            | Name:         |
| Home Address: <b>One Canon Park<br/>Melville, NY 11747</b> | Home Address: |
| Name:  | Name:         |
| Home Address:  | Home Address: |
| Name:  | Name:         |
| Home Address:  | Home Address: |



|   |   |
|---|---|
| Subscribed and sworn before me this <u>3<sup>rd</sup></u> day of <u>June</u> ,<br><u>2020</u>   | <br>(Affiant) |
| (Notary Public) PAMELA MARINO<br>NOTARY PUBLIC, State of New York<br>No. 01MA5C45376<br>Qualified in Suffolk County<br>Commission Expires June 19, 20 <u>23</u> | <b>Peter Kowalczyk, President</b><br>(Print name & title of affiant)                              |
| My Commission expires:  | (Corporate Seal)  |

Requirements for National Cooperative Contract



**OMNIA PARTNERS EXHIBITS**  
**EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

DOC #6

**Certification of Non-Involvement in Prohibited Activities in Iran**

Pursuant to N.J.S.A. 52:32-58, Offerors must certify that neither the Offeror, nor any of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32 – 56(e) (3)), is listed on the Department of the Treasury’s List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32 – 56(f).

Offerors wishing to do business in New Jersey through this contract must fill out the Certification of Non-Involvement in Prohibited Activities in Iran here:

[http://www.state.nj.us/humanservices/dfd/info/standard/fdc/disclosure\\_investmentact.pdf](http://www.state.nj.us/humanservices/dfd/info/standard/fdc/disclosure_investmentact.pdf).

Offerors should submit the above form completed with their proposal.

**STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY  
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

Quote Number: 001811-Feb2020

Bidder/Offeror: Canon Solutions America, Inc.

**PART 1: CERTIFICATION**

**BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.**

**FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE.**

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders must review this list prior to completing the below certification. **Failure to complete the certification will render a bidder's proposal non-responsive.** If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment.

**LIEBHERR**

Confidentiality and Non-Disclosure Agreement

PLEASE CHECK THE APPROPRIATE BOX:

I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. **I will skip Part 2 and sign and complete the Certification below.**

**9. Entire Agreement**

OR


I am unable to certify as above. This Agreement encompasses the entire understanding between the Parties with respect to the subject matter of this Agreement, and there are no representations, warranties, covenants, agreements, understandings, oral or otherwise, express or implied, affecting this instrument that are not expressly stated herein. This Agreement supersedes any and all prior agreements, written or oral, heretofore made between the Parties with respect to the subject matter of this Agreement.

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN**

You must provide a detailed, accurate, and precise description of the activities of the bidding person or entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran, outlined above by completing the boxes below.

**9.2 This Agreement may not be modified or amended except by a writing duly executed by the Parties.**

**EACH BOX WILL PROMPT YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ADDITIONAL ACTIVITIES ENTRY" BUTTON.**


|   |                                |
|---|--------------------------------|
| Name  | Relationship to Bidder/Offeror |
| Description of Activities   |                                |
| Duration of Engagement  |                                |
| Bidder/Offeror Contact Name   |                                |
| By:  |                                |
| Name  | Title                          |
| ADD AN ADDITIONAL ACTIVITIES ENTRY  |                                |

OMNIA PARTNER  
Canon Solutions America, Inc.

Certification: I, being duly sworn upon my oath, hereby certify that the information provided herein is true and complete. I attest that I am not aware of any information that would cause me to believe that the information provided herein is false or misleading. I acknowledge that the State of New Jersey is relying on the information contained herein. I recognize that I am making this certification, and if I do so, I recognize that I am making my agreement(s) with the State of New Jersey and that it is enforceable.

Full Name (Print): Peter Kowalczyk  
Title: President





06/03/20





**OMNIA PARTNERS EXHIBITS**  
**EXHIBIT G- NEW JERSEY BUSINESS COMPLIANCE**

DOC #7

**NEW JERSEY BUSINESS REGISTRATION CERTIFICATE**  
**(N.J.S.A. 52:32-44)**

Offerors wishing to do business in New Jersey must submit their State Division of Revenue issued Business Registration Certificate with their proposal here. Failure to do so will disqualify the Offeror from offering products or services in New Jersey through any resulting contract.

<http://www.state.nj.us/treasury/revenue/forms/njreg.pdf>

05/16/13

Taxpayer Identification# 132-677-004/000

Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

Additionally, please note that State law requires all contractors and subcontractors with Public agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.

If you have any questions or require more information, feel free to call our Registration Hotline at (609)292-9292.

I wish you continued success in your business endeavors.

Sincerely,



James J. Fruscione  
Director  
New Jersey Division of Revenue

STATE OF NEW JERSEY  
BUSINESS REGISTRATION CERTIFICATE

DEPARTMENT OF TREASURY/  
DIVISION OF REVENUE  
PO BOX 252  
TRENTON, N J 08646-0252

TAXPAYER NAME:  
CANON SOLUTIONS AMERICA, INC.

ADDRESS:  
300 COMMERCE SQ BLVD  
BURLINGTON NJ 08016-1270  
EFFECTIVE DATE:


05/01/71

TRADE NAME:

SEQUENCE NUMBER:  
0058553

ISSUANCE DATE:

05/16/13



Director  
New Jersey Division of Revenue

FORM-BRC

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

(04-00), D205046V

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION  
SALES TAX COLLECTION SCHEDULE  
RATE 7% EFFECTIVE JULY 15, 2006

| Amount of Sale      | Tax to be Collected | Amount of Sale      | Tax to be Collected |
|---------------------|---------------------|---------------------|---------------------|
| \$0.01 to \$0.10 .. | None                | \$5.91 to \$6.10 .. | \$0.42              |
| 0.11 to 0.19 ..     | \$0.01              | 6.11 to 6.19 ..     | .43                 |
| 0.20 to 0.32 ..     | .02                 | 6.20 to 6.32 ..     | .44                 |
| 0.33 to 0.47 ..     | .03                 | 6.33 to 6.47 ..     | .45                 |
| 0.48 to 0.62 ..     | .04                 | 6.48 to 6.62 ..     | .46                 |
| 0.63 to 0.77 ..     | .05                 | 6.63 to 6.77 ..     | .47                 |
| 0.78 to 0.90 ..     | .06                 | 6.78 to 6.90 ..     | .48                 |
| 0.91 to 1.10 ..     | .07                 | 6.91 to 7.10 ..     | .49                 |
| 1.11 to 1.19 ..     | .08                 | 7.11 to 7.19 ..     | .50                 |
| 1.20 to 1.32 ..     | .09                 | 7.20 to 7.32 ..     | .51                 |
| 1.33 to 1.47 ..     | .10                 | 7.33 to 7.47 ..     | .52                 |
| 1.48 to 1.62 ..     | .11                 | 7.48 to 7.62 ..     | .53                 |
| 1.63 to 1.77 ..     | .12                 | 7.63 to 7.77 ..     | .54                 |
| 1.78 to 1.90 ..     | .13                 | 7.78 to 7.90 ..     | .55                 |
| 1.91 to 2.10 ..     | .14                 | 7.91 to 8.10 ..     | .56                 |
| 2.11 to 2.19 ..     | .15                 | 8.11 to 8.19 ..     | .57                 |
| 2.20 to 2.32 ..     | .16                 | 8.20 to 8.32 ..     | .58                 |
| 2.33 to 2.47 ..     | .17                 | 8.33 to 8.47 ..     | .59                 |
| 2.48 to 2.62 ..     | .18                 | 8.48 to 8.62 ..     | .60                 |
| 2.63 to 2.77 ..     | .19                 | 8.63 to 8.77 ..     | .61                 |
| 2.78 to 2.90 ..     | .20                 | 8.78 to 8.90 ..     | .62                 |
| 2.91 to 3.10 ..     | .21                 | 8.91 to 9.10 ..     | .63                 |
| 3.11 to 3.19 ..     | .22                 | 9.11 to 9.19 ..     | .64                 |
| 3.20 to 3.32 ..     | .23                 | 9.20 to 9.32 ..     | .65                 |
| 3.33 to 3.47 ..     | .24                 | 9.33 to 9.47 ..     | .66                 |
| 3.48 to 3.62 ..     | .25                 | 9.48 to 9.62 ..     | .67                 |
| 3.63 to 3.77 ..     | .26                 | 9.63 to 9.77 ..     | .68                 |
| 3.78 to 3.90 ..     | .27                 | 9.78 to 9.90 ..     | .69                 |
| 3.91 to 4.10 ..     | .28                 | 9.91 to 10.10 ..    | .70*                |
| 4.11 to 4.19 ..     | .29                 | Over \$10 .....     | .70*                |
| 4.20 to 4.32 ..     | .30                 | Over \$20 .....     | 1.40*               |
| 4.33 to 4.47 ..     | .31                 | Over \$30 .....     | 2.10*               |
| 4.48 to 4.62 ..     | .32                 | Over \$40 .....     | 2.80*               |
| 4.63 to 4.77 ..     | .33                 | Over \$50 .....     | 3.50*               |
| 4.78 to 4.90 ..     | .34                 | Over \$60 .....     | 4.20*               |
| 4.91 to 5.10 ..     | .35                 | Over \$70 .....     | 4.90*               |
| 5.11 to 5.19 ..     | .36                 | Over \$80 .....     | 5.60*               |
| 5.20 to 5.32 ..     | .37                 | Over \$90 .....     | 6.30*               |
| 5.33 to 5.47 ..     | .38                 | Over \$100 .....    | 7.00*               |
| 5.48 to 5.62 ..     | .39                 | Over \$200 .....    | 14.00*              |
| 5.63 to 5.77 ..     | .40                 | Over \$300 .....    | 21.00*              |
| 5.78 to 5.90 ..     | .41                 | Over \$400 .....    | 28.00*              |

\* On amounts above \$10.00, the tax shall be \$0.07 on each full dollar of the amount of sale, plus the tax on each part of a dollar in excess of a full dollar in accordance with the above formula.

ST-75 (7-06)

**NOTICE:** The enclosed N.J. State Sales Tax Certificate of Authority (CA-1) is a permit to:

- Collect N.J. State Sales Tax
- Issue N.J. Resale Certificates (ST-3)
- Issue N.J. Exempt Use Certificates (ST-4)

You must have a valid N.J. Sales Tax Certificate to collect Sales Tax or issue certificates. If you are not subject to collect N.J. Sales Tax but need to issue Resale or Exempt Use Certificates, you can request to be placed on a "Non-reporting Basis". Call or write the Division to obtain the proper forms (ST-6205) at: State of New Jersey Division of Taxation P O Box 252 Trenton, N.J. 08646-0252 (609) 292-9292. This Certificate of Authority (CA-1) must be displayed at your place of business.

132-677-004/000

**STATE OF NEW JERSEY**  
**Certificate of Authority**

DIVISION OF TAXATION  
TRENTON, N.J. 08695

The person, partnership or corporation named below is hereby authorized to collect  
**NEW JERSEY SALES & USE TAX**

pursuant to **N.J.S.A. 54:32B-1 ET SEQ.**

This authorization is good ONLY for the named person at the location specified herein.  
This authorization is null and void if any change of ownership or address is effected.

**CANON SOLUTIONS AMERICA, INC.**  
**300 COMMERCE SQ BLVD**  
**BURLINGTON NJ 08016-1270**

Tax Registration No.: **XXX-XXX-004/000**  
Tax Effective Date: **03-01-13**  
Document Locator No.: **C0000530512**  
Date Issued: **06-14-13**

*Michael J. Boy*  
Director, Division of Taxation

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.



## Agenda Report

24-522

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Action to Authorize the City Manager to Negotiate and Execute Agreements and/or Amendments to Existing Agreements as Required to Complete Emergency Transformer Replacement at Juliette Substation and Approve Related Budget Amendment

#### BACKGROUND

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), owns and operates the Juliette Substation (JUL), which provides electric service and power to Intel Corporation (Intel). Intel is one of SVP's largest customers, and the Intel campus connects to SVP's 60KV Northwest Loop.

SVP and Intel are interconnected between SVP's 12KV transformers and the customer's 12KV switchgear. Intel is responsible for maintaining their own switchgear and substation. As part of the electric system, SVP owns and is responsible for maintaining the 60KV Circuit Breakers and two (2) 60KV/12KV, 56MVA distribution transformers at JUL.

#### Intel's Request to Re-rate Existing Transformers

In 2022, Intel requested that SVP conduct a re-rating of the existing 56MVA transformers at JUL. Their requested rating is 62MVA, which represents a 10.7% increase.

These transformers were manufactured by the HK Porter Company in 1986. Delta Star Inc. (DSI) currently holds ownership of the design; therefore, SVP contracted with DSI to perform the re-rate study for the transformers located at JUL. Intel has or will pay for the study, the resulting inspections, and all the recommended upgrades.

In September 2022, DSI performed an initial inspection and assessment of the JUL transformers to determine whether they were in acceptable condition to be rated at a higher MVA. At that time, DSI informed SVP that the transformer inspection and field testing did not indicate any problem areas or concerns, and that the transformers could be re-rated to 62MVA. As a part of their deliverables, DSI also produced a re-rate engineering report, which outlined the new MVA rating for the existing JUL transformers, along with all of the required field upgrades.

In March 2024, prior to performing field upgrades to the JUL transformers, DSI performed an additional inspection. This time, DSI found various issues with the transformers, including:

- 1) Large gaps in the core steel and possible core joint overheating, as evidenced by high parts-per-million (PPM) concentration of hydrogen gas in the insulating oil.
- 2) Loose key spacers in the transformer's high voltage winding. This can pose a critical challenge during a fault.
- 3) Low voltage winding leads and bushings that need to be replaced in order to increase the MVA



rating of the transformers.

- 4) Other identified areas of concern are regarding the heating of oil and paper as shown by elevated gases in the insulating oil and the lack of margin in winding rises.

Due to these new findings from the latest field inspection of the JUL transformers, a re-rate is no longer feasible. DSI has recommended the following: (1) maintain the current transformers MVA rating; (2) increase monitoring, and (3) add cooling fans in an effort to extend the life of the aging transformers until their replacements are delivered. This will affect Intel's request to meet their desired 62MVA demand as the transformers will remain at their current rating of 56MVA until replaced

## DISCUSSION

SVP, with concurrence from the Purchasing Division Manager, recommends that the City procure from DSI two (2) new 65MVA transformers for JUL without being required to engage in a formal competitive procurement process. Under Section 2.105.290 of the Santa Clara City Code, the City of Santa Clara (the City) may forgo competitive bidding when, "Due to circumstances beyond the control of the City, the time necessary to use the competitive procurement procedure would result in substantial economic loss to the City or substantial interference with a critical City operation." These transformers require replacement to avoid a substantial interference with a critical City operation, namely, to provide electric service.

SVP conducted due diligence by directly reaching out to major transformer manufacturers, including Delta Star, Inc. (DSI), Prolec-GE Waukesha, Inc., Siemens Energy USA, and Hyundai Power Transformers USA (Hyundai), and received limited responses. Hyundai declined to bid on transformers of this size and other vendors have not yet provided bids for SVP's consideration. In addition, the current market is facing significant supply chain issues, with many large vendors refusing to accept any new orders or unable to meet SVP's delivery requirements.

DSI provided SVP with a quote for two (2) new 60KV/12KV, 65MVA transformers. DSI's pricing is \$9.3 million for both transformers, with the first delivery scheduled for the end of Q3/2025 and the second delivery promised for Q4/2026. This quote expires 30 days from May 1, 2024. DSI is the only local power transformer manufacturing company with a plant in San Carlos, CA, and a local transformer field services crew, and DSI is currently supporting SVP with similar projects. Staff is evaluating potential options included in the quote for additional services and recommended spare parts. This pricing does not include tax, therefore, staff recommends authorization for up to \$11.5 million for these transformers including optional items, freight, and taxes.

In addition, staff requests authorization for the City Manager to negotiate and execute contracts, agreements, amendments to existing agreements, or issue purchase orders where appropriate for the purchase of all services necessary for the installation of the transformers. This includes (1) civil, foundation and overhead electrical work services, (b) design and construction of new foundation, oil containment, and electrical connections, and (c) any additional modifications and protection coordination work. Staff will authorize this work using existing agreements with engineering firms or through new agreements in alignment with the City's purchasing policy and in the best interest of the City. Where construction services are needed, such services will be solicited and contracted pursuant to the City Charter.

The phased approach for replacing the JUL 56MVA transformers is as follows:

1. Phase 1 - Approve procurement of two (2) new transformers and issue a Purchase Order to secure delivery dates.
2. Phase 2 - Begin engineering design for civil, foundation, oil containment, overhead electrical and protective relays.
3. Phase 3 - Solicit and contract services from a general contractor to perform civil and electrical work outside of the transformer manufacturer’s scope.
4. Phase 4 - Field construction, installation, testing, commissioning, and energizing two (2) new transformers at JUL over multiple years.

Estimated Costs

SVP is anticipating additional costs related to the foundation design, civil work, overhead electrical work, and construction of the oil containment. Currently, the only known cost is that of the two (2) new 60KV/12KV, 65MVA Transformers without options. Civil and electrical work cost estimates are based on a similar scope of work at SVP’s Agnew Substation. Staff recommends approval of an additional \$2,000,000 for contingency.

A preliminary estimate of the equipment and tasks that have been identified and their associated cost is as follows:

| Equipment/Project  | Estimated Cost |
|--|----------------|
| Procurement of two (2) transformers including selected options and sales tax | \$11,500,000   |
| Civil, overhead electrical and foundation work for two (2) transformers      | \$ 1,500,000   |
| Contingency  | \$ 2,000,000   |
| Total Estimated Cost   | \$15,000,000   |

Contract Authority

Due to the critical need to replace the transformers at JUL as soon as possible, SVP recommends an expedited process that delegates authority to the City Manager to negotiate and execute new agreements and/or amendments to existing agreements for a total authorization of up to \$15,000,000 for the specific purpose of completing all procurement of materials and services related to the two (2) new transformers at JUL. SVP will coordinate closely with the Purchasing Division of the Finance Department as well as with the City Attorney’s Office to assure procurement methods are aligned with the City Charter, the City Ordinance, City policies, and will evaluate the decision to execute new agreements and/or amendments to existing agreements to best meet the needs of the City. Approval of these recommendations will permit staff to execute documents needed to secure delivery timelines for these critical transformers and accelerate other actions associated with this critical project.

ENVIRONMENTAL REVIEW

Staff recommends that the City Council determine that the proposed actions are exempt from the California Environmental Quality Act (“CEQA”) pursuant to sections 15301 and 15302 of Title 14 of the California Code of Regulations as they authorize the replacement of existing infrastructure.

FISCAL IMPACT

The recommended budget amendment below is needed to fully fund the transformer procurement costs, as well as associated engineering and construction services. Costs, totaling \$15.0 million are proposed to be funded by a transfer from the Electric Utility Fund Unrestricted Fund Balance to the Juliette Substation Transformer Rerate and Installation Project (CIP 2462) in the Electric Utility Capital Fund.

**Budget Amendment  
FY 2023/2024**

|   | Current      | Increase/ (Decrease) | Revised      |
|---|--------------|----------------------|--------------|
| <u>Electric Utility Fund (091)</u>                              |              |                      |              |
| <u>Transfers Out</u>  |              |                      |              |
| Transfer to the Electric Utility Capital Fund                   | \$23,062,234 | \$15,000,000         | \$38,062,234 |
| <br>  |              |                      |              |
| <u>Ending Fund Balance</u>                                      |              |                      |              |
| Unrestricted Fund Balance                                       | \$87,174,994 | (\$15,000,000)       | \$72,174,994 |
| <br>  |              |                      |              |
| <u>Electric Utility Capital Fund (591)</u>                      |              |                      |              |
| <u>Transfers In</u>   |              |                      |              |
| Transfer from the Electric Utility Fund                         | \$23,062,234 | \$15,000,000         | \$38,062,234 |
| <br>  |              |                      |              |
| <u>Expenditures</u>   |              |                      |              |
| Juliette Substation Transformer Rerate and Installation Project | \$ 4,252,040 | \$15,000,000         | \$19,252,040 |

**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. Determine the proposed actions are exempt from CEQA pursuant to Sections 15301 (Class 1 - Existing Facilities) and 15302 (Class 2 - Replacement or Reconstruction) of Title 14 of the California Code of Regulations;
2. Authorize the City Manager to negotiate and execute agreements and/or amendments to existing agreements to complete the transformer replacements at Juliette Substation with a maximum

- 
- compensation of \$15,000,000, subject to approval as to form by the City Attorney;
3. Authorize the City Manager to take any actions as necessary to implement and administer the agreements and to negotiate and execute amendments as needed to complete the Juliette Substation transformer replacements, subject to the total maximum authorization of \$15,000,000 and review and approval as to form by the City Attorney;
  4. Approve the following FY 2023/24 budget amendments:
    - A. In the Electric Utility Fund, increase the transfer to the Electric Utility Capital Fund and decrease the Unrestricted Ending Fund Balance in the amount of \$15.0 million (five affirmative Council votes required for the use of unused balances); and
    - B. In the Electric Utility Capital Fund, recognize a transfer from the Electric Utility Fund and increase the Juliette Substation Transformer Rerate and Installation Project in the amount of \$15.0 million (five affirmative Council votes required to appropriate additional revenue).

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-38

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Action on an Agreement for Services with CRMOrbit, Inc. dba energyOrbit for a Rebate Processing System for Silicon Valley Power

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

The City of Santa Clara's Electric Department, Silicon Valley Power (SVP), primarily relies on manual processes for rebate management, while most electric utilities in California are using a rebate processing tool to increase capacity. This lack of a rebate processing tool limits SVP's expansion and enhancement of its customer offerings.

California law mandates SVP to track and report on its use of public benefits funds for energy efficiency and low-income programs, as well as spending of funds received from the State of California for electric vehicles and chargers. SVP has largely used a combination of manual processes and third-party tools for tracking, and those methods do not scale easily with increased offerings or increased participation.

The Climate Action Plan states that the City's main strategies for achieving carbon reduction in buildings and energy is to "shift to electric fuels in new and existing buildings to achieve net-zero carbon buildings" and "improve energy efficiency." Customer programs can impact a customer's decision to improve energy efficiency and reduce carbon. Using a tool that is capable of appropriately scaling to meet customer offerings and participation is an important step to improving participation.

Staff identified a rebate processing tool as a critical necessity to align with the goals of SVP, City Council, and our customers. This tool will streamline processing, enable paperless transactions, and ensure timely payment of customer rebates. It will also allow SVP to fulfill state reporting obligations more efficiently.

#### DISCUSSION

In August 2021, Turlock Irrigation District (TID) published a Request for Proposals (RFP) for a rebate management system. Through the RFP process, energyOrbit was selected for award and TID subsequently executed an agreement with energyOrbit on December 14, 2021. The term of TID's agreement is five years through December 14, 2026.

Staff is recommending entering into an agreement with CRMOrbit, Inc. dba energyOrbit (energyOrbit) for a three-year term beginning on or around June 1, 2024. This recommendation is pursuant to City

Code Section 2.105.270(d) which states that the City may, without observing formal bidding requirements, contract directly with a vendor at a price and on terms obtained through a competitive bidding process of another public agency, when such agreement resulted from a competitive bid process that meets or exceeds the City’s competitive bid process. The Purchasing Division Manager has determined that the above-mentioned competitive process meets or exceeds the City’s process; therefore, it is appropriate for the City to rely on TID’s competitive process and contract with energyOrbit.

To meet goals for enhanced programs around electrification and solar, SVP needs to significantly increase customer rebate processing capacity by the end of 2024. The energyOrbit rebate system is tailored for electric utility rebate tracking, payment, and reporting, and is currently used by several other utilities, including Roseville Electric. This software-as-a-service enables efficient, paperless processing and ensures timely payment of customer rebates. Additionally, it serves as a repository for various customer program information.

The proposed agreement with energyOrbit includes a one-time implementation fee and fixed subscription pricing for each year. The implementation payment schedule is tied to successful completion of key project milestones, with the remaining 10%, or \$23,869.50, payable after the system goes live. The total implementation cost of the software is \$238,695, of which a substantial portion is associated with initial setup. Initial setup involves creating process maps, cleaning up data, creating approval processes, and transferring historical data, among other things. Should SVP adopt another rebate processing system in the future, the implementation cost is expected to be greatly reduced because those initial setup activities will transfer over to the new system and those costs will not be incurred again.

Compensation in the agreement is outlined in Table 1 below.

| Cost Element                       | Cost         |
|------------------------------------|--------------|
| One-Time Implementation Fee        | \$238,695.00 |
| Year 1 Software Subscription Fee   | \$ 30,245.00 |
| Year 2 Software Subscription Fee   | \$ 31,152.35 |
| Year 3 Software Subscription Fee   | \$ 32,086.92 |
| Subtotal                           | \$332,179.27 |
| Contingency                        | \$ 17,820.73 |
| Not-to-Exceed Maximum Compensation | \$350,000.00 |

TID’s agreement with energyOrbit ends on December 31, 2026. Typically, when leveraging another public agency’s agreement, it is the practice of the Purchasing Division to align the terms with the other agency’s agreement. In this case, SVP staff with the concurrence of the Purchasing Manager, is requesting approval for a term through April 30, 2027, as the software subscription with energyOrbit requires a full three years. Additionally, staff is requesting authority to further extend the term of the agreement in the event that TID extends their term.

**ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California

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Environmental Quality Act (“CEQA”) pursuant to section 15378(b)(4) of Title 14 of the California Code of Regulations as the implementation of the rebate processing tool is an administrative activity which does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

### FISCAL IMPACT

The compensation under the proposed contract with crmOrbit, Inc. is not to exceed \$350,000 to provide licensing and implement a utility rebate processing, payment, and reporting solution.

Sufficient funds are available in the SVP Public Benefits Fund in the Electric Operating Grant Trust Fund.

### 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 public information desk at any City of Santa Clara public library.

### RECOMMENDATION

1. Authorize the City Manager to execute the proposed Agreement for Services (Agreement) with CRMOrbit, Inc. dba energyOrbit for a Rebate Processing System for a three-year term beginning on or around June 1, 2024, with a maximum compensation not to exceed \$350,000, subject to the annual appropriation of funds funded by Silicon Valley Power’s Public Benefit’s Program in the Electric Operating Grant Trust Fund; and
2. Authorize the City Manager to take any actions as necessary to implement and administer the Agreement and to negotiate and execute amendments to the Agreement to (a) increase the maximum compensation by up to an additional \$100,000 for a total maximum compensation not to exceed \$450,000 in the event that SVP requires additional training, licenses, or features, and (b) exercise options to extend the term to align with the term of the Agreement with the lead agency, Turlock Irrigation District, subject to the appropriation of funds and review and approval as to form by the City Attorney.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager

### ATTACHMENTS

1. Proposed Agreement with CRMOrbit, Inc. dba energyOrbit



**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
CRMORBIT, INC. DBA ENERGYORBIT**

**PREAMBLE**

This Agreement is entered into as the date last executed by the Parties (“Effective Date”) between the City of Santa Clara, California, a chartered California municipal corporation (City) and CRMOrbit, Inc. dba energyOrbit, a California corporation (Contractor). City and Contractor may be referred to individually as a “Party”.

**RECITALS**

- A. City desires to secure the services (“Services”) more fully described in this Agreement, in Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required Services and goods of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such Services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D – SaaS Solution Support Services

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 June 1, 2024 and terminate on May 31, 2027.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

## **4. WARRANTY**

In addition to those warranties contained in Exhibit A, Contractor expressly warrants that all Services and materials covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions applicable to this Agreement. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services or materials at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace Services or materials, City may make corrections or replace Services or materials and charge Contractor for the cost incurred by City.

## **5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

## **6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is **Three Hundred Fifty Thousand Dollars (\$350,000)** subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services, including any taxes. All Services performed or supplies, materials and equipment provided in excess of the maximum compensation shall be at Contractor's expense.

Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## **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. If City exercises its right to terminate this Agreement under this Section 7(A), then (i) City shall remit payment to Contractor for any Services rightfully delivered by Contractor to City up to the effective time of such termination and (ii) Contractor shall have no obligation to refund City any pre-paid license fees remitted by City to Contractor before the effective time of such termination.
- 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

- A. "Confidential Information" means, with respect to a Party hereto, all information or material which is either (1) marked or identified as "Confidential," "Restricted," or "Proprietary Information" or other similar marking or identification, or (2) known by the Parties or of the type that is typically to be considered confidential and proprietary. Confidential Information shall consist of all information, whether in written, oral, electronic, or other form, furnished on or after the Effective Date by one of the Parties or its Representatives ("Representative" is defined as any elected and appointed officials, affiliate, director, officer, employee, agent, advisor, consultant, or subcontractor of either of the Parties or their subsidiaries or affiliates) to the other Party or to its Representatives, and specifically includes but is not limited to City's individually identifiable City information, City's customer usage data and financial data, City's customer information, and the Contractor's technology and related documentation. In addition, Confidential Information includes all documents, including drafts, preliminary drawings or plans, notes, ideas and communications that City provides to Contractor, unless City authorizes, in writing, the release of said information. Finally, Confidential Information includes Contractor's proprietary know-how and/or business processes embodied in the software as a service Rebate Management System and utilized to deliver the Services. Contractor pricing is not Confidential Information. From time to time in this Agreement, City's personally identifiable City information, City's customer usage data and financial data, City's customer information shall be referred to "City's Customer Data". For purposes of this provision, the term "Disclosing Party" shall mean the Party that discloses to the other Party certain Confidential Information and the term "Receiving Party" shall mean the Party that receives such Confidential Information.
- B. [INTENTIONALLY OMITTED]
- C. The Receiving Party will treat all Confidential Information, no matter written, electronic, or oral, as confidential and proprietary, and the Receiving Party shall only use the information for City-authorized Project uses. As such, the Receiving Party shall hold in confidence the Confidential Information, and ensure that the Confidential Information is not disclosed to any other person or entity, except as expressly permitted by this Agreement. Receiving Party shall not disclose Confidential Information received under this Agreement to any person other than its Representatives who require knowledge of the Confidential Information in furtherance of City-authorized Project uses. The Receiving Party shall inform its Representatives of the confidential nature of the Confidential Information and advise such Representatives of the limitations on the use and disclosure and prohibition on making copies or summaries of the Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

Neither Contractor nor its Representatives shall use the Confidential Information for any commercial purpose.

- D. If the Receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, the Receiving Party will provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy, or waive compliance with the provisions of this Agreement. So long as it is consistent with applicable law, the Receiving Party will not oppose action by, and the Receiving Party will cooperate with, the Disclosing Party, at the Disclosing Party's sole cost and expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. If the Disclosing Party fails to obtain such protective order or other remedy, or if the Disclosing Party waives compliance with the requirements of the preceding sentence, the Receiving Party will disclose only that Confidential Information that it is legally required to disclose, and will exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.
- E. In the event the Receiving Party discloses, disseminates or releases any Confidential Information, except as expressly permitted by this Agreement, such disclosure, dissemination or release will be deemed a material breach of this Agreement and the Disclosing Party may demand prompt return of all Confidential Information previously provided to the Receiving Party. As soon as the Receiving Party becomes aware that it has made an unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all necessary actions to recover the improperly disclosed Confidential Information and immediately notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective measures being taken. Each Party agrees that any breach of their confidentiality obligations could cause irreparable harm to the other Party, the amount of which would be extremely difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not be a sufficient remedy for any material breach of this Agreement and that specific performance and injunctive relief in addition to monetary damages shall be appropriate remedies for any breach or any threat of such breach. The provisions of this Paragraph are in addition to any other legal rights or remedies the Receiving Party may have under federal or state law.
- F. Contractor acknowledges that although City will endeavor to include in the Confidential Information those materials that are believed to be reliable and relevant, City makes no representation or warranty as to the accuracy or completeness of the Confidential Information.

- G. Contractor agrees to provide City with copies of all data, reports, and publications that are produced as a result of having access to Confidential Information.
- H. Within two (2) weeks of the termination of this Agreement, each Party will return to the other Party any and all Confidential Information, including all originals, copies, translations, transcriptions or any other form of said material, without retaining any copy or duplicate thereof. To the extent permitted by law, and if authorized in writing by City, Contractor shall promptly destroy any and all electronic and hardcopy versions of the City Confidential Information, as well as any documents consisting of excerpts or portions of the Confidential Information. Contractor shall certify in writing the destruction of the Confidential Information. To the extent permitted by law, and if authorized in writing by the Contractor, City shall promptly destroy any and all electronic and hardcopy versions of the Contractor Confidential Information, as well as any documents consisting of excerpts or portions of the Confidential Information. City shall certify in writing the destruction of the Confidential Information. City may perform an audit of Contractor's records to confirm the return or destruction of the Confidential Information at Contractor's sole cost and expense. City shall have this audit right for three (3) years after the termination of this Agreement.
- I. City owns the data stored in the solution. Upon mutual agreement (as to term and pricing) reached prior to the expiration of the applicable subscription term, Contractor shall grant City access to the data, including exporting it directly from its database, at any time up to one (1) year after Agreement termination or expiration. Contractor shall delete such data as directed by City.
- J. Contractor may allow its Representatives who are subcontractors or subconsultants to access City's Confidential Information solely as necessary for Contractor to perform the Services under this Agreement and for no other purpose whatsoever; provided, those Representatives execute a confidentiality agreement offering protections substantially similar to those contained in this Agreement.
- K. Contractor shall implement and maintain technical and organizational measures to protect City's Confidential Information against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access as described in accordance with the highest industry standard and applicable law. Contractor shall adopt and maintain throughout the Term such security measures to encrypt City's Customer Data and other Confidential Information of City; to help ensure ongoing confidentiality, integrity, availability and resilience of the Services; to help restore timely access to City Confidential Information following an incident; and for regular testing of the effectiveness of solution security. Contractor shall update or modify its data security measures from time to time provided that such updates and

modifications do not result in the degradation of the overall security of the Services. Contractor shall ensure compliance with its data security measures described herein by its Representatives to the extent applicable to their scope of performance. Without limiting City's remedies and notwithstanding anything to the contrary in this Agreement, Contractor shall immediately investigate and remediate any accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access of City's Confidential Information and take such actions as required by City in connection therewith.

- L. This Section shall survive the expiration or earlier termination of this Agreement.

## **12. OWNERSHIP OF MATERIAL**

All documents and materials furnished by City to Contractor shall remain the property of City and shall be returned to City upon termination of this Agreement, for any reason. Except in the case of the solution, a derivative work, improvement or modification thereof, in which case ownership of such shall be with the Contractor, all documents or material prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractor, specifically for the City as part of the Services, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other Party. Contractor shall, at Contractor's sole cost and expense, provide such documents and materials to City upon prior written request. Notwithstanding the foregoing, all documents or materials prepared or caused to be prepared by Contractor for general use of its clients (in addition to City) in the course of Contractor's delivery of the Services and which are not the copyright of any other party or publicly available, including educational materials, the solution (including all copies, modifications, and derivative works thereof, by whomever produced) and any other computer applications, shall continue to be the property of Contractor. Finally, Contractor (or other third party licensors) shall retain all intellectual property rights, if any, embodied in: (a) the software as a service System (as defined in Exhibit A) delivered for the benefit of the City pursuant to this Agreement and (b) the proprietary know-how and/or business processes utilized to deliver to the City the Services detailed herein.

## **13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

- A. City, through its authorized employees, representatives or agents shall have the right during the Term and for four (4) years from the date of final payment for Services or goods 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.

- B. Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

#### **14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

**15. INSURANCE REQUIREMENTS**

During the Term, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

**16. WAIVER**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

**17. NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara  
Attention: Silicon Valley Power  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [svpcontracts@santaclaraca.gov](mailto:svpcontracts@santaclaraca.gov) and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

CRMORBIT, INC  
911 Lakeville Street, Suite 137  
Petaluma, CA 94952  
and by e-mail at [jfox@energy-orbit.com](mailto:jfox@energy-orbit.com)

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

**18. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to

comply with City's Ethical Standards:  
<http://santaclaraca.gov/home/showdocument?id=58299>.

**19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

**21. NO USE OF CITY NAME OR EMBLEM**

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to Services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

**23. SEVERABILITY CLAUSE**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

**24. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties.



**25. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form: \_\_\_\_\_

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"

**CRMORBIT, INC. DBA ENERGYORBIT**  
a California corporation

Dated: 05/01/24

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

Name: Jon Ezrine \_\_\_\_\_

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

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

Principal Place of Business Address: 911 Lakeville Street, Suite 137 \_\_\_\_\_

Petaluma, CA 94952 \_\_\_\_\_

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

Telephone: (866) 628-8744 \_\_\_\_\_

"CONTRACTOR"

## EXHIBIT A – SCOPE OF SERVICES

### SECTION 1. INTRODUCTION

Contractor shall provide a software as a service Rebate Management System (the “System”), including all professional services to define, configure, and maintain the System.

### SECTION 2. PROJECT TEAM

2.1 The following roles and people will comprise the Contractor project team:

- 2.1.1 Executive Oversight - James Murray, VP of Professional Services (Houston, TX)
- 2.1.2 Project Manager - Phil Harmon, Sr. Project Manager (Portland, OR)
- 2.1.3 Business Analyst - Makena Ikiara, Salesforce Business Analyst (Austin, TX)
- 2.1.4 Technical Leadership / Solution Architect - Alex Zeltser, CTO (Hayward, CA)
- 2.1.5 Development Lead & Quality Assurance - Zeeshan Virani (Atlanta, GA)

### SECTION 3. IMPLEMENTATION TASKS

3.1 **Task 1 – Kickoff.** This meeting shall gather the Contractor and City project teams to meet and review the project plan and establish a common goal for project completion. Specific activities include:

- 3.1.1 Introductions for the project team;
- 3.1.2 Project plan confirmation;
- 3.1.3 Roles and responsibilities;
- 3.1.4 Project governance (including status reporting)

3.2 **Task 2 – Blueprint**

3.2.1 This effort shall produce the overall high-level blueprint of the overall solution. The desired outcome is to create an Implementation Design document to include:

- 3.2.1.1 High level process flows for energy efficiency project workflow;
- 3.2.1.2 Data objects/fields required to manage the process flows;

- 3.2.1.3 Security approach (roles and access);
- 3.2.1.4 Training/Change Management Plan;
- 3.2.1.5 Interface Design Specification Template;
- 3.2.1.6 Test plan;
- 3.2.1.7 Infrastructure plan;

3.2.2 As part of the Blueprint phase, Contractor shall establish a multi-environment infrastructure. Contractor shall need a multi-environment approach as soon as the solution is deployed. Although our requirements may change depending upon the City's Information Technology standards, our proposed minimum requirement shall be a development environment (configuration, development and unit testing), a test environment (functional, unit and regression testing) and a production environment.

3.2.3 Establishing these environments early will facilitate the City's ability to manage the solution going forward.

### **3.3 Task 3 - Detailed Project Plan**

At the conclusion of the Blueprint phase, the Contractor's project team shall update the initial project plan to reflect any changes made as a result of the Blueprint-related work. Contractor shall then use the revised project plan to manage the remainder of the project.

### **3.4 Task 4 - Design and Prototyping**

3.4.1 Contractor shall design the Portfolio/Program structure for the Rebate Management System based on the provided business requirements and shall conduct design sessions to define business rules and validations.

3.4.2 In the process of validating the design, Contractor's project team may elect to prototype specific configurable aspects of the solution. In previous projects, this has proven helpful in enabling users to understand the look and feel of the new system prior to finalizing the design.

3.4.3 The specifications for any required interfaces shall be prepared during this task, along with an estimated level of effort to develop and implement those interfaces. The decision regarding the scheduling of the development and implementation shall be determined after those specifications have been approved, and the project scope, budget, and schedule adjusted as needed.

### **3.5 Task 5 - Configuration and Development**

3.5.1 This phase shall involve the actual configuration of the solution and shall include the approved custom interface development. Configuration shall be

done on an iterative basis, with the configuration reviewed periodically with users to confirm the configuration meets the design.

- 3.5.2 The design document created in the Blueprint task shall be updated to include the additional details created and shall serve as final system documentation provided at the completion of the project.

### **3.6 Task 6 – Deployment and Testing**

Contractor shall execute unit testing and support functional testing to ensure the solution is functioning as designed. The following types of testing shall be conducted.

- 3.6.1 Unit testing shall be performed by the configurator/developer who created the functionality. Successful completion of unit testing shall be validated by the City by reviewing the unit test results. Upon approving the unit test results, the City will determine timing for moving the configuration to functional testing. The moving of the configuration from the Development environment to the Test environment shall be executed by Contractor, unless otherwise determined by the City.
- 3.6.2 Functional testing shall be executed by the City and supported by Contractor testers. The City shall be responsible for creating the functional test scripts, leveraging unit test scripts provided by Contractor. Test scripts shall cover the “happy path” for moving an application from Lead to payment processing. Negative testing shall be performed to ensure validations and error messages appear as designed. Defined acceptance criteria shall be met before the system shall be approved for User Acceptance Testing.
- 3.6.3 Regression testing may be required if the functionality being deployed shall impact functionality that is already in production. The process for regression testing shall leverage the functional testing process to ensure there are no negative impacts to production.

### **3.7 Task 7 - User Training and User Acceptance Testing (UAT)**

Contractor shall provide training in accordance with the approved training plan developed in the Blueprint task. This training could include:

- 3.7.1 Functional testing training and UAT tester training (provided prior to functional testing and prior to UAT respectively);
- 3.7.2 User training sessions – three (3) 4-hour sessions;
- 3.7.3 Administrative training session – three (3) 4-hour sessions;
- 3.7.4 Admin prerequisite: Salesforce Administration Training provided by Salesforce;



**3.7.5** User acceptance testing shall be led by the City, who shall provide the test scripts and scenarios for the users. Contractor shall contribute to the test scripts and shall support UAT for defects and issues that arise.

### **3.8 Task 8 - Migration to Production (Go-Live)**

In preparation for Go Live, the Contractor's project team shall identify any issues that need to be addressed first. Examples of tasks that must be verified as complete before Go-Live include:

- 3.8.1** Test scripts have passed and UAT has been completed;
- 3.8.2** Necessary data have been uploaded and verified by the City team;
- 3.8.3** All users have been trained and have received a login;
- 3.8.4** Contractor has identified and documented pre-and post-deployment activities; the City team has reviewed the deployment checklist and assigned a resource to coordinate activities;
- 3.8.5** Contractor has uploaded the configuration change set from Test to Production. (NOTE: depending upon City IT standards, City/utility resources may upload the configuration change set. If that is the case, documentation and support shall be provided by Contractor);
- 3.8.6** The City team should coordinate smoke tests for validating and verifying successful completion of deployment to production.

### **3.9 Task 9 – Stabilization**

For four weeks following successful Go-Live, Contractor shall support the City to ensure the deployment and use of the system is successful. This support includes:

- 3.9.1** User support and follow-up training as requested;
- 3.9.2** Defect resolution;
- 3.9.3** Minor enhancements to improve usability and adoption;
- 3.9.4** System administrator support (this assumes the City has an assigned system administrator that has been trained).

### **3.10 Schedule**

Project tasks are anticipated to be complete within seven (7) months from initiation. Upon successful and accepted implementation, maintenance and support of Rebate Management System shall renew annually.

### **3.11 Progress Reports**

In relation to custom enhancements to be provided by Contractor, a progress report shall be prepared by Contractor and delivered to the City representative via fax, mail, electronic mail, or in person, to the City bi-weekly. The progress report shall contain, but not be limited to, the following items:

- 3.11.1** An updated, detailed project schedule, with explanations for any changes.
- 3.11.2** A detailed list of all activities performed since the previous report.
- 3.11.3** A list of all Contractor personnel working on the project since the last report with an identification of the activities of each person and the amount of time worked.
- 3.11.4** A list of the planned activity of Contractor personnel for the next reporting period.
- 3.11.5** A description of current and anticipated problem areas or issues.

### **3.12 Timeline**

Implementation tasks will be completed over the following timeline:

- 3.12.1** Task 1 – Project Kickoff will occur during the first month of the Term.
- 3.12.2** Task 2 – Blueprinting will occur from the third week of the first month of the Term to the first week of the second month of the Term.
- 3.12.3** Task 3, 4, and 5 – System Development & Testing will occur from the first week of the second month of the Term to the first week of the sixth month of the Term.
- 3.12.4** Task 6 – User Acceptance Testing will occur from the second week of the sixth month of the Term to the first week of the seventh month of the Term.
- 3.12.5** Task 7 – Deployment will occur from the first week of the seventh month of the Term to the third week of the seventh month of the Term.
- 3.12.6** Task 8 – Training will occur from the third week of the seventh month of the Term to the first week of the eighth month of the term.
- 3.12.7** Task 9 – Stabilization will occur during the eighth month of the term.

## **SECTION 4. SAAS SOLUTION SUPPORT SERVICES**

Contractor will provide telephone and email support (“Technical Support”) as defined in Exhibit D – ENERGYORBIT SERVICE LEVEL AGREEMENT.

## **SECTION 5. ADDITIONAL SERVICES**

- 5.1** When services such as licenses, training, or configuration are required that are not included in Table B1 of Exhibit B System Implementation or Table B2 of Exhibit B – Master License and Products (“Additional Services”), SVP will notify Contractor to provide a Proposal for Services. SVP will provide a description of the Services required and any other relevant information (Work Request).
- 5.2** Proposal. Contractor shall prepare and submit a Proposal (Proposal) for each Work Request that includes:
- 5.2.1** A work plan that includes a detailed description of the licenses required and / or services to be performed.
  - 5.2.2** A project timeline/schedule with discussion on any activities that may impact the project timeline/schedule.
  - 5.2.3** Any required documents.
  - 5.2.4** A list of City responsibilities.
  - 5.2.5** A final acceptance criteria.
  - 5.2.6** An itemized cost proposal showing:
    - 5.2.6.1** Hours and hourly rates by position for both Contractor and subcontractor personnel if applicable.
    - 5.2.6.2** Parts, materials
    - 5.2.6.3** Reimbursable expenses, in accordance with the limitations set forth in Exhibit B.
    - 5.2.6.4** Any additional costs including, but not limited to freight, permits, fees
    - 5.2.6.5** Breakdown of materials and labor sufficient to calculate sales tax
    - 5.2.6.6** Estimated total cost including sales tax
    - 5.2.6.7** All submitted pricing shall be in accordance with the rates authorized in Exhibit B of this Agreement and the Proposal shall include sufficient information for the City to determine that rates are in accordance with the Agreement.

- 5.2.7** Cost for any additional equipment, parts, or services required for completion of services as detailed in the Work Request and in Contractor's Proposal but not reflected in the Contractor's cost proposal shall be the sole responsibility of the Contractor and at no cost to the City.
- 5.2.8** The City will review the Proposal, and may elect to approve it, reject it, or use it as a basis for further negotiations with Contractor.
- 5.2.9** Provided that Contractor's original Proposal includes all items listed in Section 5.2, the City and Contractor may negotiate whether the cost for the additional services will be fixed price (lump sum) or based on specific rates of compensation (e.g. time-and-materials) for completion of the services.
- 5.2.10** Contractor must submit a revised Proposal to the City based upon such negotiations. If a fixed fee or lump sum is authorized, a payment schedule shall be included. The final proposal shall include a clear breakdown of materials and labor indicating taxable and non-taxable items and an estimate of sales tax.
- 5.3** Work Authorization:

  - 5.3.1** If the completion of the services in the Proposal will not result in total costs under this Agreement exceeding the maximum amount for Additional Services in Table B3 – Optional License, Products, and Services of Exhibit B, (when combined with all previously authorized Additional Services), the City may authorize the proposed services as set forth in this Section.
  - 5.3.2** The City will issue a purchase order authorizing Additional Services. Purchase Order ("Purchase Order") is a document issued by the City of Santa Clara Finance Department which will reference the terms and conditions of this Agreement and serves as final approval for each additional Services.
  - 5.3.3** A Proposal attached to a Purchase Order for Additional Services must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement shall prevail over any and all terms and conditions contained in a Proposal – even if the Proposal expressly states that it is intended to control. Any conflicting terms and conditions in a Proposal are invalid and unenforceable.
  - 5.3.4** Contractor shall not initiate the additional services and the City will not compensate the Contractor until the City has issued a Purchase Order.
  - 5.3.5** The City may terminate an Approved Service for convenience with ten (10) days prior written notice to Contractor. In such event, the Contractor shall have no further rights hereunder, except that Contractor shall be paid for all Services adequately rendered prior to such termination.

**5.3.6** Each Purchase Order shall be incorporated into the Agreement by reference and subject to its terms and conditions and the Services contained therein shall be included within the Services.

**5.3.7** Quotes, pricing, and Proposals are not confidential and will not be treated as confidential even if marked confidential when submitted.

**EXHIBIT B**  
**SCHEDULE OF FEES AND PAYMENT PROVISIONS**

**SECTION 1. MAXIMUM COMPENSATION**

The maximum compensation payable to Contractor during the Term shall not exceed the amount in Section 6 (Compensation and Payment) of this Agreement.

**SECTION 2. SYSTEM IMPLEMENTATION FEES**

2.1 Contractor shall provide all services as specified in Exhibit A on a firm fixed fee basis as set forth in Table B1 – Milestones below.

**Table B1 – System Implementation Payment Milestones**

| Milestone   | Cost                |
|---|---------------------|
| 1. Project Initiation (Task 1 in Project Plan)  | \$23,869.50         |
| 2. Completion of Requirements Development and Design (Task 2 in Project Plan)                     | \$35,804.25         |
| 3. Implementation of Requirements in Development/Test Environment (Task 3, 4 & 5 in Project Plan) | \$119,347.50        |
| 4. Acceptance of Rebate Management System (Task 6 in Project Plan)                                | \$35,804.25         |
| 5. Production launch of Rebate Management System (Task 7 in Project Plan)                         | \$23,869.50         |
| <b>System Implementation Total:</b>   | <b>\$238,695.00</b> |

2.2 Contractor will invoice the City following the City’s acceptance of designated deliverables for each task as set forth in Table B1. City shall pay all undisputed invoices within such time as City reasonably requires but which shall not exceed sixty (60) days of receipt of such invoice.

**SECTION 3. ONGOING SOFTWARE LICENSE & PRODUCT PRICES**

3.1 The cost of software licenses shall be in accordance with Table B2 – Master License and Products. Beginning in Year 2, Annual License Fees shall increase 3% annually.

3.2 Contractor will invoice the City 100% of the amount listed in Table B2 in advance for each respective contract year as follows:

3.2.1 Year 1: beginning on May 1, 2024, and ending on April 30, 2025;

3.2.2 Year 2: beginning on May 1, 2025, and ending on April 30, 2026; and

3.2.3 Year 3: beginning on May 1, 2026, and ending on April 30, 2027.

3.3 City shall pay all undisputed invoices within such time as City reasonably requires but which shall not exceed sixty (60) days of receipt of such invoice.

3.4 In the event of early termination of the Agreement, Section 7(A) of the Agreement shall govern City's right of refund, if any.

**Table B2 - Master License and Products**

| Annual License Fees                                   |          |                     |                    |   |
|---|----------|---------------------|--------------------|---|
| Product & License Type                                | Quantity | Unit Price Per Year | Total Cost         | Notes   |
| energyOrbit Administrative License                    | 3        | \$1,650.00          | \$4,950.00         | Administrative user licenses for Silicon Valley Power program personnel to access the core energyOrbit solution.                                    |
| energyOrbit User License                              | 12       | \$1,650.00          | \$19,800.00        | Platform user licenses for Silicon Valley Power program personnel or third-party users to access the core energyOrbit solution.                     |
| energyOrbit Customer Community – Login (Customers)    | 1,000    | \$0.75              | \$750.00           | Community login licenses for SVP customer users to access and submit application within the energyOrbit portal.                                     |
| energyOrbit Customer Community – Member (Contractors) | 25       | \$50.00             | \$1,250.00         | Community member licenses for contractor users to frequently access and submit applications within the energyOrbit portal.                          |
| energyOrbit Full Sandbox                              | 1        | \$3,495.00          | \$3,495.00         | Full sandbox is an exact replica of the production environment used for user acceptance testing to troubleshoot issues as part of on-going support. |
| <b>Subtotal (Year 1)</b>                              | N/A      | N/A                 | <b>\$30,245.00</b> | N/A   |
| <b>Subtotal (Year 2)</b>                              | N/A      | N/A                 | <b>\$31,152.35</b> | N/A   |
| <b>Subtotal (Year 3)</b>                              | N/A      | N/A                 | <b>\$32,086.92</b> | N/A   |



|                          |     |     |                    |     |
|--------------------------|-----|-----|--------------------|-----|
| <b>Total for 3 Years</b> | N/A | N/A | <b>\$93,484.27</b> | N/A |
|--------------------------|-----|-----|--------------------|-----|

**SECTION 4. OPTIONAL LICENSES, PRODUCTS, AND SERVICES**

During the term of this Agreement, the City may from time to time request that Contractor provide additional software products. Contractor shall quote and invoice optional professional licenses, products and services in accordance with Table B3 – Optional License, Products, and Services.

**Table B3 - Optional License, Products, and Services**

| <b>Product &amp; License Type</b>  | <b>Quantity</b> | <b>Unit Cost</b> | <b>Total Cost</b>  | <b>Notes</b>  |
|--|-----------------|------------------|--------------------|---|
| energyOrbit Customer Community – Login (Customers)   | 12,000          | \$0.75           | \$9,000            | Community login licenses for SVP customer users to access and submit applications within the energyOrbit portal.<br><br>Additional licenses from this category shall be provisioned in 1,000 count allocations, as necessary. |
| energyOrbit Customer Community – Member (Contractors)  | 25              | \$50             | \$1,250            | Community member licenses for contractors/trade ally users to access and submit application within the energyOrbit portal.  |
| energyOrbit Integration User License   | 1               | \$825            | \$825              | Integration user license for Silicon Valley Power to serve as a dedicated, non-person user to facilitate automated data transfers between systems, if required.   |
| <b>Additional Services</b>   |                 |                  |                    |   |
| <b>Position</b>  |                 |                  | <b>Hourly Rate</b> |   |
| Project Manager / Business Analyst   |                 |                  | \$180              |   |
| <b>Total Available for Optional Licenses, Products, and Services<br/>(Must be authorized pursuant to Section 5 of Exhibit A)</b> |                 |                  |                    | <b>\$17,820.73</b>  |

## **SECTION 5. ADDITIONAL COSTS**

Contractor agrees that the amounts in Sections 2 – 4 of Exhibit B represent all costs associated with this Agreement. There are no additional costs such as travel cost or other items for which Contractor may seek reimbursement.

**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 shall 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 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 Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City’s approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City’s request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.  
City of Santa Clara – Silicon Valley Power  
P.O. Box 100085 – S2 or 1 Ebix Way  
Duluth, GA 30096 John’s Creek, GA 30097

Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**EXHIBIT D**  
**ENERGYORBIT SERVICE LEVEL AGREEMENT**

1. Agreement Overview

Technical Support Description. Contractor shall provide to City telephone and email support (“**Technical Support**”) as defined in Section 2 “Service Availability – Initial Contact and Response.

2. Service Availability – Initial Contact and Response

2.1. Request for Technical Support. Authorized Users may make Technical Support requests by submitting a request via Contractor’s City service web portal at <https://energyorbit.force.com/support/>.

2.2. Coverage parameters specific to the services covered in this Schedule are as follows:

2.2.1. Support Community: Contractor will monitor Support Community 7:00 A.M. to 6:00 P.M. Monday – Friday, Pacific Time Zone. Contractor shall collect Service Requests received outside of office hours but does not guarantee action will be taken until the next business day.

2.2.2. Contractor does not offer support on the following days; inquiries received during these holidays shall be addressed on the next business day.

| <b>Day or Date</b>          | <b>Official Name</b>   |
|-----------------------------|------------------------|
| January 1                   | New Year's Day         |
| Third Monday in February    | Presidents' Day        |
| Last Monday in May          | Memorial Day           |
| July 4                      | Independence Day       |
| First Monday in September   | Labor Day              |
| Fourth Thursday in November | Thanksgiving Day       |
| Friday after Thanksgiving   | Day after Thanksgiving |
| December 25                 | Christmas              |

3. Service Tiers

Post implementation support is defined in the following table.



| Tier | Owner      | Definition   | Typical Tier Questions  |
|------|------------|--|---|
| 1    | City       | Tier 1 Support provides assistance with simple end-use questions (Internal or 3rd Party) for system navigation and basic / standard functionality.   | <ul style="list-style-type: none"> <li>• Login questions.</li> <li>• Screen navigation.</li> <li>• Basic report creation.</li> <li>• General questions energyOrbit / Platform.</li> </ul>   |
| 2    | Contractor | <p>Tier 2 Support provides answers to questions about energyOrbit semi- complex functionality: security model, user profiles, email templates, audit data, questions, etc.</p> <ul style="list-style-type: none"> <li>• Support provides answers and troubleshooting (i.e. associated with City's customization objects) of complex functionality and data integrity issues.</li> <li>• Questions about "Managed Package" or other non-City customizations which are not associated with City's core objects / extensions are routed to Tier 3 via one of the contact mechanisms listed in this Schedule.</li> <li>• Important Note: energyOrbit shall facilitate support for standard Platform Contractor functionality as needed.</li> </ul> | <ul style="list-style-type: none"> <li>• First level triage - data / system trouble shooting.</li> <li>• Advanced Reporting / Query.</li> <li>• eO Functionality or Administrative Task.</li> <li>• Flow or Validation Rule setup and configuration.</li> <li>• Changes to eO generated Page layouts to the extent not covered by Tier 1.</li> <li>• Data Integrity issues at screen level.</li> <li>• City Data import questions.</li> <li>• General understanding of energyOrbit objects and relationships.</li> <li>• Functionality around City-specific customization objects / extensions.</li> <li>• Data integrity issues.</li> <li>• Scheduled and Batch imports / export issues.</li> <li>• Metadata related questions.</li> <li>• Defects associated with Platform.</li> </ul> <p>Contractor platform and customizations (i.e. project custom fields, validation rules, flows, extensions, etc.).</p> <ul style="list-style-type: none"> <li>• All Non-"Managed Package" code issues (for code created by Contractor).</li> <li>• Resolution of Tier 1 Issue Log / Defects.</li> <li>• Investigation of security related issues.</li> </ul> |

| Tier | Owner      | Definition   | Typical Tier Questions   |
|------|------------|--|--|
| 3    | Contractor | <p>Tier 3 Support answers questions about “Managed Package” or other non-City customizations which are not associated with City’s core objects/ extensions.</p> <ul style="list-style-type: none"> <li>• Support provides technical assistance for areas such as new releases and defects in code or configuration that was implemented as part of in scope functionality.</li> <li>• Important Note: Contractor shall facilitate support for standard Platform Contractor functionality as needed.</li> </ul> | <ul style="list-style-type: none"> <li>• Advanced technical questions about the Managed Package.</li> <li>• Data integrity questions about exported data sets implemented by the energyOrbit</li> <li>• Questions about system changes that require configuration of the “Managed Package” objects / flows.</li> <li>• Examples of support questions for the “Managed Package” include: <ul style="list-style-type: none"> <li>• How does energyOrbit sort measure on the selection page by default?</li> <li>• Why aren’t my incentives being capped correctly?</li> <li>• How do I configure multi-phase project payments?</li> <li>• What is the purpose of the “Installation Summary” records?</li> </ul> </li> <li>• Questions about Managed Package defects or defects in ‘unmanaged’ code or configuration that were implemented as part of ‘in scope’ functionality.</li> <li>• Support and maintenance of code that is common to all customers (shared functionality).</li> </ul> |

4. Inquiry Settlement (Service Defect) Request and Response

The following definitions shall be used for this Schedule.

- 4.1. CRITICAL: Defect Severity Level 1 (S1) – Defined as application is not available to all or substantial number of users and production processing is not available for any business purposes (i.e. software does not operate. Excludes Internet connectivity issues).
- 4.2. HIGH: Defect Severity Level 2 (S2) – Defined as part of production application is not working and there is no workaround; major functionality is inoperable or unusable for a small number of users. Also defined as software does not meet in-scope business requirements without a manual work-around or a specific in-scope module of the software is not usable without a manual work-around.
- 4.3. MEDIUM: Defect Severity Level 3 (S3) – Defined as part of the application is not working for in-scope software features as intended, but a reasonable, jointly agreed-upon work-around exists leaving the essential functions intact and operable.
- 4.4. LOW: Defect Severity Level 4 (S4) – Defined as minor cosmetic problems within in-scope features of the software that do not impact the established business processes.

- 4.5. General support (G) – General end user questions about in-scope functionality falling under the ‘General Tier 3’ support category (defined above).
- 4.6. Training requests (T) – Requests for training on in-scope features falling under the ‘General Tier 3’ support category (defined above).

**Inquiry Settlement (Service Defect) Request and Response Table**

| <b>Request Type</b> | <b>Response Time</b>   | <b>Initial Assessment</b> | <b>Update Frequency</b> | <b>Maximum Resolution Time</b> |
|---------------------|--|---------------------------|-------------------------|--------------------------------|
| S1 Critical         | During Business hours: 30 minutes<br>Outside business hours: 2 hours | 2 business hours          | 2 business hours        | 16 business hours              |
| S2 High             | 2 business hours   | 4 business hours          | 4 business hours        | 24 business hours              |
| S3 Medium           | 8 business hours   | 16 business hours         | Weekly                  | 40 business hours              |
| S4 Low              | None.  | 24 business hours         | Weekly                  | 60 business hours              |
| G                   | None.  | 24 business hours         | Weekly                  | 60 business hours              |
| T                   | None.  | 24 business hours         | Weekly                  | 80 business hours              |

**5. Service Level Agreement Reporting**

Contractor agrees to report on Service Level Agreement metrics, such as the number of request submitted by month, by type as well as response times and resolution times, to City at least once every ninety days.

**6. Support Limits**

Support requests made to Contractor are subject to a monthly limitation as follows.

- 6.1. Support incidents included on a monthly basis shall be referred to as ‘standard’ support incidents.
- 6.2. Prior to system go-live date, there is no monthly limitation on standard support incidents.
- 6.3. From system go-live date and thereafter, up to 10 standard Tier 2 or Tier 3 support incidents (as defined above) per calendar month are included. Unused incidents do not rollover to the next month.

## **7. energyOrbit Upgrades**

Contractor shall provide City at least four weeks' notice for planning and coordination efforts prior to availability of any Upgrades that impact the Company's energyOrbit platform.

## **8. Salesforce Upgrades**

All releases and upgrades to the Salesforce Platform can be monitored in the City Production Environment Release Update page, available through Setup as described here:

[https://help.salesforce.com/s/articleView?id=sf.release\\_updates\\_manage.htm&type=5](https://help.salesforce.com/s/articleView?id=sf.release_updates_manage.htm&type=5)






# AGREEMENT FOR THE PERFORMANCE OF SERVICES

Final Audit Report

2024-05-01

|                 |  |
|-----------------|--|
| Created:        | 2024-05-01                                   |
| By:             | Newton Quantz (newton.quantz@pierferd.com)   |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAMxKLREsmpZTLDugrofJVxp9PIZI4cQxR |

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## Agenda Report

24-222

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Action on an Agreement with Kimley-Horn and Associates, Inc. for Professional Services for the Santa Clara Vision Zero Plan

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

Vision Zero has been publicized as a strategy aimed at eliminating traffic fatalities and severe injuries, while enhancing safe, healthy, equitable mobility for all. Initially introduced in Sweden during the 1990s, Vision Zero programs have since been implemented around the world and locally in California and Santa Clara County. The City's Bicycle Plan and Pedestrian Master Plan have objectives that include studying the implementation of a Vision Zero Plan.

The United States Bipartisan Infrastructure Law established the Safe Streets and Roads for All (SS4A) grant program that provides funding opportunities to develop comprehensive safety action plans and implement projects identified within these plans. To achieve the goal of studying and implementing a Vision Zero Plan, the Department of Public Works (DPW) applied for a SS4A grant in September 2022. In February 2023, DPW was notified of a \$450,000 grant award to help in developing a Santa Clara Vision Zero Plan (Plan). The City was also required to provide a 20 percent local match as part of the grant.

On December 5, 2023, the City Council accepted the SS4A grant funding to establish the Plan, authorized the City Manager to execute all documents related to accepting federal funding, and approved a budget amendment of \$570,000 for the Santa Clara Vision Zero Plan project.

On January 5, 2024, the grant agreement with the Federal Highway Administration (FHWA) was fully executed.

The Plan will involve robust community engagement and a comprehensive citywide safety analysis to identify the locations, severity, demographics, and common collision types within the City. The Plan will develop a collision countermeasure toolbox, comprising programmatic measures and roadway design features to address traffic safety issues. Additionally, a list of potential traffic improvements will be developed and prioritized. Upon completion of the Plan, the City will have the opportunity to seek future grant opportunities to fund implementation under the SS4A program.

#### DISCUSSION

Pursuant to City Code Section 2.105.140(c), a formal Request for Proposals (RFP) was conducted, with the award recommendation based on "best value." On January 25, 2024, the City published the

RFP for professional services for the Santa Clara Vision Zero Plan on the City's e-procurement platform. In addition, staff directly sent notifications to civil engineering and public outreach companies obtained from the Caltrans Disadvantaged Business Enterprise (DBE) database.

The City received one proposal from Kimley-Horn and Associates, Inc. (Kimley-Horn), which was thoroughly reviewed and evaluated by staff who checked references and determined that their proposal satisfied the RFP requirements. Kimley-Horn has extensive experience in leading roadway safety projects and similar Vision Zero efforts in California. The City conducted a Best and Final Offer (BAFO) to memorialize clarifications and provide a final opportunity for Kimley-Horn to revise their cost proposal, resulting in a cost savings of \$27,000.

Staff recommends awarding an agreement to Kimley-Horn and Associates, Inc. for the Santa Clara Vision Zero Plan. Under the proposed agreement, Kimley-Horn will provide professional services including (a) project management, (b) review of existing plans, policies, and standards, (c) analysis of existing conditions, (d) public outreach, and (e) preparation of a final project report. The agreement has a term of two years and a not-to-exceed maximum compensation of \$556,536, which includes a contingency amount of \$50,594. Payments are tied to successful completion of key tasks/deliverables.

#### 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 a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

#### FISCAL IMPACT

The City negotiated to receive a Best and Final Offer from Kimley-Horn to obtain the recommended not-to-exceed amount.

The proposed agreement is for a total not to exceed amount of \$556,536, which was negotiated by the City during the BAFO process. This amount consists of \$505,942 for basic services and a \$50,594 contingency for additional services. Funding for the agreement is available in the Streets and Highways Capital Fund in the Santa Clara Vision Zero Plan project (Project 1268).

#### 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. Authorize the City Manager to negotiate and execute an agreement with Kimley-Horn and Associates, Inc. (Agreement) to provide professional services for the Santa Clara Vision Zero Plan



- project with a maximum compensation not-to-exceed \$556,536 over a two-year term, in a final form approved by the City Attorney; and
2. Authorize the City Manager to take any actions necessary to implement and administer the Agreement and negotiate and execute amendments to the Agreement to extend the term and modify the scope of services, in final forms approved by the City Attorney.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Jovan Grogan, City Manager

### ATTACHMENTS

1. Agreement

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
KIMLEY-HORN AND ASSOCIATES, INC.**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Kimley-Horn and Associates, Inc., a North Carolina corporation, (Consultant). City and Consultant may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. Consultant represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Consultant shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A1 – Scope of Services

Exhibit A2 – City of Santa Clara SS4A Application Narrative

Exhibit B1 – Schedule of Fees

Exhibit B2 – Fees by Task

Exhibit C – Insurance Requirements

Exhibit D – Title VI Assurances

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 June 1, 2024 and terminate on May 31, 2026.

**3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Consultant shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence. Times for performance shall be extended, as mutually agreed, for delays which are caused by reason of: any factor outside of its reasonable control, including but not limited to natural disasters, epidemics, pandemics, quarantine restrictions, adverse weather, or acts of the City, third parties, or governmental agencies.

**4. WARRANTY**

Consultant's services covered by this Agreement shall conform to the specifications, requirements and instructions upon which this Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

**5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

Consultant represents and maintains that it is qualified in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant shall perform such Services and duties in conformance to and consistent with the professional standards of firms in the same discipline in the State of California.

**6. CONFLICT OF INTEREST (FORM 700)**

In accordance with the California Political Reform Act (Government Code section 81000 et seq.) and the City's Conflict of Interest Code, Consultant shall cause each person who will be principally responsible for providing the service and deliverables under this Agreement as having to file a Form 700 to do each of the following:

- A. Complete and file the Form 700 no later than thirty (30) calendar days after the date the person begins performing services under the Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- B. File the Form 700 with the City's Clerk Office.

## **7. COMPENSATION AND PAYMENT**

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is as specified in Exhibit B1 Section 1, 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 Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

## **8. TERMINATION**

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.
- B. Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.
- D. The Consultant shall have the right to terminate this agreement upon ten days written notice to the City upon breach by City of its material obligations by City under this Agreement. In the event of termination, the Consultant shall be paid for all services performed up to the effective date of the termination.

## **9. ASSIGNMENT AND SUBCONTRACTING**

City and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or

transferred without the prior written approval of City. Consultant shall not hire subcontractors without express written permission from City.

Consultant 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 Consultant is for the acts and omissions of persons directly employed by it.

**10. 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.

**11. INDEPENDENT CONSULTANT**

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant has full rights to manage its employees in their performance of Services under this Agreement.

**12. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

**13. OWNERSHIP OF MATERIAL**

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Consultant may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

**14. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of

final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

## **15. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subcontractors, or agents in the performance, or non-performance, of the Scope under this Agreement.
- B. Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, Consultants, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Consultant warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

## **16. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

**17. WAIVER**

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

**18. 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 – Traffic Division  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [schan@santaclaraca.gov](mailto:schan@santaclaraca.gov)

And to Consultant addressed as follows:

Kimley-Horn and Associates, Inc.  
Attention: Adam Dankberg  
1300 Clay Street, Suite 325  
Oakland, CA 94612  
and by e-mail at [adam.dankberg@kimley-horn.com](mailto:adam.dankberg@kimley-horn.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.

**19. COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).



**20. CONFLICTS OF INTEREST**

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

**21. FAIR EMPLOYMENT**

Consultant shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

**22. NO USE OF CITY NAME OR EMBLEM**

Consultant shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

**23. 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.

**24. 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.

**25. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

**26. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form: \_\_\_\_\_

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

\_\_\_\_\_  
GLEN R. GOOGINS  
City Attorney

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

“CITY”

**KIMLEY-HORN AND ASSOCIATES, INC.**  
a North Carolina corporation

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

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

Name: Adam Dankberg

Title: Vice President

Principal Place of Business Address: 1300 Clay Street, Suite 325  
Oakland, CA 94612

Email Address: adam.dankberg@kimley-horn.com

Telephone: (510) 625-0712

Fax: N/A

“CONSULTANT”

## **EXHIBIT A SCOPE OF SERVICES**

The following Scope of Services defines the services and responsibilities of Consultant and City to professional services for a comprehensive citywide transportation safety analysis and the development of a Vision Zero Plan (“Plan”) throughout Santa Clara.

The Scope of Services, including Exhibit A and Consultant’s proposal response dated February 22, 2024 and BAFO response dated April 9, 2024 provide context, supplemental information, and are incorporated by reference to the extent not inconsistent with the Agreement.

### **1. GENERAL**

- 1.1. Consultant will provide professional services for a comprehensive citywide transportation safety analysis and the development of a Vision Zero Plan (“Plan”) throughout Santa Clara. Consultant will be expected to deliver complete, high-quality services and products within a reasonable schedule, and to consult and work with City staff who are involved with the project.
- 1.2. The City received a grant award from Safe Streets 4 All (SS4A) program for this project and is pending execution of the funding agreement with USDOT. The goal of this project is to develop a Vision Zero Plan for all modes that is aligned with the Safe System Approach and meets the requirements for future SS4A Implementation grant funding. Required elements can be found in the linked documents in Section 1.5 below and at the SS4A website: <https://www.transportation.gov/grants/SS4A>.
- 1.3. The Plan must reflect the goals and actions outlined in the SS4A grant narrative. Refer to Exhibit A2 for the Santa Clara Safety Action Plan Grant Narrative.
- 1.4. This Plan should also meet Caltrans eligibility requirements for Highway Safety Improvement Project (HSIP) grants. The Plan will provide a systematic, citywide approach for identifying, analyzing, and prioritizing safety improvement countermeasures to reduce and prevent fatal and serious injury collisions for all users of the roadways that follows current State and Federal local roads safety plan guidelines. The plan will also include an approach and process for keeping the Safety Action Plan current. The Vision Zero Plan shall be developed in accordance with federal, state, and local guidelines and principles.
- 1.5. Consultant shall utilize the SS4A Action Plan Development Resources including, but not limited to, the following list in the creation of the Vision Zero Action Plan:
  - 1.5.1. Action Plan Self-Certification Checklist

- 1.5.2. FHWA Safety Website
  - 1.5.2.1. Safe System Approach
  - 1.5.2.2. Safety Data Analysis & Tools
    - Highway Safety Manual
    - Systemic Approach to Safety
    - Crash Modification Factors Clearinghouse
  - 1.5.2.3. Proven Safety Countermeasures
  - 1.5.2.4. Local & Rural Safety Plans
  - 1.5.2.5. Complete Streets
- 1.5.3. Caltrans Local Roadway Safety Plan and Systemic Safety Analysis Report Program
- 1.5.4. County of Santa Clara Local Roadway Safety Plan
- 1.5.5. MTC Resolution No. 4400: Regional Safety / Vision Zero (VZ) Policy
- 1.5.6. Vision Zero Network
- 1.5.7. AASHTO Highway Safety Manual
- 1.5.8. Equity in Roadway Safety
- 1.5.9. Integrating Road Safety into NEPA Analysis FHWA 1136
- 1.6. The Plan shall comply with future funding opportunities for implementing the priority projects including, but not limited to, the following:
  - 1.6.1. Safe Streets and Roads for All Implementation Grants
  - 1.6.2. Highway Safety Improvement Program (HSIP)
  - 1.6.3. Transportation Alternatives (TA) Set-Aside from the Surface Transportation Block Grant (STBG)
  - 1.6.4. Congestion Mitigation and Air Quality Improvement (CMAQ) Program
- 1.7. The consultant is expected to incorporate the tasks listed below in Section 3 in their proposed Scope of Services. Consultant is encouraged to incorporate their own expertise into their proposed Scope of Services to be submitted as part of their proposal and propose additions or modifications to this Scope of Services that the Proposer deems necessary or advisable to meet the CITY's objectives. However, it shall be assumed that the project will include all of the listed tasks in Section 3 specified herein.

## **2. PROJECT TIMELINE**

The City anticipates developing and completing the Vision Zero Plan in 15 months. Consultant shall propose a workplan and timeline that targets draft plan completion by August 2025 and final Plan adoption by October 2025.

### 3. PROJECT TASKS

3.1. Task 1: Project Management & Administration - Refer to the table below for tasks and deliverables for Task 1 Consultant will be responsible for.

| Task # | Task Description          | Task Activities  |
|--------|---------------------------|--|
| 1      |                           | <b>Project Management &amp; Administration</b>   |
| 1.1    | Project Kick-Off Meeting  | <ol style="list-style-type: none"> <li>1. Within two weeks after the receipt of a written “Authorization to Proceed” from the City, the City and Consultant will have a kick-off meeting to frame the Plans’ goals, finalize the schedule and needed data, and discuss community engagement strategies.</li> <li>2. Prior to the project kick-off, the consultant shall prepare and provide a draft data request list for the planning process, specifically to support activities in Task 4. City will review the list and provide guidance on what can be provided by the City.</li> <li>3. Consultant shall prepare the meeting agenda and email it to the City staff before the kick-off meeting.</li> </ol> |
| 1.2    | Bi-weekly Project Updates | <ol style="list-style-type: none"> <li>1. To keep the project on schedule and meet federal grant requirements, the Consultant shall schedule, facilitate, and document bi-weekly project updates, bi-weekly project meetings, provide monthly progress reports that include a project schedule with key milestones and deliverables as well as a project budget with itemized costs and fund balances in a checklist, spreadsheet format.</li> <li>2. The Consultant’s Project Manager will be responsible for updating the check-in meeting agendas in a collaborative document editing platform such as Google Doc, Microsoft Office, etc., and summarizing action items and next steps.</li> </ol>            |

| Task #                           | Task Description      | Task Activities   |
|----------------------------------|-----------------------|---|
| 1.3                              | File and Data Sharing | Consultant shall provide City with an online account or access for file-sharing purposes. All collected and existing data, community outreach materials, technical memos, project deliverables shall be uploaded online. The account must be accessible by the City throughout the project duration.  |
| 1.4                              | Progress Reporting    | <p>1. Consultant shall assist the City in preparing progress reports to USDOT including the final progress report after Plan adoption. The progress report schedule is shown below, assuming final Plan adoption by August 2025.</p> <p>2. Federal Reporting Due Dates (Tentative; Additional dates may be added if project finishes after August 2025):</p> <ul style="list-style-type: none"> <li>• July 20, 2024</li> <li>• October 20, 2024</li> <li>• January 20, 2025</li> <li>• April 20, 2025</li> <li>• July 20, 2025</li> <li>• October 20, 2025</li> </ul>   |
| <p>QA/QC Review Information:</p> |                       | <p>This task covers efforts associated with the internal quality control and technical review process. Specifically, the Consultant shall conduct internal QA/QC discussions and follow-up with technical experts as necessary during the project. Consultant shall also perform internal checking or peer review of all deliverables.</p> <p>For each project deliverable, the Consultant shall allow sufficient review time for the City. For major deliverables such as BPAC presentations, High Injury Network map, Project and Program Recommendation, draft Plan and final Plan, the Consultant shall allow minimum two weeks for review time and plan for up to three (3) rounds of consolidated comments from the City.</p> <p>Comments on data errors and analysis inaccuracy shall not count as a round of comments as this will be assumed to be resolved during the project consultant's internal QA/QC review.</p> |

| <b>Task 1 Deliverables</b> |   |  |
|----------------------------|---|--|
| 1.1                        | (a)   | Final work plan and schedule   |
|                            | (b)   | Kick-off meeting agenda and minutes                                  |
|                            | (c)   | Initial list of existing and needed data                             |
| 1.2                        | (a)   | Finalized Scope of Work  |
|                            | (b)   | Bi-weekly project meeting agendas, minutes, and list of action items |
| 1.3                        | Provide City with access to online file sharing.                                  |  |
| 1.4                        | Provide support to City staff on requirements for Federal reporting requirements. |  |

3.2. Task 2: Benchmarking & Data Review - Refer to the table below for tasks and deliverables for Task 2 Consultant will be responsible for.

| <b>Task #</b> | <b>Task Description</b>                     | <b>Task Activities</b>   |
|---------------|---|--|
| <b>2</b>      | <b>Benchmarking &amp; Data Review</b>       |  |
| 2.1           | Programs, Policy, and Planning Benchmarking | <ol style="list-style-type: none"> <li>1. Consultant shall review all relevant City plans, projects, policies, programs, and standards to ensure Vision Zero Plan is developed in coordination with current requirements.</li> <li>2. Consultant shall assist City in determining the hierarchy of existing City plans, policies, and regulations. The items shall include but not be limited to: <ol style="list-style-type: none"> <li>a. Bicycle Master Plan Update 2018</li> <li>b. Pedestrian Master Plan 2019</li> <li>c. General Plan</li> <li>d. Specific Plans/Precise Plans/Focus Plans (El Camino, Freedom Circle, Patrick Henry, Lawrence Station, Tasman East, Downtown, Santa Clara Station)</li> <li>e. Bike &amp; Pedestrian Projects (Pruneridge, De La Cruz/Coleman, Walsh/Martin, Benton, Monroe, Bassett-Laurelwood, Lafayette, Bowers, Lick Mill/Scott/De La Cruz, Central Santa Clara Bicycle and Pedestrian Improvement Project)</li> <li>f. Creek Trail Master Plan</li> <li>g. Stevens Creek Blvd Vision Study</li> <li>h. Private Developments (Kylli, Related, Great America Theme Park)</li> </ol> </li> </ol> |



| Task # | Task Description       | Task Activities   |
|--------|------------------------|---|
| 2      |                        | <b>Benchmarking &amp; Data Review</b>   |
|        |                        | <ul style="list-style-type: none"> <li>i. Complete Streets Policy</li> <li>j. Safe Routes to School Program</li> <li>k. Neighborhood Traffic Calming Program</li> <li>l. Shared Mobility Program</li> <li>m. Joint On-Demand Shuttle Program (Cupertino and Santa Clara)</li> <li>n. City Design Standards</li> <li>o. Future uncontrolled crosswalk projects</li> <li>p. Transportation Management and Operations Plan for the Levi's Stadium in Santa Clara</li> </ul> <p>3. Consultant shall review local, statewide, and federal policies, plans, guidelines, and/or standards to identify opportunities to improve how City processes prioritize safety. Consultant shall also review policies, plans, and benchmarking assessments from other cities in the Bay Area that have existing Vision Zero Plans and recommend how City can learn from them. The benchmarking assessment will be based on the tool recommended in the FHWA Primer on Safe System Approach for Pedestrians and Bicyclists. In this assessment, Consultant will recommend Vision Zero policies that apply to City's review of new development projects, City projects, and other agency projects within Santa Clara.</p> <p>4. Consultant will identify a target date to reach zero fatalities and serious injuries and a target date to achieve significant declines (50% reduction) in roadway fatalities and serious injuries, to be reviewed and approved by the City. Target dates shall be developed through consideration of realistic schedules for capital project improvements, policy changes, and implementation of proposed programs.</p> |
| 2.2    | Vision Zero Task Force | 1. Consultant shall lead efforts with the City to establish a Vision Zero Task Force including  |

| Task # | Task Description | Task Activities   |
|--------|------------------|---|
| 2      |                  | <b>Benchmarking &amp; Data Review</b>   |
|        |                  | <p>representatives from City Public Works staff, City Police, County Roads &amp; Airport and Public Health staff, Caltrans, BPAC (up to 2 representatives), Senior Advisory Commission representative, VTA, school districts, college/university representatives, other local safety advocacy groups such as Silicon Valley Bicycle Coalition, Silicon Valley Chamber of Commerce, and other major employers. Consultants may propose additional representatives from other organizations.</p> <p>2. Consultant will schedule the first meeting with the Vision Zero Task Force to provide a primer on the SafeSystem Approach to understand what supporting policies, resolutions, and/or ordinances may be helpful to support the plan implementation and any ongoing meetings (see Task 3.5 for more details).</p> |
| 2.3    | Data Review      | <p>1. Consultant will review and assess the quality and completeness of existing available data – including crash, transportation, land use, and demographic data.</p> <p>2. Summarize and identify gaps in the data and how to efficiently and effectively develop any additional public input data to be used in the Plan development.</p> <p>3. If analysis methods require more information, the Consultant may propose additional data collection in their scope of work and fee for review and approval.</p>  |
| 2.4    | Data Collection  | <p>1. Consultant will work with the City to identify locations that do not have historical or relevant traffic counts.</p> <p>2. The City may consider the use of “Big Data” (i.e. StreetLight) for additional traffic data for the project.</p> <p>3. The Consultant may conduct site visits of corridors with frequent collisions to analyze</p>  |

| Task #                     | Task Description   | Task Activities   |
|----------------------------|--|---|
| <b>2</b>                   | <b>Benchmarking &amp; Data Review</b>  |   |
|                            |  | existing operations. Site visits may include Consultant, City staff, BPAC, and selected stakeholders. |
| <b>Task 2 Deliverables</b> |  |   |
| 2.1                        | Benchmarking assessment technical memo including safety goal and programs, policies, data review, and practices recommendations as a section of the Draft Plan. The assessment will include a hierarchy of plans, policies, and regulations related to Vision Zero and any proposed updates on existing plans, policies, and regulations to align with current state of practice.<br><br>The memo should also include a literature review summary of current efforts to address transportation safety – including strategies and best practices other jurisdictions are using to address safety, identifying programs that have evidence of measurable success and assessments of the most effective and efficient methods used to achieve outcomes. |   |
| 2.2                        | Agendas and meeting minutes with Vision Zero Task Force  |   |
| 2.3                        | Technical report on the data review  |   |
| 2.4                        | List of additional data and collection methodology (if applicable)   |   |

3.3. Task 3: Community Engagement - Refer to the table below for tasks and deliverables for Task 3 Consultant will be responsible for.

| Task #  | Task Description                                 | Task Activities   |
|---|--|---|
| <b>3</b>  | <b>Community Engagement</b>                      |   |
| <i>(All meetings will be publicly noticed to ensure maximum attendance. All public notices must be in English, Chinese, and Spanish – the three primary languages spoken at home in Santa Clara. Translator and sign language interpreters will be present at all meetings if requested.)</i> |  |   |
| 3.1   | Community Engagement Plan & Schedule Development | The Consultant will prepare a Community Engagement Plan and provide a project timeline for implementing an equitable and authentic public engagement process. While in-person public engagement is preferred, virtual engagement methods should also be utilized. The Consultant shall consider the following for their public engagement strategy: <ul style="list-style-type: none"> <li>Identify communities that are</li> </ul> |

| Task # | Task Description          | Task Activities   |
|--------|---------------------------|---|
|        |                           | <p>disproportionately impacted by traffic risks and ensure that they are getting representation and feedback from these traditionally underrepresented communities.</p> <ul style="list-style-type: none"> <li>• Utilize tools to meaningfully engage communities, including preferred engagement techniques. Different tools can include community workshops, online surveys, interactive web map, and walking tours.</li> <li>• Engage with Bicycle and Pedestrian Advisory Committee, Senior Advisory Commission, Youth Commission, ADA Committee, and Parks and Recreation Commission, and communities from early stage of the process and keep them informed throughout the process.</li> <li>• Create a tool to document and share the impact of engagement on decision-making.</li> <li>• Assess the feedback received, including the activity and participants engaged, and how the feedback will be incorporated into the Vision Zero Plan.</li> </ul> |
| 3.2    | Project Promotion/Website | <ol style="list-style-type: none"> <li>1. Consultant shall create content to be placed on the City's project website to promote outreach and education materials, document meetings, announce public events, and provide a forum for the public to submit comments. Promotional items may include slogan/taglines. Consultant can propose additional engagement strategies for City's consideration.</li> <li>2. Consultant shall create and monitor a project phone number and email address for the public to submit voicemail and/or email comments. A project phone number will ensure members of the public who do not have a smart phone, computer, or internet access have a method for providing comments.</li> <li>3. Consultant shall identify up to fifteen (15) key corridors and up to ten (10) other hotspots or residential streets within the City, create and</li> </ol>   |

| Task # | Task Description                    | Task Activities  |
|--------|-------------------------------------|--|
|        |                                     | <p>produce roadway signs with project information to be placed along each key corridor on street pole lights. The amount of roadway signs will be 10 to 20 signs per corridor depending on corridor length (maximum 300 signs). The signs will be customized 18-inch x 24-inch corrugated plastic signs. Signs shall be delivered to City facilities to be installed by City staff. Consultant may propose alternative messaging method such as street banners to maximize public engagement and provide a cost estimate for review and approval.</p> <p>4. Consultant will create an interactive safety data dashboard displaying the results of the Collision Data Analysis. An example from the City of San Jose:<br/> <a href="https://www.sanjoseca.gov/your-government/departments-offices/transportation/safety/vision-zero/maps-data">https://www.sanjoseca.gov/your-government/departments-offices/transportation/safety/vision-zero/maps-data</a></p> <p>5. The data dashboard will be hosted on the City's project website.</p> |
| 3.3    | Community Surveys (up to 4 surveys) | <p>Consultant shall create up to four (4) online community surveys to obtain additional public input. The survey will be used in addition to the website, phone number, and community outreach events and shall align with the community meetings.</p> <ul style="list-style-type: none"> <li>• Survey #1 – Public Input on traffic safety concerns citywide and identify locations where do they have most traffic concerns. Public can report near-misses and stressful locations. Survey should include a citywide pin-map where the public can note locations and add comments to report observed safety issues.</li> <li>• Survey #2 – Public input on collision analysis, High-injury Network (HIN)</li> <li>• Survey #3 – Public input on programs and policies, countermeasure toolkit</li> </ul>  |

| Task # | Task Description                                   | Task Activities  |
|--------|--|--|
|        |  | <ul style="list-style-type: none"> <li>• Survey #4 – Public input on project priority list</li> </ul>  |
| 3.4    | Outreach Events/Pop-Ups                            | <p>Consultant shall conduct outreach at up to five (5) major public events and/or up to five (5) pop-up events (Art &amp; Wine Festival, 4th of July Picnic, Christmas Tree lighting, Bike to Work Day, Earth Day).</p> <p>Consultant shall distribute flyers/postcards/promotional items to the public and/or assist City in posting project signs at other popular City places (i.e. City Library, Reed Street Dog Park, Central Park, Farmer’s Market, Mission College/Santa Clara University, Caltrain Station, church festivals) in order to inform the community of the project and solicit feedback from the community about the conceptual design alternatives. One potential meeting may be a high school pop-up event.</p> |
| 3.5    | Vision Zero Task Force Meetings (Up to 3 meetings) | <p>Consultant shall schedule and lead up to three (3) Vision Zero Task Force Meetings with the following anticipated themes:</p> <ol style="list-style-type: none"> <li>1. Project Introduction, Safe System Approach and Vision Zero Goals</li> <li>2. Review collision data, High Injury Network, and proposed Countermeasure tools, Programs and Policies</li> <li>3. Review and provide feedback on Priority Project List, Proposed Programs, and Draft final plan.</li> </ol>   |
| 3.6    | Community Workshops                                | <ol style="list-style-type: none"> <li>1. Consultant shall conduct a minimum of four (4) community workshops to engage the public, solicit feedback, and inform the staff and council on the community’s priorities. The Consultant is encouraged to identify specific outreach techniques in the work plan to maximize public participation and hear the community’s voice. The community meetings will either be in person or virtual. Consultant may propose additional community workshops as they see appropriate for successful project delivery.             <ol style="list-style-type: none"> <li>a. Community Meeting #1: Consultant shall</li> </ol> </li> </ol>  |

| Task # | Task Description | Task Activities  |
|--------|------------------|--|
|        |                  | <p>introduce the project to the public and solicit feedback from the community about Vision Zero policies and goals and ask for their input on near-miss collisions and stressful locations.</p> <ul style="list-style-type: none"> <li>b. Community Meeting #2: Consultant shall present collision analysis and high injury network. Public comments will be used to inform staff and the Council on the HIN.</li> <li>c. Community Meeting #3: Consultant shall present Programs and Policies and countermeasure toolkit.</li> <li>d. Community Meeting #4: Consultant shall present results of project priority list and obtain public input.</li> </ul> <p>2. Consultant shall provide all materials necessary to conduct a public meeting either in person such as poster boards or virtual such as a PowerPoint presentation to support methods identified in the work plan.</p> <p>3. Consultant shall assist staff to advertise each public meeting by preparing a writeup to be submitted to the City's Communications Department for release through the City's website, City Manager blog, and social media channels such as Facebook, Twitter, and Next Door.</p> <p>4. Consultant shall also post the Draft Plan (when ready) on the project webpage for public comments. Public review of the Draft Plan will also occur through the committee meetings' public comment opportunities.</p> |



| Task # | Task Description  | Task Activities   |
|--------|---|---|
| 3.7    | Bicycle and Pedestrian Advisory Committee (BPAC) Meetings | <p>Consultant shall meet with the City's BPAC to gather input and feedback at up to five (5) BPAC meetings. The purpose of the meetings is described below:</p> <ul style="list-style-type: none"> <li>• Meeting #1: Consultant shall introduce the project to the BPAC including the Safe System approach and solicit feedback from members on Vision Zero policies, best practices, and goals. City will ask BPAC to select up to two representatives to serve on the Vision Zero Task Force.</li> <li>• Meeting #2: Consultant shall present collision data analysis and obtain input on draft High Injury Network.</li> <li>• Meeting #3: Consultant shall present Programs and Policies, and Countermeasure toolbox.</li> <li>• Meeting #4: Consultant shall present project priority list and draft Plan to receive BPAC input.</li> <li>• Meeting #5: Consultant shall present the final Plan to the BPAC for adoption prior to City Council.</li> </ul> |
| 3.8    | Commission Meetings                                       | <p>City staff will attend the Commission meetings. Consultant shall provide up to 10 hours of support to the City to prepare presentation materials and reports for up to four (4) meetings in total, i.e. Youth Commission, Senior Advisory Commission, Parks and Recreation Commission, and ADA Committee.</p>  |
| 3.9    | City Council Meetings (Up to 2)                           | <ol style="list-style-type: none"> <li>1. Consultant shall assist staff to present the project at up to two (2) Council meetings.</li> <li>2. Consultant shall provide all the materials necessary to present at the Council meetings to support methods identified in the work plan.</li> <li>3. Consultant shall assist staff to advertise each meeting by preparing a writeup to be submitted to the City's Communications Department for release through City of Santa Clara website, City Manager blog, and all of the social media channels such as Facebook, Twitter, and Next Door.</li> </ol>  |

| <b>Task #</b>              | <b>Task Description</b>   | <b>Task Activities</b> |
|----------------------------|---|------------------------|
| <b>Task 3 Deliverables</b> |   |                        |
| 3.1                        | Provide a community engagement strategy and timeline for the Department review and approval.  |                        |
| 3.2                        | (a) Assist City in creating the project webpage.<br>(b) Dedicated project contact including email, voicemail, and promotional signage.<br>(c) Interactive safety data dashboard |                        |
| 3.3                        | Up to four (4) Community Surveys and summary of survey results, such as near-miss collisions, stressful locations, public comments, etc.  |                        |
| 3.4                        | (a) Participation in up to five (5) Community Events<br>(b) Participation in up to five (5) additional pop-ups<br>(c) Summary of outreach outcomes.                             |                        |
| 3.5                        | Prepare agendas, all presentation materials, and meeting minutes for up to (3) Vision Zero Task Force meetings.   |                        |
| 3.6                        | (a) All presentation materials necessary for Community Workshops.<br>(b) Summary of Frequently Asked Questions from the public.   |                        |
| 3.7                        | Prepare all presentation materials and staff report for up to five (5) BPAC meetings.   |                        |
| 3.8                        | Prepare all presentation materials and reports for up to four (4) Commission meetings.  |                        |
| 3.9                        | Prepare all presentation materials and staff report for up to two (2) City Council meetings.  |                        |

3.4. Task 4: Collision Data Collection & Analysis - Refer to the table below for tasks and deliverables for Task 4 Consultant will be responsible for.

The City will provide the Consultant with collision data from Crossroads for the last eight years (2016 – 2023). The Consultant will also collect and review collisions, traffic, and roadway from 2016 – 2023 from California Statewide Integrated Traffic Records System (SWITRS) and/or UC Berkeley SafeTREC’s Transportation Injury Mapping System (TIMS) to understand critical safety issues and provide insight into trends, causes, and patterns of transportation safety throughout the region. The data analysis and final recommendations will prioritize the “3 Es” of traffic safety: Engineering, Enforcement, and Education, and will also include a fourth “E”: Equity.

| <b>Task #</b> | <b>Task Description</b>                       | <b>Task Activities</b>   |
|---------------|---|--|
| <b>4</b>      | <b>Collision Data Collection and Analysis</b> |  |
| 4.1           | Existing Conditions Analysis                  | 1. Analyze existing conditions and historical trends that provide a baseline level of crashes. The analysis will document traffic patterns, mode share, roadway features, traffic volumes, crash |

| Task # | Task Description               | Task Activities   |
|--------|--------------------------------|---|
|        |                                | <p>types, driver factors, and environmental conditions with special attention to fatalities and serious injuries.</p> <ol style="list-style-type: none"> <li>2. Collect and analyze public inputs on near-misses and/or unreported collisions from community surveys.</li> <li>3. Summarize crash characteristics and determine the most likely contributing factors, matching crash activity with roadway characteristics such as speed limits, intersection controls, streetlights, pedestrian crossings, railroad crossings, etc., for each road user (vehicles, motorcycles, bicycle riders, and pedestrians).</li> <li>4. Summarize collision data in figures using City maps showing top intersections and roadway segments with overall collisions, serious injury collisions, vulnerable road user (bicycle and pedestrian) collisions, etc.</li> </ol>   |
| 4.2    | High Injury Network (HIN) Maps | <ol style="list-style-type: none"> <li>1. The consultant will first develop criteria and methodology for the analysis for City's review and approval. The methodology should include but not limit to weight assignment to collision types, thresholds of "priority" projects, normalization.</li> <li>2. Identify and develop a High Injury Network (HIN). The HIN shall be developed inclusive of the County and Caltrans jurisdictions to coordinate what locations and projects will require cross-jurisdictional collaboration. In this task, City staff will work directly with the Consultant to understand existing conditions in Santa Clara, especially reviewing the risk-based High injury network and developing the final high-injury network. The high-injury network shall not include mainline freeway segments (US 101, I-280, SR 237).</li> <li>3. Develop the following heat maps: <ol style="list-style-type: none"> <li>a. High Injury Intersections and High Injury</li> </ol> </li> </ol> |

| <b>Task #</b>              | <b>Task Description</b>  | <b>Task Activities</b>  |
|----------------------------|--|---|
|                            |  | <p>Corridors – All Modes</p> <p>b. Pedestrian High Injury Network</p> <p>c. Bicycle High Injury Network</p> <p>d. Automobile and Motorcycle High Injury Network</p> <p>4. Develop recommendations to coordinate with other agencies to implement the cross-jurisdictional projects.</p>   |
| 4.3                        | Develop Collision Profiles   | <p>Building on the collision analysis, Consultant will define up to ten (10) collision profiles to extrapolate collision history to contextual settings. Use best practices, methods, and datasets identified in Task 2 to inform the Action Plan and Project Prioritization, including:</p> <ol style="list-style-type: none"> <li>1. prevalence of crash types, especially those resulting in fatalities and serious injuries.</li> <li>2. citywide distribution of crashes, including geographic locations of crashes as well as road typologies or system characteristics.</li> <li>3. data that connects prevalent risk and crash characteristics to agency policy and processes, including implementing proven safety countermeasures, identifying projects or locations for priority funding, and supporting local project development.</li> </ol> |
| <b>Task 4 Deliverables</b> |  |   |
| 4.1                        | Existing Conditions Memo   |   |
| 4.2                        | <p>(a) Complete collision analysis identifying priority corridors, intersections, and concentration areas. A memorandum will be prepared for City review and will be revised based on up to three (3) rounds of consolidated comments. This memorandum will be folded into chapter(s) of the Draft Plan.</p> <p>(b) The HIN maps geocoded in GIS and in PDF format</p> |   |
| 4.3                        | Up to ten collision profiles   |   |

3.5. Task 5: Countermeasure Toolbox - Refer to the table below for tasks and deliverables for Task 5 Consultant will be responsible for.

| <b>Task #</b> | <b>Task Description</b>                   | <b>Task Activities</b> |
|---------------|---|------------------------|
| <b>5</b>      | <b>Countermeasure Toolbox Development</b> |                        |

|                            |  |   |
|----------------------------|--|---|
| 5.1                        | Develop Countermeasure Toolbox                               | <ol style="list-style-type: none"> <li>1. The Consultant in conjunction with City staff will identify countermeasures to systemically address the emphasis areas and high-risk corridors and intersections.</li> <li>2. The countermeasures must at least include the “3 Es” of traffic safety (Engineering, Enforcement, and Education) and Equity and incorporate a Safe System Approach. The consultant will include Evaluation strategies and performance measures to measure progress over time and be tracked.</li> <li>3. In addition, Consultant shall identify correlations between countermeasures and federal performance measures. A process will need to be set up to ensure transparency in reducing roadway fatalities and serious injuries.</li> <li>4. The toolbox should also include concept diagrams and high-level cost estimates for the priority areas and high-risk corridors and intersections.</li> </ol> |
| <b>Task 5 Deliverables</b> |  |   |
| 5.1                        | Draft Countermeasure Toolbox<br>Final Countermeasure Toolbox |   |

3.6. Task 6: Transportation Equity Assessment - Refer to the table below for tasks and deliverables for Task 6 Consultant will be responsible for.

| Task #   | Task Description                        | Task Activities  |
|----------|---|--|
| <b>6</b> | <b>Transportation Equity Assessment</b> |  |
| 6.1      | Transportation Equity Assessment        | <ol style="list-style-type: none"> <li>1. Consultant will perform a transportation equity assessment to better understand how current transportation systems, services, and decision-making processes impact the lives of all users, including underserved and underrepresented communities. This should include an analysis of systems, services, and processes that support safe and easy-to-use multimodal options, amenities that are accessible to all populations for reaching destinations independently, and strategies to reduce socioeconomic disparities experienced by underserved and underrepresented</li> </ol> |

| Task #                     | Task Description   | Task Activities   |
|----------------------------|--|---|
|                            |  | <p>communities.</p> <p>2. The City's Equity Priority Communities (EPC) can be found <a href="https://opendata.mtc.ca.gov/datasets/equity-priority-communities-plan-bay-area-2050/explore?location=37.878600%2C-122.370850%2C9.04">https://opendata.mtc.ca.gov/datasets/equity-priority-communities-plan-bay-area-2050/explore?location=37.878600%2C-122.370850%2C9.04</a> and the latest CalEnviro Screen: <a href="https://oehha.ca.gov/calenviroscreen">https://oehha.ca.gov/calenviroscreen</a> .</p> <p>3. As part of this task, Consultant shall develop and assess transportation indicators that easily measure transportation barriers in underserved and underrepresented areas and/or potential structural inequalities that different population groups may face.</p> <p>4. These indicators should include, at a minimum:</p> <ul style="list-style-type: none"> <li>a. Accessibility</li> <li>b. Connectivity</li> <li>c. Effectiveness</li> <li>d. Environment</li> <li>e. Health</li> <li>f. Mobility</li> <li>g. Safety</li> <li>h. Level of community engagement</li> <li>i. Other equity indicators, as required.</li> </ul> <p>5. Consultant shall develop one map showing collisions compared to EPCs and vulnerable communities.</p> |
| <b>Task 6 Deliverables</b> |  |   |
| 6.1                        | Document equity considerations, processes, and assessments, to be included as a section in the Draft Plan. The assessment includes a map showing collision data compared to EPCs and vulnerable communities. |   |

3.7. Task 7: Implementation Plan & Programs - Refer to the table below for tasks and deliverables for Task 7 Consultant will be responsible for.

| Task # | Task Description                       | Task Activities  |
|--------|--|--|
| 7      |  | <b>Implementation Plan &amp; Programs</b>  |
| 7.1    | Develop Priority Projects and Programs | <ol style="list-style-type: none"> <li>1. Consultant will identify a list of priority projects based on the results of Tasks 4, 5 and 6, and recommendations for Education and Enforcement Programs. Strategies, potential projects, and programs will be focused on the “3 Es” of transportation safety and equity.</li> <li>2. The recommendation of priority projects, programs, and policies can be based on facility types and/or certain geographic focus areas of the City including but not limited to Santa Clara downtown, Levis’ Stadium &amp; Convention Center, El Camino Real, and Santa Clara University.</li> <li>3. This task will include an assembly of projects identified in existing plans, reviewed for consistency with the Safe System Approach. Where projects have not been identified on the City’s HIN, high level project concepts with a list of potential countermeasures will be developed with City staff. Systemic or citywide projects will be envisioned to match the citywide systemic profiles where planned projects are also not in place.</li> </ol> |
| 7.2    | Develop Implementation Plan & Program  | <ol style="list-style-type: none"> <li>1. Consultant shall develop an Implementation Plan &amp; Program for the Vision Zero effort, time ranges when projects and strategies will ideally be deployed, cost estimates (including capital improvement costs for priority projects, typical costs for items included in the countermeasure toolbox, and startup/annual costs for recommended programs and policies), and explain project prioritization criteria.</li> <li>2. The Implementation Plan &amp; Programs will: <ol style="list-style-type: none"> <li>a. Recognize the needs of all users of the multimodal transportation system.</li> <li>b. Include potential projects that are feasible and applicable for grant funding.</li> <li>c. Include conceptual infrastructure improvements with quantifiable costs.</li> </ol> </li> </ol>   |



| Task #                     | Task Description  | Task Activities   |
|----------------------------|---|---|
| 7                          |   | <b>Implementation Plan &amp; Programs</b>   |
|                            |   | <ul style="list-style-type: none"> <li>d. Include a schedule for implementation.</li> <li>e. Identify roles and responsibilities for implementation.</li> <li>f. Address project evaluation and prioritization.</li> </ul> <p>3. Strategies and recommendations will consider and outline fiscal and employee resources necessary for a continued, sustained, and successful effort to achieve traffic safety goals. A project readiness timeline for each strategy and project should be included (i.e., short-term = up to five years; mid-term = five to ten years; long-term = 10+ years).</p> <p>4. The Consultant will also develop a strategy for implementing safety measures included in Task 5 (Countermeasure Toolbox) and a means to monitor safety outcomes to evaluate which measures are most effective for the City.</p> <p>5. The Consultant will identify potential projects for future grant applications, measures that can be included in regular maintenance cycles, and potential updates to regional design standards to better align safety best practices.</p> <p>6. Consultant shall develop concept plans for 10 priority projects that can be used for future grant applications. Concept plans shall be developed over high-quality aerials showing existing conditions. Consultant shall supplement concept designs with other planning-level diagrams that can be shared during public presentations.</p> |
| 7.3                        | Develop Evaluation Plan   | Identify on-going actionable steps to evaluate and monitor Vision Zero performance after Plan adoption.   |
| <b>Task 7 Deliverables</b> |   |   |
| 7.1                        | <ul style="list-style-type: none"> <li>(a) Final Prioritized Project, Programs and Policies, revised with up to three (3) rounds of consolidated comments.</li> <li>(b) Concept plans for top 10 priority projects</li> </ul> |   |

| <b>Task #</b> | <b>Task Description</b>                   | <b>Task Activities</b> |
|---------------|---|------------------------|
| <b>7</b>      | <b>Implementation Plan &amp; Programs</b> |                        |
| 7.2           | Vision Zero Implementation Plan & Program |                        |
| 7.3           | Vision Zero Evaluation & Monitoring Plan  |                        |

3.8. Task 8: Draft and Final Plan - Refer to the table below for tasks and deliverables for Task 8 Consultant will be responsible for.

| <b>Task #</b> | <b>Task Description</b>       | <b>Task Activities</b>   |
|---------------|-------------------------------|--|
| <b>8</b>      | <b>Draft and Final Plan</b>   |  |
| 8.1           | Vision Zero Plan Draft Report | <ol style="list-style-type: none"> <li>1. Consultant will prepare a draft Plan for public review and comment.</li> <li>2. Specifically, the consultant should develop a final report that: <ol style="list-style-type: none"> <li>a. Is organized and communicates a clear message both graphically and with accompanying text.</li> <li>b. Is easy to read and understand.</li> <li>c. Explains key implications as they relate to policies, programs, practices, strategies, infrastructure projects, funding, and other recommendations.</li> </ol> </li> <li>3. Consultant will revise the draft Plan based on public input. Consultant shall provide City with appropriate presentation materials for final review and adoption of the Vision Zero Plan.</li> </ol> |
| 8.2           | Vision Zero Plan Final Report | <ol style="list-style-type: none"> <li>1. Upon final review and consent by city staff, the Consultant will develop a final report that is visually appealing, easy for stakeholders to understand and communicates action plan strategies and recommendations.</li> <li>2. Upon final project completion, the consultant will be responsible for providing a high-resolution final Vision Zero Plan in PDF format. The Consultant is also expected to provide City with all data and study products. All community engagement summaries and technical analyses should be included as an appendix of the study.</li> </ol>  |

| <b>Task #</b>              | <b>Task Description</b>                             | <b>Task Activities</b>   |
|----------------------------|---|--|
| <b>8</b>                   | <b>Draft and Final Plan</b>                         |  |
| 8.3                        | Executive Summary/Fact Sheet                        | The Consultant shall develop a brief executive summary or fact sheet in PDF format, which relays all pertinent information in an easy-to-follow format. The summary should be concise and highly graphic, highlighting major assumptions, strategies, and recommendations. |
| <b>Task 8 Deliverables</b> |   |  |
| 8.1                        | Draft Plan  |  |
| 8.2                        | Electronic copy of the Final Plan                   |  |
| 8.3                        | Electronic copy of the Executive Summary/Fact Sheet |  |

#### **4. OPTIONAL TASKS**

Consultant may propose optional tasks for this project including the following:

- 4.1. Optional Task for Task 2.2: Continue 6-month collaboration with the Vision Zero Task Force and report back Vision Zero monitoring and evaluation.
- 4.2. Optional Task for Task 2.4: Obtain “Big Data” for citywide travel data including bicycle, pedestrian and vehicle trips and speed.
- 4.3. Optional Task for 2.4: Conduct site visit(s) of up to three corridors with frequent collisions.
- 4.4. Optional Task for Task 3.2: Conduct local small-scale media campaign such as banners at schools and bus stop advertisements.
- 4.5. Optional Task for Task 3.2: Purchase and distribution of Vision Zero promotional/safety items (up to \$5,000 for purchase of items).
- 4.6. Optional Task for Task 5.1: Collect Emergency Response data and develop Emergency Response strategies and countermeasures.

**EXHIBIT A2  
CITY OF SANTA CLARA SS4A APPLICATION NARRATIVE**

**The following is the City's submittal narrative:**

**E. Application Review Information**

**1. Selection Criteria**

This section specifies the criteria DOT will use to evaluate and select applications for SS4A grant awards. The Department will review merit criteria for all applications. Each of the two grant types to be made available through the SS4A grant program, Action Plan Grant and Implementation Grant, will have its own set of application review and selection criteria.

**i. Action Plan Grant Selection Criteria**

For Action Plan Grants, the Department will use three evaluation criteria. The Department will evaluate quantitative data in two selection criteria areas: #1 Safety Impact; and #2 Equity. The Department will also assess the narrative for #3 Additional Safety Considerations. Costs will also be considered.

**Selection Criterion #1:** Safety Impact. The activities are in jurisdictions that will likely support a significant reduction or elimination of roadway fatalities and serious injuries involving various road users, including pedestrians, bicyclists, public transportation users, personal conveyance and micromobility users, motorists, and commercial operators, within the timeframe proposed by the applicant. The Department will assess safety impact using two quantitative ratings:

- The count of roadway fatalities from 2016 to 2020 based on DOT's FARS data, an alternative traffic crash dataset, or a comparable data set with roadway fatality information:  
30
- The fatality rate, which is calculating using the average from the total count of fatalities from 2016 to 2020 (based on FARS data or an alternative traffic crash dataset) divided by the 2020 population of the applicant's jurisdiction based on 2020 U.S. Census population data.

$$(30/5 = 6)/127,647 = 0.0047\% \text{ or } 4.7 \text{ per } 100,000 \text{ persons}$$

**Selection Criterion #2:** Equity. The activities will ensure equitable investment in the safety needs of underserved communities in preventing roadway fatalities and injuries, including rural communities. The Department will assess the equity criterion using one quantitative rating:

- The percentage of the population in the applicant's jurisdiction that resides in an Underserved Community Census tract.<sup>24</sup> Population of a Census tract, either a tract that is Underserved Community or not, must be based on 2020 U.S. Census population data.

$$29,591 / 127,647 = 23.18\%$$

**Selection Criterion #3:** Additional Safety Considerations. The Department will assess whether the applicant has considered any of the following in the development of the Action Plan:

- Employ low-cost, high-impact strategies that can improve safety over a wider geographical area;
- Engage with a variety of public and private stakeholders (e.g., inclusive community engagement, community benefit agreements, etc.);

- Seek to adopt innovative technologies or strategies to promote safety and equity; and
- Include evidence-based projects or strategies.
- The applicant must address these considerations in narrative form.

The City of Santa Clara proposes to develop an Action Plan that will include a comprehensive citywide safety analysis to identify the highest types, locations, severity, and demographic users of collisions occurring within the City. A collision countermeasure toolbox will be developed based on recommendations within the AASHTO Highway Safety Manual and the Caltrans Local Roadway Safety Manual. The countermeasure toolbox will select low-cost, high-impact strategies that are based on collision reduction factors and the evidence of high collision types and high severity collisions found in the safety analysis. These strategies, in addition to high-cost long term improvements, will be applied to high collision locations throughout the City.

The Action Plan countermeasure toolbox may include roadway design features that address safety as well as programmatic measures. These will be based on the latest technology available including passive pedestrian and bicycle detection, signal phase extensions, and traffic control improvements. Other innovative measures will include roadway markings, road diets, “quick-build” items, educational programs and enforcement campaigns. In addition, the countermeasure toolbox will also consider strategies based on past experiences by other jurisdiction Local Roadway Safety Plans, Vision Zero Plans, and Action Plans. These experiences will be used to develop the Vision Zero Action Plan for Santa Clara.

The Action Plan will also complete robust community engagement to engage various stakeholders. The Plan will use Community Workshops, Community Event Pop-ups, Community Walk Audits, and Online Surveys to engage with public stakeholders within the community. The Plan will also use Technical Advisory Group Meetings, Business Group Meetings, and Safe Routes to School Meetings to engage with City staff stakeholders, private stakeholders, and the school district.

**EXHIBIT B1  
SCHEDULE OF FEES**

**1. MAXIMUM COMPENSATION**

- 1.1. The maximum amount payable for all services provided under this Agreement shall not exceed **Five Hundred Fifty-Six Thousand Five Hundred Thirty-Six Dollars (\$556,536)**, during the term of the Agreement. No additional services will be performed unless both Parties execute an amendment outlining the services requested and the compensation agreed for such services.
- 1.2. All payments are based upon City’s acceptance of Consultant’s performance of services specified in Exhibit A1, Scope of Services. City shall have no obligation to pay unless Consultant has successfully completed the work for which payment is due.
- 1.3. The compensation to be paid by the City is specified below:

**Table B1: Total Compensation**

| Description   | Total            |
|---|------------------|
| Task 1: Project Management & Administration               | \$50,354         |
| Task 2: Benchmarking & Data Review                        | \$27,092         |
| Task 3: Community Engagement                              | \$75,387         |
| Task 4: Collision Data Collection & Analysis              | \$44,254         |
| Task 5: Countermeasure Toolbox                            | \$28,949         |
| Task 6: Transportation Equity Assessment                  | \$22,063         |
| Task 7: Implementation Plan & Program                     | \$59,159         |
| Task 8: Draft & Final Plan                                | \$63,235         |
| Other Direct Costs (Including subcontractor: Circlepoint) | \$135,449        |
| <b>TOTAL FOR ALL TASKS AND OTHER DIRECT COSTS</b>         | <b>\$505,942</b> |
| Contingency   | \$50,594         |
| <b>TOTAL MAXIMUM COMPENSATION NOT-TO-EXCEED</b>           | <b>\$556,536</b> |

- 1.4. In the event, there is a need to move allocated hours from one task to a different task the City and Consultant must agree in writing to this change. This will not change the not-to-exceed maximum compensation of this Agreement.
- 1.5. See Exhibit B2 for task breakdown by cost and hours.

**2. FEES**

- 2.1. All hourly rates are fixed for the Term of the Agreement
- 2.2. The hourly rates for Consultant’s Personnel are listed below in Table B2:

**Table B2: Hourly Rates**

| <b>Title</b>                      | <b>Hourly Rate</b> |
|-----------------------------------|--------------------|
| <b>Kimley-Horn and Associates</b> |                    |
| Project Manager: Robert Paderna   | \$ 288.35          |
| Principal-in-Charge: Mike Colety  | \$ 411.80          |
| QC/QA: Frederik Venter            | \$ 445.98          |
| QC/QA: Brian Sowers               | \$ 388.29          |
| Analyst                           | \$ 174.38          |
| Professional I                    | \$ 243.09          |
| Professional II                   | \$ 264.62          |
| Project Support                   | \$ 132.39          |
| Senior Professional I             | \$ 314.04          |
| Senior Professional II            | \$ 366.22          |
| <b>Circlepoint</b>                |                    |
| Art Director                      | \$ 191.67          |
| Assistant/Coordinator             | \$ 105.00          |
| Associate                         | \$ 129.56          |
| Project Manager                   | \$ 178.35          |
| Senior Associate                  | \$ 150.00          |
| Senior Principal                  | \$ 305.28          |
| Senior Project Manager            | \$ 225.63          |
| Senior Web/Graphics               | \$ 164.96          |
| Web/Graphics                      | \$ 143.99          |

**3. INVOICING REQUIREMENTS**

- 3.1. Consultant shall invoice the City on a monthly basis for the percentage of services completed for each task by Consultant during the preceding month and provide the invoice in a format approved by the City, including but not limited to the information listed under Section 3.3 below.
- 3.2. City shall pay Consultant within thirty (30) days of City's receipt of an approved invoice.
- 3.3. Invoices shall include, at a minimum, the following:
  - 3.3.1. Identify the task services were provided for;
  - 3.3.2. Description of work performed;
  - 3.3.3. Deliverables completed;



- 3.3.4. Amount for services provided by task with a detailed breakout of all costs incurred and supporting documentation, including direct labor, indirect costs, other direct costs, travel, etc.; and
- 3.3.5. The not-to-exceed amount for the task, invoiced amount to date, amount for the current invoice, and remaining not-to-exceed amount for the task.

#### 4. OPTIONAL TASKS

4.1. The following optional tasks are available from Consultant at the City's discretion for the following fee:

| OPTION  | DESCRIPTION   | HOURS | Total          |
|---------|---|-------|----------------|
| O – 2.2 | <b>Continue 6-month collaboration with the Vision Zero task Force and report back Vision Zero monitoring and evaluation</b> |       | <b>\$6,418</b> |
|         | Project Manager: Robert Paderna   | 15    |                |
|         | Analyst   | 12    |                |
| O – 2.4 | <b>Obtain “Big Data” for citywide travel data including bicycle, pedestrian and vehicle trips and speed.</b>                |       | <b>\$7,588</b> |
|         | Professional I  | 14    |                |
|         | Analyst   | 24    |                |
| O – 2.4 | <b>Conduct site visit(s) of up to three corridors with frequent collisions.</b>   |       | <b>\$6,896</b> |
|         | Project Manager: Robert Paderna   | 10    |                |
|         | Senior Professional II  | 10    |                |
|         | Analyst   | 5     |                |
| O – 3.2 | <b>Conduct local small-scale media campaign such as banners at schools and bus stop advertisements.</b>                     |       | <b>\$9,948</b> |
|         | Project Manager: Robert Paderna   | 2     |                |
|         | Senior Professional II  | 8     |                |
|         | Professional I  | 10    |                |
|         | Analyst   | 23    |                |
| O – 5.1 | <b>Emergency Response Data Collection and Strategy</b>  |       | <b>\$3,923</b> |
|         | Project Manager: Robert Paderna   | 2     |                |
|         | Senior Professional I   | 2     |                |
|         | Professional II   | 5     |                |
|         | Analyst   | 8     |                |

**EXHIBIT B2  
FEES BY TASK**

| <b>TASK #</b> | <b>DESCRIPTION</b>  | <b>BUDGETED HOURS</b> | <b>HOURLY RATE</b> | <b>TOTAL</b>    |
|---------------|---|-----------------------|--------------------|-----------------|
| <b>1</b>      | <b>Project Management &amp; Administration</b>              |                       |                    |                 |
| <b>1.1</b>    | <b>Project Kick-Off Meeting</b>                             |                       |                    | <b>\$3,357</b>  |
|               | Project Manager: Robert Paderna                             | 3                     | \$288.35           | \$865           |
|               | Principal-in-Charge: Mike Colety                            | 3                     | \$411.80           | \$1,235         |
|               | Senior Professional I                                       | 4                     | \$314.04           | \$1,256         |
| <b>1.2</b>    | <b>Bi-weekly Project Updates</b>                            |                       |                    | <b>\$21,378</b> |
|               | Project Manager: Robert Paderna                             | 48                    | \$288.35           | \$13,841        |
|               | Senior Professional I                                       | 24                    | \$314.04           | \$7,537         |
| <b>1.3</b>    | <b>File and Data Sharing</b>                                |                       |                    | <b>\$1,326</b>  |
|               | Senior Professional I                                       | 2                     | \$314.04           | \$628           |
|               | Analyst   | 4                     | \$174.38           | \$698           |
| <b>1.4</b>    | <b>Progress Reporting</b>                                   |                       |                    | <b>\$8,141</b>  |
|               | Project Manager: Robert Paderna                             | 24                    | \$288.35           | \$6,920         |
|               | Analyst   | 7                     | \$174.38           | \$1,221         |
| <b>1.5</b>    | <b>Project Management</b>                                   |                       |                    | <b>\$16,153</b> |
|               | Project Manager: Robert Paderna                             | 45                    | \$288.35           | \$12,976        |
|               | Project Support   | 24                    | \$132.39           | \$3,177         |
|               | <b>TOTAL FOR TASK 1</b>                                     | <b>188</b>            |                    | <b>\$50,354</b> |
| <b>2</b>      | <b>Benchmarking &amp; Data Review</b>                       |                       |                    |                 |
| <b>2.1</b>    | <b>Programs, Policy, and Planning Benchmarking</b>          |                       |                    | <b>\$10,837</b> |
|               | Project Manager: Robert Paderna                             | 10                    | \$288.35           | \$2,884         |
|               | Senior Professional I                                       | 12                    | \$314.04           | \$3,768         |
|               | Analyst   | 24                    | \$174.38           | \$4,185         |
| <b>2.2</b>    | <b>Vision Zero Task Force</b>                               |                       |                    | <b>\$3,810</b>  |
|               | Project Manager: Robert Paderna                             | 6                     | \$288.35           | \$1,730         |
|               | Principal-in-Charge: Mike Colety                            | 2                     | \$411.80           | \$824           |
|               | Senior Professional I                                       | 4                     | \$314.04           | \$1,256         |
| <b>2.3</b>    | <b>Data Collection and Review</b>                           |                       |                    | <b>\$12,445</b> |
|               | Project Manager: Robert Paderna                             | 6                     | \$288.35           | \$1,730         |
|               | Senior Professional I                                       | 12                    | \$314.04           | \$3,768         |
|               | Professional II   | 6                     | \$264.62           | \$1,588         |
|               | Professional I  | 12                    | \$243.09           | \$2,917         |
|               | Analyst   | 14                    | \$174.38           | \$2,441         |
|               | <b>TOTAL FOR TASK 2</b>                                     | <b>108</b>            |                    | <b>\$27,092</b> |
| <b>3</b>      | <b>Community Engagement</b>                                 |                       |                    |                 |
| <b>3.1</b>    | <b>Community Engagement Plan &amp; Schedule Development</b> |                       |                    | <b>\$3,351</b>  |

| <b>TASK #</b>           | <b>DESCRIPTION</b>  | <b>BUDGETED HOURS</b> | <b>HOURLY RATE</b> | <b>TOTAL</b>    |
|-------------------------|---|-----------------------|--------------------|-----------------|
|                         | Project Manager: Robert Paderna   | 4                     | \$288.35           | \$1,153         |
|                         | Senior Professional II  | 6                     | \$366.22           | \$2,197         |
| <b>3.2</b>              | <b>Project Promotion/Website</b>  |                       |                    | <b>\$16,030</b> |
|                         | Project Manager: Robert Paderna   | 6                     | \$288.35           | \$1,730         |
|                         | Senior Professional II  | 20                    | \$366.22           | \$7,324         |
|                         | Analyst   | 40                    | \$174.38           | \$6,975         |
| <b>3.3</b>              | <b>Community Surveys (up to 4 surveys)</b>  |                       |                    | <b>\$5,967</b>  |
|                         | Project Manager: Robert Paderna   | 4                     | \$288.35           | \$1,153         |
|                         | Senior Professional II  | 4                     | \$366.22           | \$1,465         |
|                         | Senior Professional I   | 4                     | \$314.04           | \$1,256         |
|                         | Analyst   | 12                    | \$174.38           | \$2,093         |
| <b>3.4</b>              | <b>Outreach Events/pop-Ups (up to 5 events/up to 5 pop-ups for a total of 10)</b> |                       |                    | <b>\$4,360</b>  |
|                         | Analyst   | 25                    | \$174.38           | \$4,360         |
| <b>3.5</b>              | <b>Vision Zero Task Force Meetings (up to 3 meetings)</b>                         |                       |                    | <b>\$15,309</b> |
|                         | Project Manager: Robert Paderna   | 12                    | \$288.35           | \$3,460         |
|                         | Principal-in-Charge: Mike Colety  | 12                    | \$411.80           | \$4,942         |
|                         | Senior Professional I   | 12                    | \$314.04           | \$3,768         |
|                         | Analyst   | 18                    | \$174.38           | \$3,139         |
| <b>3.6</b>              | <b>Community Workshops (2 virtual, 2 in-person)</b>                               |                       |                    | <b>\$13,884</b> |
|                         | Project Manager: Robert Paderna   | 8                     | \$288.35           | \$2,307         |
|                         | Senior Professional II  | 8                     | \$366.22           | \$2,930         |
|                         | Senior Professional I   | 8                     | \$314.04           | \$2,512         |
|                         | Analyst   | 20                    | \$174.38           | \$3,488         |
|                         | Project Support   | 20                    | \$132.39           | \$2,648         |
| <b>3.7</b>              | <b>Bicycle and Pedestrian Advisory Committee (BPAC) Meetings</b>                  |                       |                    | <b>\$8,783</b>  |
|                         | Project Manager: Robert Paderna   | 6                     | \$288.35           | \$1,730         |
|                         | Principal-in-Charge: Mike Colety  | 4                     | \$411.80           | \$1,647         |
|                         | Senior Professional II  | 10                    | \$366.22           | \$3,662         |
|                         | Analyst   | 10                    | \$174.38           | \$1,744         |
| <b>3.8</b>              | <b>Commission Meetings (Up to 4)</b>  |                       |                    | <b>\$2,884</b>  |
|                         | Project Manager: Robert Paderna   | 10                    | \$288.35           | \$2,884         |
| <b>3.9</b>              | <b>City Council Meetings (Up to 2)</b>  |                       |                    | <b>\$4,819</b>  |
|                         | Project Manager: Robert Paderna   | 8                     | \$288.35           | \$2,307         |
|                         | Senior Professional I   | 8                     | \$314.04           | \$2,512         |
| <b>TOTAL FOR TASK 3</b> |   | <b>299</b>            |                    | <b>\$75,386</b> |
| <b>4</b>                | <b>Collision Data Collection and Analysis</b>                                     |                       |                    |                 |
| <b>4.1</b>              | <b>Existing Conditions Analysis</b>   |                       |                    | <b>\$23,910</b> |
|                         | Project Manager: Robert Paderna   | 2                     | \$288.35           | \$577           |

| <b>TASK #</b>           | <b>DESCRIPTION</b>                            | <b>BUDGETED HOURS</b> | <b>HOURLY RATE</b> | <b>TOTAL</b>    |
|-------------------------|---|-----------------------|--------------------|-----------------|
|                         | Professional II                               | 20                    | \$264.62           | \$5,292         |
|                         | Professional I                                | 24                    | \$243.09           | \$5,834         |
|                         | Analyst                                       | 70                    | \$174.38           | \$12,207        |
| <b>4.2</b>              | <b>High Injury Network (HIN) Maps</b>         |                       |                    | <b>\$8,182</b>  |
|                         | Project Manager: Robert Paderna               | 4                     | \$288.35           | \$1,153         |
|                         | Senior Professional I                         | 4                     | \$314.04           | \$1,256         |
|                         | Professional II                               | 6                     | \$264.62           | \$1,588         |
|                         | Analyst                                       | 24                    | \$174.38           | \$4,185         |
| <b>4.3</b>              | <b>Develop Collision Profiles</b>             |                       |                    | <b>\$12,162</b> |
|                         | Project Manager: Robert Paderna               | 6                     | \$288.35           | \$1,730         |
|                         | Senior Professional I                         | 12                    | \$314.04           | \$3,768         |
|                         | Professional II                               | 12                    | \$264.62           | \$3,175         |
|                         | Analyst                                       | 20                    | \$174.38           | \$3,488         |
| <b>TOTAL FOR TASK 4</b> |   | <b>204</b>            |                    | <b>\$44,254</b> |
| <b>5</b>                | <b>Countermeasure Toolbox</b>                 |                       |                    |                 |
| <b>5.1</b>              | <b>Develop Countermeasure Toolbox</b>         |                       |                    | <b>\$28,949</b> |
|                         | Project Manager: Robert Paderna               | 14                    | \$288.35           | \$4,037         |
|                         | Principal-in-Charge: Mike Colety              | 2                     | \$411.80           | \$824           |
|                         | QC/QA: Brian Sowers                           | 4                     | \$388.29           | \$1,553         |
|                         | Senior Professional I                         | 20                    | \$314.04           | \$6,281         |
|                         | Professional II                               | 15                    | \$264.62           | \$3,969         |
|                         | Professional I                                | 16                    | \$243.09           | \$3,889         |
|                         | Analyst                                       | 36                    | \$174.38           | \$6,278         |
|                         | Project Support                               | 16                    | \$132.39           | \$2,118         |
| <b>TOTAL FOR TASK 5</b> |   | <b>123</b>            |                    | <b>\$28,949</b> |
| <b>6</b>                | <b>Transportation Equity Assessment</b>       |                       |                    |                 |
| <b>6.1</b>              | <b>Transportation Equity Assessment</b>       |                       |                    | <b>\$22,063</b> |
|                         | Project Manager: Robert Paderna               | 8                     | \$288.35           | \$2,307         |
|                         | Principal-in-Charge: Mike Colety              | 2                     | \$411.80           | \$824           |
|                         | QC/QA: Frederik Venter                        | 4                     | \$445.98           | \$1,784         |
|                         | Senior Professional I                         | 8                     | \$314.04           | \$2,512         |
|                         | Professional II                               | 24                    | \$264.62           | \$6,351         |
|                         | Professional I                                | 14                    | \$243.09           | \$3,403         |
|                         | Analyst                                       | 28                    | \$174.38           | \$4,883         |
| <b>TOTAL FOR TASK 6</b> |   | <b>88</b>             |                    | <b>\$22,063</b> |
| <b>7</b>                | <b>Implementation Plan &amp; Programs</b>     |                       |                    |                 |
| <b>7.1</b>              | <b>Develop Priority Projects and Programs</b> |                       |                    | <b>\$31,549</b> |
|                         | Project Manager: Robert Paderna               | 8                     | \$288.35           | \$2,307         |
|                         | Principal-in-Charge: Mike Colety              | 2                     | \$411.80           | \$824           |

| <b>TASK #</b>           | <b>DESCRIPTION</b>                             | <b>BUDGETED HOURS</b> | <b>HOURLY RATE</b> | <b>TOTAL</b>    |
|-------------------------|--|-----------------------|--------------------|-----------------|
|                         | Senior Professional II                         | 4                     | \$366.22           | \$1,465         |
|                         | Senior Professional I                          | 24                    | \$314.04           | \$7,537         |
|                         | Professional II                                | 30                    | \$264.62           | \$7,939         |
|                         | Professional I                                 | 30                    | \$243.09           | \$7,293         |
|                         | Analyst  | 24                    | \$174.38           | \$4,185         |
| <b>7.2</b>              | <b>Develop Implementation Plan and Program</b> |                       |                    | <b>\$18,070</b> |
|                         | Project Manager: Robert Paderna                | 8                     | \$288.35           | \$2,307         |
|                         | Principal-in-Charge: Mike Colety               | 2                     | \$411.80           | \$824           |
|                         | Senior Professional I                          | 20                    | \$314.04           | \$6,281         |
|                         | Professional II                                | 9                     | \$264.62           | \$2,382         |
|                         | Analyst  | 36                    | \$174.38           | \$6,278         |
| <b>7.3</b>              | <b>Develop Evaluation Plan</b>                 |                       |                    | <b>\$9,540</b>  |
|                         | Project Manager: Robert Paderna                | 6                     | \$288.35           | \$1,730         |
|                         | Principal-in-Charge: Mike Colety               | 2                     | \$411.80           | \$824           |
|                         | Senior Professional II                         | 2                     | \$366.22           | \$732           |
|                         | Senior Professional I                          | 9                     | \$314.04           | \$2,826         |
|                         | Professional II                                | 9                     | \$264.62           | \$2,382         |
|                         | Analyst  | 6                     | \$174.38           | \$1,046         |
| <b>TOTAL FOR TASK 7</b> |  | <b>231</b>            |                    | <b>\$59,159</b> |
| <b>8</b>                | <b>Draft and Final Plan</b>                    |                       |                    |                 |
| <b>8.1</b>              | <b>Vision Zero Plan Draft Report</b>           |                       |                    | <b>\$40,376</b> |
|                         | Project Manager: Robert Paderna                | 20                    | \$288.35           | \$5,767         |
|                         | Principal-in-Charge: Mike Colety               | 4                     | \$411.80           | \$1,647         |
|                         | QC/QA: Frederik Venter                         | 4                     | \$445.98           | \$1,784         |
|                         | QC/QA: Brian Sowers                            | 4                     | \$388.29           | \$1,553         |
|                         | Senior Professional II                         | 18                    | \$366.22           | \$6,592         |
|                         | Senior Professional I                          | 30                    | \$314.04           | \$9,421         |
|                         | Professional II                                | 10                    | \$264.62           | \$2,646         |
|                         | Professional I                                 | 20                    | \$243.09           | \$4,862         |
|                         | Analyst  | 35                    | \$174.38           | \$6,103         |
| <b>8.2</b>              | <b>Vision Zero Plan Final Report</b>           |                       |                    | <b>\$19,334</b> |
|                         | Project Manager: Robert Paderna                | 13                    | \$288.35           | \$3,749         |
|                         | Principal-in-Charge: Mike Colety               | 2                     | \$411.80           | \$824           |
|                         | QC/QA: Frederik Venter                         | 2                     | \$445.98           | \$892           |
|                         | QC/QA: Brian Sowers                            | 2                     | \$388.29           | \$777           |
|                         | Senior Professional II                         | 6                     | \$366.22           | \$2,197         |
|                         | Senior Professional I                          | 20                    | \$314.04           | \$6,281         |
|                         | Professional II                                | 6                     | \$264.62           | \$1,588         |
|                         | Professional I                                 | 6                     | \$243.09           | \$1,459         |

| <b>TASK #</b>   | <b>DESCRIPTION</b>                  | <b>BUDGETED HOURS</b> | <b>HOURLY RATE</b> | <b>TOTAL</b>     |
|---|-------------------------------------|-----------------------|--------------------|------------------|
|   | Analyst                             | 9                     | \$174.38           | \$1,569          |
| <b>8.3</b>  | <b>Executive Summary/Fact Sheet</b> |                       |                    | <b>\$3,524</b>   |
|   | Project Manager: Robert Paderna     | 2                     | \$288.35           | \$577            |
|   | QC/QA: Frederik Venter              | 2                     | \$445.98           | \$892            |
|   | Professional I                      | 2                     | \$243.09           | \$486            |
|   | Analyst                             | 9                     | \$174.38           | \$1,569          |
| <b>TOTAL FOR TASK 8</b>   |                                     | <b>226</b>            |                    | <b>\$63,235</b>  |
| <b>TOTAL FOR ALL TASKS</b>  |                                     | <b>1,467</b>          |                    | <b>\$370,493</b> |
| <b>Other Direct Costs</b>   |                                     |                       |                    |                  |
| Outreach Materials  |                                     |                       |                    | \$7,000          |
| Purchase and Distribution of Vision Zero Promotional/Safety Items |                                     |                       |                    | \$5,000          |
| Additional Supplemental Traffic Counts                            |                                     |                       |                    | \$5,000          |
| Circlepoint (Task 3)  |                                     |                       |                    | \$118,449        |
| <b>TOTAL FOR OTHER DIRECT COSTS</b>                               |                                     |                       |                    | <b>\$135,449</b> |

## **EXHIBIT C INSURANCE REQUIREMENTS**

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant or any 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 Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution



from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge

City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every 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. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be emailed to:

[ctsantaclaraca@ebix.com](mailto:ctsantaclaraca@ebix.com)

Or mailed to:

EBIX Inc.  
City of Santa Clara Department of Public Works  
P.O. Box 100085 – S2  
Duluth, GA 30096

Telephone number: 951-766-2280  
Fax number: 770-325-0409

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

DRAFT

**EXHIBIT D  
TITLE VI ASSURANCES**

**APPENDIX A**

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.

- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

DRAFT



## Agenda Report

24-521

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Action to Authorize the City Manager to Negotiate and Execute Agreements and/or Amendments to Existing Agreements as Required to Complete Unanticipated Internal Inspection and Re-rate Engineering Study for Transformer Upgrades at the Kifer Receiving Station (KRS) and Scott Receiving Station (SRS) and Approve Related Budget Amendment

#### BACKGROUND

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), imports electric power generated outside of Santa Clara using PG&E interconnections primarily at three receiving substations within the City limits: Kifer Receiving Station (KRS), Scott Receiving Station (SRS), and Northern Receiving Station (NRS). These stations use multiple transformers to lower voltage from 115kV to 12kV. In addition, SVP's distribution substations use transformers to step down sub-transmission (60kV) voltage to distribution level (12kV). Most of the power from PG&E transmission lines pass through six (6) large transformers, each with a 115kV/60kV 186MVA capacity, installed at NRS, KRS and SRS (two transformers per station).

As part of the several rebuild projects included in SVP's system expansion plan, new 115kV/60kV 336MVA transformers will be installed at the three stations - two (2) transformers each at KRS and SRS and three (3) transformers at NRS. Until those projects are complete, the existing 115kV/60kV 186MVA transformers need to handle the increased demand.

SVP continues to explore options for providing additional power to serve existing and future customers and will study the feasibility of re-rating the existing 115kV/60kV 186MVA transformers at KRS and SRS. This request is a result of the continuous growth of SVP's electric load and supply chain issues affecting the re-build of NRS, KRS and SRS. The projected dates for energization/in-service of NRS, KRS, and SRS rebuilds are in fiscal year 2027/2028. Between now and the energization date for these receiving stations, staff recommends evaluating the re-rating of the existing transformers at KRS and SRS to provide additional capacity. A transformer re-rate evaluates modifications such as fuel type, exhaust, and other features to increase capacity of the transformer. Providing additional capacity sooner will meet customer needs as well as result in millions of dollars in sales revenue.

SVP's existing transformers are manufactured by:

1. KRS TA Transformer: ABB (acquired by Hitachi)
2. KRS TB Transformer: Trafo Union (trademark of Siemens Energy)
3. SRS TA and TB Transformers: North American Transformers (purchased by Waukesha Electric Systems, and then merged into Prolec GE-Waukesha, Inc.)

All the original manufacturers of the transformers at NRS, KRS, and SRS have merged or been acquired by other companies and, as a result, there is no clear customer support provided to these legacy transformers.

### DISCUSSION

SVP recommends an expedited process that delegates authority to the City Manager to negotiate and execute new agreements and/or amendments to existing agreements for a total authorization of up to \$500,000 for the specific purpose of completing an analysis of improvements needed to increase capacity at KRS and SRS and to apply exceptions to competitive procurement requirements where applicable under City procurement ordinances. If improvements can be identified, it is expected that staff will return to Council with a request for up to \$5.5 million to complete the work.

SVP will coordinate closely with the Purchasing Division of the Finance Department as well as with the City Attorney's Office to assure procurement methods are aligned with City policies and ordinance including use of exception to competitive bidding pursuant to Section 2.105.290 of the Santa Clara City Code where appropriate. Section 2.105.290 states that a purchase is exempt from a competitive procurement process if it would not be useful or produce advantage to the City, and if due to circumstances beyond the control of the City, the time necessary to use the competitive procurement procedure would result in substantial economic loss to the City or substantial interference with a critical City operation and will evaluate the decision to execute new agreements or amendments to existing agreements to best meet the needs of the City. Approval of these recommendations will permit staff to execute documents needed to secure delivery timelines for long lead time equipment and accelerate other actions associated with this critical project.

SVP has reached out to major transformer manufacturer's including Delta Star Inc. (DSI), Prolec-GE Waukesha, Inc., Siemens Energy USA, and Hyundai Power Transformers USA, Inc. (Hyundai). Hyundai declined to offer their services for this project and recommended that SVP reach out to the original manufacturers. At this time, only DSI has provided quotes reflecting service needs and anticipated costs. DSI is the only local power transformer manufacturing company with a plant in San Carlos, CA, and a local transformer field services crew and DSI is currently supporting SVP with similar projects. The remaining vendors were non-responsive to our requests for information regarding re-rating or other options to increase the capacity of existing SVP transformers.

In addition to transformer inspection and re-rate studies, additional services will be required from engineering firms for protection and control settings. Staff will authorize this work using existing agreements with engineering firms or through new agreements where aligned with purchasing policy and in the best interest of the City. In the event that construction is required, such services will be procured pursuant to the City Charter.

### Plan of Action

Staff have developed a detailed scope of work and there will be a phased approach for re-rating the existing 186MVA transformers:

1. Phase 1 - Internal inspection of existing 186MVA transformers and re-rate engineering study (current Council action).
2. Phase 2 - Field upgrade, installation and testing of the re-rated 186MVA transformers, as recommended in the re-rate engineering study from Phase 1 (possible future Council action).



Estimated Costs:

After completion of the re-rate study, SVP anticipates additional costs related to the findings of internal transformer inspections (phase 2 of plan of action above). Staff will return to Council with additional actions at that time.

A preliminary estimate of the additional tasks that have been identified and their associated cost is as follows:

| Equipment/Project  | Estimated Cost     |
|--|--------------------|
| Internal Inspections and re-rate to four (4) transformers (current Council action) | \$ 500,000         |
| Anticipated upgrades to four (4) transformers (possible future Council action)     | \$3,500,000        |
| Contingency (possible future Council action)                                       | \$2,000,000        |
| <b>Total Anticipated Cost</b>  | <b>\$6,000,000</b> |

ENVIRONMENTAL REVIEW

The proposed actions do not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to section 15061(c)(3) of Title 14 of the California Code of Regulations as it can be seen with certainty that there is no possibility the inspection services will have a significant effect on the environment.

FISCAL IMPACT

The recommended budget amendment below is needed to fully fund the transformer upgrade cost, as well as associated inspection, engineering, and construction services. Funding is provided by a transfer from the Electric Utility Fund Unrestricted Fund Balance to the KRS Rebuild and Replacement (CIP 2453) and SRS Rebuild and Replacement (CIP 2456) in the Electric Utility Capital Fund.

Budget Amendment  
FY 2023/2024

|   | Current      | Increase/ (Decrease) | Revised      |
|---|--------------|----------------------|--------------|
| Electric Utility Fund (091)                   |              |                      |              |
| <u>Transfers Out</u>                          |              |                      |              |
| Transfer to the Electric Utility Capital Fund | \$23,062,234 | \$500,000            | \$23,562,234 |
| <u>Reserves</u>                               |              |                      |              |
| Unrestricted Fund Balance                     | \$87,174,994 | (\$500,000)          | \$86,674,994 |
| Electric Utility Capital Fund (591)           |              |                      |              |
| <u>Transfers In</u>                           |              |                      |              |

|   |              |           |              |
|---|--------------|-----------|--------------|
| Transfer from the Electric Utility Fund | \$23,062,234 | \$500,000 | \$23,562,234 |
| <u>Expenditures</u>                     |              |           |              |
| KRS Rebuild and Replacement             | \$86,447,723 | \$250,000 | \$86,697,723 |
| SRS Rebuild and Replacement             | \$90,552,753 | \$250,000 | \$90,802,753 |

### 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. Subject to compliance with Chapter 2.105 of the City Code, as applicable, and review and approval as to form by City Attorney, authorize the City Manager to negotiate and execute new agreements and/or amendments to existing agreements with various vendors to complete unanticipated internal inspections, and re-rate engineering studies, at the Kifer Receiving Station (KRS) and Scott Receiving Station (SRS) with a total aggregate authorization not to exceed \$500,000;
2. Authorize the City Manager or designee to take any actions as necessary to implement and administer the agreements and to negotiate and execute further amendments to the agreements as needed to complete inspections and studies at KRS and SRS, subject to the maximum authorization of \$500,000 and approval as to form by the City Attorney; and
3. Approve the following FY 2023/24 budget amendments:
  - A. In the Electric Utility Fund, increase the transfer to the Electric Utility Capital Fund and decrease the Unrestricted Ending Fund Balance in the amount of \$500,000 (**five affirmative Council votes required for the use of unused balances** ); and
  - B. In the Electric Utility Capital Fund, recognize a transfer from the Electric Utility Fund in the amount of \$500,000, increase the KRS Rebuild and Replacement project (CIP 2453) by \$250,000, and increase the SRS Rebuild and Replacement project (CIP 2456) by \$250,000 ( **five affirmative Council votes required to appropriate additional revenue**).

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-453

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Action Authorizing the City Manager to Negotiate and Execute Agreement(s) with Vendor(s) for the Purchase of High Voltage Disconnect Switches, Station Service Voltage Transformers, Voltage Transformers and Capacitive Voltage Transformers, and Combination Revenue Metering Transformers to be Funded by the Electric Utility Capital Fund

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

In November 2019, Silicon Valley Power (SVP) management met to discuss the strategic priorities for SVP and identified that the City of Santa Clara (the City) would experience significant electric load growth requiring SVP to develop a capital improvement strategy. Staff have determined the need for developing both near-term and long-term strategies to accommodate approved growth and develop the necessary infrastructure plan options.

On October 13, 2020, the City Council authorized the City Manager to execute master service agreements with several engineering consultant firms to support SVP with system expansion, general consulting services, and plan implementation services (RTC # 20-854).

On April 6, 2021, staff presented a comprehensive review of upcoming load growth and capital projects to the City Council as part of the SVP Quarterly Report. The presentation concluded with the next steps, including the preparation of a system growth strategy to be presented at a future City Council meeting.

On September 28, 2021, the City Council accepted SVP's Three-Year System Growth Plan Strategy (RTC # 21-871). This plan identified \$300 million in proposed projects for both near-term and long-term capital improvement projects needed to support anticipated system growth and to replace end-of life equipment for system reliability.

On April 5, 2022, the City Council adopted Resolution # 22-9069 adding new and updated connection and load development fees for SVP (RTC # 22-449). Additionally, on April 19, 2022, the City Council adopted Resolution # 22-9081 adopting the City of Santa Clara 2022/23 Municipal Fee Schedule, which included new and updated connection fees and load development fees, effective July 1, 2022 (RTC # 22-99). These fees were further updated for fiscal year 2023/24 by the adoption of Resolution 23-9221 on April 18, 2023, and for fiscal year 2024/25 by adoption of Resolution #24-9316. Such fees and their corresponding increases are intended to maintain fees at cost recovery levels necessary to support electric load growth.

On November 15, 2022 (RTC # 22-1172), the City Council accepted SVP's System Expansion Plan for the California Independent System Operator's Transmission Planning Process FY2023/24 (SVP System Expansion Plan CAISO TPP FY2023/24). The purpose of this process is to project SVP's load growth over the next ten years and apply it to an electric system model to simulate load growth impacts on SVP's electric system.

On May 9, 2023, the City Council adopted Resolution # 23-9223 regarding the City's intent to issue tax-exempt electric system bonds for reimbursement of expenditures for certain capital improvement projects for SVP (RTC # 23-104), including load growth projects and associated equipment and material purchases.

On July 18, 2023, staff presented an update on these key near-term projects necessary for system growth to the City Council as part of the SVP Quarterly Report (RTC # 23-757). At the same meeting, the City Council approved amendments to several master service agreements including increases to cumulative maximum compensations (RTC # 23-737).

A critical element of the necessary load growth noted in these City Council actions is the need to purchase long lead items to support the system expansion projects. On October 10, 2023, the City Council authorized the purchase of up to twelve (12) high voltage transformers from HD Hyundai Electric America Corporation with a total not-to-exceed amount of \$81,392,908 (RTC # 23-122). On May 7, 2024, the City Council approved the purchase of high voltage circuit breakers for an amount not to exceed \$38,000,000.

This report now seeks authorization for the purchase of additional critical equipment essential for the Northern Receiving Station (NRS), Kifer Receiving Station (KRS) and Scott Receiving Station (SRS) system expansion projects, as detailed in this report. The procurement is also requesting the purchase of critical equipment for the Esperanca Substation (ESP) which is a general distribution substation to support development in north Santa Clara.

## DISCUSSION

The following four procurements require expedited methods for acquiring critical equipment needed to meet the construction schedules of the expansion projects mentioned above. All procurements have adhered to or will adhere to the City's purchasing policy, including formal notification through the City's e-procurement system. The request to obtain City Council approval for these purchases is being made concurrently with the various steps of the procurement process.

### High Voltage Disconnect Switches

Pursuant to Section 2.105.140(d) of the Santa Clara City Code (City Code), a formal Request for Bids (RFB) was conducted with the award recommendation based on the lowest responsive and responsible bidder(s).

On March 13, 2024, the City issued the RFB for High Voltage Disconnect Switches, which was published on the City's e-procurement system. In addition, the City contacted several firms directly, informing them of the RFB and directing them to the e-procurement system if interested. A total of 45 companies viewed the RFB, and six bids were received by the April 24, 2024, deadline from the firms listed below with the manufacturer they represent appearing in parentheses:

1. Pacific Utilities (Ashlee Kulback/Cleveland Price Inc.)

2. Geo E. Honn Co. (EMSPEC Inc.)
3. Southern Electrical Equipment Company, Inc. (SEECO)
4. Sierra Utility Sales Inc. (Royal Swithgear Manufacturing Company)
5. SPX Transformer Solutions c/o Isberg Nott (GE Grid Solutions LLC)
6. Walker-Miller Energy Services, LLC (Pascor Atlantic)

Bids are currently being evaluated by staff to verify their conformance to the RFB. Staff is seeking authorization for the City Manager to enter into an agreement with the vendor(s) submitting the lowest responsive and responsible bid(s).

Alternatively, staff seeks authorization for the City Manager to enter into purchase orders or agreements with the vendors(s) pursuant to Section 2.105.200. If all six bids are deemed non-responsive or non-responsible, the Purchasing Division Manager may reject all bids under Section 2.105.200 and direct staff to negotiate with the bidders and other suppliers in the open market. Section 2.105.200 authorizes this direct negotiation and specifically provides that “if all bids or proposals are rejected, the Purchasing Division Manager or designee may re-notice the solicitation or award without further complying with the provisions of this Chapter [Chapter 2.105 of the City Code] if re-advertising is determined to be an idle act.” The Purchasing Division Manager has determined that re-advertising would be an idle act, as the City received an adequate number of bids and the outcome would not be different.

The description and quantities are listed in Table 1.

Table 1: High Voltage Disconnect Switches

| High Voltage Disconnect Switches         | Station(s)         | Qty |
|--|--------------------|-----|
| 60kV vertical break, 4000A, 80kA         | KRS, SRS, NRS, ESP | 103 |
| 60kV center break Vee type, 4000A, 80kA  | SRS, KRS           | 19  |
| 115kV vertical break, 4000A, 80kA        | KRS, SRS, NRS      | 105 |
| 115kV center break Vee type, 4000A, 80kA | SRS, KRS           | 13  |
| 230kV vertical break, 3000A, 63kA        | NRS                | 14  |

Station Service Voltage Transformers

Pursuant to Section 2.105.140(d) of the Santa Clara City Code (City Code), a formal Request for Bids (RFB) was conducted with the award recommendation based on the lowest responsive and responsible bidder(s).

On March 22, 2024, the City issued the RFB for Station Service Voltage Transformers, which was published on the City’s e-procurement system. In addition, the City contacted several firms directly, informing them of the RFB and directing them to the e-procurement system if interested. A total of 35 companies viewed the RFB, and no bids were received by the April 19, 2024, deadline. As a result, the Purchasing Division Manager directed staff to negotiate with suppliers of station service voltage transformers in the open market pursuant to Section 2.105.220 of the City Code. Section 2.105.220 authorizes this direct negotiation and specifically provides that “If no bids or proposals are received, the Purchasing Division Manager or designee may re-advertise or may otherwise acquire in the open market without further complying with the provisions of this Chapter [Chapter 2.105 of the City

Code].”

The description and quantities are listed in Table 2.

Table 2: Station Service Voltage Transformers

| Station Service Voltage Transformers                                | Station(s) | Qty |
|---|------------|-----|
| 34.8 kV/208V/120V, 350kV BIL, 60Hz, 100kVA, SSVT Operates @60kV L-L | KRS, SRS   | 8   |

Voltage Transformers, Capacitive Voltage Transformers

Pursuant to Section 2.105.140(d) of the Santa Clara City Code (City Code), a formal Request for Bids (RFB) was conducted with the award recommendation based on the lowest responsive and responsible bidder(s).

On April 2, 2024, the City issued the RFB for Voltage Transformers, Capacitive Voltage Transformers, which was published on the City’s e-procurement system. In addition, the City contacted several firms directly, informing them of the RFB and directing them to the e-procurement system if interested. A total of 41 companies viewed the RFB, and five bids were received by the April 30, 2024, deadline from the firms listed below with the manufacturer they represent appearing in parentheses:

1. Geo E. Honn Co. (Ritz Instruments)
2. One Source Distributors (Hitachi)
3. SPX Transformer Solutions c/o Isberg Nott (GE Grid Solutions LLC)
4. Wesco (Hitachi)
5. Wesco (Trench)

Bids are currently being evaluated by staff to verify their conformance to the RFB. Staff is seeking authorization for the City Manager to enter into an agreement with the vendor(s) submitting the lowest responsive and responsible bid(s).

Alternatively, staff seeks authorization for the City Manager to enter into purchase orders or agreements with the vendors(s) pursuant to Section 2.105.200. If all five bids are deemed non-responsive or non-responsible, the Purchasing Division Manager may reject all bids under Section 2.105.200 and direct staff to negotiate with the bidders and other suppliers in the open market. Section 2.105.200 authorizes this direct negotiation and specifically provides that “if all bids or proposals are rejected, the Purchasing Division Manager or designee may re-notice the solicitation or award without further complying with the provisions of this Chapter [Chapter 2.105 of the City Code] if re-advertising is determined to be an idle act.” The Purchasing Division Manager has determined that re-advertising would be an idle act, as the City received an adequate number of bids and the outcome would not be different.

The description and quantities are listed in Table 3.

Table 3: Voltage Transformers, Capacitive Voltage Transformers

| Voltage Transformers, Capacitive Voltage Transformers | Station(s) | Qty |
|---|------------|-----|
|   |            |     |

|   |                    |    |
|---|--------------------|----|
| 60kV VT, 350kv Bil, Max Phase to Ground<br>41.9kv, 1ph, Two Windings, Ratio 0.3wxyz<br>60hz, Single Bushing     | NRS, KRS, SRS, ESP | 88 |
| 115kV CVT. 550kv Bil, Max Phase to Ground<br>71kv, 1ph, Two Windings, Ratio 0.3wxyz 60hz,<br>Single Bushing     | NRS, KRS, SRS      | 90 |
| 230kV CVT, 1050kv Bil, Max Phase to Ground<br>141.4kv, 1ph, Two Windings, Ratio 0.3wxyz<br>60hz, Single Bushing | NRS                | 17 |

Combination Revenue Metering Transformers

The City plans to issue the RFB for Combination Revenue Metering Transformers by the end of May 2024. Staff is seeking authorization for the City Manager to (a) enter into an agreement with the vendor(s) submitting the lowest responsive and responsible bid, pursuant to Section 2.105.140(d); or (b) negotiate and execute purchase orders or agreements with the supplier(s), pursuant to Section 2.105.200 if the bids received are non-responsive or non-responsible; or (c) negotiate and execute an agreement with the supplier(s), pursuant to Section 2.105.220 if there are no bids received.

The description and quantities are listed in Table 4.

Table 4: Combination Revenue Metering Transformers

| Combination Revenue Metering Transformers              | Station(s) | Qty |
|--|------------|-----|
| 115kV Combination Revenue Metering Transformer (CT/VT) | KRS, NRS   | 14  |
| 230kV Combination Revenue Metering Transformer (CT/VT) | NRS        | 4   |

Summary

Subject to compliance with Chapter 2.105 of the City Code, staff is seeking authorization for the City Manager to negotiate and execute agreements and/or purchase orders for all four purchases: (1) high voltage disconnect switches, (2) station service voltage transformers, (3) voltage transformers and capacitive voltage transformers, and (4) combination revenue metering transformers, up to a total maximum aggregate amount of \$17,400,000 inclusive of applicable taxes. The requested authorization is subject to review and approval as to form of all agreements and/or purchase orders by the City Attorney and appropriation of funds.

The majority of the total maximum aggregate amount is designated for the high voltage disconnect switches, with the remaining funds allocated for the station service voltage transformers, voltage transformers and capacitive voltage transformers, and combination revenue metering transformers.

Delivery Timeline

Deliveries are expected to take place between July 2025 and July 2027. Payment will be based on the successful completion of key milestones, including a minimum of 10% of the contract value retained until after final acceptance of the varying equipment types.

A two-year warranty period is anticipated to cover parts and labor and will commence upon final acceptance of each unit.

### Additional Quantities

As part of the expansion, SVP may need to purchase additional, high voltage disconnect switches, station service voltage transformers, voltage transformers and capacitive voltage transformers, and combination revenue metering transformers. If such purchases are necessary, they will be made pursuant to City Code Section 2.105.130, which states “at the discretion of the Purchasing Division Manager, additional quantities may be purchased after the initial award of a contract or purchase order for general services or products. If the purchase of additional quantities or services increases the maximum compensation that exceeds the City Manager’s signature authority set forth in this chapter, or an amount previously approved by the City Council, then City Council approval is required.”

### ENVIRONMENTAL REVIEW

The actions being considered do not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to section 15378(b)(2) of Title 14 of the California Code of Regulations as the proposed actions solely involve the equipment purchases for NRS, KRS, SRS, and ESP.

### FISCAL IMPACT

The amounts to be paid to the Vendors under these Agreements are for a not-to-exceed amount of \$17,400,000 for the initial quantity of units noted in Tables 1-4, and an additional \$2,610,000 for a 15% contingency of the total cumulative contract value. Appropriations are available in the Electric Utility Capital Fund for Esperanca Substation and the three receiving station rebuild and replacement projects - SRS, KRS, and NRS. Debt financing is planned in the budget to fund SRS, KRS, and NRS. SVP is expected to seek Council approval for the issuance of Debt Financing in 2024. If this debt financing is not approved, an alternative funding mechanism would need to be identified for these Agreements and the projects would overall be delayed.

### 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. Subject to compliance with Chapter 2.105 of the City Code, review and approval as to form by the City Attorney, and appropriation of funds, authorize the City Manager or designee to negotiate and execute agreement(s) or purchase order(s) with vendors for the four purchases listed below, subject to a total maximum aggregate compensation amount of \$17,400,000 plus a fifteen percent (15%) contingency (\$2,610,000) for a total not to exceed amount of \$20,100,000, as follows:



- 
- (a) High Voltage Disconnect Switches for an approximately three-year agreement term and a two-year warranty period;
  - (b) Station Service Voltage Transformers for an approximately three-year agreement term and a two-year warranty period;
  - (c) Voltage Transformers and Capacitive Voltage Transformers for an approximately three-year agreement term and a two-year warranty period;
  - (d) Combination Revenue Metering Transformers for an approximately three-year agreement term and a two-year warranty period; and
2. Authorize the City Manager or designee to (a) take any actions as necessary to implement and administer the agreement(s) and/or purchase orders, and (b) negotiate and execute amendments to the agreement(s) and/or purchase order(s) for (i) design changes, (ii) any unanticipated issues, (iii) extensions of the term, or (iv) the purchase of additional High Voltage Disconnect Switches, Station Service Voltage Transformers, Voltage Transformers and Capacitive Voltage Transformers, and Combination Revenue Metering Transformer, up to the \$20,100,000 amount and subject to the review and approval as to form by the City Attorney.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-384

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Action to Authorize the Use of City Electric Forces for New Dark Fiber Installations at 6001 America Center Drive - 3080 Raymond Street

#### 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.”

In 2014, Silicon Valley Power (SVP) developed a position called Fiber Splicing Technician as an in-house position to primarily perform maintenance and repairs to meet the performance standards of fiber customers, which includes City departments and commercial customers. Fiber Splicing Technician activities include basic splicing and distribution changes to fiber optic cables. The technician can also perform duties such as pulling, laying, aligning, and positioning fiber optic equipment for new connections to the fiber network. Fiber Splicing Technicians also perform fusion splicing at building entrances and in maintenance spaces. Currently, SVP employs two Fiber Splicing Technicians.

#### DISCUSSION

Currently, the SVP fiber optic network serves SVP, other City departments, and various commercial customers. The Fiber Splicer Technician performs a variety of specialized activities from maintenance and repair to new or re-spliced interconnections to the SVP Fiber Enterprise. Each interconnection can be unique involving different hours of labor depending on the number of fibers required to be spliced and the particular location within the network. Technician time is tracked hourly and not on a per fiber basis.

Large or extensive projects involving extending fiber cable being laid along new paths or significant distances or adding conduit or related infrastructure are performed by a construction contractor through a public works contract. SVP spends up to \$1 million per year on these public works contracts.

Staff believes that the work described below is better performed with City forces based upon the following factors: (1) the work is limited in size and scope; (2) City forces have knowledge and training in operating, maintaining and repairing the fiber optic 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 following fiber optic projects and approve the use of City forces for such projects:

Estimate Number: FWM#1622  
 Location: 6001 America Center Drive - 3080 Raymond Street  
 Type of Service: New Business  
 Description of Work: Splice, terminate and test fibers for a new point to point route from 6001 America Center Drive to 3080 Raymond for a fiber lease customer.  
 Estimated Cost: \$12,604  
 Appropriation: Electric Utility Capital Fund (591) Project 2004 - Fiber Development, Design & Expansion  
 Source of Revenue: Developer Contribution

#### ENVIRONMENTAL REVIEW

Staff recommends that the City Council determine that the action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations, as the proposed work involves the construction or installation of a limited number of small fiber 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 \$12,604, are included in the Fiscal Year 2023/24 Budget, Fiber Development, Design, and Expansion project in the Electric Utility Capital Fund. All referenced work will be performed with City Electric Forces (SVP staff). Some work associated with encroachment permits may be performed by the Department of Public Works (DPW). DPW costs are recovered through payment of permit fees.

#### COORDINATION

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

#### PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<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 exempt from CEQA pursuant to Section 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations;

and

2. Declare and determine in accordance with Section 1310 of the City Charter that the public works located at 6001 America Center Drive to 3080 Raymond Street are better performed by the City with its own employees based on the information set forth in this Report to Council and authorize the performance of this public work consistent with this authorization.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-427

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Action on Recommendations from Governance and Ethics Committee to Amend Council Policy 046 entitled "Mayor and Council Public Records Policy" and Amend Email Retention from 90 days to two years for City Councilmembers

#### BACKGROUND

At the March 4, 2024 Governance and Ethics Committee (Committee), the Committee discussed the policy on email retention. This agenda item was carried over from the approved 2023 Governance and Ethics Committee workplan. Staff presented information on the current policies pertaining to public records and email retention for the Committee for review and discussion.

In addition to email retention, the Committee also discussed the options to consider retention of text messages on City devices for a specific duration of time. City staff is currently analyzing the capabilities to retain text messages and the costs and feasibility of those options. City staff will return to the Governance and Ethics Committee with an informational report pertaining to text messages as a public record and its retention policy at a future Committee meeting.

After a discussion on the retention of public records, the Governance and Ethics Committee recommends amending the email retention from 90 days to two years for the Mayor and City Councilmembers and updating Council Policy 046 to include these proposed changes. This item is being brought forth to the full City Council for consideration and approval as recommended by the Governance and Ethics Committee.

#### DISCUSSION

As background, there are two current policies that provide information on public records and email retention which include Council Policy 046 ("Mayor and Council Public Records Policy") (Attachment 1) and City Manager Directive (CMD) 42 Email Retention Policy (Attachment 2).

#### Council Policy 046 ("Mayor and Council Public Records Policy")

Council Policy 046 was established to make clear what records created, received, or retained by the Mayor and the Councilmembers are considered public records available for disclosure and the policy outlines that any communications, including emails, texts, messages or comments on social media, to or from the Mayor or City Councilmember that pertain to the conduct of public business, regardless of whether or not they were created or sent to a private or public account, are public records that may be disclosed unless otherwise exempt from disclosure.

#### City Manager Directive (CMD) 42 Email Retention Policy

Per City Manager Directive (CMD) 42 Email Retention Policy, the City follows a 90-day email

retention policy that documents and treats emails as “transitory communications.” In general, “transitory communications” include transmittal letters, confirmations of receipt, scheduling, instant messaging, voicemails, and other types of communications that don’t have a material impact on the conduct of City business. If, however, an email is more than “transitory” CMD 42 provides that such email should be retained and made available for disclosure in accordance with state law.

Government Code Section 34090 sets forth the minimum requirements for record retention for City records. Unless otherwise required by law, Section 34090 requires that emails related to City business be retained for a minimum of two years.

Both CMD 42, as applied to City staff, and City Council Policy 046, as applied to Mayor and Council, require that non-transitory emails relating to City business be retained for 2 years. Specifically, for Mayor and Council, the Records Retention Schedule identifies the records required to be retained and the retention period (Attachment 3). Under this schedule, the retention period for email records that fall within the Correspondence Record Description is two years.

#### California Public Records Act Requirements.

The California Public Records Act (Government Code Sections 7920.000 et seq (CPRA) requires the retention and disclosure of all “public records.” The CPRA defines a public record as, “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” The California Supreme Court relied on this definition to state that a public record has 4 aspects, “it is (1) a writing, (2) with content related to the conduct of the people’s business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency.” The CPRA applies to email messages on both city and personal accounts/devices and requires that proper identification and care of email be performed by the City Officials and staff.

#### Proposed Amendments for Council Policy 046

The proposed amendment to Council Policy 046 (Attachment 4) revises the 90-day email deletion policy to two-years for City Councilmember emails to minimize the risk of records being inadvertently deleted and maximize compliance with the requirements under the City’s retention schedule. This hold follows a two-year retention policy for all correspondence records as defined in the Mayor and City Council Retention Schedule. This amendment aligns with the recommendations from the Governance and Ethics Committee and the CPRA.

If the City Council approves the amended policy, the City will implement the process outlined below:

- Establish an automated two-year hold on all City Councilmember mailboxes and the general mailbox for the Mayor and Council. This action will retain all emails from the time the hold is enabled until the removal of the hold.
- Set a rule to automatically move emails (Inbox and Sent) which are two years or older to the deleted folder. After 21 days, the emails in the deleted folder will be permanently deleted.
- All email records on the two-year hold will be searchable and available for Public Record Act requests.
- City staff is developing a program to provide the City Councilmembers periodic trainings on public record management, including what constitutes a “transitory” record and best practices for responding to public records act requests on personal devices.

## 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

The anticipated costs would be associated with increased staff time to create new retention rules for City Councilmember mailboxes and the review of public records associated with the Public Records Act.

## COORDINATION

This report was coordinated with the City Manager's Office, City Attorney's Office and Information Technology 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

Adopt a Resolution approving the recommendations from the Governance and Ethics Committee to Amend Council Policy 046 entitled "Mayor and Council Public Records Policy" to include amending email retention from 90 days to two years.

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

Approved by: Jovan D. Grogan, City Manager

## ATTACHMENTS

1. Council Policy 046 ("Mayor and Council Public Records Policy")
2. City Manager Directive (CMD) 42 Email Retention Policy
3. Mayor and City Council Records Retention Schedule
4. Proposed Council Policy 046 "Mayor and Council Public Records Policy" (red line)
5. Resolution





## MAYOR AND COUNCIL PUBLIC RECORDS POLICY

### *POLICY*

As technology has evolved, the creation and retention of public records has changed. In order to make clear what records created, received or retained by the Mayor and the Council Members are considered public records available for disclosure, the City Council hereby establishes the following policy.

Any communications, including emails, texts, messages or comments on social media, to or from the Mayor or City Council Member that pertain to the conduct of public business, regardless of whether or not they were created or sent to a private or public account, are public records that may be disclosed unless otherwise exempt from disclosure.

### *PROCEDURE*

1. The Mayor and the Council Members shall only use official City email and text accounts to conduct City business.
2. The City shall provide the Mayor and the Council Members with separate publicly owned devices such as cell phones and tablets for the conduct of City business.
3. The Mayor and the Council Members shall endeavor to keep communications regarding City business out of their personal accounts and shall forward any communications regarding City business that they receive in their personal accounts to their official City accounts.
4. Any communications, including emails and texts that relate to an Agenda item received before or during a Council meeting by a majority of the Council must be disclosed in accordance with Government Code Section 54957.5.
5. No campaign activity may be conducted on City accounts or City devices.
6. If a request for records is received, a search that is reasonably calculated to locate responsive records will be conducted. Privacy concerns can and should be addressed on a case-by-case basis. Communications that are primarily personal, containing no more than incidental mentions of City business are generally not considered public records.

*Reference:* ***City Council-approved policy***



RESOLUTION NO. 17-8433

A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA ADOPTING A MAYOR AND CITY COUNCIL  
PUBLIC RECORDS POLICY

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

**WHEREAS**, a recent California Supreme Court decision has clarified the nature of communications that may constitute a public record subject to disclosure;

**WHEREAS**, the City Council referred this matter to its Governance Committee; and,

**WHEREAS**, the Governance Committee has recommended that the attached Mayor and City Council Public Records Policy be approved and adopted by the City Council.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. Adoption of Policy. The attached Mayor and City Council Public Records Policy is hereby approved and adopted.
2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 16<sup>th</sup> DAY OF MAY 2017, BY THE FOLLOWING VOTE:

|            |             |   |
|------------|-------------|---|
| AYES:      | COUNCILORS: | Davis, Kolstad, Mahan, O'Neill and Watanabe and Mayor Gillmor |
| NOES:      | COUNCILORS: | None  |
| ABSENT:    | COUNCILORS: | Caserta   |
| ABSTAINED: | COUNCILORS: | None  |

ATTEST:



ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:  
1. Mayor and City Council Public Records Policy  
I:\RESOLUTIONS\Mayor and City Council Public Records Policy 05-16-17.docx



**ADMINISTRATIVE CODE**

**CMD NUMBER 42**

**CITY MANAGER'S DIRECTIVE-PROCEDURE**

**DATE: March 2, 2009**

**CANCELS: None**

**SUBJECT :** EMAIL RETENTION POLICY

**POLICY :** Electronic telecommunications systems (email, voice mail, fax systems, PDA's, the Internet, etc.) are tools to send or receive communications. City email is a business tool that should only be used to provide an efficient and effective means of intra-agency and inter-agency communications on City business.

Email is subject to the same laws, policies and practices that apply to other means of communication, including the California Public Records Act and discovery statutes. Therefore, employees must determine when these communications constitute records which should be retained and how to retain them.

City email and City email systems are for communication and not for the permanent storage of records. As such, City emails are generally deemed to be preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the City in its ordinary course of business and are therefore not public records. However, email that is a public record should be retained and accessible for the appropriate time period before destruction. Email which is public record is open to inspection by the public upon request, unless exempt from disclosure. See the list of Definitions at the end of this CMD for additional clarification.

**RESPONSIBILITY :** ACTION

Human Resources Department,  
IT Department, and Supervisors  
in all Departments

1. When an employee separates from City service (through retirement, resignation or termination), the HR Department will notify IT, and the email account for the departing employee will be set up as a "proxy" account to the separating employee's direct Supervisor. The Supervisor is responsible for ensuring all public records are properly managed, including, but not limited to, migrating appropriate records to a successor employee.

All personnel

2. All Email Users must manage their own email boxes following the below policies and procedures. The User's Supervisor, Division Manager and Department Head are responsible for ensuring that their employees are in compliance with this policy.

**CMD NUMBER 42**

3. Email Inboxes and Sent Items folders (including their subfolders) shall be emptied on a regular basis, after records have been appropriately saved, as outlined below.
4. Email messages which contain any information relating to the conduct of the public's business that are prepared, owned, used or retained by the City may be deemed to be public records under the California Public Records Act. The email system is not to be used for long term storage.
5. Emails contained within a User's Inbox and Sent Items folders (including their subfolders) that are more than ninety (90) days old are considered duplicate copies or preliminary drafts and will be automatically deleted.
6. Users may place emails into User-created folders to organize email. Items in these folders may be public record and are discoverable through legal means.
7. Emails that are retained shall be maintained in accordance with the City's document retention manual and the User's Department Records Retention Schedule.
8. Unless set by the User to empty the Deleted Items (trash) folder upon exiting, the system will permanently delete email seven (7) days after items are placed within the Deleted Items (trash) folder.
9. Users' email mailbox storage capacity and the size of an outbound email in the email system (including file/document attachments) will be capped at a size/rate set by the IT Department.
10. All City policies (e.g. Use of City Resources, anti-harassment policies, etc.) apply to electronic media including email. Users must ensure that all communications are appropriate and comport with City policies.
11. Email from the City Attorney's Office or outside counsel should not be filed with public records. These emails may be subject to Attorney-Client and/or the Attorney Work Product privileges, and the contents should not be disclosed without first checking with the City Attorney's Office. Other exemptions may also apply.
12. If the City Attorney's Office informs departments and/or users that litigation, administrative or other proceedings exist, all emails, including duplicate copies, must be retained from the time of notice as they may be

subject to disclosure in the course of the proceeding.

IT Department

13. To instruct recipients of email sent from the City of Santa Clara about the City's policies, an email disclaimer will automatically be attached to every email leaving the City's system.
14. Frequently Asked Questions and Training Tips about the City's Email Retention Policy are available on the City's Intranet Site.

Cross-Reference:

CMD 13 – Public Record Requests

CMD 116 – Use of City Resources & Non-Confidential Nature of Information

CMD 131 – Equal Employment Opportunity Policy & Discrimination Complaint Procedure

Definitions:

- A. "Emails" are messages sent and received electronically through an email system and also known as electronic mail. Messages include the text of the email, along with any metadata or attachments affixed thereto.
- B. "Duplicate copy" is an email on which the recipient is listed as a "cc:" (copied recipient), or which another department or employee is responsible for the record's retention.
- C. "Public records" are "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."
- D. "User" is any City employee, advisory body member, Council Member, contractor, intern, or volunteer who uses City-owned or City-provided electronic technology.
- E. "Writing" includes electronic mail.
- F. "Preliminary Drafts" are preliminary versions of a written document, such as a staff report or draft agreement that is ready for revision or correction and not a final document of record. It also includes email that does not contain substantive information concerning City policies, decision-making, proceedings, projects, contractors, or practices; and does not relate to threatened or active litigation.

**RECORDS RETENTION SCHEDULE: MAYOR & CITY COUNCIL  
SANTA CLARA, CA.**

| MCC-No.   | Office of Record     | Record Type       | Records Description   | Retention / Disposition |                           |                 | Comments / Reference             |
|---|----------------------|-------------------|---|-------------------------|---------------------------|-----------------|----------------------------------|
|   |                      |                   |   | Active (in office)      | Inactive (Records Center) | Total Retention |                                  |
|   | (OFR)                |                   |   |                         |                           |                 |                                  |
| <i>If the record is not listed here, refer to the Retention for City-Wide Standards</i>   |                      |                   |   |                         |                           |                 |                                  |
| <i>Retentions begin when the act is completed, and imply a full file folder (e.g. last document + 2 years), since destruction is normally performed by file folder.</i>               |                      |                   |   |                         |                           |                 |                                  |
| <i>Litigation, complaints, claims, public records act requests, audits and/or investigations suspend normal retention periods (retention resumes after settlement or completion).</i> |                      |                   |   |                         |                           |                 |                                  |
| MCC-001   | Mayor & City Council | Awards & Mementos | <b>AWARDS &amp; MEMENTOS:</b> Received by the City (Physical Item)  | P                       |                           | p               | Department preference; GC §34090 |
| MCC-002   | Mayor & City Council | Reference         | <b>REFERENCE:</b> Significant Historical Value<br>Awards/Mementos List (received by the City),<br>Proclamations List (given by the City) etc  | current + 4 years       | P                         | P               | Department preference; GC §34090 |
| MCC-003   | Mayor & City Council | Routine           | <b>ROUTINE:</b> Copies of originals created in the Mayor and Council offices<br><br>Recognition Items given by the City: Proclamations, Certificates, Letters of Recognition, Appreciation Plaques Listing: timekeeping entries   | 4 years                 |                           | 4 years         | Department preference; GC §34090 |
| MCC-004   | Mayor & City Council | Correspondence    | <b>CORRESPONDENCE:</b> Incoming/outgoing, general information (copies)<br><br>Mayor and Council Chron, Complaints/Concerns, Calendars, Condolences, Adjournments, Schedule of Events, Council Reading, City Depts & Agencies, 49ers, etc  | current + 2 years       |                           | 2 years         | Department preference; GC §34090 |
| MCC-005   | Mayor & City Council | Non-Record        | <b>NON-RECORD:</b> Organizations, Commissions, Committees, Districts, Social Organizations<br><br>Council Committees (internal and external), City Commissions, League of California Cities, State, Federal and County, Miss Santa Clara Pageant, Sister Cities, Awards/Mementos (received by individuals), Copies of Newspaper Clippings, DVD's of City Council Meetings (copies), etc | None                    |                           | None            | Department preference; GC §34090 |



## **Mayor and Council Public Records Policy**

### **POLICY**

As technology has evolved, the creation and retention of public records has changed. In order to make clear what records created, received or retained by the Mayor and the Councilmembers are considered public records available for disclosure, the City Council hereby establishes the following policy.

Any communications, including emails, texts, messages or comments on social media, to or from the Mayor or City Councilmember that pertain to the conduct of public business, regardless of whether or not they were created or sent to a private or public account, are public records that may be disclosed unless otherwise exempt from disclosure.

### **PROCEDURE**

1. The Mayor and the Councilmembers shall only use official City email and text accounts to conduct City business.
2. The City shall provide the Mayor and the Councilmembers with separate publicly owned devices such as cell phones and tablets for the conduct of City business.
3. The Mayor and the Councilmembers shall endeavor to keep communications regarding City business out of their personal accounts and shall forward any communications regarding City business that they receive in their personal accounts to their official City accounts.
4. Any communications, including emails and texts that relate to an Agenda item received before or during a Council meeting by a majority of the Council must be disclosed in accordance with Government Code Section 54957.5.
5. No campaign activity may be conducted on City accounts or City devices.
6. If a request for records is received, a search that is reasonably calculated to locate responsive records will be conducted. Privacy concerns can and should be addressed on a case-by-case basis. Communications that are primarily personal, containing no more than incidental mentions of City business are generally not considered public records.
7. **City Email Storage and Retention: Emails contained within a Councilmembers' City Inbox and Sent Items folders (including any subfolders) shall be retained by the City for a period of two years from receipt or transmission. This hold follows a two-year retention policy for all Correspondence Record Description as defined in the Mayor and City Council Retention Schedule. Thereafter, unless**



the City Councilmember places emails into User-created folders, any emails within a Council Members' City Inbox and Sent Items folders (including any subfolders) that are more than two (2) years old shall be considered transitory and/or nonpermanent are subject to destruction per City's Retention Schedule policies and will be automatically deleted.

*Reference:*

*Council Policy 046 Approved - May 2017*

*Council Policy 046 Amended – May 28, 2024*

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
AMENDING COUNCIL POLICY 046 “MAYOR AND COUNCIL  
PUBLIC RECORDS POLICY”**

**WHEREAS**, Council Policy 046, “Mayor and Council Public Records Policy” was established to make clear what records created, received, or retained by the Mayor and City Councilmembers are considered public records available for disclosure;

**WHEREAS**, Council Policy 046 outlines that any communications including emails, texts, messages, to or from the Mayor or City Councilmember that pertain to the conduct of the public’s business may be disclosed unless otherwise exempt from disclosure; and,

**WHEREAS**, the amended Council Policy 046 revises the 90-day email deletion policy to two years for City Councilmembers emails to minimize the risk of records being inadvertently deleted and maximize compliance with the requirements under the City’s retention schedule.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the amended Council Policy 046, entitled “Mayor and Council Public Records Policy,” attached here as Attachment 1, is hereby approved and adopted.
2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28Th DAY OF MAY, 2024, BY THE FOLLOWING VOTE:

AYES:                      COUNCILORS:  
NOES:                      COUNCILORS:  
ABSENT:                    COUNCILORS:  
ABSTAINED:                COUNCILORS:

ATTEST: \_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA



Attachments to be incorporated by reference:

1. Council Policy 046 entitled "Mayor and Council Public Records Policy"



Agenda Report

24-436

Agenda Date: 5/28/2024

REPORT TO COUNCIL

SUBJECT

Action on Authorizing the Use of City Electric Forces for Public Works Projects at Various Locations

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Section 1310 of the Santa Clara City Charter (Contracts on Public Works) states “that every contract involving an expenditure of more than one thousand dollars (\$1,000) for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder.” The section further states that “the City Council may declare and determine that, in its opinion, the work in question may be performed better or more economically by the City with its own employees, and after the adoption of a resolution to this effect by at least four affirmative votes, it may proceed to have said work done in the manner stated, without further observance of the provisions of this section.”

DISCUSSION

Staff believes that the work described below is better performed with City forces based upon the following factors: (1) the work is limited in size and scope; (2) City forces have knowledge and training in operating and maintaining the electric system that can be leveraged to more economically perform this work; and (3) bidding out the work and contracting with a private entity would not likely result in a lower overall cost or time savings. Therefore, staff recommends that the City Council declare and determine that City forces can better perform the installation of the following electric facilities and approve the use of City forces.

Estimate Number: 39232  
Location: 2865 Uranium Drive  
Type of Service: New Business  
Description of Work: Remove and install 3 electric service meters.  
Estimated Cost: \$9,332  
Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
Source of Revenue: Customer/Developer Contribution

Estimate Number: 39283  
Location: 2991 Jerald Avenue  
Type of Service: Capacity  
Description of Work: Installation of a new wooden electric utility pole to relocate an existing electric service drop.

Estimated Cost: \$5,333  
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 36014  
 Location: 2310 Calle del Mundo  
 Type of Service: New Business  
 Description of Work: Install 1 padmount switch, 2 padmount transformers, ± 400' high voltage conductor, ± 400' low voltage conductor, 1 streetlight and pole, 151 residential meters, and 4 commercial meters.

Estimated Cost: \$185,313  
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 38816  
 Location: 3193 Cabrillo Avenue  
 Type of Service: New Business  
 Description of Work: Remove existing streetlights to be replaced by AT&T and install underground wires to new streetlight.

Estimated Cost: \$3,353  
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 38817  
 Location: 3345 Cabrillo Avenue  
 Type of Service: New Business  
 Description of Work: Remove existing streetlights to be replaced by AT&T and install underground wires to new streetlight.

Estimated Cost: \$2,577  
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 38822  
 Location: 3061 Monroe Street  
 Type of Service: New Business  
 Description of Work: Remove existing streetlights to be replaced by AT&T and install underground wires to new streetlight.

Estimated Cost: \$3,606  
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 39231  
 Location: 1821 Bowers Avenue

Type of Service: New Business  
 Description of Work: Remove existing streetlights to be replaced by AT&T and install underground wires to new streetlight.  
 Estimated Cost: \$3,440  
 Appropriation: Electric Utility Capital Fund (591) Project 2005 - New Business Estimate Work  
 Source of Revenue: Customer/Developer Contribution

Estimate Number: 39344  
 Location: 1962 Lafayette Street  
 Type of Service: New Business  
 Description of Work: Installation of a foreign asset on an existing wooden pole.  
 Estimated Cost: \$1,497  
 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 section 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations: as the proposed work involves the construction or installation 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 \$214,451, are included in the Fiscal Year 2023/24 Capital Budget, New Business Estimate Work, 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

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. Determine the proposed action is exempt from CEQA pursuant to Section 15303 (Class 3 - New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations; and

2. Declare and determine in accordance with Section 1310 of the City Charter that the public works projects proposed at 2865 Uranium Drive, 2991 Jerald Avenue, 2310 Calle Del Mundo, 3193 Cabrillo Avenue, 3345 Cabrillo Avenue, 3061 Monroe Street, 1821 Bowers Avenue, and 1962 Lafayette Street are better performed by the City with its own employees based on the information set forth in this Report to Council and authorize the performance of these public works by City electric utility forces consistent with this authorization.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Jovan D. Grogan, City Manager



## Agenda Report

24-231

Agenda Date: 5/28/2024

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### REPORT TO COUNCIL

#### SUBJECT

Action on Appointing a City of Santa Clara Bicycle and Pedestrian Advisory Committee Member to Serve as the City's Representative on the Santa Clara Valley Transportation Authority Bicycle Pedestrian Advisory Committee

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

The Santa Clara Valley Transportation Authority (VTA) requests that cities appoint members to the VTA Bicycle and Pedestrian Advisory Committee (VTA BPAC). The VTA BPAC is comprised of one representative from each of the sixteen member agencies, which includes the City of Santa Clara. VTA BPAC members serve two-year terms starting on July 1 and ending on June 30 of the second year and may serve successive terms.

The VTA BPAC advises the VTA Board of Directors on matters pertaining to funding and planning issues for bicycle and pedestrian projects and serves as the countywide bicycle advisory committee for Santa Clara County. Typical duties involve review of regional plans related to bicycling and walking, review of funding proposals for projects and consideration of specialized issues of regional or cross-jurisdictional significance.

#### DISCUSSION

The VTA has notified the City that the term for the City's current VTA BPAC representative, Betsy Megas, will end on June 30, 2024. Therefore, the City must appoint a new VTA BPAC representative.

The City's VTA BPAC representative must live and/or work in Santa Clara County during their term. The VTA also requires that the representative be either a member of the City's BPAC or an individual interested in bicycle or pedestrian issues and not a City or VTA staff person.

At the April 1, 2024 Santa Clara BPAC meeting, the BPAC voted to recommend to Council that member Betsy Megas continue to serve as the City's VTA BPAC representative. Betsy Megas' membership on both the City and VTA BPAC facilitates communication between the City and the other member agencies. If appointed, she will serve a term which will end on June 30, 2026.

#### 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 organization or administrative activity that will not result in direct or indirect changes in the environment.

**FISCAL IMPACT**

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

**COORDINATION**

This report was coordinated with the City Manager's Office, City Attorney's Office, and City Clerk'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**

Appoint the City of Santa Clara Bicycle and Pedestrian Advisory Committee member Betsy Megas to serve as the City's representative on the Santa Clara Valley Transportation Authority Bicycle and Pedestrian Advisory Committee.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Jovan Grogan, City Manager



## Agenda Report

24-487

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Action to Approve Revisions to the Existing Staff Analyst I Class Specification; Approve a New Senior Counsel for Silicon Valley Power Class Specification; Approve a Resolution Adopting the Amended Unclassified Salary Plan

#### COUNCIL PILLAR

Manage Strategically Our Workforce Capacity and Resources

#### BACKGROUND

Sections 4 and 6 of the Personnel and Salary Resolution require City Council approval of new or revised classifications. The proposed Council action satisfies these applicable requirements.

#### Revisions to Staff Analyst I (Job Code 796):

The Human Resources Department modified the class specification for Staff Analyst I (Job Code 796) to clarify the post-secondary degree and/or units requirements needed to meet the minimum qualifications for the classification.

The modification to Staff Analyst I (Job Code 796) was approved by the Civil Service Commission on April 11, 2024. The requested approval does not modify salary range for this classification.

#### Create the Senior Counsel for Silicon Valley Power (Job Code 179) Class Specification:

The City Attorney Office's and Human Resources Department coordinated to create a new classification titled Senior Counsel for Silicon Valley Power (Job Code 179) to better support the legal needs of Silicon Valley Power. The position has a salary range slightly higher than that of an Assistant City Attorney. The proposed Resolution satisfies the requirement for an updated Salary Plan reflecting the new position and its associated salary range.

#### DISCUSSION

#### Revisions to Staff Analyst I (Job Code 796) Class Specification

The Human Resources Department proposed revisions to the Staff Analyst I (Job Code 796) class specification to clarify the degree and/or units requirements needed to meet the minimum qualifications for the classification. This revision is intended to make it clearer to applicants what educational units are accepted for the position. The specification proposes a standard of completion of 120 semester units or 180 quarter units, with a requirement for at least one course in particular fields of study.

Staff Analyst I (Job Code 796) - with an annual salary range of \$102,267.48- \$130,801.20.



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The Staff Analyst I (Job Code 796) is responsible for program analysis and administrative duties in support of assigned programs and activities.

Create the Senior Counsel for Silicon Valley Power (Job Code 179) Class Specification:

The City Attorney's Office and Human Resources Department coordinated to create the new class specification of Senior Counsel for Silicon Valley Power (Job Code 179). This position is dedicated to providing legal support (essentially in a general counsel capacity) for Silicon Valley Power. It requires significant experience in, and knowledge of, legal requirements particular to municipal electric utilities in California. For example, the position requires: expertise with renewable energy procurement including experience with wind, geothermal, solar, and hydroelectric; expertise with CPUC Rules and Regulations, including, but not limited to General Orders 95, 128, and 165 and experience with managing and responding to CPUC audits and FERC Rules and Regulations; BAAQMD Rules and Regulations as they pertain to generation resources and their emission regulations within the City. Creating this new position allows the City to include these necessary and specific areas of expertise in the job specification, such that the skills of the incumbent can be more closely tailored to the needs of the client. This would otherwise not be possible in the standard Assistant City Attorney job specification, which applies to attorneys representing all departments in the City.

Senior Counsel for Silicon Valley Power (Job Code 179) - with an annual salary range of \$229,913.30 - \$296,588.16. The Senior Counsel for Silicon Valley Power (Job Code 179) performs the most complex work for Silicon Valley Power. Duties include providing general counsel services on a variety of matters, negotiating and drafting contracts, managing regulatory compliance issues, and managing litigation. The proposed salary is in alignment with the internal equity of the workgroup.

The salary range is higher than that of the Assistant City Attorney classification in recognition of the additional years of experience required for the position (a minimum of ten years for the SVP position, as opposed to a minimum of six years for the standard Assistant position).

Section 9 of the Personnel and Salary Resolution requires City Council approval of compensation plans for unclassified positions. California Code Regulations Section 570.5 governs and requires the adoption of updated publicly available salary schedules by the governing body. The proposed Resolution satisfies these applicable requirements. The updated salary plan reflects the salary range for the new position.

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 for the class specification modification for Staff Analyst I (Job Code 796).

The City Attorney's Office intends to reclassify a 1.0 Assistant City Attorney (Job Code 015) classification to a 1.0 Senior Counsel for Silicon Valley Power (Job Code 179). The Senior Counsel for Silicon Valley Power position has an annual salary range of \$229,913.30 - \$296,588.16 while the

Assistant City Attorney position has an annual salary range of \$213,185.04 - \$275,895.96. When considering salary and retirement costs, the average cost differential is approximately \$25,000 per year. The additional cost is expected to be absorbed in FY 2023/24 and any necessary budget adjustments will be brought forward in FY 2024/25 based on actual expenditures. Through the cost allocation process, the full cost of this position would be allocated to Silicon Valley Power.

### COORDINATION

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

### PUBLIC CONTACT

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

### RECOMMENDATION

1. Approve revisions to the existing Staff Analyst I (Job Code 796) class specification to clarify the acceptable level of educational units for the position;
2. Approve the creation of the Senior Counsel for Silicon Valley Power (Job Code 179) class specification; And
3. Approve the Resolution Adopting the Amended Unclassified Salary Plan to reflect the new Senior Counsel for Silicon Valley Power position.

Reviewed by: Aracely Azevedo, Director of Human Resources

Approved by: Jovan Grogan, City Manager

### ATTACHMENTS

1. Class Specification (clean), Staff Analyst I (Job Code 796)
2. Class Specification (track changed version, Staff Analyst I (Job Code 796)
3. Class Specification, Senior Counsel for Silicon Valley Power (Job Code 179)
4. Resolution Updated Salary Plan for Council 05-28-2024 (eff 06-09-2024)
5. Unclassified Salary Plan Approved 05-28-2024 (eff 06-09-2024)

**CITY OF SANTA CLARA, CALIFORNIA  
CLASS SPECIFICATION**

**TITLE: STAFF ANALYST I (JOB CODE 796)**

| <b>DEPARTMENT</b> | <b>ACCOUNTABLE TO</b> | <b>FLSA STATUS</b> |
|-------------------|-----------------------|--------------------|
| Various           | Various               | Non-exempt         |

**CLASS SUMMARY**

The Staff Analyst I is responsible for program analysis and administrative duties in support of assigned programs and activities. Assigned programs could include housing development, community development, community outreach, historic preservation, advanced planning, public/private housing rehabilitation, management analysis, building services, human services, criminal statistics, solid waste, recycling, waste prevention, sustainability, urban runoff pollution prevention, and federal/state grant programs and activities. Performs related duties as assigned.

**DISTINGUISHING CHARACTERISTICS**

The Staff Analyst classifications are bridge classifications between the Staff Aide classifications and the Management Analyst classifications. The Staff Analyst I works under general supervision and is expected to work within established procedures and policies of the work unit. This classification differs from the lower-level Staff Aide classifications in that the latter perform advanced clerical duties and project-based support. The classification differs from the higher-level Staff Analyst II classification in that the latter performs more complex program analysis and administrative duties. A Staff Analyst II may also provide lead or supervision to a Staff Analyst I.

**MINIMUM QUALIFICATIONS**

***EDUCATION AND EXPERIENCE***

Completion of 120 semester units or 180 quarter units which, irrespective of the preceding requirement, shall include one (1) or more courses in, or a Bachelor's degree in, public or business administration, urban planning, information management, criminal justice, environmental studies, finance, or related field from an accredited college or university.

***ACCEPTABLE SUBSTITUTION***

None

***LICENSES/CERTIFICATIONS***

Possession of a valid California Class C driver's license is required at time of appointment and for duration of employment.

***DESIRABLE QUALIFICATIONS***

Experience in electronic spreadsheets, on-line financial systems, social media outreach techniques, accounting, record-keeping, and mortgage financing.

***OTHER REQUIREMENTS***

- Must be able to perform all of the essential functions of the job assignment.

## **STAFF ANALYST (796)**

- Incumbents of this classification may be required to occasionally work overtime and odd and unusual hours.

### **TYPICAL DUTIES**

This description may not include all the duties listed below, nor do the examples cover all duties that may be performed.

The Staff Analyst I may be assigned to work in the any of the following Departments, including but not limited to: Community Development Department, City Manager's Office, Housing and Community Services Division, Department of Public Works, or the Police Department.

Under general supervision, the incumbent:

- Performs administrative duties related to all facets of assigned programs
- Maintains liaison with grantor agencies, citizen advisory committees, public services agencies, program applicants, and/or the general public
- Prepares necessary reports including program planning reports, program performance reports, and grant reports
- Coordinates data collection and performs data entry
- Prepares evaluation reports
- Maintains financial records and budgets
- Monitors financial accounts
- Prepares appropriate correspondence, applications, and reports
- Assists in developing policies and procedures relative to assigned programs
- Seeks state and federal grant opportunities and develops grant applications for same
- Prepares and distributes reports, charts, publications, and related materials to track, display, and explain trends
- Monitors program procedures and works with public when necessary and as directed
- Responds to requests for analysis information related to specific programs, grants, or projects
- Performs necessary duties to implement community-oriented programs as directed
- Performs other related duties as assigned

For the City Manager's Office and Housing and Community Services Division:

- Develops and assists in the negotiations of contracts and budgets for human service providers
- Monitors performance by contractors to service agreements and makes recommendations for improved delivery of goods and services
- Reviews and analyzes payment requests received from contractors to recommend payments based on performance accomplishments
- Coordinates the provision of financial assistance to property owners and preparation of loan packages
- Initiates contractor payments
- Monitors contractor performance on construction projects to ensure federal contract compliance standards are met
- Performs environmental review of programs and projects to evaluate compliance with federal environmental regulations, policies, and procedural requirements

## **STAFF ANALYST (796)**

- Compiles performance data and prepares drafts of reports to the City Manager and grantors

### For the Police Department:

- Analyzes data and determines trends in criminal activity for the Police Department
- Coordinates Citizens' Police Academy program

### For the Community Development Department:

- Performs research and analysis related to Department programs and initiatives
- Administers and manages contracts for the Department
- Coordinates the initiation and operation of Committees formed by the City Council
- Analyzes development activity, maintains information, and creates reports for Department management and the City Manager's Office
- Maintains websites, applications, and Social Media accounts for the Department

### For the Department of Public Works:

- Maintains websites, applications and social media accounts for the department
- Represents the City at various countywide committees and subcommittees
- Assists with the coordination of the City's annual Arbor Day/Earth Celebration and other special events
- Prepares service and solid waste hauling agreements
- Assists in solid waste and storm drain rate setting processes
- Monitors performance of solid waste and recycling service providers and facilitates successful resolution of service issues
- Administer the City's Adopt-a-Spot community-based beautification program
- Coordinates the sign-off of stormwater treatment measure inspection and maintenance agreements and third-party stormwater treatment measure installation verification sign-off for building occupancy
- Implements the construction & demolition debris recycling online reporting system

## **KNOWLEDGE, SKILLS, & ABILITIES**

### Knowledge of:

- The principles, methods, and practices of public administration
- Analytical techniques needed to review and analyze information to determine options and recommend viable solutions
- Report writing to accurately and effectively communicate job related information
- Principles and techniques used in working with different individuals and citizen groups
- Federal, state, and local regulations dealing with housing, neighborhood conservation, solid waste planning and management
- Municipal and private sector finances and financial institutions
- Property title research methods
- Basic research techniques
- Business English and statistical mathematics
- Office safety practices, procedures and standards

## **STAFF ANALYST (796)**

- Federal grants management

### **Ability to:**

- Analyze and apply complex governmental instructions, regulations and legislation
- Perform basic financial accounting tasks
- Formulate conclusions based on analysis of data
- Read and interpret maps and geological information
- Exercise tact, resourcefulness, and persuasion in dealing with individuals and groups of varied ethnic, social, and economic backgrounds
- Effectively handle multiple priorities, organize workload and meet strict deadlines
- Spell correctly and to communicate effectively, both orally and in written form, using proper English
- Prepare comprehensive, clear and concise reports
- Understand and carry out written and oral instructions
- Make presentations to large groups of people
- Speak clearly and effectively
- Interpret and apply legal requirements
- Deal tactfully with those contacted in the course of work, including co-workers and the general public
- Lift, carry, and relocate a variety of files or materials weighing up to 25 pounds
- Walk or stand for extended periods of time and bend, stoop, reach, carry, climb and lift as necessary to perform assigned duties
- Work with personal computers and perform data entry

### **SUPERVISION RECEIVED**

Works under the general supervision of a Management Analyst, Division Manager, Assistant Director, Director or other manager as assigned.

### **SUPERVISION EXERCISED**

May supervise clerical and/or administrative support staff, volunteers and/or interns. May assist in the training of other personnel.

### **CONFLICT OF INTEREST**

Incumbents in this position are required to file a Conflict of Interest statement upon assuming office, annually, and upon leaving office, in accordance with City Manager's Directive 100.

### **CLASSIFICATION HISTORY**

Established 01/2013; Rev. 12/2016; Rev. 11/2023; Rev. 04/2024

**CITY OF SANTA CLARA, CALIFORNIA  
CLASS SPECIFICATION**

**TITLE: STAFF ANALYST I (JOB CODE 796)**

| DEPARTMENT | ACCOUNTABLE TO | FLSA STATUS |
|------------|----------------|-------------|
| Various    | Various        | Non-exempt  |

**CLASS SUMMARY**

The Staff Analyst I is responsible for program analysis and administrative duties in support of assigned programs and activities. Assigned programs could include housing development, community development, community outreach, historic preservation, advanced planning, public/private housing rehabilitation, management analysis, building services, human services, criminal statistics, solid waste, recycling, waste prevention, sustainability, urban runoff pollution prevention, and federal/state grant programs and activities. Performs related duties as assigned.

**DISTINGUISHING CHARACTERISTICS**

The Staff Analyst classifications are bridge classifications between the Staff Aide classifications and the Management Analyst classifications. The Staff Analyst I works under general supervision and is expected to work within established procedures and policies of the work unit. This classification differs from the lower-level Staff Aide classifications in that the latter perform advanced clerical duties and project-based support. The classification differs from the higher-level Staff Analyst II classification in that the latter performs more complex program analysis and administrative duties. A Staff Analyst II may also provide lead or supervision to a Staff Analyst I.

**MINIMUM QUALIFICATIONS**

***EDUCATION AND EXPERIENCE***

Completion of 120 semester units or 180 quarter units which, irrespective of the preceding requirement, shall include one (1) or more courses in, or a ~~Education equivalent to~~ Bachelor's degree in, public or business administration, urban planning, information management, criminal justice, environmental studies, finance, or related field from an accredited college or university.

***ACCEPTABLE SUBSTITUTION***

None

***LICENSES/CERTIFICATIONS***

Possession of a valid California Class C driver's license is required at time of appointment and for duration of employment.

***DESIRABLE QUALIFICATIONS***

Experience in electronic spreadsheets, on-line financial systems, social media outreach techniques, accounting, record-keeping, and mortgage financing.

***OTHER REQUIREMENTS***

- Must be able to perform all of the essential functions of the job assignment.

## **STAFF ANALYST (796)**

- Incumbents of this classification may be required to occasionally work overtime and odd and unusual hours.

### **TYPICAL DUTIES**

This description may not include all the duties listed below, nor do the examples cover all duties that may be performed.

The Staff Analyst I may be assigned to work in the any of the following Departments, including but not limited to: Community Development Department, City Manager's Office, Housing and Community Services Division, Department of Public Works, or the Police Department.

Under general supervision, the incumbent:

- Performs administrative duties related to all facets of assigned programs
- Maintains liaison with grantor agencies, citizen advisory committees, public services agencies, program applicants, and/or the general public
- Prepares necessary reports including program planning reports, program performance reports, and grant reports
- Coordinates data collection and performs data entry
- Prepares evaluation reports
- Maintains financial records and budgets
- Monitors financial accounts
- Prepares appropriate correspondence, applications, and reports
- Assists in developing policies and procedures relative to assigned programs
- Seeks state and federal grant opportunities and develops grant applications for same
- Prepares and distributes reports, charts, publications, and related materials to track, display, and explain trends
- Monitors program procedures and works with public when necessary and as directed
- Responds to requests for analysis information related to specific programs, grants, or projects
- Performs necessary duties to implement community-oriented programs as directed
- Performs other related duties as assigned

For the City Manager's Office and Housing and Community Services Division:

- Develops and assists in the negotiations of contracts and budgets for human service providers
- Monitors performance by contractors to service agreements and makes recommendations for improved delivery of goods and services
- Reviews and analyzes payment requests received from contractors to recommend payments based on performance accomplishments
- Coordinates the provision of financial assistance to property owners and preparation of loan packages
- Initiates contractor payments
- Monitors contractor performance on construction projects to ensure federal contract compliance standards are met
- Performs environmental review of programs and projects to evaluate compliance with federal environmental regulations, policies, and procedural requirements



## **STAFF ANALYST (796)**

- Compiles performance data and prepares drafts of reports to the City Manager and grantors

### For the Police Department:

- Analyzes data and determines trends in criminal activity for the Police Department
- Coordinates Citizens' Police Academy program

### For the Community Development Department:

- Performs research and analysis related to Department programs and initiatives
- Administers and manages contracts for the Department
- Coordinates the initiation and operation of Committees formed by the City Council
- Analyzes development activity, maintains information, and creates reports for Department management and the City Manager's Office
- Maintains websites, applications, and Social Media accounts for the Department

### For the Department of Public Works:

- Maintains websites, applications and social media accounts for the department
- Represents the City at various countywide committees and subcommittees
- Assists with the coordination of the City's annual Arbor Day/Earth Celebration and other special events
- Prepares service and solid waste hauling agreements
- Assists in solid waste and storm drain rate setting processes
- Monitors performance of solid waste and recycling service providers and facilitates successful resolution of service issues
- Administer the City's Adopt-a-Spot community-based beautification program
- Coordinates the sign-off of stormwater treatment measure inspection and maintenance agreements and third-party stormwater treatment measure installation verification sign-off for building occupancy
- Implements the construction & demolition debris recycling online reporting system

## **KNOWLEDGE, SKILLS, & ABILITIES**

### Knowledge of:

- The principles, methods, and practices of public administration
- Analytical techniques needed to review and analyze information to determine options and recommend viable solutions
- Report writing to accurately and effectively communicate job related information
- Principles and techniques used in working with different individuals and citizen groups
- Federal, state, and local regulations dealing with housing, neighborhood conservation, solid waste planning and management
- Municipal and private sector finances and financial institutions
- Property title research methods
- Basic research techniques
- Business English and statistical mathematics
- Office safety practices, procedures and standards

## **STAFF ANALYST (796)**

- Federal grants management

### **Ability to:**

- Analyze and apply complex governmental instructions, regulations and legislation
- Perform basic financial accounting tasks
- Formulate conclusions based on analysis of data
- Read and interpret maps and geological information
- Exercise tact, resourcefulness, and persuasion in dealing with individuals and groups of varied ethnic, social, and economic backgrounds
- Effectively handle multiple priorities, organize workload and meet strict deadlines
- Spell correctly and to communicate effectively, both orally and in written form, using proper English
- Prepare comprehensive, clear and concise reports
- Understand and carry out written and oral instructions
- Make presentations to large groups of people
- Speak clearly and effectively
- Interpret and apply legal requirements
- Deal tactfully with those contacted in the course of work, including co-workers and the general public
- Lift, carry, and relocate a variety of files or materials weighing up to 25 pounds
- Walk or stand for extended periods of time and bend, stoop, reach, carry, climb and lift as necessary to perform assigned duties
- Work with personal computers and perform data entry

### **SUPERVISION RECEIVED**

Works under the general supervision of a Management Analyst, Division Manager, Assistant Director, Director or other manager as assigned.

### **SUPERVISION EXERCISED**

May supervise clerical and/or administrative support staff, volunteers and/or interns. May assist in the training of other personnel.

### **CONFLICT OF INTEREST**

Incumbents in this position are required to file a Conflict of Interest statement upon assuming office, annually, and upon leaving office, in accordance with City Manager's Directive 100.

### **CLASSIFICATION HISTORY**

Established 01/2013; Rev. 12/2016; Rev. 11/2023; [Rev. 04/2024](#)

**CITY OF SANTA CLARA, CALIFORNIA  
CLASS SPECIFICATION**

**TITLE: SENIOR COUNSEL FOR SILICON VALLEY POWER (JOB CODE 179)**

| <b>DEPARTMENT</b>      | <b>ACCOUNTABLE TO</b> | <b>FLSA STATUS</b> |
|------------------------|-----------------------|--------------------|
| City Attorney’s Office | City Attorney         | Exempt             |

**CLASS SUMMARY**

Under general direction, this classification performs the most complex work of considerable difficulty for Silicon Valley Power (SVP). Primary responsibilities include providing general counsel services on a variety matters, negotiating and drafting contracts for City Council approval, managing regulatory compliance issues, and managing litigation. Performs related duties as assigned.

**DISTINGUISHING CHARACTERISTICS**

This is a professional legal advisory and managerial position in the Unclassified Service. An incumbent in this classification must: exercise independent judgment and discretion to provide legal and policy advice; manage, control, and direct outside legal counsel and employees; and formulate administrative policies for the effective management of City utility and other operations and use of assigned personnel. The position requires a demonstrated ability to work well with management, professional and administrative support employees in the Office; with clients, professionals, managers, City’s executive management team and all City Departments and elected and appointed officials from the City and various boards, commissions, and committees.

As a member of the City’s unclassified service, this is an “at-will” position and the incumbent serves at the discretion of the City Manager and City Attorney. An incumbent in this position demonstrates strong ethical, professional, and service-oriented leadership and interpersonal skills, sets a good example, and correctly applies the tenets of the City’s Code of Ethics and Values.

**MINIMUM QUALIFICATIONS**

***EDUCATION AND EXPERIENCE***

J.D. or L.L.B. from an accredited law school AND ten (10) years recent experience in the practice of law. Six (6) years of the qualifying experience must include advising dealing with electric utilities in the State of California. Two (2) years of the qualifying experience must include advising dealing with municipal, county or state governmental agencies in the State of California.

***ACCEPTABLE SUBSTITUTION***

None.

***LICENSES/CERTIFICATIONS***

- Possession of an appropriate California driver's license is required.
- Active member in good standing of the State Bar of California is required.

***DESIRABLE QUALIFICATIONS***

- Admission to the Federal District Court and Federal Appeals Court Bar is desirable.
- One year of supervisory experience is desirable.

## **SENIOR COUNSEL FOR SILICON VALLEY POWER (JOB CODE 179)**

### ***OTHER REQUIREMENTS***

- Must be able to perform all of the essential functions of the job.
- May be required to work odd and unusual hours.

### **TYPICAL DUTIES**

This description may not include all the duties listed below, nor do the examples cover all duties that may be performed.

Under general direction, the incumbent will:

- Act as General Counsel to Silicon Valley Power;
- Give legal counsel to elected and appointed officials, boards, commissions, committees and City departments (primarily to Silicon Valley Power) on a broad variety of legal topics, including but not limited to, interpretation of Federal, State, regional and local constitutions, charters, statutes, ordinances, resolutions, rules, regulations, court decisions, administrative law decisions, and other applicable legal authority;
- Assist in developing specifications for permitting and implementing electric public works projects including procurement of necessary electric equipment (transformers, switchgear, etc.), awarding and managing public works contracts, and resolving issues/disputes with contractors, bonding agencies, regulatory agencies, etc.;
- Negotiate and draft contracts for financing, acquisition and disposition of real estate interests, including fee simple, easements and rights of way, leasing, power purchases, power service and supply agreements and any and all other contracts and agreements related to the operation of a municipal electric and telecommunications utility;
- Appear before, obtain approvals from and otherwise works closely with regulatory agencies including FERC, NERC, CPUC, CEC, and CAISO on power acquisition, transmission, distribution, and related operational issues;
- Make appearances and conduct litigation on legal matters before State and Federal courts, boards, administrative agencies, and commissions;
- Participate in the selection of and manage outside legal counsel engaged by the City for specialized legal matters;
- Prepare drafts and/or review the legality of legislation, ordinances, resolutions, administrative policies, and other legal documents and instruments;
- Confer with the City Attorney to ascertain legal policy and then make decisions with respect to prosecution, compromise and/or dismissal of civil litigation;
- Oversee or prosecute eminent domain proceedings;
- Monitor and assist in the collection of debts and damages due to the City;
- Monitor and assist in the investigation of claims and complaints by and against the City;
- Be available to attend meetings of the City Council, JPAs, boards and commissions as assigned by the City Attorney to render legal advice and counsel;
- Manage the training and supervision of subordinate attorneys and support staff;
- Perform any and all other tasks required to provide legal support for SVP or City operations as assigned; and
- Perform other related duties as required.

## **SENIOR COUNSEL FOR SILICON VALLEY POWER (JOB CODE 179)**

### **KNOWLEDGE, SKILLS, & ABILITIES**

#### Knowledge of:

- Principles and practices of civil, criminal, constitutional, and administrative law specific to an electric utility and a municipality;
- Principles and practices of government organizations, powers and limitations of governmental functions, organizational management and supervision;
- Office safety practices, procedures and standards;
- Organization and operating procedures of a municipal attorney's office;
- Computer technology, i.e. Microsoft 360 Office Suite programs (including but not limited to Word, Excel, PowerPoint, Teams, Sharepoint, etc.);
- Legal research techniques;
- General statutory and case law, with specific knowledge of law related to municipal government functions and law specific to an electric utility. Specific areas of knowledge may include, but are not limited to, the following:
  - General expertise in the legal aspects of California municipal electric utility operations including market knowledge, industry standards, stakeholders, regulatory schemes, and risk management related issues;
  - Expertise with renewable energy procurement including experience with wind, geothermal, solar, and hydroelectric;
  - Expertise with California Public Utilities Commission Rules and Regulations, including, but not limited to General Orders 95, 128, and 165 and experience with managing and responding to CPUC audits and Federal Energy Regulatory Commission Rules and Regulations;
  - Knowledge of transmission, substation, and electric system development;
  - Expertise with rates and fee development, including, Proposition 26, Proposition 218, and applicable case law;
  - Resource Adequacy procurement and sale (local, system, flexible, and contingent resource adequacy products) through purchase agreements;
  - Bay Area Quality Management District Air Resources Board Rules and Regulations as they pertain to generation resources and their emission regulations within the City;
  - Knowledge of telecommunications law (small cell and fiber optic) and negotiate and prepare related lease agreements;
- US Constitution, California Constitution, Brown Act, Public Records Act, Political Reform Act, CEQA.

#### Ability to:

- Communicate both orally and in writing in a highly effective manner;
- Prepare analysis of law, fact, and argument, clearly and logically;
- Analyze, appraise and apply legal principles and precedents to difficult legal problems and use independent judgment;
- Present statements of law, fact, and argument clearly and logically;
- Make presentations to executive leadership, City Council, City Manager;
- Prepare complex legal opinions and a wide variety of sophisticated legal documents;

## **SENIOR COUNSEL FOR SILICON VALLEY POWER (JOB CODE 179)**

- Have a common-sense approach to decision making and balancing the needs of the requesting City client;
- Work both collaboratively and independently as a member of SVP and City senior leadership team using sound judgment, initiative, creativity and discretion in responding to sensitive community and organizational issues, concerns, and needs;
- Effectively manage, organize, train and supervise assigned staff;
- Build credibility, trust and strong working relationships with internal and external clients by working cooperatively and collaboratively, by working in a team environment, by seeking input from others, by listening and communicating, by using tact and discretion and by communicating, when appropriate, technical information in non-technical terms;
- Handle stressful or sensitive situations with tact and diplomacy;
- Establish and maintain effective working relationships with those contacted in the course of work;
- Work effectively in time-sensitive situations and meet deadlines and coordinate multiple projects and complex tasks simultaneously;
- Select and manage outside legal counsel on complex matters;
- Handle a range of assignments from routine to complex; and
- Bend, stoop, reach, carry, crawl, climb, and lift as necessary to perform assigned duties.

### **SUPERVISION RECEIVED**

Works under the general direction of the City Attorney or designee.

### **SUPERVISION EXERCISED**

May supervise subordinate or administrative staff, as assigned.

### **CONFLICT OF INTEREST**

Incumbents in this position are required to file a Conflict of Interest statement upon assuming office, annually, and upon leaving office, in accordance with City Manager's Directive 100.

### **CLASSIFICATION HISTORY**

Created 05/2024

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
TO ADOPT THE AMENDED UNCLASSIFIED SALARY PLAN FOR  
SENIOR COUNSEL FOR SILICON VALLEY POWER (JOB CODE  
179) WITH AN APPROVAL DATE OF MAY 28, 2024 AND AN  
EFFECTIVE DATE OF JUNE 9, 2024**

**WHEREAS**, the City of Santa Clara contracts with CalPERS to provide retirement benefits;

**WHEREAS**, to comply with the California Code Regulations section 570.5, the City of Santa Clara shall among other things, have publicly available pay schedules approved and adopted by the City Council which shall indicate an effective date and date of any revisions; and,

**WHEREAS**, as required by the California Code Regulations section 570.5 and as mandated by CalPERS, the City Council deems it to be in the best interests of the City to adopt the Amended Unclassified Salary Plan for City of Santa Clara classifications when there are salary modifications to existing classifications, and when new classifications are created and salary ranges need to be established or when existing classifications are deleted, with an approval date of May 28, 2024, and an effective date of June 9, 2024.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the City hereby adopts the Amended Unclassified Salary Plan reflecting the creation of the Senior Counsel for Silicon Valley Power (Job Code 179) class specification.
2. Effective date. In accordance with the California Code Regulations section 570.5 and to comply with CalPERS, the attached salary schedule for unclassified positions, shall be effective June 9, 2024 and adopted with an approval date of May 28, 2024.

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 \_\_\_\_\_, 2024, BY THE FOLLOWING VOTE:

AYES:                      COUNCILORS:

NOES:                      COUNCILORS:

ABSENT:                      COUNCILORS:

ABSTAINED:

COUNCILORS:

ATTEST: \_\_\_\_\_

NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Unclassified Salary Plan Approved 05-28-2024 (eff 06-09-2024)



City of Santa Clara  
Unclassified/Elected Salary Plan

Effective 6/9/2024  
Approved 5/28/2024

| Job Title                      | Job Code | Union Code | Minimum Salary |              |               | Maximum Salary |              |               |
|--------------------------------|----------|------------|----------------|--------------|---------------|----------------|--------------|---------------|
|                                |          |            | Hourly         | Monthly      | Annual        | Hourly         | Monthly      | Annual        |
| Accounting Division Manager    | 109      | 9          | \$ 82.735962   | \$ 14,340.90 | \$ 172,090.80 | \$ 107.068904  | \$ 18,558.61 | \$ 222,703.32 |
| Asst Building Official         | 222      | 9          | \$ 88.186096   | \$ 15,285.59 | \$ 183,427.08 | \$ 114.132288  | \$ 19,782.93 | \$ 237,395.16 |
| Asst City Attorney             | 015      | 9          | \$ 102.492808  | \$ 17,765.42 | \$ 213,185.04 | \$ 132.642288  | \$ 22,991.33 | \$ 275,895.96 |
| Asst City Clerk                | 010      | 9          | \$ 68.551327   | \$ 11,882.23 | \$ 142,586.76 | \$ 88.713115   | \$ 15,376.94 | \$ 184,523.28 |
| Asst City Librarian            | 012      | 9          | \$ 89.304462   | \$ 15,479.44 | \$ 185,753.28 | \$ 115.571885  | \$ 20,032.46 | \$ 240,389.52 |
| Asst City Manager              | 016      | 9          | \$ 138.876519  | \$ 24,071.93 | \$ 288,863.16 | \$ 179.714250  | \$ 31,150.47 | \$ 373,805.64 |
| Asst Dir Of Community Dev      | 038      | 9          | \$ 100.938519  | \$ 17,496.01 | \$ 209,952.12 | \$ 131.219769  | \$ 22,744.76 | \$ 272,937.12 |
| Asst Dir Of Electric Util      | 021      | 9          | \$ 120.989942  | \$ 20,971.59 | \$ 251,659.08 | \$ 156.576692  | \$ 27,139.96 | \$ 325,679.52 |
| Asst Dir Of Finance            | 022      | 9          | \$ 96.290654   | \$ 16,690.38 | \$ 200,284.56 | \$ 124.614865  | \$ 21,599.91 | \$ 259,198.92 |
| Asst Dir Of Human Resources    | 018      | 9          | \$ 96.290654   | \$ 16,690.38 | \$ 200,284.56 | \$ 124.614865  | \$ 21,599.91 | \$ 259,198.92 |
| Asst Dir Of Pub Works/City Eng | 071      | 9          | \$ 106.188404  | \$ 18,405.99 | \$ 220,871.88 | \$ 137.424058  | \$ 23,820.17 | \$ 285,842.04 |
| Asst Dir Of Water & Sewer Util | 014      | 9          | \$ 95.307346   | \$ 16,519.94 | \$ 198,239.28 | \$ 123.348692  | \$ 21,380.44 | \$ 256,565.28 |
| Asst Fire Chief                | 024      | 9B         | \$ 141.201404  | \$ 24,474.91 | \$ 293,698.92 | \$ 182.740500  | \$ 31,675.02 | \$ 380,100.24 |
| Asst Fire Marshal              | 026      | 9B         | \$ 108.300346  | \$ 18,772.06 | \$ 225,264.72 | \$ 140.153423  | \$ 24,293.26 | \$ 291,519.12 |
| Asst Police Chief              | 027      | 9A         | \$ 147.198635  | \$ 25,514.43 | \$ 306,173.16 | \$ 183.163154  | \$ 31,748.28 | \$ 380,979.36 |
| Asst To The City Manager       | 028      | 9          | \$ 94.131115   | \$ 16,316.06 | \$ 195,792.72 | \$ 121.812635  | \$ 21,114.19 | \$ 253,370.28 |
| Audit Manager                  | 201      | 9          | \$ 79.650981   | \$ 13,806.17 | \$ 165,674.04 | \$ 103.077635  | \$ 17,866.79 | \$ 214,401.48 |
| Battalion Chief                | 036      | 9B         | \$ 116.678712  | \$ 20,224.31 | \$ 242,691.72 | \$ 150.987577  | \$ 26,171.18 | \$ 314,054.16 |
| Battalion Chief 24 Hrs         | 036S     | 9BS        | \$ 79.373283   | \$ 19,261.25 | \$ 231,135.00 | \$ 102.712624  | \$ 24,924.93 | \$ 299,099.16 |
| Budget & Treasury Division Mgr | 113      | 9          | \$ 82.735962   | \$ 14,340.90 | \$ 172,090.80 | \$ 107.068904  | \$ 18,558.61 | \$ 222,703.32 |
| Building Maintenance Manager   | 041      | 9          | \$ 73.268827   | \$ 12,699.93 | \$ 152,399.16 | \$ 94.818865   | \$ 16,435.27 | \$ 197,223.24 |
| Building Official              | 042      | 9          | \$ 97.010481   | \$ 16,815.15 | \$ 201,781.80 | \$ 125.540365  | \$ 21,760.33 | \$ 261,123.96 |
| Cemetery Operations Manager    | 045      | 9          | \$ 58.589308   | \$ 10,155.48 | \$ 121,865.76 | \$ 75.820442   | \$ 13,142.21 | \$ 157,706.52 |
| Chief Asst City Attorney       | 037      | 9          | \$ 117.866423  | \$ 20,430.18 | \$ 245,162.16 | \$ 152.538635  | \$ 26,440.03 | \$ 317,280.36 |
| Chief Electric Utility Officer | 108      | 9          | \$ 159.713192  | \$ 27,683.62 | \$ 332,203.44 | \$ 206.682346  | \$ 35,824.94 | \$ 429,899.28 |
| Chief Operating Officer        | 311      | 9          | \$ 159.713192  | \$ 27,683.62 | \$ 332,203.44 | \$ 206.682346  | \$ 35,824.94 | \$ 429,899.28 |

City of Santa Clara  
Unclassified/Elected Salary Plan

Effective 6/9/2024  
Approved 5/28/2024

| Job Title                      | Job Code | Union Code | Minimum Salary |              |               | Maximum Salary |              |               |
|--------------------------------|----------|------------|----------------|--------------|---------------|----------------|--------------|---------------|
|                                |          |            | Hourly         | Monthly      | Annual        | Hourly         | Monthly      | Annual        |
| City Attorney                  | 060      | Appointed  |                |              |               | \$ 165.865385  | \$ 28,750.00 | \$ 345,000.00 |
| City Auditor                   | 067      | 9          | \$ 96.290654   | \$ 16,690.38 | \$ 200,284.56 | \$ 124.614865  | \$ 21,599.91 | \$ 259,198.92 |
| City Clerk                     | 063      | Elected    |                |              |               |                | \$ 1,500.00  | \$ 18,000.00  |
| City Council Member            | CNCL     | Elected    |                |              |               |                | \$ 2,000.00  | \$ 24,000.00  |
| City Librarian                 | 066      | 9          | \$ 111.619327  | \$ 19,347.35 | \$ 232,168.20 | \$ 144.448846  | \$ 25,037.80 | \$ 300,453.60 |
| City Manager                   | 069      | Appointed  |                |              |               | \$ 201.067673  | \$ 34,851.73 | \$ 418,220.76 |
| Communications & Outreach Mgr  | 083      | 9          | \$ 66.513981   | \$ 11,529.09 | \$ 138,349.08 | \$ 86.071615   | \$ 14,919.08 | \$ 179,028.96 |
| Communications Operations Mgr  | 068      | 9          | \$ 75.370500   | \$ 13,064.22 | \$ 156,770.64 | \$ 97.537500   | \$ 16,906.50 | \$ 202,878.00 |
| Compliance Manager             | 081      | 9          | \$ 67.561558   | \$ 11,710.67 | \$ 140,528.04 | \$ 87.427731   | \$ 15,154.14 | \$ 181,849.68 |
| Contracts Manager              | 342      | 9          | \$ 74.477135   | \$ 12,909.37 | \$ 154,912.44 | \$ 96.374250   | \$ 16,704.87 | \$ 200,458.44 |
| Deputy City Attorney I         | 170      | 9          | \$ 64.052365   | \$ 11,102.41 | \$ 133,228.92 | \$ 82.890173   | \$ 14,367.63 | \$ 172,411.56 |
| Deputy City Attorney II        | 172      | 9          | \$ 74.727808   | \$ 12,952.82 | \$ 155,433.84 | \$ 96.708404   | \$ 16,762.79 | \$ 201,153.48 |
| Deputy City Clerk              | 178      | 9          | \$ 57.689596   | \$ 9,999.53  | \$ 119,994.36 | \$ 74.663538   | \$ 12,941.68 | \$ 155,300.16 |
| Deputy City Manager            | 079      | 9          | \$ 103.546846  | \$ 17,948.12 | \$ 215,377.44 | \$ 133.991942  | \$ 23,225.27 | \$ 278,703.24 |
| Deputy Fire Chief              | 080      | 9B         | \$ 128.364288  | \$ 22,249.81 | \$ 266,997.72 | \$ 166.129038  | \$ 28,795.70 | \$ 345,548.40 |
| Deputy Parks & Rec Director    | 175      | 9          | \$ 83.674327   | \$ 14,503.55 | \$ 174,042.60 | \$ 108.283615  | \$ 18,769.16 | \$ 225,229.92 |
| Deputy Public Works Director   | 176      | 9          | \$ 83.822077   | \$ 14,529.16 | \$ 174,349.92 | \$ 108.476423  | \$ 18,802.58 | \$ 225,630.96 |
| Development Project Manager    | 158      | 9          | \$ 83.816596   | \$ 14,528.21 | \$ 174,338.52 | \$ 108.467135  | \$ 18,800.97 | \$ 225,611.64 |
| Development Review Officer     | 144      | 9          | \$ 81.090635   | \$ 14,055.71 | \$ 168,668.52 | \$ 104.941500  | \$ 18,189.86 | \$ 218,278.32 |
| Director Of Community Developm | 090      | 9          | \$ 122.712462  | \$ 21,270.16 | \$ 255,241.92 | \$ 158.806962  | \$ 27,526.54 | \$ 330,318.48 |
| Director Of Finance            | 087      | 9          | \$ 122.468250  | \$ 21,227.83 | \$ 254,733.96 | \$ 158.485615  | \$ 27,470.84 | \$ 329,650.08 |
| Director Of Human Resources    | 088      | 9          | \$ 112.898250  | \$ 19,569.03 | \$ 234,828.36 | \$ 146.100635  | \$ 25,324.11 | \$ 303,889.32 |
| Director Of Inf Technology/CIO | 089      | 9          | \$ 116.497385  | \$ 20,192.88 | \$ 242,314.56 | \$ 150.766615  | \$ 26,132.88 | \$ 313,594.56 |
| Director Of Public Works       | 091      | 9          | \$ 129.801519  | \$ 22,498.93 | \$ 269,987.16 | \$ 167.978365  | \$ 29,116.25 | \$ 349,395.00 |
| Director Of Wtr & Sewer Utils  | 102      | 9          | \$ 117.647885  | \$ 20,392.30 | \$ 244,707.60 | \$ 152.244865  | \$ 26,389.11 | \$ 316,669.32 |
| Elec Div Mgr - Engineering     | 104Q     | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |

City of Santa Clara  
Unclassified/Elected Salary Plan

Effective 6/9/2024  
Approved 5/28/2024

| Job Title                      | Job Code | Union Code | Minimum Salary |              |               | Maximum Salary |              |               |
|--------------------------------|----------|------------|----------------|--------------|---------------|----------------|--------------|---------------|
|                                |          |            | Hourly         | Monthly      | Annual        | Hourly         | Monthly      | Annual        |
| Elec Div Mgr - Generation      | 104R     | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |
| Elec Div Mgr - Operations      | 104P     | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |
| Elec Div Mgr - Substations     | 104M     | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |
| Elec Div Mgr - Transm, Distrib | 104S     | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |
| Elec Div Mgr-Mkt A & P         | 107F     | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |
| Elec Division Manager          | 104      | 9          | \$ 99.986250   | \$ 17,330.95 | \$ 207,971.40 | \$ 129.402981  | \$ 22,429.85 | \$ 269,158.20 |
| Elec Program Manager           | 424      | 9          | \$ 86.952115   | \$ 15,071.70 | \$ 180,860.40 | \$ 112.519096  | \$ 19,503.31 | \$ 234,039.72 |
| Elec Util Chief Oper Officer   | 116      | 9          | \$ 133.092173  | \$ 23,069.31 | \$ 276,831.72 | \$ 172.239577  | \$ 29,854.86 | \$ 358,258.32 |
| Elec Util Risk Control Analyst | 697      | 9          | \$ 77.870596   | \$ 13,497.57 | \$ 161,970.84 | \$ 100.776750  | \$ 17,467.97 | \$ 209,615.64 |
| Emergency Services Officer     | 106      | 9          | \$ 90.512712   | \$ 15,688.87 | \$ 188,266.44 | \$ 117.127269  | \$ 20,302.06 | \$ 243,624.72 |
| Environmental Programs Mgr     | 461      | 9          | \$ 67.561558   | \$ 11,710.67 | \$ 140,528.04 | \$ 87.427731   | \$ 15,154.14 | \$ 181,849.68 |
| Executive Assistant            | 187      | 9          | \$ 56.821904   | \$ 9,849.13  | \$ 118,189.56 | \$ 73.532365   | \$ 12,745.61 | \$ 152,947.32 |
| Field Foreperson               | 114      | 9          | \$ 81.829673   | \$ 14,183.81 | \$ 170,205.72 | \$ 105.892731  | \$ 18,354.74 | \$ 220,256.88 |
| Fire Chief                     | 117      | 9B         | \$ 153.565904  | \$ 26,618.09 | \$ 319,417.08 | \$ 198.721904  | \$ 34,445.13 | \$ 413,341.56 |
| Fire Marshal                   | 120      | 9B         | \$ 116.678019  | \$ 20,224.19 | \$ 242,690.28 | \$ 150.983423  | \$ 26,170.46 | \$ 314,045.52 |
| Fleet Manager                  | 034      | 9          | \$ 69.811038   | \$ 12,100.58 | \$ 145,206.96 | \$ 90.339173   | \$ 15,658.79 | \$ 187,905.48 |
| Housing & Comm Svc Div Mgr     | 075      | 9          | \$ 83.892808   | \$ 14,541.42 | \$ 174,497.04 | \$ 108.572827  | \$ 18,819.29 | \$ 225,831.48 |
| Housing Development Officer    | 749      | 9          | \$ 65.884096   | \$ 11,419.91 | \$ 137,038.92 | \$ 85.261788   | \$ 14,778.71 | \$ 177,344.52 |
| Human Resources Div Mgr        | 139      | 9          | \$ 82.735962   | \$ 14,340.90 | \$ 172,090.80 | \$ 107.068904  | \$ 18,558.61 | \$ 222,703.32 |
| Information Technology Svc Mgr | 112      | 9          | \$ 77.652058   | \$ 13,459.69 | \$ 161,516.28 | \$ 100.481135  | \$ 17,416.73 | \$ 209,000.76 |
| Inspection Manager             | 134      | 9          | \$ 83.095846   | \$ 14,403.28 | \$ 172,839.36 | \$ 107.544462  | \$ 18,641.04 | \$ 223,692.48 |
| Legal Executive Assistant      | 185      | 9          | \$ 56.821904   | \$ 9,849.13  | \$ 118,189.56 | \$ 73.532365   | \$ 12,745.61 | \$ 152,947.32 |
| Library Div Mgr -Support Svcs  | 127G     | 9          | \$ 69.759635   | \$ 12,091.67 | \$ 145,100.04 | \$ 90.287769   | \$ 15,649.88 | \$ 187,798.56 |
| Management Analyst             | 008      | 9          | \$ 57.689596   | \$ 9,999.53  | \$ 119,994.36 | \$ 74.663538   | \$ 12,941.68 | \$ 155,300.16 |
| Mayor                          | MAYOR    | Elected    |                |              |               |                | \$ 2,500.00  | \$ 30,000.00  |
| Municipal Services Div Mgr     | 110      | 9          | \$ 82.735962   | \$ 14,340.90 | \$ 172,090.80 | \$ 107.068904  | \$ 18,558.61 | \$ 222,703.32 |

City of Santa Clara  
Unclassified/Elected Salary Plan

Effective 6/9/2024  
Approved 5/28/2024

| Job Title                      | Job Code | Union Code | Minimum Salary |              |               | Maximum Salary |              |               |
|--------------------------------|----------|------------|----------------|--------------|---------------|----------------|--------------|---------------|
|                                |          |            | Hourly         | Monthly      | Annual        | Hourly         | Monthly      | Annual        |
| Park Maint & Operations Superv | 131      | 9          | \$ 68.956269   | \$ 11,952.42 | \$ 143,429.04 | \$ 89.227327   | \$ 15,466.07 | \$ 185,592.84 |
| Parks & Recreation Director    | 132      | 9          | \$ 113.753077  | \$ 19,717.20 | \$ 236,606.40 | \$ 147.199615  | \$ 25,514.60 | \$ 306,175.20 |
| Parks Const, Mtc & Repair Mgr  | 130      | 9          | \$ 68.956269   | \$ 11,952.42 | \$ 143,429.04 | \$ 89.227327   | \$ 15,466.07 | \$ 185,592.84 |
| Performance Auditor I          | 203      | 9          | \$ 48.074654   | \$ 8,332.94  | \$ 99,995.28  | \$ 62.219596   | \$ 10,784.73 | \$ 129,416.76 |
| Performance Auditor II         | 204      | 9          | \$ 57.689596   | \$ 9,999.53  | \$ 119,994.36 | \$ 74.663538   | \$ 12,941.68 | \$ 155,300.16 |
| Plan Review Manager            | 629      | 9          | \$ 83.989212   | \$ 14,558.13 | \$ 174,697.56 | \$ 108.682096  | \$ 18,838.23 | \$ 226,058.76 |
| Planning Manager               | 072      | 9          | \$ 87.588346   | \$ 15,181.98 | \$ 182,183.76 | \$ 113.348135  | \$ 19,647.01 | \$ 235,764.12 |
| Police Captain                 | 138      | 9A         | \$ 144.246231  | \$ 25,002.68 | \$ 300,032.16 | \$ 174.454212  | \$ 30,238.73 | \$ 362,864.76 |
| Police Chief                   | 141      | Elected    |                |              |               |                | \$ 28,755.00 | \$ 345,060.00 |
| Police Records Manager         | 647      | 9          | \$ 59.424865   | \$ 10,300.31 | \$ 123,603.72 | \$ 76.906558   | \$ 13,330.47 | \$ 159,965.64 |
| Power System Scheduler/Trader  | 674      | 9          | \$ 74.573538   | \$ 12,926.08 | \$ 155,112.96 | \$ 96.509192   | \$ 16,728.26 | \$ 200,739.12 |
| Power Trader                   | 673      | 9          | \$ 95.307346   | \$ 16,519.94 | \$ 198,239.28 | \$ 123.348692  | \$ 21,380.44 | \$ 256,565.28 |
| Principal Accountant           | 148      | 9          | \$ 74.477135   | \$ 12,909.37 | \$ 154,912.44 | \$ 96.374250   | \$ 16,704.87 | \$ 200,458.44 |
| Principal Electric Utility Eng | 145      | 9          | \$ 95.236615   | \$ 16,507.68 | \$ 198,092.16 | \$ 123.245827  | \$ 21,362.61 | \$ 256,351.32 |
| Principal Eng - Water & Sewer  | 142W     | 9          | \$ 92.344385   | \$ 16,006.36 | \$ 192,076.32 | \$ 119.505288  | \$ 20,714.25 | \$ 248,571.00 |
| Principal Eng/City Surveyor    | 140      | 9          | \$ 96.961731   | \$ 16,806.70 | \$ 201,680.40 | \$ 125.482442  | \$ 21,750.29 | \$ 261,003.48 |
| Principal Engineer             | 142      | 9          | \$ 92.344385   | \$ 16,006.36 | \$ 192,076.32 | \$ 119.505288  | \$ 20,714.25 | \$ 248,571.00 |
| Principal Financial Analyst    | 149      | 9          | \$ 74.477135   | \$ 12,909.37 | \$ 154,912.44 | \$ 96.374250   | \$ 16,704.87 | \$ 200,458.44 |
| Principal Planner              | 143      | 9          | \$ 74.477135   | \$ 12,909.37 | \$ 154,912.44 | \$ 96.374250   | \$ 16,704.87 | \$ 200,458.44 |
| Principal Power Analyst        | 154      | 9          | \$ 74.477135   | \$ 12,909.37 | \$ 154,912.44 | \$ 96.374250   | \$ 16,704.87 | \$ 200,458.44 |
| Principal Util Info System Mgr | 146      | 9          | \$ 95.307346   | \$ 16,519.94 | \$ 198,239.28 | \$ 123.348692  | \$ 21,380.44 | \$ 256,565.28 |
| Public Information Officer     | 077      | 9          | \$ 90.512712   | \$ 15,688.87 | \$ 188,266.44 | \$ 117.127269  | \$ 20,302.06 | \$ 243,624.72 |
| Public Records Manager         | 082      | 9          | \$ 57.689596   | \$ 9,999.53  | \$ 119,994.36 | \$ 74.663538   | \$ 12,941.68 | \$ 155,300.16 |
| Purchasing Division Manager    | 147      | 9          | \$ 79.650981   | \$ 13,806.17 | \$ 165,674.04 | \$ 103.077635  | \$ 17,866.79 | \$ 214,401.48 |
| Recreation Manager             | 150      | 9          | \$ 75.184096   | \$ 13,031.91 | \$ 156,382.92 | \$ 97.293231   | \$ 16,864.16 | \$ 202,369.92 |
| Risk Manager                   | 700      | 9          | \$ 79.650981   | \$ 13,806.17 | \$ 165,674.04 | \$ 103.077635  | \$ 17,866.79 | \$ 214,401.48 |

City of Santa Clara  
Unclassified/Elected Salary Plan

Effective 6/9/2024  
Approved 5/28/2024

| Job Title                      | Job Code | Union Code | Minimum Salary |              |               | Maximum Salary |              |               |
|--------------------------------|----------|------------|----------------|--------------|---------------|----------------|--------------|---------------|
|                                |          |            | Hourly         | Monthly      | Annual        | Hourly         | Monthly      | Annual        |
| Sr Counsel for SVP             | 179      | 9          | \$ 110.535231  | \$ 19,159.44 | \$ 229,913.28 | \$ 142.590462  | \$ 24,715.68 | \$ 296,588.16 |
| Sr Deputy City Attorney        | 161      | 9          | \$ 79.432385   | \$ 13,768.28 | \$ 165,219.36 | \$ 102.801346  | \$ 17,818.90 | \$ 213,826.80 |
| Sr Elec Div Mgr                | 173      | 9          | \$ 109.980346  | \$ 19,063.26 | \$ 228,759.12 | \$ 142.340769  | \$ 24,672.40 | \$ 296,068.80 |
| Sr Elec Div Mgr-Mkt A&P        | 174A     | 9          | \$ 109.980346  | \$ 19,063.26 | \$ 228,759.12 | \$ 142.340769  | \$ 24,672.40 | \$ 296,068.80 |
| Sr Information Tech Svcs Mgr   | 743      | 9          | \$ 85.088250   | \$ 14,748.63 | \$ 176,983.56 | \$ 110.115346  | \$ 19,086.66 | \$ 229,039.92 |
| Sr Management Analyst          | 742      | 9          | \$ 63.458365   | \$ 10,999.45 | \$ 131,993.40 | \$ 82.129673   | \$ 14,235.81 | \$ 170,829.72 |
| Sr Performance Auditor         | 202      | 9          | \$ 67.561558   | \$ 11,710.67 | \$ 140,528.04 | \$ 87.427731   | \$ 15,154.14 | \$ 181,849.68 |
| Sr Power System Schedlr/Trader | 772      | 9          | \$ 80.152269   | \$ 13,893.06 | \$ 166,716.72 | \$ 103.733192  | \$ 17,980.42 | \$ 215,765.04 |
| Street Superintendent          | 159      | 9          | \$ 76.199596   | \$ 13,207.93 | \$ 158,495.16 | \$ 98.617269   | \$ 17,093.66 | \$ 205,123.92 |
| Transportation Manager         | 171      | 9          | \$ 93.186404   | \$ 16,152.31 | \$ 193,827.72 | \$ 120.597865  | \$ 20,903.63 | \$ 250,843.56 |
| Utility Business Systems Mgr   | 898      | 9          | \$ 74.355000   | \$ 12,888.20 | \$ 154,658.40 | \$ 96.219981   | \$ 16,678.13 | \$ 200,137.56 |
| Utility Operations Engineer    | 155      | 9          | \$ 78.494019   | \$ 13,605.63 | \$ 163,267.56 | \$ 101.573712  | \$ 17,606.11 | \$ 211,273.32 |
| Water & Sewer Operations Mgr   | 180      | 9          | \$ 77.150827   | \$ 13,372.81 | \$ 160,473.72 | \$ 99.851250   | \$ 17,307.55 | \$ 207,690.60 |
| Water & Sewer Superintendent   | 029      | 9          | \$ 69.759635   | \$ 12,091.67 | \$ 145,100.04 | \$ 90.287769   | \$ 15,649.88 | \$ 187,798.56 |
| Web & Digital Media Manager    | 073      | 9          | \$ 66.513981   | \$ 11,529.09 | \$ 138,349.08 | \$ 86.071615   | \$ 14,919.08 | \$ 179,028.96 |



Agenda Report

24-364

Agenda Date: 5/28/2024

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Informational Report on Stadium Authority and Stadium Manager Meetings for the Period of January 1 to March 31, 2024

BOARD PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On August 24, 2017, the Stadium Authority approved the Harvey Rose Audit titled “Comprehensive Audit of Stadium”. Audit recommendation 1.Q states that “the Stadium Authority Board should direct the Executive Director to require that all meetings, including the date and purpose of the meetings, between Stadium Authority and Stadium Manager staff be documented and reported quarterly or annually to the Stadium Authority Board.” Staff has implemented this audit recommendation on a quarterly basis.

At the August 25, 2020 meeting, the Stadium Authority Board provided additional direction to staff to prepare minutes for all future Stadium Authority and Stadium Manager staff meetings.

DISCUSSION

In accordance with the Board approved audit recommendation, meetings between Stadium Authority and Stadium Manager staff for the period of January 1 to March 31, 2024 are listed below. The attendees and topics discussed at these meetings are included in this report as Attachment 1.

| Date       | Meeting Purpose  |
|------------|--|
| 01/03/2024 | Weekly Accounting Status Meeting (via Teams)                         |
| 01/04/2024 | Introduction to Events Team (in person)                              |
| 01/05/2024 | Biweekly Stadium CapEx Permit Meeting (via Zoom)                     |
| 01/09/2024 | Naming Rights Proposal Meeting (in person)                           |
| 01/10/2024 | SCSA Permit Meeting (via Zoom)                                       |
| 01/10/2024 | Jumbotron Project Meeting (via Teams)                                |
| 01/10/2024 | Weekly Accounting Status Meeting (via Teams)                         |
| 01/11/2024 | Outstanding Arbitration and Naming Rights Issues Meeting (via phone) |
| 01/17/2024 | SCSA/Guidepost/Stadium Manager Check-In (via Teams)                  |
| 01/17/2024 | Weekly Accounting Status Meeting (via Teams)                         |
| 01/17/2024 | SCSA/Stadium Manager Monthly Coordination Meeting (via Teams)        |

|            |  |
|------------|--|
| 01/17/2024 | Levi's Naming Rights Meeting (in person)                               |
| 01/19/2024 | Levi's Naming Rights Meeting (via Teams)                               |
| 01/22/2024 | Levi's/49ers/SCSA Comms Discussion (via Zoom)                          |
| 01/22/2024 | Procurement Discussion (via Teams)                                     |
| 01/22/2024 | Various Issues Meeting (via Teams)                                     |
| 01/24/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 01/25/2024 | Jumbotron Project Meeting (via Teams)                                  |
| 01/26/2024 | Biweekly Stadium CapEx Permit Meeting (via Zoom)                       |
| 01/26/2024 | SCSA/ManCo Budget/Finance Check-In (in person)                         |
| 01/31/2024 | Ticketmaster License User Agreement Discussion (via Teams)             |
| 01/31/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 02/09/2024 | Biweekly Stadium CapEx Permit Meeting                                  |
| 02/14/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 02/21/2024 | SCSA Open Budget Items (via Teams)                                     |
| 02/21/2024 | Financial Management System Managed Services Status Meeting (via Zoom) |
| 02/21/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 02/22/2024 | Budget Meeting (via Zoom)  |
| 02/26/2024 | Assignment and Assumption Letter Meeting (via Zoom)                    |
| 02/27/2024 | Shared Stadium Expenses Budget Review Meeting (via Zoom)               |
| 02/27/2024 | SCSA/Stadium Manager Monthly Coordination Meeting (via Teams)          |
| 02/28/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 02/28/2024 | Various Stadium Operations Claims and Issues Meeting (via Teams)       |
| 03/06/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 03/08/2024 | Biweekly Stadium CapEx Permit Meeting (via Zoom)                       |
| 03/08/2024 | Various Stadium Operations Claims and Issues Meeting (via Teams)       |
| 03/11/2024 | Janitorial Services Meeting (via Teams)                                |
| 03/13/2024 | Assignment and Assumption Letter Meeting (via Zoom)                    |
| 03/13/2024 | Weekly Accounting Status Meeting (via Teams)                           |
| 03/13/2024 | Arbitration Issues Meeting (via Teams)                                 |
| 03/18/2024 | Stadium Capital Projects Update Meeting (via Teams)                    |
| 03/19/2024 | Arbitration Issues Meeting (via Teams)                                 |
| 03/22/2024 | Biweekly Stadium CapEx Permit Meeting                                  |
| 03/26/2024 | SCSA/Stadium Manager Quarterly Status Meeting (in person)              |
| 03/28/2024 | Various Stadium Operational Claims and Issues Meeting (via phone)      |

### ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California

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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.

#### COORDINATION

This report has been coordinated with the Stadium Authority Counsel and Treasurer's Offices.

#### 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

Note and file the quarterly report on Stadium Authority and Stadium Manager staff meetings and corresponding summaries for the period of January 1 to March 31, 2024.

Reviewed by: Chuck Baker, Assistant City Manager

Approved by: Jovan D. Grogan, Executive Director

#### ATTACHMENTS

1. Stadium Authority and Stadium Manager Meeting Summaries for the Period of 1/1/24 to 3/31/24



Weekly Accounting Status Meeting

Date: 1/3/2024; 2:30pm to 2:45pm

Teams Meeting: Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Agreed Upon Procedures report work with KPMG
2. Status of Fiscal Year 2021/22 true-up for Groundskeeping in Shared Stadium Expenses
3. Stadium Builder License (SBL) monies to be transferred on January 12, 2024

Introduction to Events Team

Date: 1/4/24; 10AM to 11AM

In-Person - Levi's Stadium: Chuck Baker (City/SCSA), Brent Schoeb, Emily Eskin, Catherine Lentz, Peter Wilhelm, and Francine Hughes (Stadium Manager)

1. Met with marketing and sponsorship team to discuss the FY23/24 Marketing Plan

Biweekly Stadium CapEx Permit Meeting

Date: 1/5/2024; 11:30am to 12:00pm

Zoom Meeting: Elycia Knight (SCSA), Ryan Van Maarth (ManCo)

1. Discussed SCSA Budget – OpEx /CapEx due 1/31.
2. Planning meeting to discuss Jumbotron Project submission.
3. Update on the status of Verizon rights for DAS system.

Date: 1/9/2024, 1:30 p.m.  
In Person Meeting – Levi's Stadium

For Santa Clara Stadium Authority:  
Jovan D. Grogan, Executive Director  
Chuck Baker, Assistant City Manager  
Glen R. Googins, Stadium Authority Counsel

For Stadium Manager:  
Al Guido  
Jihad Beauchman  
Peter Wilhelm

1. Naming Rights Proposal

SCSA Permit Meeting

Date: 1/10/2024; 11:00 am to 11:30 am

Zoom Meeting: Elycia Knight (SCSA), Ryan Van Maarth (ManCo)

1. Projects SCSA and ManCo Projects in critical path
  - a. Naming Rights Signage Permit Requirements
  - b. Video Boards Permit Requirements
  - c. FIFA Super Bowl Capital Improvement Projects

Jumbotron Project Meeting

Date: 1/10/24; 1:30PM to 2:30PM

Teams Meeting: Chuck Baker, Elycia Knight, Reena Brilliot (City/SCSA), Ryan Van Maarth, and Francine Hughes (Stadium Manager)

1. Update on current status of Jumbotron CapEx project and control room expansion proposal

Weekly Accounting Status Meeting

Date: 1/10/2024; 2:30pm to 2:37pm

Teams Meeting: Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Agreed Upon Procedures report work with KPMG
2. Stadium Builder License (SBL) monies to be transferred on January 12, 2024

Date: 1/11/2024, 12:00 p.m.  
Phone Call

For Santa Clara Stadium Authority:  
Glen Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Outstanding Arbitration Disputes
2. Naming Rights Issues



Date: 1/17/2024, 1:00 p.m.  
Teams Meeting

For Santa Clara Stadium Authority:

Chuck Baker, Assistant City Manager

Christine Jung, Assistant to the City Manager

Glen Googins, Stadium Authority Counsel

For Stadium Manager:

Francine Hughes

Jeremy Vaux

For Guidepost Solutions:

Jim Hayes

1. Check-in with Guidepost and Stadium Manager Regarding Security Assessment

Weekly Accounting Status Meeting

Date: 1/17/2024; 2:30pm to 2:40pm

Teams Meeting: Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Stadium Builder License (SBL) deposit to US Bank
2. Fiscal Year 2021/22 true-up of \$1,493.30 for Groundskeeping in Shared Stadium Expenses to be transferred on January 19, 2024
3. Stadium Manager aiming to have Financial Management System (FMS) payroll request completed before March 31, 2024

**MEETING MINUTES FOR  
STADIUM AUTHORITY/STADIUM MANAGER  
MONTHLY COORDINATION MEETING  
January 17, 2024 | 3:00 p.m. – 4:00 p.m.  
Microsoft Teams Meeting**

**ATTENDEES**

**City/Stadium Authority**

- Chuck Baker, Assistant City Manager/ Assistant Executive Director
- Christine Jung, Assistant to the City Manager/Assistant to the Executive Director

**49ers/Stadium Manager**

- Francine Melendez Hughes, Executive Vice President & General Manager
- Peter Wilhelm, Chief Financial Officer

**MEETING MINUTES**

**1. Parking Spots and Parking Access (Stadium Authority)**

The City/Stadium Authority and Stadium Manager shared their respective updates related to the status of pending agreements for Yellow Lot 1 (public vehicle access) and Yellow Lot 3 (parking). The City planned to execute the agreement for Yellow Lot 1 the following day.

**2. Jumbotron (Stadium Authority)**

The jumbotron is a StadCo capital project that is being funded by StadCo. This item was discussed with the following item (Levi's Stadium Naming Rights Signage).

**3. Levi's Stadium Naming Rights Signage (Stadium Authority)**

The Stadium Authority and Stadium Manager discussed the Levi's Stadium Naming Rights signage in relation to the proposed extension of the Stadium Authority's Naming Rights Agreement with Levi Strauss & Co. The Stadium Authority asked questions regarding maintenance and repairs costs related to the existing and proposed Naming Rights signage enhancement, including existing FY 2023/24 CapEx funding and potential cost sharing for the proposed Naming Rights signage enhancement. The Stadium Manager confirmed that no FY 2023/24 CapEx funds had been expended on maintenance for the existing signage. It was agreed that the proposed extension of the Naming Rights Agreement would go on the January 30, 2024 meeting agenda for the Stadium Authority Board's consideration.

**4. City/Stadium Authority Participation in Key Upcoming Solicitations – Follow Up (Stadium Authority)**

As a follow up from prior discussions regarding the upcoming janitorial and event security solicitations, the Stadium Manager shared that their Director of Procurement would share a timeline for the Request for Proposals (RFP) and the RFPs for the City and Stadium Authority's review.

**5. Additional Endzone Field Level Seats – Follow Up (Stadium Authority)**

As a follow up from prior discussions regarding the Stadium Manager and StadCo's proposal to move forward with adding SBLs to additional field seats, the Stadium Authority confirmed that the Stadium Authority Counsel Office's direction was that SBLs for any seats above the 70 field seats that were approved by the Stadium Authority Board in June 2022 would require additional Board approval. The Stadium Authority and Stadium Manager discussed the requirement for the NFL's approval of the field

seats and number of seats being added. The Stadium Manager shared that a building permit was submitted for additional field seats.

**6. Complaints Discussion (Stadium Authority)**

The Stadium Authority shared recent complaints related to ADA seating and season ticket price increases. The Stadium Manager explained their process for seating ADA patrons and clarified that they cannot ask someone who is requesting ADA seating to show proof of their disability. They also shared their process for getting ADA patrons and mobility groups to the gate or seat. The Stadium Manager described their internal process for handling season holder ticket complaints and shared information about the benefits that attributed to the recent price increases. The Stadium Authority and Stadium Manager confirmed that the current process for sending/forwarding complaints should be continued.

Levi's Naming Rights Meeting

Date: 1/17/24; 6:00PM to 8:30PM

In-Person - Selby's Restaurant: Chuck Baker (City/SCSA), Al Guido (49ers), Chip Bergh, and Michelle Gass (Levi's)

1. Discuss specific Levi's naming rights deal points

**Date:** 1/19/24 2:30pm-3:00pm

**Meeting Title:** Levi's Naming Rights

**Meeting Location:** Teams link provided by Janine De la Vega

**Attendees:**

- From 49ers - Ellie Caple (Director Communications and Public Affairs), Josh Stephens (Manager Communications and Public Affairs)
  - From City/SCSA - Janine De la Vega, Michelle Templeton, Chuck Baker
- Discussion:** Potential for a joint press release on the Levi's Stadium Naming Rights Agreement pending Board approval.

**Date:** 1/22/24 11:30am-Noon

**Meeting Title:** Levi's/49ers/SCSA Comms Discussion

**Meeting Location:** Zoom link provided by Ellie Caple

**Attendees:**

- **From 49ers** - From 49ers - Ellie Caple (Director Communications and Public Affairs), Josh Stephens (Manager Communications and Public Affairs)
- **From Levi's** – Marie-Helene Azar (Director of Communications Levi's Strauss & Co.)
- **From City/SCSA** - Chuck Baker (Assistant City Manager), Michelle Templeton (Acting Assistant City Manager), Janine De la Vega (City Communications Director),

**Discussion:** Potential for a joint press release on the Levi's Stadium Naming Rights Agreement pending Board approval including Levi's staff.

Procurement Discussion

Date: 01/22/2024; 3:00pm to 3:15pm

Teams Meeting: Grace Dougherty (City/SCSA) and Jenti Vandertuig (Stadium Manager)

1. Discuss upcoming agreement extensions that will go to the Board for approval



Date: 1/22/2024, 5:00 p.m.  
Teams Meeting:

For Santa Clara Stadium Authority:  
Glen R. Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Touch Base Regarding Various Issues, Including Proposed Naming Rights Extension and Stadium Operations

Weekly Accounting Status Meeting

Date: 1/24/2024; 2:30pm to 2:44pm

Teams Meeting: Linh Lam, Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Status of outstanding public safety costs
2. Fiscal Year 2022/23 Shared Expense payroll review

Jumbotron Project Meeting

Date: 1/25/24: 11AM to 12PM

Teams Meeting: Chuck Baker, Elycia Knight, Reena Brilliot (City/SCSA), Ryan Van Maarth, and Francine Hughes (Stadium Manager)

1. Review planning/permitting process with Stadium Manager staff

## Biweekly Stadium CapEx Permit Meeting

Date: 1/26/2024; 11:00 am to 11:30 am

Zoom Meeting: Elycia Knight (SCSA), Ryan Van Maarth (ManCo)

### **StadCo**

1. FIFA Bowl Modifications Field Seats – Confirmation of submittal to Planning. Redirection for building permit intake.
  - a. Need to generate drawings for a building permit.
  - b. Feb 1st, 2025, to begin renovations
2. Video Boards – (weekly meetings scheduled)
  - a. David J Wright - Shannon George worked on the original EIR.
  - b. ManCo working on preliminary CEQA analysis.
  - c. Integrator is studying the media room. There will be a deferred submittal for the equipment layout.
3. Installation of (20) additional Verizon 5G radios

### **SCSA – CapEx**

1. Stadium canopies and cameras
2. Kitchen equipment

### **Budget items going before the Board.**

1. Replace Furniture: Going before the Board on 2/20.
2. Aesthetic Improvements – Premium Areas and Special Events: Budget amendment before Board 12/12/2023

### **Other**

1. Anticipated dates for critical path permit submittals.
2. Anticipated budget amendment items to be submitted.
3. SCSA CapEx tracking reconciliation.
4. FY23 Budget.
5. Any other permits in the queue.

Date: 01/26/2024; 2:30pm to 4:00pm

In Person Meeting at Starbucks, 2030 Wyatt Drive, Santa Clara: Kenn Lee (City/SCSA); Jeff Fong, Alex Acton (Stadium Manager)

1. Fiscal Year 2024/25 Budget
2. Trust Budget

Date: 1/31/2024, 1:00 p.m.  
Teams Meeting

For Santa Clara Stadium Authority:  
Elizabeth Klotz, Assistant City Attorney

For Stadium Manager:  
Jihad Beauchman

1. Ticketmaster Licensed User Agreement Discussion

Weekly Accounting Status Meeting

Date: 1/31/2024; 2:30pm to 2:41pm

Teams Meeting: Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Status of outstanding public safety cost and parking fees – Fiscal Year 2022/23 invoices to be paid by February 2, 2024
2. December bank reconciliations

Biweekly Stadium CapEx Permit Meeting

Date: 2/9/2024; 11:00 am to 11:30 am

Zoom Meeting: Elycia Knight (SCSA), Ryan Van Maarth (ManCo)

1. Open Submittals in Review
  - a. SCSA
  - b. ManCo
2. Reoccurring Meeting Status
  - a. Devcon
  - b. Building
  - c. Video Boards / Naming Rights
3. Anticipated Submittals
  - a. Level 700 Expansion
  - b. Field Lights
  - c. Naming Rights
4. Other Misc.
  - a. ManCo to provide updated schedule
  - b. ManCo to provide breakout schedule for Video Boards
  - c. ManCo to provide breakout schedule for projects in critical path
  - d. Site walk to be scheduled
  - e. Facilities Condition Assessment



Weekly Accounting Status Meeting

Date: 2/14/2024; 2:30pm to 2:50pm

Teams Meeting: Tyler Cook (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Status of 3<sup>rd</sup> Quarter Non-NFL Events and Stadium Builder License reports
2. Trust Budget update for year-end reserves
3. Status of outstanding public safety costs for Fiscal Year 2023/24
4. Capital expenditure cutoff date for year-end close
5. Agreed Upon Procedures report work with KPMG

SCSA Budget Open Items

Date: 2/21/24; 11AM to 1PM

Teams Meeting: Jōvan Grogan, Chuck Baker (City/SCSA), Peter Wilhelm, and Francine Hughes (Stadium Manager)

1. Get clarity on answers to FY24/25 open budget items

Financial Management System

Managed Services Status Meeting

Date: 2/21/2024; 2:00pm to 2:19pm

Zoom Meeting: Tyler Cook, Brenda Lee, David Presley (City/SCSA); Brent Ghan (Stadium Manager); Chad Hundley, Rebecca Bunas, Giles Zollar (Armanino)

1. Available system review, available support hours and academy courses
2. Smartview access for SCSA team
3. ManCo open support tickets with InTwo
4. Bulk import for processing vendor refunds using Integration Manager
5. Coupa/Scribe to load AP invoices into Great Plains
6. System upgrade for Great Plains to upgrade from 18.4 to 18.6
7. SCSA trainings using available academy courses

Weekly Accounting Status Meeting

Date: 2/21/2024; 2:30pm to 2:42pm

Teams Meeting: Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Monthly Operating and Maintenance and year-end reserve deposit to US Bank
2. Status of 3rd Quarter Non-NFL Events and Stadium Builder License reports
3. Agreed Upon Procedures report work with KPMG
4. Naming Rights Fee Credit reimbursement to SCSA

Date: 02/22/2024; 1:00pm to 1:30pm

Zoom Meeting: Kenn Lee (City/SCSA); Jeff Fong, Alex Acton (Stadium Manager)

1. Fiscal Year 2024/25 Budget

Date: 2/26/2024, 11:00 a.m.

Zoom:

For Santa Clara Stadium Authority:

Jovan D. Grogan, Executive Director

Christine Jung, Assistant to the City Manager

Glen Googins, Stadium Authority Counsel

Elizabeth Klotz, Assistant City Attorney

For Stadium Manager:

Jihad Beauchman

For Bay Area Host Committee:

Zaileen Janmohamed

Ruth Shikada

Becca Smith

Sonia Nayak

Matt Richards

Robert Weikert

1. Process, Terms and Issues for World Cup 2026 Assignment and Assumption Agreement

Shared Stadium Expenses Budget Review Meeting

Date: 02/27/2024; 10:00am to 12:00pm

Zoom Meeting: Kenn Lee, Linh Lam, Tyler Cook, Chuck Baker (City/SCSA); Alex Acton, Chris Steele, Harshil Bhavsar, Brent Ghan (Stadium Manager)

1. Team Introductions
2. Overview of Shared Stadium Expenses Compensation for Fiscal Year (FY) 2024/25 Budget
  - a. Methodology for Shared Stadium Expenses Compensation and the assumptions behind general annual salary increase
3. Sampling of Shared Stadium Expenses Compensation for FY 2024/25
4. Overview and Sampling of Other General and Administrative Expenses for FY 2024/25

**MEETING MINUTES FOR  
STADIUM AUTHORITY/STADIUM MANAGER  
MONTHLY COORDINATION MEETING  
February 27, 2024 | 3:00 p.m. – 4:00 p.m.  
Microsoft Teams Meeting**

**ATTENDEES**

**City/Stadium Authority**

- Chuck Baker, Assistant City Manager/ Assistant Executive Director
- Christine Jung, Assistant to the City Manager/Assistant to the Executive Director
- Elycia Knight, Development Project Manager

**49ers/Stadium Manager**

- Francine Melendez Hughes, Executive Vice President & General Manager
- Peter Wilhelm, Chief Financial Officer

**MEETING MINUTES**

**1. Exhibit C (Stadium Manager)**

The Stadium Manager referred the Stadium Authority to look at Stadium Lease Exhibit C for the Stadium site plan. There was discussion about the ambiguity of a few proposed Capital Expense (CapEx) projects and whether they were more operational in nature than capital.

**2. Response to Q4 2022 Proposal (Stadium Manager)**

Confidential discussion.

**3. Discussion on the Tuesday (2/27) Council Meeting (Stadium Manager)**

The Stadium Manager shared that two representatives would be present via Zoom to respond to questions for the February 27, 2024 Council/Board meeting, in which included a Study Session on the proposed Stadium Authority FY 2024/25 Budget.

**4. Marketing Plan (Stadium Authority)**

New Stadium Authority staff is learning the Stadium Manager's business model for Non-NFL Events and would like to sit down with key Stadium Manager staff to learn more about ticketed Non-NFL Event strategies and bookings.

**5. Community Grants (Stadium Authority)**

The Stadium Manager shared that StadCo was still working on the approach for community grants that were connected to the recent Amendment to the Naming Rights Agreement and would provide updates at a later time.

**6. Facilities Condition Assessment**

The Stadium Authority and Stadium Manager discussed having Stadium Authority staff participate in the Facilities Condition Assessment. The Stadium Manager also provided updates on the solicitation process and what the assessment would entail (walk through, report, etc.).



**7. SBLs (Stadium Authority)**

The Stadium Authority confirmed that the proposed field seat SBLs that were previously discussed would require Stadium Authority Board approval. The Stadium Authority and Stadium Manager discussed outstanding issues related to the request, including number of additional seats and proposed pricing.

**8. Guidepost Invoicing (Stadium Authority)**

The Stadium Manager provided an update that they were ready to schedule time with Guidepost Solutions to go over a pending request. The Stadium Authority and Stadium Manager also discussed and agreed on a process for which StadCo will pay for its respective portion of the Guidepost Agreement.

Weekly Accounting Status Meeting

Date: 2/28/2024; 2:30pm to 2:43pm

Teams Meeting: Linh Lam, Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Financial Management System (FMS) payroll selections
2. Status of 3<sup>rd</sup> Quarter Stadium Builder License report
3. 4<sup>th</sup> Quarter SBL monies to be transferred on March 8, 2024
4. Status of outstanding public safety costs for Fiscal Year 2023/24
5. January bank statements uploaded to One Drive

Date: 2/28/2024, 4:00 p.m.  
Via Teams:

For Santa Clara Stadium Authority:  
Glen Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Various Stadium Operations and Claims Issues

Weekly Accounting Status Meeting

Date: 3/6/2024; 2:30pm to 2:40pm

Teams Meeting: Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Status of outstanding public safety costs for Fiscal Year 2023/24
2. Status of payment for Naming Rights Fee Credit invoice
3. 4th Quarter Stadium Builder License monies to be transferred on March 8, 2024
4. Capital expenditure cutoff date for year-end close

## Biweekly Stadium CapEx Permit Meeting

Date: 3/8/2024; 11:00 am to 11:30 am

Zoom Meeting: Elycia Knight (SCSA), Ryan Van Maarth (ManCo)

1. Incoming submittals
  - Level 100 ADA Modifications
  - Level 100 Club Access
  - Bowl Modifications
  - Video Board/Naming Rights (progress)
  - South Field Seats Corners - anticipated end of next week
  - LED Field Lights (April)
2. Submittals Under Review
  - Yahoo Wings (demo)
    - 3/18 comments back to StadCo
    - Mobilization late March /early April
  - Yahoo building permit
    - Resubmittal next week 3/12
    - Health department permit to go in.
3. Site Walk
4. Meeting Cadence

Date: 3/8/2024, 4:00 p.m.

Via Teams:

For Santa Clara Stadium Authority:  
Glen Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Various Stadium Operations and Claims Issues

Janitorial Services

Date: 03/11/2024; 6:30pm to 7:00pm

Teams Meeting: Chuck Baker, Christine Jung (City/SCSA), and Francine Melendez Hughes (Stadium Manager)

1. Procurement and operational questions regarding janitorial services agreement
2. Upcoming Request for Proposal process for janitorial services

Date: 3/13/2024, 11:00 a.m.

Via Zoom:

For Santa Clara Stadium Authority:

Jovan D. Grogan, Executive Director

Chuck Baker, Assistant City Manager

Christine Jung, Assistant to the City Manager

Glen Googins, Stadium Authority Counsel

Elizabeth Klotz, Assistant City Attorney

For Stadium Manager:

Jihad Beauchman

For Bay Area Host Committee:

Zaileen Janmohamed

Sonia Nayak

Matthew Richards

Ruth Shikada

Becca Smith

Robert Weikert

1. Assignment and Assumption Agreement Issues



Weekly Accounting Status Meeting

Date: 3/13/2024; 2:30pm to 2:39pm

Teams Meeting: Linh Lam, Tyler Cook, Brenda Lee (City/SCSA); Brent Ghan, Caitlin Ritchie (Stadium Manager)

1. Request for facility fee to be broken out in the 45-Day Non-NFL reports
2. Status of supporting backup in the Financial Management System for Fiscal Year 2023/24 – data through September 2023

Date: 3/13/2024, 5:00 p.m.  
Via Teams:

For Santa Clara Stadium Authority:  
Glen Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Arbitration Issues

Stadium Capital Projects Update Meeting

Date: 3/18/24; 9AM to 10AM

Teams: Chuck Baker, Elycia Knight, Reena Brilliot, Nimisha Agrawal, Armand Lobao (City/SCSA Staff), Francine Hughes, Ryan Van Maarth, Joseph Crummett, and Shannon George (Stadium Manager)

1. Update on current and planned stadium capital projects

Date: 3/19/2024, 3:00 p.m.  
Via Teams:

For Santa Clara Stadium Authority:  
Glen Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Arbitration Issues

## Biweekly Stadium CapEx Permit Meeting

Date: 3/22/2024; 11:00 am to 11:30 am

Zoom Meeting: Elycia Knight (SCSA), Ryan Van Maarth (ManCo)

### 1. Incoming submittals

- Bowl Modifications anticipated intake 4/30/24.
- LED Video Boards anticipated intake 4/30/24 (Architectural / Mechanical, Engineering and Plumbing (MEP))
- Tech Room anticipated intake 4/30/24.
  - Deferred submittal for catwalk and screen technology
- Naming Rights Signage x 4 (Exterior Façade, Video Board and Suite Tower) anticipated intake 4/30/24.
- Field Lights - Public Funds (Prevailing wage) anticipated intake 4/30/24.

**MEETING MINUTES FOR  
STADIUM AUTHORITY/STADIUM MANAGER  
QUARTERLY STATUS MEETING  
March 26, 2024 | 3:30 p.m. – 5:00 p.m.  
Santa Clara City Hall, CMO Staff Conference Room**

**ATTENDEES**

City/Stadium Authority

- Jōvan D. Grogan, City Manager/Executive Director
- Chuck Baker, Assistant City Manager/Assistant Executive Director
- Christine Jung, Assistant to the City Manager/Assistant to the Executive Director

49ers/Stadium Manager

- Francine Melendez Hughes, Executive Vice President & General Manager
- Peter Wilhelm, Chief Financial Officer

**MEETING MINUTES**

1. **Quarterly Status Meeting Updates from Stadium Manager (Required by Management Agreement)**
  - a. **Financial Performance of Past Non-NFL Events**
  - b. **Status of Future Non-NFL Events**
    - i. **Booked Events**
    - ii. **Pipeline Events**

The Stadium Manager provided an update that reconciliation for the FY 2023/24 Non-NFL Events will occur in the May or June timeframe. Stadium Authority and Stadium Manager discussed scheduling separate meetings to discuss review previous and upcoming ticketed and non-ticketed Non-NFL Events and who would participate in those meetings, which will include the Executive Director's Office.

- c. **Private Parking Agreements**
  - i. **Executed Private Parking Agreements**
  - ii. **Ongoing Negotiations for Private Parking Agreements**

The Stadium Manager provided an update on the Stadium Authority's prior request related to the Stadium Manager's off-site parking agreements and would complete the request in the upcoming weeks. The Stadium Authority and Stadium Manager also discussed the number of required parking spaces and how future development in the area may impact parking availability for events, which the Stadium Authority agreed to keep the Stadium Manager in the loop about.

2. **Stadium Operations Oversight Improvements (Stadium Authority)**
  - a. **Community Outreach & Engagement (Requests Timing, Board Meeting Appearance)**
  - b. **Marketing Plan KPIs**

### **c. SOPs/Best Practices**

The Stadium Authority and Stadium Manager acknowledged processes that have improved over time due to communication and close coordination and discussed other areas that both sides would further open lines of communication, partner, and collaborate on such as community outreach/engagement, especially for the neighborhood adjacent to the Stadium, and the Marketing Plan. There was also discussion regarding the Stadium Manager making quarterly appearances at Stadium Authority Board meetings.

### **3. Stadium Builder's Licenses (SBLs) (Stadium Authority and Stadium Manager)**

- a. Approval Status/Protocols**
- b. Staffing Levels and Roles**
- c. Pricing Methodology**
- d. End Zone Seats**

The Stadium Manager confirmed that the total number of field seats being added to the existing 70 field seats was 24, bringing the total number of field seats to 94 (47 each in the North and South end zones). The Stadium Authority and Stadium Manager agreed that a separate workstream was required to discuss and coordinate the proposal to assign SBLs to the additional 24 field seats for the Stadium Authority Board's consideration at the April 23 or May 7, 2024 Board meeting.

### **4. Settlement (Stadium Manager)**

Confidential discussion.

### **5. Facility Conditions Assessment (Stadium Manager)**

The Stadium Manager provided updates on the Facility Conditions Assessment solicitation process. The Stadium Authority and Stadium Manager discussed the scope of work and the Stadium Authority's participation in the assessment.

### **6. Foundation (Stadium Manager)**

The Stadium Manager shared that a proposal was provided to City Attorney Glen Googins regarding the grant funds in connection with the Naming Rights Agreement extension that would be provided through the Forty Niners' Foundation.

### **7. 24/25 Budget (Stadium Manager)**

This item was not discussed during the meeting.

### **8. Inventory (Stadium Manager)**

The Stadium Manager previously provided the Stadium Authority with inventory list of salvaged assets that they would like to sell. Those items are in storage and they plan to start selling items in the next 90 days. Due to recent transition of staff, the Stadium Authority no longer has the inventory list and the Stadium Manager will reshare the inventory list.

### **9. Security RFP (Stadium Manager)**

The Stadium Authority and Stadium Manager discussed the timeline for the Event Security Services Request for Proposals (RFP), including the City and Stadium Authority's review of the draft RFP (early April), release of the RFP (April), evaluation process with the City's Police Department's participation (May), and anticipated recommendation to the Stadium Authority Board (July).

**10. Video Control Room – 8th Floor (Stadium Manager)**

The Stadium Authority and Stadium Manager discussed this capital project, including costs and labor, that is connected to the Video Board Enhancement project. The Video Board Enhancement project is a StadCo project and StadCo will be responsible for the costs.

**11. Miscellaneous Items, If Needed**

No additional items were discussed.



Date: 3/28/2024, 3:00 p.m.  
Phone Call:

For Santa Clara Stadium Authority:  
Glen Googins, Stadium Authority Counsel

For Stadium Manager:  
Jihad Beauchman

1. Various Stadium Operational and Claims Issues



## Agenda Report

24-401

Agenda Date: 5/28/2024

### REPORT TO STADIUM AUTHORITY BOARD

#### SUBJECT

Action on Amendment No. 1 to the Agreement with KPMG LLP for Auditing and Consulting Services for the Santa Clara Stadium Authority

#### COUNCIL PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

#### BACKGROUND

The Credit Agreement, entered into between the Santa Clara Stadium Authority (Stadium Authority), Stadium Funding Trust (FinanceCo), and Goldman Sachs Bank USA on March 28, 2012, requires that the Stadium Authority file audited annual financial statements within 180 days after the end of each fiscal year. It further requires that the financial statements be audited by a nationally recognized independent certified public accounting (CPA) firm (also known as the "Big Four") selected by the Stadium Authority.

Section 8.3.3 of the Amended and Restated Stadium Lease Agreement (Stadium Lease) between the Stadium Authority and Forty Niners SC Stadium Company LLC (StadCo or Tenant) dated June 19, 2013, requires the Stadium Authority to furnish (or cause the Forty Niners Stadium Management Company LLC to furnish) to the Tenant a Statement of Operations within 90 days following each lease year. The Statement of Operations shall be prepared by a qualified, third party independent certified public accountant selected by Landlord and approved by Tenant, of the following: Stadium Authority Revenue, Tenant's Proportionate Share, Shared Stadium Expenses, the amount of Tenant's payments for Estimated Shared Stadium Expenses, Stadium Authority Expenses, Capital Expenditures, Net Income from Non-NFL Events, and distributions to and from the Operating Expense Reserve, Stadium Capital Expenditure Reserve and Renovation/Demolition Reserve. This reporting requirement was also noted in the Harvey Rose Measure J Audit under audit finding item 1.I.

In addition, Section 8.6.3 of the Stadium Lease allows for the Stadium Authority to conduct an audit of the Stadium Records within 180 days following the Stadium Authority's receipt of any Annual Statement of Stadium from the Tenant. The Stadium Authority desires to have an independent CPA review of the Shared Stadium Expenses between the Stadium Authority and StadCo.

#### DISCUSSION

On June 25, 2021, the Stadium Authority entered into an agreement with KPMG to provide audit services. The current agreement with KPMG has a term of five years through March 31, 2026 and includes annual financial audit and agreed upon procedure services on the Shared Stadium Expenses. The agreement's maximum compensation of \$754,554 covers these services. Since the execution of this agreement, other finance-related ad hoc projects have been identified which require

KPMG's expertise and services. Therefore, staff is seeking authorization to execute Amendment No. 1 to the Agreement to increase the compensation by \$100,000 for a revised not-to-exceed amount of \$854,554. The additional funding will cover for these new ad hoc projects identified.

### ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of a California Environmental Quality Act ("CEQA") pursuant to the 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

The proposed Amendment No. 1 to the Agreement with KPMG will increase the not-to-exceed compensation by \$100,000 to a total of \$854,554. The cost of the fiscal year 2023/24 audit and services are budgeted in fiscal year 2024/25 Stadium Authority Operating Budget. Appropriations in future year will be requested and approved through the annual budget process.

### COORDINATION

This report has been coordinated with the Stadium Authority Counsel and Executive Director.

### 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

Authorize the Executive Director or designee to execute an Amendment No. 1 to the Agreement with KPMG LLP for audit and consulting services to increase the compensation by \$100,000 from \$754,554 to \$854,554 in a final form approved by the City Attorney.

Reviewed by: Kenn Lee, Treasurer

Approved by: Jovan D. Grogan, Executive Director

### ATTACHMENTS

1. Original Professional Services Agreement with KPMG LLP
2. Amendment No. 1 to the Professional Services Agreement with KPMG LLP

**AGREEMENT FOR SERVICES  
BETWEEN THE  
SANTA CLARA STADIUM AUTHORITY AND  
KPMG LLP**

**PREAMBLE**

This Agreement is entered into between the Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code, with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“Authority”), and KPMG LLP, a Delaware registered limited liability partnership, with a place of business located at 55 Second Street, Suite 1400, San Francisco, California 94105, (Contractor). Authority and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. Authority desires to secure the services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of Authority; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between Authority 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

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 Effective Date of this Agreement and terminate on March 31, 2026.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

## **4. WARRANTY**

Contractor expressly warrants that all materials and services covered by this Agreement shall be performed in accordance with the applicable professional standards.

## **5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

Contractor represents and maintains that it has the experience in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and Authority 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.

## **6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, Authority 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 seven hundred fifty-four thousand five hundred and fifty-four dollars, 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.

## **7. TERMINATION**

A. Termination for Convenience. Authority 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, Authority may terminate this Agreement immediately upon written notice to Contractor, after providing reasonable notice and opportunity to cure.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services in accordance with professional standards. Contractor may retain a copy of all information necessary to comply with its applicable professional standards and contractual obligations. Upon termination, Contractor shall discontinue further services as of the effective date of termination, and Authority shall pay Contractor for all Services satisfactorily performed up to such date.

## **8. ASSIGNMENT AND SUBCONTRACTING**

Authority 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 Authority. Contractor shall not hire subcontractors without express written permission from Authority.

Contractor shall be as fully responsible to Authority 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 Authority. 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, except as permissible under applicable professional standards or use other permitted by this Agreement, shall not, without the prior written consent of Authority, 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 deliverables under this Agreement shall be the property of Authority but Contractor may retain and use copies thereof. Authority shall not be limited in any way or at any time in its use of said material. No ownership rights of the Authority's information shall transfer to the Contractor. Contractor's working papers shall remain the Contractor's exclusive property. Contractor retains ownership rights of all its pre-existing property.

## **13. RIGHT OF AUTHORITY TO INSPECT RECORDS OF CONTRACTOR**

Authority, through its authorized employees, representatives or agents, who are subject to our consent, 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 timekeeping and expense 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 timekeeping and expense records to establish the correctness of all charges submitted to Authority. Any expenses not so recorded shall be disallowed by Authority. 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 Authority.

Contractor shall submit to Authority any and all reports concerning its performance under this Agreement that may be requested by Authority in writing. Contractor agrees to assist Authority in meeting Authority's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

## **14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify Authority, its governing board, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any such claim arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subcontractors, or agents in the performance or non-performance, of services under this Agreement. The Contractor is not required to provide indemnification under this section where doing so would violate the Contractor's independence requirements or other applicable professional standards.

- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full Authority and Authority's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against Authority (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless Authority for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

**15. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to Authority, insurance policies as set forth in Exhibit C.

**16. WAIVER**

Contractor agrees that waiver by Authority 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 Authority'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 Authority addressed as follows:

Santa Clara Stadium Authority  
Attention: Finance Department  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [finance@santaclaraca.gov](mailto:finance@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

KPMG LLP  
55 Second Street, Suite 1400  
San Francisco, CA 94105  
or by facsimile at (415) 963-8100



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**

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no Authority 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 performance of this Agreement in accordance with applicable professional standards. 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 Authority 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 AUTHORITY NAME OR EMBLEM**

Contractor shall not use Authority'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 Authority.

**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. In the event of a dispute, the parties agree to use non-binding mediation prior to commencing litigation in a court of competent jurisdiction.

**23. SEVERABILITY CLAUSE**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

**24. AMENDMENTS**


This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

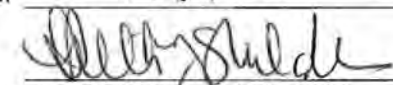
**25. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:   
\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

Dated: 01/25/2021  
  
\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**KPMG LLP**  
a Delaware Registered Limited Liability Partnership

Dated: 5/11/2021  
By (Signature):   
Name: Lisa Avis  
Title: Managing Director  
Principal Place of Business Address: 500 Capitol Mall, Ste. 2100  
Sacramento, CA 95814  
Email Address: lavis@kpmg.com  
Telephone: (916) 551-3115  
Fax: (916) 554-1199  
"CONTRACTOR"

**EXHIBIT A**  
**SCOPE OF SERVICES**

The Services to be performed for the Authority by the Contractor under this Agreement are fully described in the Contractor's proposal entitled, "Engagement Letter" dated March 29, 2021 and March 30, 2021, which is attached to this Exhibit A and incorporated by this reference.





KPMG LLP  
500 Capitol Mall, Ste 2100  
Sacramento, CA 95814-4754

Telephone +1 916 448 4700  
Fax +1 916 554 1199  
kpmg.com

March 30, 2021

Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, California 95050

Attention: Finance Director

Ladies and Gentlemen:

This letter (Engagement Letter) confirms our understanding of our engagement to provide professional services to the Authority.

#### **Objectives and Limitations of Services**

##### *Audit Services*

You have requested that we audit the Authority's financial statements as set forth in Appendix I.

We have the responsibility to conduct and will conduct the audit of the financial statements in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States (Government Auditing Standards), with the objectives of obtaining reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to error or fraud, and issuing an auditor's report that includes our opinion as to whether the presentation of the financial statements conforms with U.S. generally accepted accounting principles.

Reasonable assurance is a high level of assurance but it is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users made on the basis of these financial statements.

As part of an audit in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, we exercise professional judgment and maintain professional skepticism throughout the audit. We also will:

- Identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion on the financial statements.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall financial statement presentation, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.



- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority ability to continue as a going concern for a reasonable period of time.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, there is an unavoidable risk that some material misstatements, fraud, and noncompliance with laws and regulations may exist and not be detected by an audit of financial statements even though the audit is properly planned and performed in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Also, an audit is not designed to detect matters that are immaterial to the financial statements.

We will also perform certain limited procedures to the required supplementary information as required by auditing standards generally accepted in the United States of America. However, we will not express an opinion or provide any assurance on the information. Our report relating to the financial statements will include our consideration of required supplementary information.

We also understand that the financial statements will include supplementary information which is presented for the purpose of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information will be subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America with the objective of expressing an opinion as to whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

Subject to the remainder of this paragraph, we will issue a written report upon completion of our audit of the Authority's financial statements addressed to the Board of Directors of the Santa Clara Stadium Authority. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinion, add an emphasis-of-matter paragraph or other-matter paragraph to our auditor's report, or, if necessary, withdraw from the engagement. If, during the performance of our audit procedures such circumstances arise, we will communicate to the audit committee our reasons for modification or withdrawal.

#### *Internal Control over Financial Reporting and Compliance and Other Matters*

We will obtain an understanding of the Authority's internal control relevant to the audit in order to determine the nature, timing, and extent of our audit procedures for the purpose of expressing an opinion on the financial statements but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control.

The objective of our audit of the financial statements is not to report on the Authority's internal control and we are not obligated to search for material weaknesses or significant deficiencies as part of our audit of the financial statements. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of





deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Authority's compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, our objective is not to provide an opinion on compliance with such provisions.

In accordance with *Government Auditing Standards*, we will prepare a written report, *Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards* (GAGAS report), on our consideration of internal control over financial reporting and tests of compliance made as part of our audit of the financial statements. This report will include any material weaknesses and significant deficiencies identified during the audit. This report will also include any of the following that we identify or suspect:

- Instances of noncompliance with provisions of laws, regulations, contracts, or grant agreements that have a material effect on the financial statements or other financial data significant to the audit objectives;
- Instances of fraud that are material, either qualitatively or quantitatively, to the financial statements or other financial data significant to the audit objectives.

The report will describe its purpose and will state that it is not suitable for any other purpose.

In accordance with *Government Auditing Standards*, we will also communicate in writing when:

- Identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements comes to our attention during the course of our audit that has an effect on the financial statements or other financial data significant to the audit objectives that is less than material but warrants the attention of those charged with governance, or
- We obtained evidence of identified or suspected instances of fraud that have an effect on the financial statements or other financial data significant to the audit objectives that are less than material but warrant the attention of those charged with governance.

In accordance with *Government Auditing Standards*, we are also required in certain circumstances to report identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements, or instances of fraud directly to parties outside the auditee.

#### *Offering Documents*

In the event the Authority requests our involvement with a future exempt filing that will include or incorporate by reference these financial statements and our audit report(s) thereon, professional standards require us to be separately engaged. The specific terms of our future services with respect to future exempt offerings will be determined at the time the services are to be performed and will be subject to the negotiation, agreement, and execution of a specific engagement letter or contract.



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In the event the Authority does not engage us to be involved with the offering document, then the Authority agrees to include the following language in the offering document:

"KPMG LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. KPMG LLP also has not performed any procedures relating to this official statement."

#### **Our Responsibility to Communicate with the Audit Committee**

We will communicate our planned scope and timing for our audit with the audit committee, including significant risks identified in planning our audit.

We will report to the audit committee or those charged with governance the following matters:

- Material, corrected misstatements that were brought to the attention of management as a result of audit procedures.
- Uncorrected misstatements accumulated by us during the audit and the effect that they, individually or in the aggregate, may have on our opinion in the auditor's report, the effect of uncorrected misstatements related to prior periods, and that uncorrected misstatements or matters underlying those uncorrected misstatements could potentially cause future-period financial statements to be materially misstated, even if the auditor has concluded that the uncorrected misstatements are immaterial to the financial statements under audit.
- Our views about qualitative aspects of the Authority's significant accounting practices, including accounting policies, accounting estimates, and financial statement disclosures.
- Significant unusual transactions, if any.
- Significant difficulties, if any, encountered during our audit.
- Disagreements with management, if any.
- Circumstances that affect the form and content of our auditor's report, if any.
- Matters that are difficult or contentious for which the auditor consulted outside the engagement team and that are, in the auditor's judgment, significant and relevant to those charged with governance regarding their responsibility to oversee the financial reporting process.
- Other matters required to be communicated by auditing standards generally accepted in the United States of America and *Government Auditing Standards*.

We will also read minutes, if any, of relevant committee meetings for consistency with our understanding of the communications made to the audit committee and determine that the audit committee has received copies of all material written communications between ourselves and management. We will also determine that the audit committee has been informed of i) the initial selection of, or the reasons for any change in, significant accounting policies or their application during the period under audit, ii) the methods used by management to account for significant unusual transactions, and iii) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.





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To the extent that they come to our attention, we will inform the appropriate level of management about any instances of noncompliance or suspected noncompliance with laws and regulations, unless they are clearly inconsequential, material errors in the financial statements and any instances of fraud. Further, to the extent they come to our attention, we also will communicate directly to the audit committee any instances of noncompliance or suspected noncompliance with laws and regulations, unless they are clearly inconsequential, material errors in the financial statements, and any instances of fraud that involve senior management or that, in our judgment, cause a material misstatement of the financial statements.

### **Management Responsibilities**

The management of the Authority acknowledges and understands that they have responsibility for the preparation and fair presentation, in accordance with U.S. generally accepted accounting principles, of the financial statements and all representations contained therein. Management also is responsible for identifying and ensuring that the Authority complies with laws, regulations, contracts, and grant agreements applicable to its activities, and for informing us of any known instances of noncompliance or suspected noncompliance with laws, regulations and provisions of contracts and grant agreements. Management also is responsible for the design, implementation, and maintenance of programs and controls to prevent, deter, and detect fraud, for adopting sound accounting policies, and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements whether due to error or fraud. Management is also responsible for informing us, of which it has knowledge, of all material weaknesses and significant deficiencies in the design or operation of such controls. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities.

The management of the Authority also acknowledges and understands that they have responsibility for the preparation of the supplementary information in accordance with the applicable criteria. Management is also responsible for providing us written representations regarding the supplementary information. Management is also responsible for including our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information, and for including the audited financial statements with any presentation of the supplementary information that includes our report thereon or making the audited financial statements readily available to intended users of the supplementary information no later than the date the supplementary information is issued with our report thereon.

Management of the Authority also acknowledges and understands that it is their responsibility to provide us with: i) access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters; ii) additional information that we may request from management for purposes of the audit; and iii) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence. As required by auditing standards generally accepted in the United States of America, we will make specific inquiries of management about the representations embodied in the financial statements and the effectiveness of internal control, and obtain a representation letter from management about these matters. The responses to our inquiries, the written representations, and the results of audit tests, among other things, comprise the evidential matter we will rely upon in forming an opinion on the financial statements.

To facilitate our audit planning, in accordance with *Government Auditing Standards*, management agrees to identify and provide copies of reports, if applicable, of previous audits, attestation engagements, or other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented, prior to April 1, 2021.





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Management is responsible for adjusting the financial statements to correct material misstatements and for affirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements being reported upon, taken as a whole. Because of the importance of management's representations to the effective performance of our services, the Authority will release KPMG LLP (KPMG) and its personnel from any claims, liabilities, costs and expenses relating to our services under this Engagement Letter attributable to any misrepresentations in the representation letter referred to above. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.

Management is also responsible for providing us with written responses in accordance with *Government Auditing Standards* to the findings included in the GAGAS report within 10 days of being provided with draft findings. If such information is not provided on a timely basis prior to release of the report, the GAGAS report will indicate management did not provide written responses.

Management is responsible for the distribution of the reports issued by KPMG.

#### **Non-audit service - Assistance in Preparing Financial Statements**

We will assist management in preparing the financial statements and related notes in accordance with U.S. generally accepted accounting principles. We will use information from the trial balance and/or other source documents provided by management to assist management in preparing the financial statements and related notes.

We may also provide advice and recommendations to assist management of the Authority in performing its responsibilities. We will not assume management responsibilities on behalf of the Authority.

The Authority agrees to:

- Assume all management responsibilities, including determining the accuracy and completeness of the financial statements and notes.
- Assign a suitable employee with appropriate skills, knowledge and/or experience to oversee the financial statement preparation assistance and evaluate the adequacy and results of the services.
- Accept responsibility for the results of the financial statement preparation assistance.

#### **Dispute Resolution**

The parties agree that any dispute or claim arising out of or relating to the Engagement Letter and the related contract or the services provided thereunder shall first be submitted to non-binding mediation as a prerequisite to litigation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude a party from filing a timely formal claim in accordance with applicable California law provided, however, that the party shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction.





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#### Other Matters

In the event that any term or provision of this Engagement Letter shall be held to be invalid, void or unenforceable, then the remainder of the Engagement Letter shall not be affected, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

This Engagement Letter shall serve as the Authority's authorization for the use of e-mail and other electronic methods to transmit and receive information, including confidential information, between KPMG and the Authority and between KPMG and outside specialists or other entities engaged by either KPMG or the Authority. The Authority acknowledges that e-mail travels over the public Internet, which is not a secure means of communication and, thus, confidentiality of the transmitted information could be compromised through no fault of KPMG. KPMG will employ commercially reasonable efforts and take appropriate precautions to protect the privacy and confidentiality of transmitted information.

In an effort to facilitate efficient communication between KPMG and the Authority related to the audit and to track engagement progress during the course of the engagement, KPMG may provide the Authority with access to certain online tools. If such access is provided to the Authority, the Authority shall be responsible for: (i) its users' access and use of such tools (including the information its users may upload to such tools and compliance with all laws and regulations applicable to use or access by the Authority's users outside of the United States (e.g. export control and data privacy laws and regulations)), and (ii) protecting the security of the account credentials in its possession for each user including timely informing KPMG when the Authority individuals' access should be removed. The Authority acknowledges that it shall not provide third parties (agents or contractors) with access to such tools without KPMG's written consent, use such tools as a system of record, nor use such tools other than for purposes of the audit engagement.

Except as permitted by law or as set forth in this paragraph, neither party shall acquire hereunder any right to use the name or logo of the other party or any part thereof, and any such use shall require the express written consent of the owner party. The Authority agrees that KPMG may list the Authority as a client in KPMG's internal and external marketing materials, including KPMG websites and social media, indicating the general services rendered (e.g., "[the Santa Clara Stadium Authority] is an Audit client of KPMG LLP"). Further, for purposes of the services described in this Engagement Letter only, the Authority hereby grants to KPMG a limited, revocable, non-exclusive, non-transferable, paid up and royalty-free license, without right of sublicense, to use all logos, trademarks and service marks of the Authority solely for presentations or reports to the Authority or for internal KPMG presentations and intranet sites.

The Authority and KPMG acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective responsibilities under the Engagement Letter. Unless requested by KPMG to allow it to complete its audit, the Authority will not provide KPMG, or grant KPMG access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Control Reform Act of 2018, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR ("Export Controlled Information"). If KPMG requests Export Controlled Information from the Authority, the Authority shall provide KPMG with notice of provision of Export Controlled Information at least 48 hours prior to providing such Export Controlled Information to KPMG.

KPMG is a limited liability partnership comprising both certified public accountants and certain principals who are not licensed as certified public accountants. Such principals may participate in the engagements to provide the services described in this Engagement Letter.





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March 30, 2021  
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The audit documentation for this engagement is the property of KPMG. If KPMG receives a subpoena; other validly issued administrative, judicial, government or investigative regulatory demand or request; or other legal process requiring it to disclose the Authority's confidential information ("Legal Demand"), KPMG shall, unless prohibited by law or such Legal Demand, provide prompt written notice to the Authority of such Legal Demand in order to permit it to seek a protective order. So long as KPMG gives notice as provided herein, KPMG shall be entitled to comply with such Legal Demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter. In the event KPMG is requested or authorized by the Authority, or is required by law, rule, regulation or Legal Demand in a proceeding or investigation to which KPMG is not a named party or respondent, to produce KPMG's documents or personnel as witnesses or for interviews, or otherwise to make information relating to the service under the Engagement Letter available to a third party, or the Authority, the Authority shall reimburse KPMG for its professional time, at its then-current standard hourly rates, and expenses, including reasonable attorneys' fees and expenses, incurred in producing documents or personnel or providing information pursuant to such requests, authorizations or requirements.

Pursuant to *Government Auditing Standards*, and subject to applicable provisions of laws and regulations, we are required to make appropriate individuals and certain audit documentation available in a timely manner to others, including Regulators, upon request. In addition, we may also be requested to make certain audit documentation available to Regulators pursuant to authority provided by law or regulation. If so requested, access to such audit documentation will be provided. Furthermore, Regulators may obtain copies of selected audit documentation. Such regulators may intend, or decide, to distribute the copies or information contained therein to others, including other government agencies.

KPMG, as an accounting firm, has an obligation to comply with applicable professional standards. Certain professional standards, including AICPA Code of Professional Conduct Section 1.700, "Confidential The Authority Information Rule," adopted by the American Institute of Certified Public Accountants and similar rules adopted by the boards of accountancy of many states, prohibit the disclosure of the Authority confidential information without the Authority consent, except in limited circumstances. KPMG represents to the Authority that KPMG will treat the Authority's confidential information in accordance with applicable professional standards.

KPMG may work with and use the services of other members of the international KPMG network of independent firms and entities controlled by, or under common control with, one or more KPMG member firms (together with KPMG, the "KPMG Firms") to provide services to the Authority. The KPMG Firms, together with the entities comprising KPMG International, shall be referred to herein as the "KPMG Parties." In connection with the performance of services under this Engagement Letter, the KPMG Firms may, in their discretion, utilize the services of third party service providers within or outside of the United States to complete the services under this Engagement Letter. KPMG Parties and such third parties may have access to your confidential information from offshore locations. In addition, KPMG uses third party service providers within and outside of the United States to provide, at its direction, back-office administrative and clerical, or analytical services to KPMG and these third party service providers may in the performance of such services have access to your confidential information. In particular, KPMG's audit technologies, software productivity tools and certain technology infrastructure and, necessarily, your confidential information, may be hosted in cloud environments operated by KPMG Parties or such third party service providers. In addition, for purposes of fulfilling our professional responsibilities, such as maintaining independence and performing conflict checks, the Authority will be listed as a client in internal KPMG Parties' systems accessible on a need to know basis to KPMG Parties. KPMG represents that it has technical, legal and/or other safeguards, measures and controls in place to protect your confidential information from unauthorized disclosure or use.





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You also understand and agree that the KPMG Parties, with the assistance of third parties as outlined above, may use all the Authority information for other purposes consistent with our professional standards, such as improving the delivery or quality of audit and other services or technology to you and to other clients, thought leadership projects, to allow you and other clients to evaluate various business transactions and opportunities, and for use in presentations to you, other clients and non-clients. When your information is used outside of the KPMG Parties or such third parties assisting them as outlined above, the Authority will not be identified as the source of the information.

It may be necessary or convenient for the Authority to use KPMG-owned or -licensed software, software agents, scripts, technologies, tools or applications (collectively "KPMG Technology") designed to extract data from The Authority's electronic books and records systems or other systems (collectively, "Systems"), in connection with the audit. The Authority understands and agrees that it is solely responsible for following appropriate change management policies, processes and controls relating to use of such technology (including without limitation appropriate backup of the Authority's information and Systems) (collectively, "Change Management Processes") before such KPMG Technology is utilized to extract data from the Systems. In the event the Authority fails to use such Change Management Processes or if such Change Management Processes prove to be inadequate, the Authority acknowledges that the Systems and/or KPMG Technology may not function as intended. In consideration of the foregoing, KPMG hereby grants the Authority the right to use KPMG Technology solely to facilitate the Authority's necessary or convenient provision of information to KPMG in connection with the audit, and this grant does not extend to any other purposes or use by third parties outside of your organization without our prior written approval, provided that third party contractors of the Authority having a need to know in order to perform their services to the Authority are permitted to use KPMG Technology to the extent necessary for such parties to perform such services, so long as the Authority exercises the same level of care to protect such KPMG Technology and KPMG confidential information as it uses to protect its own confidential information, but in no event less than reasonable care. Other than as expressly permitted hereby, the Authority agrees to keep KPMG Technology confidential, using no less than a reasonable standard of care to protect it from unauthorized disclosure or use, and to notify KPMG of any legal compulsions to disclose it, in accordance with the provisions governing legal demand of confidential information which appear in this engagement letter with respect to which the KPMG Technology is being used, *mutatis mutandis*. If the KPMG Technology is subject to any third party license terms and conditions before being provided to the Authority, the Authority may be required to accept such terms and conditions before using the KPMG Technology, in which case KPMG will provide such license terms and conditions to the Authority in writing before the Authority elects to use the KPMG Technology.

Except as otherwise provided for in this Engagement Letter, neither party may assign, transfer or delegate any of its rights, obligations, claims or proceeds from claims arising under or relating to this Engagement Letter (including by operation of law, in which case the assigning party will, to the extent legally permissible, give as much advance written notice as is reasonably practicable thereof) without the prior written consent of the other party, such consent not to be unreasonably withheld. Any assignment in violation hereof shall be null and void.

As required by *Government Auditing Standards*, we have attached a copy of KPMG's most recent peer review report.

#### **Reports, Services and Associated Fees**

Appendix I to this Engagement Letter lists the reports we will issue and the services we will provide as part of this engagement and our fees for professional services to be performed under this Engagement Letter.



Santa Clara Stadium Authority  
March 30, 2021  
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In addition, fees for any special audit-related projects, such as research and/or consultation on special business or financial issues, will be billed separately from the audit fees for professional services set forth in Appendix I and may be subject to written arrangements supplemental to those in this Engagement Letter.

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Our engagement herein is for the provision of annual audit services for the financial statements for the periods described in Appendix I, and it is understood that such services are provided as a single annual engagement. Pursuant to our arrangement as reflected in this Engagement Letter we will provide the services set forth in Appendix I as a single engagement for each of the Authority's subsequent fiscal years until either those charged with governance or we terminate this agreement, or mutually agree to the modification of its terms. The fees for each subsequent year will be annually subject to negotiation and approval by those charged with governance.

We shall be pleased to discuss this Engagement Letter with you at any time. For your convenience in confirming these arrangements, we enclose a copy of this Engagement Letter. Please sign and return it to us to indicate your acknowledgement of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities.

Very truly yours,

KPMG LLP

Lisa Avis  
Managing Director

ACCEPTED

Santa Clara Stadium Authority

Authorized Signature

Stadium Authority Treasurer

Title

April 23, 2021

Date

**Reports, Services and Associated Fees**

Based upon our discussions with and representations of management, our fees for services we will perform are estimated as follows:

|   |           |
|---|-----------|
| Audit of financial statements and related notes to the financial statements of the Authority as of and for the year ended March 31, 2021 and Agreed-Upon Procedures Reports | \$142,120 |
|---|-----------|

The above estimates are based on the level of experience of the individuals who will perform the services. Circumstances encountered during the performance of these services that warrant additional time or expense could cause us to be unable to deliver them within the above estimates. We will endeavor to notify you of any such circumstances as they are assessed.

Where KPMG is reimbursed for expenses, it is KPMG's policy to bill clients the amount incurred at the time the good or service is purchased. If KPMG subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, KPMG does not credit such payment to the client. Instead, KPMG applies such payments to reduce its overhead costs, which costs are taken into account in determining KPMG's standard billing rates and certain transaction charges which may be charged to clients.

All fees, charges and other amounts payable to KPMG under the Engagement Letter do not include any sales, use, excise, value added, income or other applicable taxes, tariffs or duties, payment of which shall be the Authority's sole responsibility, excluding any applicable taxes based on KPMG's net income or taxes arising from the employment or independent contractor relationship between KPMG and its personnel.





KPMG LLP  
500 Capitol Mall, Ste 2100  
Sacramento, CA 95814-4754

March 29, 2021

Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, California 95050

Attention: Finance Director

PRIVATE

This Engagement Letter (Engagement Letter) sets forth our understanding of the terms and objectives of our engagement and the nature and limitations of the services KPMG LLP ("KPMG") will provide.

We will apply the following agreed-upon procedures to the Shared Stadium Expenses and Statement of Operations of Santa Clara Stadium Authority (the Authority) for the year ended March 31, 2021. The Authority is responsible for the Shared Stadium Expenses. The sufficiency of the procedures is solely the responsibility of the specified users of the report: the Santa Clara Stadium Authority. Consequently, we make no representation regarding the sufficiency of the procedures either for the purpose for which our report is being prepared or for any other purpose. Execution of this Engagement Letter will signify the Authority's agreement to the procedures and to its responsibility for the sufficiency of the procedures for its purposes.

- 1) Obtain the *Stadium Lease Agreement by and between the Santa Clara Stadium Authority and Forty Niners Stadium Company LLC dated as of March 28, 2012, as amended and restated as of June 19, 2013 (Lease Agreement)*.
- 2) Obtain the following Shared Expense categories utilized by ManagementCo and agree them to the Lease agreement in Procedure 1.
  - a. Day to day expenses (StadCo's share of 50%)
  - b. Capital repairs and capital expenditures (StadCo's share of 50%)
  - c. Stadium management fees (StadCo's share of 50%)
  - d. Other specified shared expenses (StadCo's share of 50%)
  - e. Groundskeeping services (StadCo's share of 70%)
  - f. Insurance expenses (1<sup>st</sup> lease year \$2,550,000, 2<sup>nd</sup> lease year onwards \$2,550,000 increased by 3% each year, tenant expansion period 0%)
- 3) Determine if SCSA properly charged StadCo for its proportionate share of the Shared Stadium Expenses by obtaining the final Shared Stadium Expenses reconciliation prepared by ManagementCo and comparing it against the Estimated Shared Stadium Expenses paid by StadCo. If there is a difference between the estimated and final amount, then ensure that ManagementCo properly credit or invoice StadCo for the difference on behalf of SCSA.
- 4) Agree the Stadium Authority's Revenues, Expenses, Capital Expenditures, and Net Income (Loss) from Non-NFL Events to the Stadium Authority's March 31, 2020's general ledger





Santa Clara Stadium Authority  
March 29, 2021  
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- 5) Recalculate the distributions to and from the Operating Expense Reserve, Stadium Capital Expenditure Reserve and Renovation/Demolition Reserve and agree it to the general ledger.

The Authority acknowledges its responsibility for determining the scope of the engagement, including the subject matter and criteria used in evaluating the subject matter, agreeing to the procedures and the sufficiency of such procedures for the Authority's purposes. At the conclusion of the engagement, the Authority agrees to supply us with a representation letter that will include the Authority's assertion about the Shared Expenses based on the criteria and will include:

- a. a statement that all known matters contradicting the subject matter or assertion and any communication from regulatory agencies or others affecting the subject matter or assertion have been disclosed to us including communications received between the end of the period addressed in the written assertion and the date of our report,
- b. a statement acknowledging its responsibility for the subject matter and the assertion, selecting the criteria, when applicable, and determining that such criteria are appropriate for its purposes,
- c. a statement that it has provided us with access to all records relevant to the subject matter and the agreed-upon procedures, and
- d. other matters as we may deem appropriate.

If such a representation letter is not provided, which includes the aforementioned assertion, it may be necessary for us to withdraw from the engagement.

Our engagement to apply agreed-upon procedures will be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants. Because the agreed-upon procedures referred to above do not constitute an examination or review, we will not express an opinion or conclusion on Shared Expenses of the Authority. Our report will include a statement to that effect. In addition, we have no obligation to perform any procedures beyond those referred to above.

Our written independent accountants' agreed-upon procedures report will include a list of the procedures performed (or reference thereto) and the related findings. Our report will also contain a paragraph indicating that had we performed additional procedures, other matters might have come to our attention that would have been reported to you. We have no responsibility to update our report for events and circumstances occurring after the date of such report.

Our report is intended solely for the use of the Authority, and is not intended for use by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. Our report will include a statement to that effect. If you request that additional specified users of the report be added, we will require that they acknowledge, in writing, their agreement with the procedures and their responsibility for the sufficiency of the procedures for their purposes.

If we are unable to complete the agreed-upon procedures referred to above, we will discuss the matter with you during the engagement. In such circumstances, we may conclude that we will not issue a report as a result of this engagement.

Because of the importance of management's representations to the effective performance of our services, the Authority hereby releases KPMG and its personnel from and against any and all claims, liabilities, costs, and





Santa Clara Stadium Authority  
March 29, 2021  
Page 3 of 7

expenses relating to our services under this Engagement Letter attributable to any misrepresentations in the representation letter referred to above. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.

The Authority will indemnify, defend, and hold KPMG and its personnel harmless from and against any and all claims, liabilities, costs, and expenses asserted against KPMG by any third party to the extent resulting from or attributable to (i) that party's use or possession of, or reliance upon, KPMG's report or reference to KPMG's services hereunder as a result of the Authority's disclosure of such report or reference thereto other than to the specified user(s) or (ii) any misrepresentations in the representation letter referred to above. The foregoing indemnification obligation shall apply regardless of whether the third party claim alleges a breach of contract, violation of statute or tort (including without limitation negligence) by KPMG.

The Authority hereby releases KPMG and its personnel from and against any and all claims, liabilities, costs, and expenses relating to our services under this Engagement Letter, except to the extent determined to have resulted from the gross negligence of KPMG personnel.

The Authority will indemnify, defend, and hold KPMG and its personnel harmless from and against any and all claims, liabilities, costs, and expenses asserted against KPMG by any third party to the extent resulting from or attributable to that party's use or possession of, or reliance upon, KPMG's report or reference to KPMG's services hereunder as a result of the Authority's disclosure of such report or reference thereto.

#### **Dispute Resolution**

The parties agree that any dispute or claim arising out of or relating to the Engagement Letter and the related contract or the services provided thereunder shall first be submitted to non-binding mediation as a prerequisite to litigation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude a party from filing a timely formal claim in accordance with applicable California law provided, however, that the party shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction.

#### **Other Matters**

In the event that any term or provision of this Engagement Letter shall be held to be invalid, void or unenforceable, then the remainder of the Engagement Letter shall not be affected, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

This Engagement Letter shall serve as the Authority's authorization for the use of e-mail and other electronic methods to transmit and receive information, including confidential information, between KPMG and the Authority and between KPMG and outside specialists or other entities engaged by either KPMG or the Authority. The Authority acknowledges that e-mail travels over the public Internet, which is not a secure means of communication and, thus, confidentiality of the transmitted information could be compromised through no fault of KPMG. KPMG will employ commercially reasonable efforts and take appropriate precautions to protect the privacy and confidentiality of transmitted information.





Santa Clara Stadium Authority  
March 29, 2021  
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In an effort to facilitate efficient communication between KPMG and the Authority related to the attest engagement and to track engagement progress, KPMG may provide the Authority with access to certain online tools. If such access is provided to the Authority, the Authority shall be responsible for: (i) its users' access and use of such tools (including the information its users may upload to such tools and compliance with all laws and regulations applicable to use or access by the Authority's users outside of the United States (e.g. export control and data privacy laws and regulations)), and (ii) protecting the security of the account credentials in its possession for each user including timely informing KPMG when the Authority individuals' access should be removed. The Authority acknowledges that it shall not provide third parties (agents or contractors) with access to such tools without KPMG's written consent, use such tools as a system of record, nor use such tools other than for purposes of the attest engagement. The KPMG online tools include technology licensed from Microsoft, and the Authority's use of such Microsoft technology is subject to the Microsoft End-User Terms available at [http://www.kpmginfo.com/NDPPS/media/docs/144210-1A\\_NAS\\_MicrosoftEnd-UserTerms.pdf](http://www.kpmginfo.com/NDPPS/media/docs/144210-1A_NAS_MicrosoftEnd-UserTerms.pdf).

Except as permitted by law or as set forth in this paragraph, neither party shall acquire hereunder any right to use the name or logo of the other party or any part thereof, and any such use shall require the express written consent of the owner party. The Authority agrees that KPMG may list the Authority as a client in KPMG's internal and external marketing materials, including KPMG websites and social media, indicating the general services rendered (e.g., "[the Santa Clara Stadium Authority] is an Audit client of KPMG LLP"). Further, for purposes of the services described in this Engagement Letter only, the Authority hereby grants to KPMG a limited, revocable, non-exclusive, non-transferable, paid up and royalty-free license, without right of sublicense, to use all logos, trademarks and service marks of the Authority solely for presentations or reports to the Authority or for internal KPMG presentations and intranet sites.

The Authority and KPMG acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective responsibilities under the Engagement Letter. Unless requested by KPMG to allow it to complete its audit, the Authority will not provide KPMG, or grant KPMG access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Control Reform Act of 2018, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR ("Export Controlled Information"). If KPMG requests Export Controlled Information from the Authority, the Authority shall provide KPMG with notice of provision of Export Controlled Information at least 48 hours prior to providing such Export Controlled Information to KPMG.

KPMG is a limited liability partnership comprising both certified public accountants and certain principals who are not licensed as certified public accountants. Such principals may participate in the engagements to provide the services described in this Engagement Letter.

The documentation for this engagement is the property of KPMG. If KPMG receives a subpoena; other validly issued administrative, judicial, government or investigative regulatory demand or request; or other legal process requiring it to disclose the Authority's confidential information ("Legal Demand"), KPMG shall, unless prohibited by law or such Legal Demand, provide prompt written notice to the Authority of such Legal Demand in order to permit it to seek a protective order. So long as KPMG gives notice as provided herein, KPMG shall be entitled to comply with such Legal Demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter. In the event KPMG is requested or authorized by the Authority, or is required by law, rule, regulation or Legal Demand in a proceeding or investigation to which KPMG is not a named party or respondent, to produce KPMG's documents or personnel as witnesses or for interviews, or





Santa Clara Stadium Authority  
March 29, 2021  
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otherwise to make information relating to the service under the Engagement Letter available to a third party, or the Authority, the Authority shall reimburse KPMG for its professional time, at its then-current standard hourly rates, and expenses, including reasonable attorneys' fees and expenses, incurred in producing documents or personnel or providing information pursuant to such requests, authorizations or requirements.

KPMG, as an accounting firm, has an obligation to comply with applicable professional standards. Certain professional standards, including AICPA Code of Professional Conduct Section 1.700, "Confidential Client Information Rule," adopted by the American Institute of Certified Public Accountants and similar rules adopted by the boards of accountancy of many states, prohibit the disclosure of client confidential information without client consent, except in limited circumstances. KPMG represents to the Authority that KPMG will treat the Authority's confidential information in accordance with applicable professional standards.

KPMG may work with and use the services of other members of the international KPMG network of independent firms and entities controlled by, or under common control with, one or more KPMG member firms (together with KPMG, the "KPMG Firms") to provide services to the Authority. The KPMG Firms, together with the entities comprising KPMG International, shall be referred to herein as the "KPMG Parties." In connection with the performance of services under this Engagement Letter, the KPMG Firms may, in their discretion, utilize the services of third party service providers within or outside of the United States to complete the services under this Engagement Letter. KPMG Parties and such third parties may have access to your confidential information from offshore locations. In addition, KPMG uses third party service providers within and outside of the United States to provide, at its direction, back-office administrative and clerical, or analytical services to KPMG and these third party service providers may in the performance of such services have access to your confidential information. In particular, KPMG's audit technologies, software productivity tools and certain technology infrastructure and, necessarily, your confidential information, may be hosted in cloud environments operated by KPMG Parties or such third party service providers. In addition, for purposes of fulfilling our professional responsibilities, such as maintaining independence and performing conflict checks, the Authority will be listed as a client in internal KPMG Parties' systems accessible on a need to know basis to KPMG Parties. KPMG represents that it has technical, legal and/or other safeguards, measures and controls in place to protect your confidential information from unauthorized disclosure or use.

You also understand and agree that the KPMG Parties, with the assistance of third parties as outlined above, may use all the Authority information for other purposes consistent with our professional standards, such as improving the delivery or quality of audit and other services or technology to you and to other clients, thought leadership projects, to allow you and other clients to evaluate various business transactions and opportunities, and for use in presentations to you, other clients and non-clients. When your information is used outside of the KPMG Parties or such third parties assisting them as outlined above, the Authority will not be identified as the source of the information.

Except as otherwise provided for in this Engagement Letter, neither party may assign, transfer or delegate any of its rights, obligations, claims or proceeds from claims arising under or relating to this Engagement Letter (including by operation of law, in which case the assigning party will, to the extent legally permissible, give as much advance written notice as is reasonably practicable thereof) without the prior written consent of the other party, such consent not to be unreasonably withheld. Any assignment in violation hereof shall be null and void.

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Our engagement herein is for the provision of annual audit services for the financial statements for the periods described in Appendix I of the financial statement audit engagement letter, and it is understood that such



Santa Clara Stadium Authority  
March 29, 2021  
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services are provided as a single annual engagement. Pursuant to our arrangement as reflected in this Engagement Letter we will provide the services set forth in Appendix I of the financial statement audit engagement letter as a single engagement for each of the Authority's subsequent fiscal years until either those charged with governance or we terminate this agreement, or mutually agree to the modification of its terms. The fees for each subsequent year will be annually subject to negotiation and approval by those charged with governance.

Based upon our discussions with and representations of the Authority, we estimate that fees for these services is \$15,000. This estimate is based on the level of experience of the individuals who will perform the services. In addition, expenses are billed for reimbursement as incurred. Circumstances encountered during the performance of these services that warrant additional time or expense could cause us to be unable to deliver the services within the above estimates. We will endeavor to notify you of any such circumstances as they are assessed.

Our fees and expenses will be billed every two weeks as charges are incurred. All invoices shall be paid within 30 days after the date thereof. In the event any invoice is not timely paid as set forth herein, then upon five days prior written notice to you, KPMG may terminate its performance hereunder and will not be responsible for any loss, costs, or expense thereby resulting. It is understood that neither our fees nor the payment thereof will be contingent upon the results of our engagement.

Where KPMG is reimbursed for expenses, it is KPMG's policy to bill clients the amount incurred at the time the good or service is purchased. If KPMG subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, KPMG does not credit such payment to the client. Instead, KPMG applies such payments to reduce its overhead costs, which costs are taken into account in determining KPMG's standard billing rates and certain transaction charges which may be charged to clients.

All fees, charges and other amounts payable to KPMG under the Engagement Letter do not include any sales, use, excise, value added, income or other applicable taxes, tariffs or duties, payment of which shall be the Authority's sole responsibility, excluding any applicable taxes based on KPMG's net income or taxes arising from the employment or independent contractor relationship between KPMG and its personnel.





Santa Clara Stadium Authority  
March 29, 2021  
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We shall be pleased to discuss this Engagement Letter with you at any time. For your convenience in confirming these arrangements, we enclose a copy of this Engagement Letter. Please sign and return it to us.

Very truly yours,

KPMG LLP

Lisa Avis  
Managing Director

This Engagement Letter correctly sets forth the understanding of the Santa Clara Stadium Authority.

ACCEPTED

Santa Clara Stadium Authority

Authorized Signature

Stadium Authority Treasurer

Title

April 23, 2021

Date



KPMG LLP  
500 Capitol Mall, Ste 2100  
Sacramento, CA 95814-4754

Telephone +1 916 448 4700  
Fax +1 916 554 1199  
kpmg.com

March 29, 2021

Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, California 95050

Attention: Finance Director

PRIVATE

This Engagement Letter (Engagement Letter) sets forth our understanding of the terms and objectives of our engagement and the nature and limitations of the services KPMG LLP ("KPMG") will provide.

We will apply the following agreed-upon procedures to the Shared Stadium Expenses of Santa Clara Stadium Authority (the Authority) for the year ended March 31, 2021. The Authority is responsible for the Shared Stadium Expenses. The sufficiency of the procedures is solely the responsibility of the specified users of the report: the Santa Clara Stadium Authority. Consequently, we make no representation regarding the sufficiency of the procedures either for the purpose for which our report is being prepared or for any other purpose. Execution of this Engagement Letter will signify the Authority's agreement to the procedures and to its responsibility for the sufficiency of the procedures for its purposes.

1. Obtain the Stadium Lease Agreement by and between the Santa Clara Stadium Authority and Forty Niners Stadium Company LLC dated as of March 28, 2012, as amended and restated as of June 19, 2013 (Lease Agreement).
2. Obtain the following Shared Expense categories utilized by Management Co, select 100 non-labor expenditures, and agree them to the original source documents (i.e. vendor invoice, agreements, etc.) and to the Lease agreement in Procedure 1.
  - a. Day to day expenses (the Authority's share of 50%)
  - b. Capital repairs and capital expenditures (the Authority's share of 50%)
  - c. Groundskeeping services (the Authority's share of 30%)
3. For SBL Sales and Services, select 20 Commission and 10 Bonus payouts, trace and agreed the amount to the payroll report, employment agreement or payout approval, and verify that the expenditure was reasonable and properly allocated to the Stadium Authority as agreed in Procedure 1.
4. For non-SBL Sales and Services transactions, select 20 Bonus and/or Commission payouts, trace and agreed the amount to payroll report, employment agreement or payout approval, and verify that the expenditure was reasonable and properly allocated to the Stadium Authority as agreed in Procedure 1.
5. For fulltime labor transactions, select 30 payouts and 10 accruals, trace and agree the sample to the original source documents, verify that the expense was properly charged and allocated to the Stadium Authority as agreed in Procedure.



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6. Review the Shared Expense details and determine if there are any Related Party transactions. If so, then select 10 samples, trace the payout to the original source documents or agreements, verify that there is no conflict of interest and that the expenditure was reasonable and properly allocated to the Stadium Authority as agreed in Procedure 1.

The Authority acknowledges its responsibility for determining the scope of the engagement, including the subject matter and criteria used in evaluating the subject matter, agreeing to the procedures and the sufficiency of such procedures for the Authority's purposes. At the conclusion of the engagement, the Authority agrees to supply us with a representation letter that will include the Authority's assertion about the Shared Expenses based on the criteria and will include:

- a. a statement that all known matters contradicting the subject matter or assertion and any communication from regulatory agencies or others affecting the subject matter or assertion have been disclosed to us including communications received between the end of the period addressed in the written assertion and the date of our report,
- b. a statement acknowledging its responsibility for the subject matter and the assertion, selecting the criteria, when applicable, and determining that such criteria are appropriate for its purposes,
- c. a statement that it has provided us with access to all records relevant to the subject matter and the agreed-upon procedures, and
- d. other matters as we may deem appropriate.

If such a representation letter is not provided, which includes the aforementioned assertion, it may be necessary for us to withdraw from the engagement.

Our engagement to apply agreed-upon procedures will be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants. Because the agreed-upon procedures referred to above do not constitute an examination or review, we will not express an opinion or conclusion on Shared Expenses of the Authority. Our report will include a statement to that effect. In addition, we have no obligation to perform any procedures beyond those referred to above.

Our written independent accountants' agreed-upon procedures report will include a list of the procedures performed (or reference thereto) and the related findings. Our report will also contain a paragraph indicating that had we performed additional procedures, other matters might have come to our attention that would have been reported to you. We have no responsibility to update our report for events and circumstances occurring after the date of such report.

Our report is intended solely for the use of the Authority, and is not intended for use by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. Our report will include a statement to that effect. If you request that additional specified users of the report be added, we will require that they acknowledge, in writing, their agreement with the procedures and their responsibility for the sufficiency of the procedures for their purposes.

If we are unable to complete the agreed-upon procedures referred to above, we will discuss the matter with you during the engagement. In such circumstances, we may conclude that we will not issue a report as a result of this engagement.





Santa Clara Stadium Authority  
March 30, 2021  
Page 3 of 7

Because of the importance of management's representations to the effective performance of our services, the Authority hereby releases KPMG and its personnel from and against any and all claims, liabilities, costs, and expenses relating to our services under this Engagement Letter attributable to any misrepresentations in the representation letter referred to above. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.

The Authority will indemnify, defend, and hold KPMG and its personnel harmless from and against any and all claims, liabilities, costs, and expenses asserted against KPMG by any third party to the extent resulting from or attributable to (i) that party's use or possession of, or reliance upon, KPMG's report or reference to KPMG's services hereunder as a result of the Authority's disclosure of such report or reference thereto other than to the specified user(s) or (ii) any misrepresentations in the representation letter referred to above. The foregoing indemnification obligation shall apply regardless of whether the third party claim alleges a breach of contract, violation of statute or tort (including without limitation negligence) by KPMG.

The Authority hereby releases KPMG and its personnel from and against any and all claims, liabilities, costs, and expenses relating to our services under this Engagement Letter, except to the extent determined to have resulted from the gross negligence of KPMG personnel.

The Authority will indemnify, defend, and hold KPMG and its personnel harmless from and against any and all claims, liabilities, costs, and expenses asserted against KPMG by any third party to the extent resulting from or attributable to that party's use or possession of, or reliance upon, KPMG's report or reference to KPMG's services hereunder as a result of the Authority's disclosure of such report or reference thereto.

#### **Dispute Resolution**

The parties agree that any dispute or claim arising out of or relating to the Engagement Letter and the related contract or the services provided thereunder shall first be submitted to non-binding mediation as a prerequisite to litigation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude a party from filing a timely formal claim in accordance with applicable California law provided, however, that the party shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction.

#### **Other Matters**

In the event that any term or provision of this Engagement Letter shall be held to be invalid, void or unenforceable, then the remainder of the Engagement Letter shall not be affected, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

This Engagement Letter shall serve as the Authority's authorization for the use of e-mail and other electronic methods to transmit and receive information, including confidential information, between KPMG and the Authority and between KPMG and outside specialists or other entities engaged by either KPMG or the Authority. The Authority acknowledges that e-mail travels over the public Internet, which is not a secure means of communication and, thus, confidentiality of the transmitted information could be compromised through no





Santa Clara Stadium Authority  
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fault of KPMG. KPMG will employ commercially reasonable efforts and take appropriate precautions to protect the privacy and confidentiality of transmitted information.

In an effort to facilitate efficient communication between KPMG and the Authority related to the attest engagement and to track engagement progress, KPMG may provide the Authority with access to certain online tools. If such access is provided to the Authority, the Authority shall be responsible for: (i) its users' access and use of such tools (including the information its users may upload to such tools and compliance with all laws and regulations applicable to use or access by the Authority's users outside of the United States (e.g. export control and data privacy laws and regulations)), and (ii) protecting the security of the account credentials in its possession for each user including timely informing KPMG when the Authority individuals' access should be removed. The Authority acknowledges that it shall not provide third parties (agents or contractors) with access to such tools without KPMG's written consent, use such tools as a system of record, nor use such tools other than for purposes of the attest engagement. The KPMG online tools include technology licensed from Microsoft, and the Authority's use of such Microsoft technology is subject to the Microsoft End-User Terms available at [http://www.kpmginfo.com/NDPPS/media/docs/144210-1A\\_NAS\\_MicrosoftEnd-UserTerms.pdf](http://www.kpmginfo.com/NDPPS/media/docs/144210-1A_NAS_MicrosoftEnd-UserTerms.pdf).

Except as permitted by law or as set forth in this paragraph, neither party shall acquire hereunder any right to use the name or logo of the other party or any part thereof, and any such use shall require the express written consent of the owner party. The Authority agrees that KPMG may list the Authority as a client in KPMG's internal and external marketing materials, including KPMG websites and social media, indicating the general services rendered (e.g., "[the Santa Clara Stadium Authority] is an Audit client of KPMG LLP"). Further, for purposes of the services described in this Engagement Letter only, the Authority hereby grants to KPMG a limited, revocable, non-exclusive, non-transferable, paid up and royalty-free license, without right of sublicense, to use all logos, trademarks and service marks of the Authority solely for presentations or reports to the Authority or for internal KPMG presentations and intranet sites.

The Authority and KPMG acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective responsibilities under the Engagement Letter. Unless requested by KPMG to allow it to complete its audit, the Authority will not provide KPMG, or grant KPMG access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Control Reform Act of 2018, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR ("Export Controlled Information"). If KPMG requests Export Controlled Information from the Authority, the Authority shall provide KPMG with notice of provision of Export Controlled Information at least 48 hours prior to providing such Export Controlled Information to KPMG.

KPMG is a limited liability partnership comprising both certified public accountants and certain principals who are not licensed as certified public accountants. Such principals may participate in the engagements to provide the services described in this Engagement Letter.

The documentation for this engagement is the property of KPMG. If KPMG receives a subpoena; other validly issued administrative, judicial, government or investigative regulatory demand or request; or other legal process requiring it to disclose the Authority's confidential information ("Legal Demand"), KPMG shall, unless prohibited by law or such Legal Demand, provide prompt written notice to the Authority of such Legal Demand in order to permit it to seek a protective order. So long as KPMG gives notice as provided herein, KPMG shall be entitled to comply with such Legal Demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter. In the event KPMG is requested or authorized by the Authority, or is





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required by law, rule, regulation or Legal Demand in a proceeding or investigation to which KPMG is not a named party or respondent, to produce KPMG's documents or personnel as witnesses or for interviews, or otherwise to make information relating to the service under the Engagement Letter available to a third party, or the Authority, the Authority shall reimburse KPMG for its professional time, at its then-current standard hourly rates, and expenses, including reasonable attorneys' fees and expenses, incurred in producing documents or personnel or providing information pursuant to such requests, authorizations or requirements.

KPMG, as an accounting firm, has an obligation to comply with applicable professional standards. Certain professional standards, including AICPA Code of Professional Conduct Section 1.700, "Confidential Client Information Rule," adopted by the American Institute of Certified Public Accountants and similar rules adopted by the boards of accountancy of many states, prohibit the disclosure of client confidential information without client consent, except in limited circumstances. KPMG represents to the Authority that KPMG will treat the Authority's confidential information in accordance with applicable professional standards.

KPMG may work with and use the services of other members of the international KPMG network of independent firms and entities controlled by, or under common control with, one or more KPMG member firms (together with KPMG, the "KPMG Firms") to provide services to the Authority. The KPMG Firms, together with the entities comprising KPMG International, shall be referred to herein as the "KPMG Parties." In connection with the performance of services under this Engagement Letter, the KPMG Firms may, in their discretion, utilize the services of third party service providers within or outside of the United States to complete the services under this Engagement Letter. KPMG Parties and such third parties may have access to your confidential information from offshore locations. In addition, KPMG uses third party service providers within and outside of the United States to provide, at its direction, back-office administrative and clerical, or analytical services to KPMG and these third party service providers may in the performance of such services have access to your confidential information. In particular, KPMG's audit technologies, software productivity tools and certain technology infrastructure and, necessarily, your confidential information, may be hosted in cloud environments operated by KPMG Parties or such third party service providers. In addition, for purposes of fulfilling our professional responsibilities, such as maintaining independence and performing conflict checks, the Authority will be listed as a client in internal KPMG Parties' systems accessible on a need to know basis to KPMG Parties. KPMG represents that it has technical, legal and/or other safeguards, measures and controls in place to protect your confidential information from unauthorized disclosure or use.

You also understand and agree that the KPMG Parties, with the assistance of third parties as outlined above, may use all the Authority information for other purposes consistent with our professional standards, such as improving the delivery or quality of audit and other services or technology to you and to other clients, thought leadership projects, to allow you and other clients to evaluate various business transactions and opportunities, and for use in presentations to you, other clients and non-clients. When your information is used outside of the KPMG Parties or such third parties assisting them as outlined above, the Authority will not be identified as the source of the information.

Except as otherwise provided for in this Engagement Letter, neither party may assign, transfer or delegate any of its rights, obligations, claims or proceeds from claims arising under or relating to this Engagement Letter (including by operation of law, in which case the assigning party will, to the extent legally permissible, give as much advance written notice as is reasonably practicable thereof) without the prior written consent of the other party, such consent not to be unreasonably withheld. Any assignment in violation hereof shall be null and void.

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Our engagement herein is for the provision of annual audit services for the financial statements for the periods described in Appendix I of the financial statement audit engagement letter, and it is understood that such services are provided as a single annual engagement. Pursuant to our arrangement as reflected in this Engagement Letter we will provide the services set forth in Appendix I of the financial statement audit engagement letter as a single engagement for each of the Authority's subsequent fiscal years until either those charged with governance or we terminate this agreement, or mutually agree to the modification of its terms. The fees for each subsequent year will be annually subject to negotiation and approval by those charged with governance.

Based upon our discussions with and representations of the Authority, we estimate that fees for these services is \$20,000. This estimate is based on the level of experience of the individuals who will perform the services. In addition, expenses are billed for reimbursement as incurred. Circumstances encountered during the performance of these services that warrant additional time or expense could cause us to be unable to deliver the services within the above estimates. We will endeavor to notify you of any such circumstances as they are assessed.

Our fees and expenses will be billed every two weeks as charges are incurred. All invoices shall be paid within 30 days after the date thereof. In the event any invoice is not timely paid as set forth herein, then upon five days prior written notice to you, KPMG may terminate its performance hereunder and will not be responsible for any loss, costs, or expense thereby resulting. It is understood that neither our fees nor the payment thereof will be contingent upon the results of our engagement.

Where KPMG is reimbursed for expenses, it is KPMG's policy to bill clients the amount incurred at the time the good or service is purchased. If KPMG subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, KPMG does not credit such payment to the client. Instead, KPMG applies such payments to reduce its overhead costs, which costs are taken into account in determining KPMG's standard billing rates and certain transaction charges which may be charged to clients.

All fees, charges and other amounts payable to KPMG under the Engagement Letter do not include any sales, use, excise, value added, income or other applicable taxes, tariffs or duties, payment of which shall be the Authority's sole responsibility, excluding any applicable taxes based on KPMG's net income or taxes arising from the employment or independent contractor relationship between KPMG and its personnel.





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We shall be pleased to discuss this Engagement Letter with you at any time. For your convenience in confirming these arrangements, we enclose a copy of this Engagement Letter. Please sign and return it to us.

Very truly yours,

KPMG LLP

Lisa Avis  
Managing Director

This Engagement Letter correctly sets forth the understanding of the Santa Clara Stadium Authority.

ACCEPTED

Santa Clara Stadium Authority

Authorized Signature

Stadium Authority Treasurer

Title

April 23, 2021

Date

**EXHIBIT B**  
**SCHEDULE OF FEES**

Contractor will bill Authority on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by Authority and subject to verification and approval by Authority. Authority will pay Contractor within thirty (30) days of Authority's receipt of an approved invoice.

Fee Schedule is per Appendix I in the Contractor's proposal entitled, "Engagement Letter" dated March 30, 2021, which is attached to this Exhibit B and incorporated by this reference. In no event shall the amount billed to Authority by Contractor for services under this Agreement exceed seven hundred fifty-four thousand five hundred and fifty-four dollars (including expenses) for audit services for fiscal year ending March 31, 2021 thru March 31, 2025. All fees are subject to annual budget appropriations.

**EXHIBIT C  
INSURANCE REQUIREMENTS**

**INSURANCE COVERAGE REQUIREMENTS  
FOR PROFESSIONAL SERVICES**

Without limiting the Consultant's indemnification of the Santa Clara Stadium Authority ("Stadium Authority"), and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the Stadium Authority, 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 Stadium Authority so that any other coverage held by the Stadium Authority shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This General Liability policy must include a Waiver of Subrogation in favor of the Stadium Authority, its governing board, subordinate boards, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. 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 Stadium Authority General Counsel'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. The Santa Clara Stadium Authority, its governing board, officers, employees, and agents ("Indemnified Parties") are hereby added as additional insureds in respect to liability arising out of Consultant's work for the Stadium Authority.
2. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnified Parties may possess, including any self-insurance or self-insured retention they may have. Any other insurance that the Indemnified Parties may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to the Stadium Authority 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 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 the Stadium Authority at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

## F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and the Stadium Authority agree as follows:

1. Consultant 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 Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by the Stadium Authority, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to the Stadium Authority for review.
2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge the Stadium Authority or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Stadium Authority. It is not the intent of the Stadium Authority to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the Stadium Authority for payment of premiums or other amounts with respect thereto.
3. The Stadium Authority reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every 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 the Stadium Authority and as described in this Agreement. Consultant shall file with the Stadium Authority all certificates and blanket endorsements for the required insurance policies for the Stadium Authority's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage, and be delivered to the Stadium Authority through its representative as set forth below, at or prior to execution of this Agreement. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to the Stadium Authority pursuant to this Agreement shall be mailed to:

Santa Clara Stadium Authority [Finance Department]

c/o Ebix, Inc.

P.O. Box 100085 – S2

Duluth, GA 30096

or 1 Ebix Way

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the Stadium Authority or its insurance compliance representatives.

**AMENDMENT NO. 1  
TO THE AGREEMENT FOR SERVICES  
BETWEEN THE  
SANTA CLARA STADIUM AUTHORITY  
AND  
KPMG LLP**

**PREAMBLE**

This agreement (“Amendment No. 1”) is entered into between the Santa Clara Stadium Authority (Authority), a joint powers agency created pursuant to Section 6532 of the California Government Code (Authority) and KPMG LLP, a Delaware registered limited liability partnership, (Contractor). Authority and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. The Parties previously entered into an agreement entitled “Agreement for Services Between the Santa Clara Stadium Authority and KPMG LLP, dated June 25, 2021 (Agreement); and
- B. The Parties entered into the Agreement for the purpose of having Contractor provide financial statement and agreed-upon procedures audits, and the Parties now wish to amend the Agreement to include ad hoc audit projects and increase the maximum compensation by One Hundred Thousand Dollars (\$100,000) for a new revised not to exceed amount of Eight Hundred Fifty-Four Thousand Five Hundred and Fifty-Four Dollars (\$854,554).

NOW, THEREFORE, the Parties agree as follows:

**AMENDMENT TERMS AND CONDITIONS**

- 1. Section 3 of the Agreement, entitled “Scope of Services & Performance Schedule” is amended to read as follows:

**“3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A and other ad hoc audit projects. Time is of the essence.”

- 2. Section 6 of the Agreement, entitled “Compensation and Payment” is amended to read as follows:

**“6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, Authority 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 Eight Hundred Fifty-Four Thousand Five Hundred and Fifty-Four Dollars (\$854,554), 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."

3. Exhibit B of the Agreement, entitled "Schedule of Fees" is amended to read as follows:

"EXHIBIT B SCHEDULE OF FEES

Contractor will bill Authority on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by Authority and subject to verification and approval by Authority. Authority will pay Contractor within thirty (30) days of Authority's receipt of an approved invoice.

Fee Schedule is per Appendix I in the Contractor's proposal entitled, "Engagement Letter" dated March 30, 2021, which is attached to this Exhibit B and incorporated by this reference. In no event shall the amount billed to Authority by Contractor for services under this Agreement exceed Eight Hundred Fifty-Four Thousand Five Hundred and Fifty-Four Dollars (\$854,554), including expenses, for audit and other ad hoc audit projects for fiscal year ending March 31, 2021 thru March 31, 2025. All fees are subject to annual budget appropriations."

4. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

**SANTA CLARA STADIUM AUTHORITY**

a Joint Exercise of Powers Entity, created through Government Code sections 6500 et seq.

Approved as to Form:

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

\_\_\_\_\_  
GLEN R. GOOGINS  
Stadium Authority Counsel

\_\_\_\_\_  
JOVAN D. GROGAN  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“AUTHORITY”

**KPMG LLP**

a Delaware Registered Limited Liability Partnership

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

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

Name: Lisa Avis

Title: Managing Director

Principal Place of Business Address: 500 Capitol Mall, Ste.2100  
Sacramento, CA 95814

Email Address: [lavis@kpmg.com](mailto:lavis@kpmg.com)

Telephone: (916) 551-3115

Fax: (916) 554-1199

“CONTRACTOR”



## Agenda Report

24-201

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Public Hearing: Action on Resolutions Approving Water, Sewer and Recycled Water Amended Rates to be Effective July 1, 2024

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

In November 1996, California voters approved Proposition 218, which amended the State Constitution to establish a new category of fees and charges referred to as “property-related fees and charges” and created new procedural requirements for their adoption. Under these requirements, proposed fees or charges for water, sewer, and recycled water service are subject to a written notice and public hearing not less than 45 days after the mailing of the notice as well as an explanation of the protest procedure for customers who may wish to formally protest their adoption. At the public hearing, all protests against the proposed fees or charges are tabulated and if protests are presented by a majority of utility customers (50% plus 1), the fees or charges cannot be imposed. If there is not a majority of utility customers protesting the proposed fees or charges, Council can make and act on a motion to approve increases. The required number of protests needed to deny Council the option to approve rate increases is 13,888.

The City updates the rates it charges Santa Clara residents and businesses for water, sewer, and recycled water services on an annual basis. Each of these three utilities are self-sustaining and rates are adopted to pay for revenue requirements associated with operations and maintenance (O&M) costs, capital improvement program (CIP) projects and, when possible and feasible, the funding for reserves associated with the respective utility systems.

Staff is seeking approval of the attached resolutions assigning water and recycled water rates (Attachment 1), and sewer rates (Attachment 2) to be effective July 1, 2024.

The Water & Sewer Utilities Department engaged Black & Veatch Management Consulting, LLC (Black & Veatch) to conduct an ongoing cost-of-service study of water, sewer, and recycled water rates charged to City residents and businesses.

#### DISCUSSION

In the fall of 2021, the City conducted a competitive procurement, and in December 2021, entered into a new agreement with Black & Veatch for consulting services related to rate setting for the next five (5) years.

As in years past, Black & Veatch conducted a cost-of-service analysis for all three utilities, projected

three years of rates and created a ten-year financial plan to fund O&M and capital expenditures with adequate reserves. Black & Veatch also updated the Rate Study (Attachment 3) to reflect funding reserves analysis and financial plans on cost-of-service analyses. The methodology in the rate study allocates cost components of each utility's operation and capital costs to customers and customer classes within each utility based on their use of the respective utilities.

### Water Rates

The potable water rates charged to Santa Clara residents and businesses are primarily driven by wholesale water purchases, O&M costs, and capital improvements for rehabilitation and replacement of aging infrastructure. The San Francisco Public Utilities Commission (SFPUC) voted on May 14, 2024 to raise the rates it charges to its wholesale customers by 8.8% for FY 2024/25. On May 14, 2024, the Santa Clara Valley Water District (Valley Water) Board adopted a 12.9% increase of wholesale water rates for FY 2024/25. The City's Water Utility is proposing to complete approximately \$25.7 million in CIP projects over the next five years to address aging infrastructure and ensure ongoing water quality standards are met. These costs, including O&M costs, have resulted in the need to propose an 11.6% increase in the potable water rate. For an average residential customer that uses 12 units (1 unit=1 HCF=748 gallons) of water, the monthly water bill will increase by \$11.16. In addition, there is an 8.8% average increase in minimum monthly charges for the water meter based on its size.

### Sewer Rates

The sewer rates charged to Santa Clara customers are primarily driven by the City's contribution to the capital and O&M costs at the San José-Santa Clara Regional Wastewater Facility (RWF), of which the City is a co-owner. O&M and capital costs on the City's collection system are also drivers of sewer rates. The RWF has been undergoing a large rehabilitation/replacement project that may last upwards of 30 years. Santa Clara's share of this project's costs is currently budgeted to be approximately \$86 million over the next five (5) years. The Sewer Utility issued \$35 million in installment sale financing Certificates of Participation (COPs) in October of 2023 in an effort to mitigate the rate impacts of the RWF capital project and to ensure generational equity as the project is funded. The costs associated with the Sewer Utility have resulted in the need to propose an 8.5% increase for single family residential customers. Based on the cost-of-service analysis, multi-family residential customers will see a proposed 7.5% increase to their sewer rates. Non-residential customers will see a proposed average 13.7% increase to their sewer rates, however the actual increase for individual customers will be based on their customer class.

If proposed rates are adopted, single family residential customers will see their monthly sewer bill increase by \$4.09 and multi-family residential customers will see their monthly sewer bill increase by \$3.43.

### Recycled Water Rates

The recycled water rates charged to City customers are primarily driven by wholesale rates charged by the City of San José through South Bay Water Recycling (SBWR). SBWR's rates are tied to the groundwater charge levied by Valley Water. The rate charged to the City of Santa Clara to purchase recycled water will increase by 13.6%. These costs along with O&M costs, have resulted in the need to propose an 11.8% increase in the recycled water rate. Recycled water is used by non-residential customers for irrigation, dual plumbing, and various industrial processes.

## ENVIRONMENTAL REVIEW



The action being considered is not subject to the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21080(b)(8) and CEQA Guidelines section 15273 as it concerns the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges that are for the purpose of (A) meeting operating expenses, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, or (D) obtaining funds for capital projects necessary to maintain service within existing service areas. As described above, the proposed rate increases will cover operations and maintenance (O&M) costs, capital improvement program (CIP) projects and the funding of reserves associated with the respective utilities' systems.

### FISCAL IMPACT

The proposed rates are reflected in the FY 2024/25 amended Water & Sewer Utilities operating budget, recommended as part of the FY 2024/25 and FY 2025/26 Proposed Capital Improvement Budget. Failure to adopt the proposed rates will result in lower than expected revenues and the need to amend the upcoming budgets by further drawing down reserve funds for the three utilities and to change the ten-year financial outlook for each of the utilities.

### COORDINATION

This report has been coordinated with the Finance Department, City Manager's Office 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>> .

Additionally, on April 8, 2024, which is not less than 45 days before the public hearing, as required by Article XIII D of the California Constitution (Proposition 218), notices were mailed to all 27,773 current utility customers in the City Utility Billing System. Also, staff reached out to utility customers via social media platforms and through the utility rates page on the City's website.

### ALTERNATIVES

1. Adopt the Proposed Resolutions Establishing Water Rate Schedule 2024-01, Recycled Water Rate Schedule 2024-02 and Sewer Rate Schedule S-24
2. Do Not Adopt the Proposed Resolutions Establishing Water Rate Schedule 2024-01, Recycled Water Rate Schedule 2024-02 and Sewer Rate Schedule S-24 and Direct Staff to Return to Council with Necessary Budget Amendments.

### RECOMMENDATION

Alternative 1: Adopt the Proposed Resolutions Establishing Water Rate Schedule 2024-01, Recycled Water Rate Schedule 2024-02 and Sewer Rate Schedule S-24

Reviewed by: Gary Welling, Director, Water & Sewer Utilities

Approved by: Jovan D. Grogan, City Manager

**ATTACHMENTS**

1. Proposed Resolution Establishing Water Rate Schedule 2024-01 & Recycled Water Rate Schedule 2024-02
2. Proposed Resolution Establishing Sewer Rate Schedule S-24
3. Draft 2024 Water and Sewer Rate Study Report by Black & Veatch Management Consulting, LLC

**RESOLUTION NO. 24-XXX**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,  
ESTABLISHING WATER RATE SCHEDULE 2024-01 AND  
RECYCLED WATER RATE SCHEDULE 2024-02 FOR CITY  
SERVICE**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, all water furnished to utility customers by the City of Santa Clara shall be charged, paid for and supplied only in accordance with such applicable schedules, rules and regulations as the City Council shall adopt pursuant to the provision of Section 13.15.020 [entitled "Water Rates to be Determined by City Council"] of "The Code of the City of Santa Clara, California" ("SCCC") and the Rules and Regulations for Water Service of the City of Santa Clara;

**WHEREAS**, Article XIII D of the California Constitution requires that increases to property related fees and charges, including water service rates, be approved by the City Council at a Public Hearing conducted not less than 45 days after mailing notice of the proposed rate increase;

**WHEREAS**, notice of a Public Hearing to be held on May 28, 2024 was mailed to water utility customers on April 8, 2024, which is more than 45 days prior to the Public Hearing;

**WHEREAS**, the notice was sent to 27,773 utility customers;

**WHEREAS**, the Council has reviewed the Water Rate Schedule 2024-01 and Recycled Water Rate Schedule 2024-02 (the "Rate Schedules") attached and incorporated into this Resolution by reference;

**WHEREAS**, the amounts shown on the Rate Schedules reflect the actual costs to provide utility services; and,

**WHEREAS**, on May 28, 2024, the Council conducted a Public Hearing, at which it reviewed all protests regarding the proposed rate increases.

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**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That based on a tabulation of all the protests received prior to the close of the Public Hearing, ~~XX~~ protests were received, which does not constitute a majority of affected water utility customers.

2. In accordance with Article XIID § 6 of the California Constitution and as set forth in the accompanying Agenda Report, incorporated herein by this reference, the City Council finds:

A. The revenue derived from the Water Rates and Recycled Water Rates, as stated in the attached Rate Schedules, do not exceed the funds required to cover the operating and capital improvement project expenses for the provision of water;

B. The revenue derived from the Water Rates and Recycled Water Rates will not be used for any purpose other than the provision of water and recycled water and related capital improvement projects;

C. The Water Rates and Recycled Water Rates will not exceed the proportional cost of the service attributable to each parcel;

D. The Water Rates and Recycled Water Rates are only charged for water service and programs that are currently available;

E. The Water Rates and Recycled Water Rates are not charged for general governmental services.

3. That Water Rate Schedule 2024-01 and Recycled Water Rate Schedule 2024-02, attached to this Resolution and incorporated by this reference, are hereby adopted and shall be effective per Section 4 of this Resolution.

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4. All previously adopted water rate schedules, to the extent that they are inconsistent with those contained herein, are superseded by those charges provided for hereinabove as follows: Commencing with the billing cycle for water service provided on or after July 1, 2024, and each subsequent billing cycle thereafter as set forth in Water Rate Schedule 2024-01 and Recycled Water Rate 2024-02.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28TH DAY OF MAY, 2024, BY THE FOLLOWING VOTE:

|            |             |      |
|------------|-------------|------|
| AYES:      | COUNCILORS: |      |
| NOES:      | COUNCILORS: | None |
| ABSENT:    | COUNCILORS: | None |
| ABSTAINED: | COUNCILORS: | None |

ATTEST: \_\_\_\_\_

Attachments incorporated by reference:  
1. Water Rate Schedule 2024-01  
2. Recycled Water Rate Schedule 2024-02

**CITY OF SANTA CLARA**  
**WATER RATE SCHEDULE 2024-01**  
 (Replaces Water Rate Schedule 2023-01)  
**ADOPTED BY RESOLUTION NO. 24-XXX, May 28, 2024**

**RATE W-1. METERED POTABLE WATER SERVICE**

Applicable to all metered potable water service provided by the City of Santa Clara

(1) **MONTHLY QUANTITY CHARGES:**

All potable water use, \$8.90 per Hundred Cubic Feet (HCF). The Monthly Quantity Charge recovers the annual cost to operate the Water Utility, including groundwater charges, treated water purchased from others for resale, and energy for pumping.

(2) **MINIMUM MONTHLY METER RATES:**

The minimum monthly meter rate includes a consumption allowance to recover fixed cost elements and accommodate water considered essential for health and safety.

| <u>WATER METER SIZE</u> | <u>MINIMUM CHARGE(\$)</u> |
|-------------------------|---------------------------|
| 5/8 x 3/4 inch          | 23.42                     |
| 1 inch                  | 36.67                     |
| 1 ½ inch                | 69.78                     |
| 2inch                   | 109.51                    |
| 3inch                   | 215.46                    |
| 4inch                   | 334.66                    |
| 6inch                   | 665.77                    |
| 8 inch                  | 1,063.09                  |
| 10inch                  | 1,592.86                  |

**RATE W-2. FIRE SERVICE**

(1) **MONTHLY FIRE SERVICE CHARGE:**

| <u>SERVICE SIZE</u> | <u>MONTHLY CHARGE(\$)</u> |
|---------------------|---------------------------|
| 2 inch              | 3.15                      |
| 4 inch              | 17.84                     |
| 6 inch              | 52.48                     |
| 8 inch              | 111.78                    |
| 10 inch             | 201.00                    |
| 12 inch             | 324.85                    |

(2) SPECIAL CONDITIONS:

Fire Service charges are imposed for maintenance and operation of the metering components, including capital replacement. No charge will be made for water used to extinguish fires or for testing. Any other usage of water through leakage or for general use shall result in the imposition of regular water service rates (RATE W-1) for a minimum of three (3) billing cycles or longer, until such time as illicit use of water through the fire service connection has ceased.

Continued water usage through a fire service is a violation of City's Rules and Regulations and may cause interruption of service.

**RATE W-3. CROSS CONNECTION CONTROLS**

Applicability - Applicable to all service connections where a public cross connection control device has been required by the City or County Health Department.

(1) MONTHLY CHARGE:

| <u>SIZE OF SERVICE</u> | <u>MONTHLY CHARGE (\$)</u> |
|------------------------|----------------------------|
| 1 inch                 | 8.60                       |
| 2 inch                 | 13.76                      |
| 3 inch                 | 27.53                      |
| 4 inch                 | 43.01                      |
| 6inch                  | 86.02                      |
| 8 inch                 | 137.63                     |
| 10 inch                | 206.44                     |

**CITY OF SANTA CLARA**  
**RECYCLED WATER RATE SCHEDULE 2024-02**  
 (Replaces Recycled Water Rate Schedule 2023-02)  
**ADOPTED BY RESOLUTION NO. 24-XXX, May 28, 2024**

**RATE RW-1. METERED RECYCLED WATER SERVICE**

Applicable to all metered service connections served by the City of Santa Clara Recycled Water System, except for those specified recycled water uses described in Rate RW-2.

(1) MONTHLY QUANTITY CHARGES:

All use: **\$5.06** per Hundred Cubic Feet (HCF).

(2) MINIMUM MONTHLY METER RATES:

The minimum monthly meter rate includes a consumption allowance to recover fixed cost elements and accommodate water considered essential for health and safety.

| <u>WATER METER SIZE</u> | <u>MINIMUM CHARGE(\$)</u> |
|-------------------------|---------------------------|
| 5/8 x 3/4 inch          | 17.44                     |
| 1 inch                  | 28.43                     |
| 1 ½ inch                | 55.91                     |
| 2inch                   | 88.88                     |
| 3inch                   | 176.80                    |
| 4inch                   | 275.71                    |
| 6inch                   | 550.46                    |
| 8 inch                  | 880.16                    |
| 10inch                  | 1,319.76                  |
| 12inch                  | 1,855.53                  |

**RATE W-2. FIRE SERVICES**

Applicable to separate fire services (automatic sprinklers, private fire hydrants, etc.) required by the City of Santa Clara or insurance underwriters.

(1) MONTHLY FIRE SERVICE CHARGE:

| <u>SERVICE SIZE</u> | <u>MONTHLY CHARGE(\$)</u> |
|---------------------|---------------------------|
| 2 inch              | 3.15                      |
| 4 inch              | 17.84                     |
| 6 inch              | 52.48                     |
| 8 inch              | 111.78                    |
| 10 inch             | 201.00                    |
| 12 inch             | 324.85                    |



(2) SPECIAL CONDITIONS:

Fire Service charges are imposed for maintenance and operation of the metering components, including capital replacement. No charge will be made for water used to extinguish fires or for testing. Any other usage of water through leakage or for general use shall result in the imposition of regular water service rates (RATE W-1) for a minimum of three (3) billing cycles or longer, until such time as illicit use of water through the fire service connection has ceased.

Continued water usage through a fire service is a violation of City's Rules and Regulations and may cause interruption of service.

**RATE W-3. CROSS CONNECTION CONTROLS**

Applicable to all service connections where a public cross connection control device has been required by the City or County Health Department.

(1) MONTHLY CHARGE:

| <u>SIZE OF SERVICE</u> | <u>MONTHLY CHARGE (\$)</u> |
|------------------------|----------------------------|
| 1 inch                 | 8.60                       |
| 2 inch                 | 13.76                      |
| 3 inch                 | 27.53                      |
| 4 inch                 | 43.01                      |
| 6inch                  | 86.02                      |
| 8 inch                 | 137.63                     |
| 10 inch                | 206.44                     |

**RESOLUTION NO. 24-XXX**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,  
ESTABLISHING MONTHLY SEWER SERVICE CHARGES AND  
SEWER RATE SCHEDULE S-24**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, Section 13.10.090, entitled "Rates – Users Within the City", of "The Code of the City of Santa Clara" ("SCCC"), provides that the City Council may by resolution establish and amend the monthly sewer service charges;

**WHEREAS**, Article XIII D of the California Constitution requires that utility customers be given a minimum of 45 days notice of any proposed rate increase;

**WHEREAS**, notice of a Public Hearing to be held on May 28, 2024 was mailed to utility customers on April 8, 2024, which is more than 45 days prior to the Public Hearing;

**WHEREAS**, the notice was sent to 27,773 utility customers;

**WHEREAS**, the Council has reviewed the Sewer Rate Schedule S-24 (attached) and incorporated into this Resolution by reference;

**WHEREAS**, the amounts shown on the Schedule S-24 reflect the actual costs to provide utility services; and,

**WHEREAS**, on May 28, 2024, the Council conducted a Public Hearing, at which it reviewed all protests regarding the proposed rate increases.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That based on a tabulation of all protests received prior to the close of the Public Hearing **XX** protests were received, which do not constitute a majority of affected utility customers.

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2. That, in accordance with Article XIID § 6 of the California Constitution and as set forth in the accompanying Agenda Report, incorporated herein by this reference:

A. The revenues derived from the Sewer Rates, as stated in the attached Schedule S-24, do not exceed the funds required to cover the operating and capital improvement project expenses for the provision of sewer services;

B. The revenues derived from the Sewer Rates will not be used for any purpose other than the provision of sewer services and related capital improvement projects;

C. The Sewer Rates will not exceed the proportional cost of the service attributable to each customer class;

D. The Sewer Rates are only charged for sewer programs that are currently available;

E. The Sewer Rates are not charged for general governmental services.

3. That Sewer Rate Schedule S-24, attached to this Resolution and incorporated by this reference, are hereby adopted and shall be effective per Section 4 of this Resolution.

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4. All previously adopted sewer rate schedules, to the extent that they are inconsistent with those contained herein, are superseded by those charges provided for hereinabove as follows: Commencing with the billing cycle for sewer service provided on or after July 1, 2024, and each subsequent billing cycle thereafter as set forth in Sewer Rate Schedule S-24.

5. 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 28<sup>TH</sup> DAY OF MAY, 2024, BY THE FOLLOWING VOTE:

AYES:                    COUNCILORS:

NOES:                    COUNCILORS:

ABSENT:                COUNCILORS:

ABSTAINED:           COUNCILORS:

ATTEST: - \_\_\_\_\_

Attachments incorporated by reference:  
1. Sewer Rate Schedule S-24

SCHEDULE S-24  
MONTHLY SEWER SERVICE CHARGES  
EFFECTIVE JULY 1, 2024  
(REPLACES SCHEDULE S-23)

A. Residential Users:

Single Family dwelling units including accessory dwellings: \$52.37 per month

Multiple dwelling unit structures including, but not limited to, duplexes, retirement homes, mobile home courts, college dormitories, and apartments: \$49.31 per month per dwelling unit

B. Miscellaneous Users:

For all users other than residential users and major commercial and industrial users, the monthly service charges per month shall be as follows, depending on the appropriate North American Industrial Classification System (NAICS) class:

| NAICS CLASS  | DESCRIPTION                    | SERVICE CHARGE \$/HCF <sup>1</sup> | SEWAGE VOLUME AS A PERCENTAGE OF METERED WATER USE |
|--|--------------------------------|------------------------------------|--|
| 111998, 311XXX, 3121XX                                       | Food and Kindred Products      | \$15.74                            | 70%  |
| 322:XXX  | Paper                          | \$4.44                             | 80%  |
| 211112, 325:XXX  | Industrial Chemical            | \$11.58                            | 90%  |
| 332812, 332813   | Metal Plating                  | \$5.05                             | 90%  |
| 332XXX, 333:XXX, 3341 IX, (excepting 332812, 332813, 333314) | Machinery Manufacturers        | \$9.33                             | 90%  |
| 334XXX, 335XXX, 33632X (excepting 33451X, 33411X, 334611)    | Electric & Electronic Equip.   | \$6.18                             | 90%  |
| 4411XX, 4412XX, 4471XX                                       | Auto Dealers & Service Station | \$7.80                             | 90%  |
| 722110, 722410   | Restaurants                    | \$16.01                            | 90%  |
| 721XXX   | Motels & Hotels                | \$8.09                             | 90%  |
| 561740, 811490, 8123XX                                       | Laundries                      | \$6.80                             | 90%  |

<sup>1</sup>References the volume of sewage discharged. HCF=one hundred cubic feet=748 gallons

|   |                                |        |     |
|---|--------------------------------|--------|-----|
| 8111XX, 812930  | Repair Shops & Car Washes      | \$5.90 | 90% |
| 713:XXX   | Amusement Parks                | \$6.93 | 90% |
| 621:XXX, 622XXX,<br>623:XXX   | Hospitals & Convalescent Homes | \$7.60 | 90% |
| 611:XXX   | Schools & Colleges             | \$7.31 | 24% |
| 8131XX  | Churches                       | \$6.12 | 35% |
| Commercial/Industrial/Miscellaneous not otherwise specified in this schedule of charges |                                | \$6.61 | 90% |

In no case shall the minimum charge be less than \$52.37 per month.

C. Major Commercial and Industrial Users are those having (1) a sewage discharge of at least 25,000 gallons per day, or (2) having a daily discharge which is intermittent or irregular in strength, amount or nature. Major Commercial and Industrial Users shall have monthly sewer charges, which may consist of any or all of the following charges:

Annual Capital Cost Recovery:

Volume: \$1,306,599 per million gallons per day of flow capacity  
 BOD<sup>2</sup>: \$124,262 per 1,000 pounds per day of BOD removal capacity  
 SS<sup>3</sup>: \$114,880 per 1,000 pounds per day of SS removal capacity  
 NH<sub>3</sub><sup>4</sup>: \$538,093 per 1,000 pounds per day of NH<sub>3</sub> removal capacity

Operating and Maintenance Cost Recovery:

Volume: \$3,671.11 per million gal  
 BOD: \$561.28 per 1,000 pounds  
 SS: \$651.81 per 1,000 pounds  
 NH<sub>3</sub>: \$4,980 per 1,000 pounds

<sup>2</sup> Biochemical Oxygen Demand: This is the quantity of oxygen utilized in the biological oxidation of organic matter under standard laboratory conditions for 5 days at a temperature of 20 degrees Centigrade. The determination of the charge for BOD is as follows: BOD in parts per million x 8.34 x volume in million gallons = pounds of BOD.

<sup>3</sup> Suspended Solids – That which either floats on the surface or is in suspension in sewage and which is determined by laboratory filtering. The determination of the charge for Suspended Solids is as follows: SS in parts per million x 8.34 x volume in million gallons = pounds of Suspended Solids

<sup>4</sup> Ammonia is that form of nitrogen in the tri-negative oxidation state which is chemically definable as the compound NH<sub>3</sub>. The determination of the charge for Ammonia is as follows: NH<sub>3</sub> in parts per million x 8.34 x volume in million gallons = pounds of Ammonia.

The volume of sewage shall be based upon a fixed percentage of water usage noted, or based on standard methods acceptable to the Director.

The City may require the installation of special metering and sampling devices whenever the Director deems that such devices are required to determine the volume and/or strength of the sewage discharge. A customer may also request the installation of a special metering device. Whenever special metering devices are installed, they shall be devices approved by the Director, and the cost of furnishing and installing said devices shall be borne by the customer.

DRAFT

# WATER AND SEWER RATE STUDY

BLACK & VEATCH PROJECT NO. 410918

PREPARED FOR



City of Santa Clara, CA

28 MAY 2024





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## Legal Notice

Black & Veatch has prepared this report for the City, and it is based on information not within the control of Black & Veatch. The City has not requested Black & Veatch to make an independent analysis, verify the information provided to us, or render an independent judgment of the validity of the information provided by others. Because of this, Black & Veatch cannot, and does not, guarantee the accuracy thereof to the extent that such information, data, or opinions were based on information provided by others.

In conducting these analyses and in forming an opinion of the projection of future financial operations summarized in this report, Black & Veatch made certain assumptions on the conditions, events, and circumstances that may occur in the future. The methodology utilized in performing the analyses follows generally accepted practices for such projections. Such assumptions and methodologies are reasonable and appropriate for the purpose for which they are used. While we believe the assumptions are reasonable and the projection methodology valid, actual results may differ materially from those projected, as influenced by the conditions, events, and circumstances that occur. Such factors may include the utilities' ability to execute the capital improvement program as scheduled and within budget, regional climate and weather conditions affecting the demand for water, discharge of sewage flow, and adverse legislative, regulatory, or legal decisions (including environmental laws and regulations) affecting the utilities' ability to manage the system and meet water quality requirements.

## 1.0 Executive Summary

The City of Santa Clara (City) commissioned Black & Veatch Management Consulting, LLC (Black & Veatch) to perform an update of the Water and Sewer Rate Study (Study) for its Water, Recycled Water, and Sewer Utilities. The Study included the development of a three-year financial plan, a cost-of-service analysis, and the design of rates. In addition, a ten-year financial plan was developed to provide the City with a high-level view of each utility's operations. The specific objectives of the Study were to:

- Evaluate the adequacy of projected revenues under existing rates to meet projected revenue requirements.
- Develop sound financial plans for the utilities covering a three and ten-year period for both ongoing operations and planned capital improvements.
- Allocate the utilities' projected revenue requirements to the various customer classes in accordance with their respective service requirements.
- Develop a suitable rate schedule that produces revenues adequate to meet financial needs while recognizing customer costs of service and regulatory considerations such as Proposition 218 and applicable judicial decisions.

### 1.1 Water System

The Water Utility provides water services to over 26,415 residential, commercial, irrigation, schools, and agricultural customers. The City obtains potable water from three primary sources: local groundwater, surface water from the Santa Clara Valley Water District (Valley Water) and imported water from the Hetch Hetchy watershed through the San Francisco Public Utilities Commission (SFPUC). The water system infrastructure consists of 335 miles of transmission and distribution mains, 7 storage tanks totaling 28.8 million gallons of storage capacity, 21 wells, and 3 booster pump stations. The City has a target of obtaining 68% of the 5.8 billion gallons of water that flows to its customers each year from the City's wells.

### 1.2 Recycled Water System

The Recycled Water Utility, operating since 1989, provides recycled water services to over 361 commercial, irrigation, and industrial customers. The City obtains recycled water from South Bay Water Recycling. The recycled water comes from the San Jose-Santa Clara Regional Wastewater Facility (RWF), an advanced tertiary treatment facility located in San Jose, of which the City is a co-owner. The recycled water infrastructure within the City limit boundary mainly consists of 34 miles of recycled water pipelines. A portion of the recycled water from the RWF supplies the Valley Water's Silicon Valley Advanced Water Purification Center for advanced treatment (microfiltration, reverse osmosis, and advanced oxidation) to create a mix of high-quality recycled water that is blended back into the recycled water system.

### 1.3 Sewer System

The Sewer Utility provides sewer services to over 25,547 residential, commercial, industrial, and municipal customers. Services include the construction and maintenance of the sewer system and installing sewer lateral clean-outs at the property line. Sanitary sewer flows in the City are collected and transported through more than 288 miles of sewer main by way of six pumping stations to the San Jose-Santa Clara Regional Wastewater Facility. The RWF is a regional treatment facility that receives waste from seven agencies in Santa Clara County and can treat 167 million gallons a day (MGD) of liquid waste.

## 1.4 Financial Plan

The City operates the utilities as individual self-supporting enterprises. Therefore, the utilities must develop financial plans that provide sufficient revenues to meet all operation and maintenance expenses, water purchases, wastewater treatment, debt service requirements, capital improvements funded from current revenues, and other expenditures.

The Study develops financial plans that project operating revenue, expenses, and capital financing costs for the utilities over a ten-year planning period beginning July 1, 2024 and ending June 30, 2034. This report will focus on a three-year planning period for discussion, beginning July 1, 2024 and ending June 30, 2027. The full ten-year financial plans can be found in Appendix A.

The financial plans project future rate revenues under existing rates, operations, and maintenance (O&M) expenses, principal and interest expense on debt, transfers, and capital improvement program (CIP) requirements. In the projection of rate revenues, annual projections of customers and water consumption rely upon the City's historical data and estimates of growth. In addition, the Water Utility's forecast incorporates efforts to continue to encourage conservation measures of maintaining a 15% voluntary water use reduction and the City's Water Shortage Contingency Plan.

### 1.4.1 Water Utility

The Water Utility's revenue requirements are summarized below:

- **Operation and Maintenance Expenses:** The Water Utility anticipates O&M expenses to increase from \$59.0M in FY 2025 to \$68.5M in FY 2027. Water production and water purchases account for most of this increase, representing an average of 65% of O&M expenses.
- **Debt Service:** The Water Utility has no existing debt service, and no future debt is planned.
- **Capital Improvements:** The Water Utility plans to execute an average of \$6.1M per year in capital projects from FY 2025 to FY 2027.
- **Reserves:** The Water Utility plans to continue funding the operating fund reserve, construction fund reserve, rate stabilization fund reserve, and pension stabilization reserve.
  - The operating fund reserve is to help cover fluctuations in day-to-day expenses. The scheduled target is 90 days of O&M expenses.
  - The infrastructure fund reserve is to help maintain enough funds on hand to help mitigate unexpected capital costs. The scheduled target is 12-months of the following year's CIP.
  - The rate stabilization fund reserve is to help mitigate future increases in drought-stricken years. The scheduled target is 10% of the prior year's rate revenues.
  - The pension fund reserve is to pay for the unfunded pension liabilities and the increase in the City's share of pension costs due to factors such as higher CalPERS rates and negotiated pay increases.

The Water Utility is proposing revenue adjustments to allow it to operate the enterprise on a revenue-neutral basis and meet reserve targets by FY 2027, as shown in Figure 1-1 and Figure 1-2.

Figure 1-1 Water Operating Cashflow

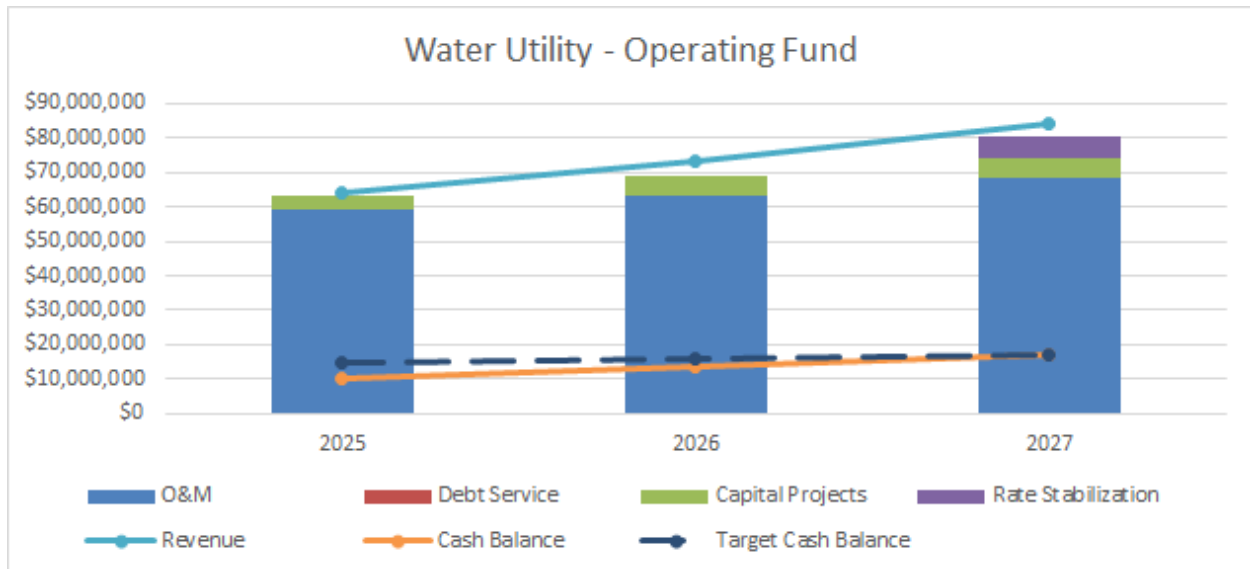
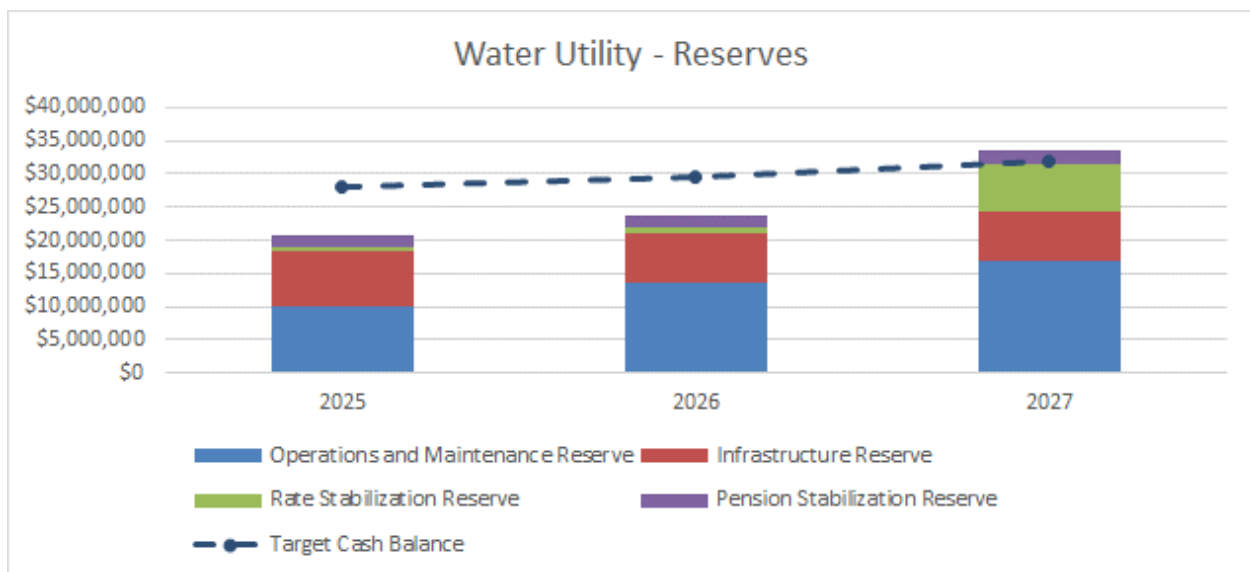


Figure 1-2 Water Reserves



### 1.4.2 Recycle Water Utility

The Recycled Water Utility's revenue requirements are summarized below:

- Operation and Maintenance Expenses: The Recycled Water Utility anticipates O&M expenses to increase from \$9.2M in FY 2025 to \$11.7M in FY 2027. Recycled water purchase costs constitute most of the increase, averaging 84% of O&M expenses.
- Debt Service: The Recycled Water Utility has no existing debt service, and no future debt is planned.
- Capital Improvements: The Recycled Water Utility plans to execute an average of \$174.6k per year in capital projects from FY 2025 to FY 2027.



- Reserves: The City plans to continue funding the operating fund reserve, construction fund reserve, rate stabilization fund reserve, and pension stabilization reserve.
  - The operating fund reserve is to help cover fluctuations in day-to-day expenses. The scheduled target is 90 days of O&M expenses.
  - The infrastructure fund reserve is to help maintain enough funds on hand to help mitigate unexpected capital costs. The scheduled target is 12-months of the following year’s CIP.
  - The rate stabilization fund reserve is to help mitigate future increases in drought-stricken years. The scheduled target is 10% of the prior year’s rate revenues.
  - The pension fund reserve is to pay for the unfunded pension liabilities and the increase in the City’s share of pension costs due to factors such as higher CalPERS rates and negotiated pay increases.

The Recycled Water Utility is proposing revenue adjustments and drawing down on reserves to allow it to operate the enterprise on a revenue-neutral basis and meet reserve targets, as shown in Figure 1-3 and Figure 1-4.

**Figure 1-3 Recycled Water Operating Cash Flow**

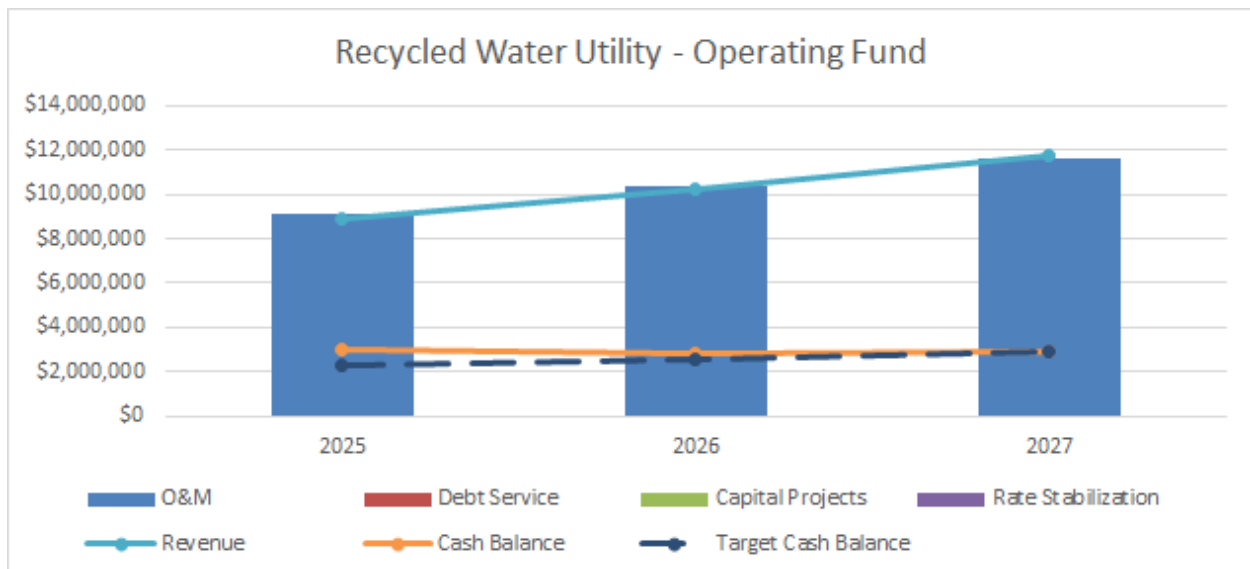
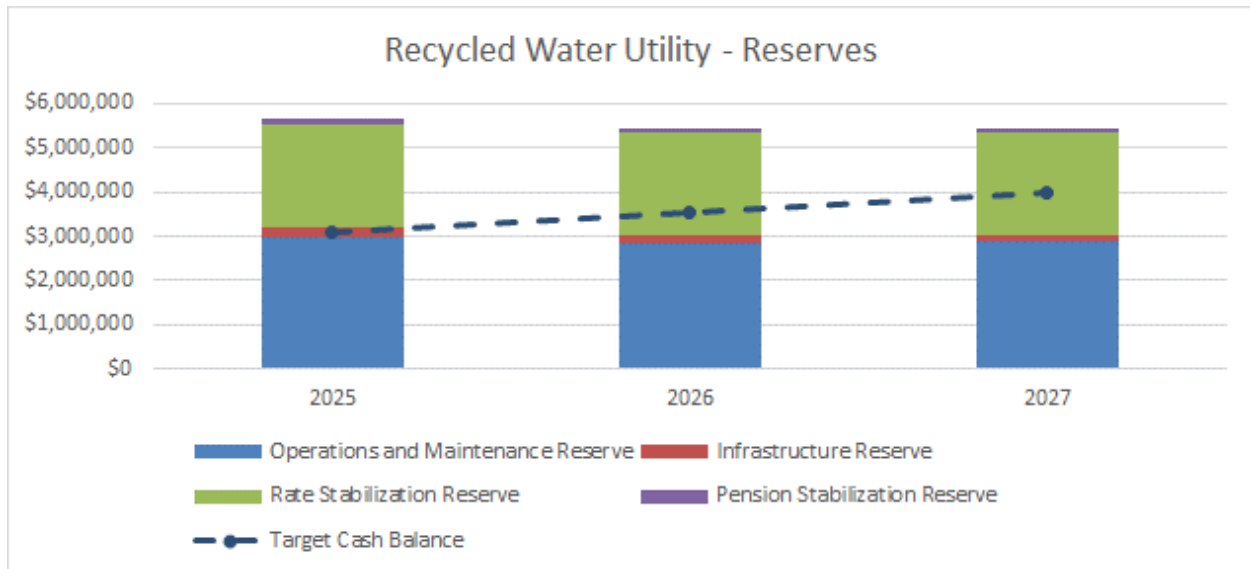


Figure 1-4 Recycled Water Reserves



### 1.4.3 Sewer Utility

The Sewer Utility’s revenue requirements are summarized below:

- Operation and Maintenance Expenses: The Sewer Utility anticipates O&M expenses to increase from \$30.1M in FY 2025 to \$32.3M in FY 2027. RWF-related costs represent an average of 69% of O&M expenses.
- Debt Service: The Sewer Utility anticipates an average debt service payment of \$3.6M per year from FY 2025 to FY 2027 associated with existing and proposed debt issuances. The City anticipates a new revenue bond for \$18.0M to be issued in 2027.
- Capital Improvements: The Sewer Utility plans to execute an average of \$13.9M per year in capital projects from FY 2025 to FY 2027.
- Reserves: The Sewer Utility plans to continue funding the operating fund reserve, construction fund reserve, rate stabilization fund reserve, and pension stabilization reserve.
  - The operating fund reserve is to help cover fluctuations in day-to-day expenses. The scheduled target is 90 days of O&M expenses.
  - The infrastructure fund reserve is to help maintain enough funds on hand to help mitigate unexpected capital costs. The scheduled target is 12-months of the following year’s City CIP and 6-months of the following year’s SJSCRWF CIP.
  - The rate stabilization fund reserve is to help mitigate future increases in drought-stricken years. The scheduled target is 10% of the prior year’s rate revenues.
  - The pension fund reserve is to pay for the unfunded pension liabilities and the increase in the City’s share of pension costs due to factors such as higher CalPERS rates and negotiated pay increases.

The Sewer Utility is proposing revenue adjustments and drawing down on reserves to allow it to operate the enterprise on a revenue-neutral basis and meet reserve targets, as shown in Figure 1-5 and Figure 1-6.

Figure 1-5 Sewer Operating Cash Flow

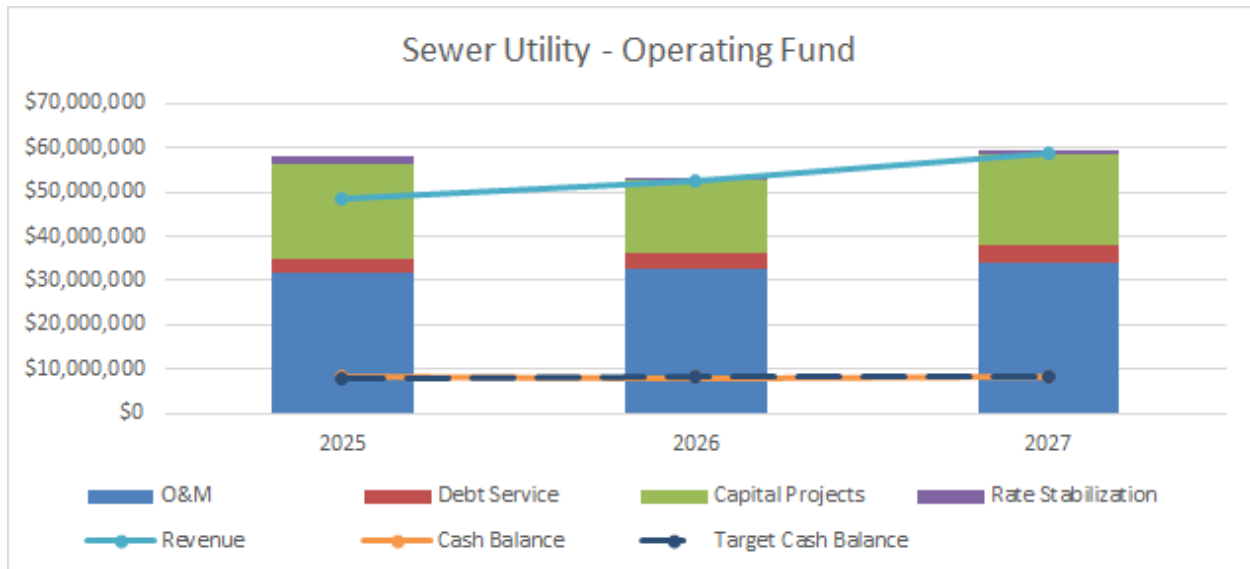
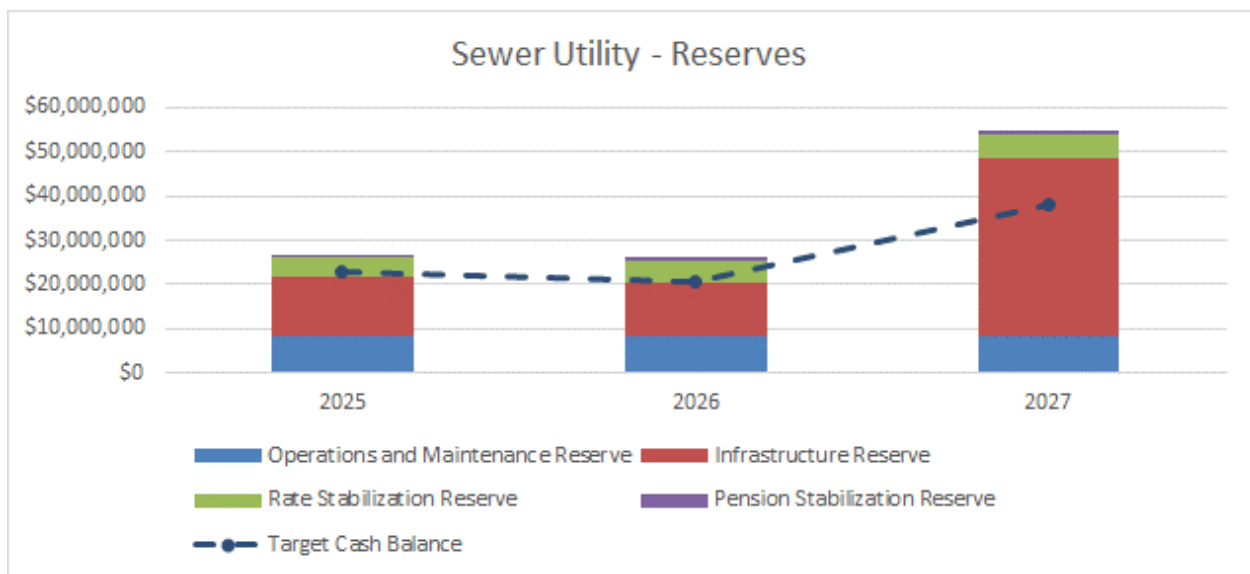


Figure 1-6 Sewer Reserves



### 1.5 Adequacy of Existing Rates to Meet Costs of Service

Based on the financial plans, Black & Veatch recommends the revenue adjustments shown in Table 1-1 to meet the projected revenue requirements for FY 2025 to FY 2027. These do not represent proposed rate increases to customers. Rather, these represent the overall revenue increases the utilities need to meet their overall obligations and maintain current service levels.

**Table 1-1 Proposed Revenue Adjustments**

| Fiscal Year | Effective Month | Water Utility | Recycled Water | Sewer Utility |
|-------------|-----------------|---------------|----------------|---------------|
| FY 2025     | July            | 15.30%        | 15.00%         | 12.15%        |
| FY 2026     | July            | 15.30%        | 15.00%         | 12.15%        |
| FY 2027     | July            | 15.30%        | 15.00%         | 12.15%        |

## 1.6 Cost of Service Analysis

The cost-of-service analysis allocates the costs to the various customer classes of service in a fair and equitable manner. The methodologies used in the Study are specific to the respective utility operations. The following is a brief description of the methodologies.

The water and recycled water cost-of-service allocation performed in this Study uses the Base-Extra Capacity Method endorsed by the American Water Works Association (AWWA) Principles of Water Rates, Fees, and Charges, M1 (M1) manual. Under cost-of-service principles, costs are allocated to the different customer classes in proportion to their water system use. As recommended by AWWA, Black & Veatch distributed functional costs to the base (average load conditions), extra capacity (peaking), and customer-related parameters. This allocation methodology produces unit costs for allocation to individual customer classes based on the projected customer service requirements.

The sewer cost-of-service allocation performed in this Study follows the Functional Cost Allocation Method endorsed by the Water Environment Federation (WEF) Financing and Charges for Wastewater Systems, Manual of Practice 27 (MoP27) manual. Like the methodology used for water systems, the sewer cost of service analysis allocates costs to the different customer classes in proportion to their use of the sewer system. As recommended by WEF, Black & Veatch distributed functional costs to volume, strength, and customer-related parameters. This allocation methodology produces unit costs for allocation to individual customer classes based on the projected customer service requirements.

## 1.7 Rate Design

The Right to Vote on Taxes Act, also known as Proposition 218, was passed by California voters in 1996 and added Article XIII C and Article XIII D to the California Constitution. These articles provide the regulatory framework that guides and informs the rate-setting process. The cost-of-service analyses provide the cost nexus for the proposed rate structures. The regulatory framework helps ensure cost recovery is proportionate to the cost of providing the service.

### 1.7.1 Water and Recycled Water Utilities

To minimize impacts, retain simplicity, and ensure the reasonable stability of revenue, Black & Veatch recommends the following rate structure.

- **Monthly Service Charge:** The Water and Recycled Water Utilities should retain the minimum monthly service charge based on meter sizes for all customer classes. The minimum monthly service charge includes a minimum consumption allowance and recovers portions of fixed cost elements such as operating and capital components, meter maintenance and services, meter reading, issuing bills, and maintenance and capacity costs associated with public fire protection. The minimum consumption allowance accommodates water considered essential for health and safety.
- **Consumption Charge:** The Water and Recycled Water Utilities should maintain the uniform consumption charge for all customer classes. The consumption charge recovers costs associated with the base and extra capacity demands.

- Fire Service Charge: The Water Utility should continue to utilize the fire service charge based on meter size for private fire service connections. The fire service charge will recover maintenance and capacity costs associated with private fire protection costs.
- Cross Connection Charge: The Water Utility should continue to utilize the cross-connection charge based on meter size for backflow connections. The cross-connection charge will recover the costs of maintenance associated with backflow devices.

Table 1-2 summarizes the recommended three-year rate schedules for all Water Utility components.

Table 1-2 Proposed Three-Year Water Rate Schedule

| Customer Class                                | Proposed |          |          |
|---|----------|----------|----------|
|   | FY 2025  | FY 2026  | FY 2027  |
| <b>Minimum Monthly Meter Rates (\$/Month)</b> | \$/month | \$/month | \$/month |
| 5/8" x 3/4"                                   | 23.42    | 26.89    | 30.90    |
| 1"  | 36.67    | 42.24    | 48.66    |
| 1-1/2"  | 69.78    | 80.61    | 93.06    |
| 2"  | 109.51   | 126.65   | 146.33   |
| 3"  | 215.46   | 249.43   | 288.41   |
| 4"  | 334.66   | 387.56   | 448.24   |
| 6"  | 665.77   | 771.26   | 892.22   |
| 8"  | 1,063.09 | 1,231.69 | 1,425.00 |
| 10"   | 1,592.86 | 1,845.60 | 2,135.37 |
| 12"   | 2,238.52 | 2,593.80 | 3,001.13 |
| <b>Fire Service (\$/Month)</b>                | \$/month | \$/month | \$/month |
| 2"  | 3.15     | 3.55     | 3.95     |
| 4"  | 17.84    | 20.09    | 22.39    |
| 6"  | 52.48    | 59.09    | 65.86    |
| 8"  | 111.78   | 125.86   | 140.28   |
| 10"   | 201.00   | 226.31   | 252.23   |
| 12"   | 324.85   | 365.76   | 407.66   |
| <b>Cross Connection (\$/Month)</b>            | \$/month | \$/month | \$/month |
| 1"  | 8.60     | 9.45     | 10.42    |
| 2"  | 13.76    | 15.11    | 16.68    |
| 3"  | 27.53    | 30.23    | 33.36    |
| 4"  | 43.01    | 47.23    | 52.12    |
| 6"  | 86.02    | 94.46    | 104.25   |
| 8"  | 137.63   | 151.14   | 166.79   |
| 10"   | 206.44   | 226.71   | 250.19   |
| <b>Consumption Charges (\$/HCF)</b>           |          |          |          |
| General Customer                              | 8.90     | 10.27    | 11.87    |

Table 1-3 summarizes the recommended three-year rate schedules for all Recycled Water Utility components.

**Table 1-3 Proposed Three-Year Recycled Water Rate Schedule**

| Customer Class                                | Proposed |          |          |
|---|----------|----------|----------|
|   | FY 2025  | FY 2026  | FY 2027  |
| <b>Minimum Monthly Meter Rates (\$/Month)</b> | \$/month | \$/month | \$/month |
| 5/8" x 3/4"                                   | 17.44    | 20.06    | 23.11    |
| 1"  | 28.43    | 32.77    | 37.83    |
| 1-1/2"  | 55.91    | 64.57    | 74.63    |
| 2"  | 88.88    | 102.72   | 118.79   |
| 3"  | 176.80   | 204.47   | 236.55   |
| 4"  | 275.71   | 318.93   | 369.04   |
| 6"  | 550.46   | 636.89   | 737.05   |
| 8"  | 880.16   | 1,018.44 | 1,178.66 |
| 10"   | 1,319.76 | 1,527.17 | 1,767.47 |
| 12"   | 1,855.53 | 2,147.18 | 2,485.09 |
| <b>Consumption Charges (\$/HCF)</b>           |          |          |          |
| General Customers                             | 5.06     | 5.82     | 6.69     |

### 1.7.2 Sewer Utility

To minimize impacts, retain simplicity, and ensure the reasonable stability of revenue, Black & Veatch recommends the following rate structure.

- **Monthly Service Charge:** The Sewer Utility should retain the monthly service charge based on equivalent dwelling units (EDUs) for all residential customer classes. In addition, the monthly service charge serves as the base amount, or minimum, for all non-residential customer classes.
- **Consumption Charge:** The Sewer Utility should retain its uniform consumption charges for each non-residential customer class. The recommended rate structure should be based on customer class.
- **Major Commercial and Industrial Users:** The Sewer Utility should retain the major commercial and industrial user charge for customers with high discharge quantities and/or high strength loadings.

Table 1-4 summarizes the recommended three-year rate schedules for all Sewer Utility components.

Table 1-4 Proposed Three-Year Sewer Rate Schedules

| Line No. | Customer Class                                   | Proposed  |           |           |
|----------|--|-----------|-----------|-----------|
|          |  | FY 2025   | FY 2026   | FY 2027   |
|          | <b>Monthly Service Charge (\$/EDU)</b>           | \$/month  | \$/month  | \$/month  |
| 1        | Single Family                                    | 52.37     | 59.79     | 66.30     |
| 2        | Multi-Family                                     | 49.31     | 56.09     | 62.30     |
|          | <b>Minimum Commercial Bill Charge (\$/Month)</b> | \$/month  | \$/month  | \$/month  |
| 3        | All Customers                                    | 52.37     | 59.79     | 66.30     |
|          | <b>Commodity Charge (\$/HCF)</b>                 | \$/HCF    | \$/HCF    | \$/HCF    |
| 1        | Amusement Parks                                  | 6.93      | 7.46      | 8.59      |
| 2        | Auto Dealers & Service Station                   | 7.80      | 8.70      | 9.81      |
| 3        | Churches   | 6.12      | 6.54      | 7.56      |
| 4        | Com/Ind/Misc                                     | 6.61      | 7.11      | 8.19      |
| 5        | Electric & Electronic Equip.                     | 6.18      | 6.48      | 7.59      |
| 6        | Food and Kindred Products                        | 15.74     | 18.89     | 20.38     |
| 7        | Hospitals & Convalescent Homes                   | 7.60      | 8.35      | 9.50      |
| 8        | Industrial Chemical                              | 11.58     | 13.53     | 14.83     |
| 9        | Laundries  | 6.80      | 7.32      | 8.43      |
| 10       | Machinery Manufacturers                          | 9.33      | 10.73     | 11.88     |
| 11       | Metal Plating                                    | 5.05      | 5.12      | 6.12      |
| 12       | Motels & Hotels                                  | 8.09      | 8.96      | 10.14     |
| 13       | Paper  | 4.44      | 6.67      | 6.67      |
| 14       | Repair Shops & Car Washes                        | 5.90      | 6.47      | 7.37      |
| 15       | Restaurants                                      | 16.01     | 19.27     | 20.75     |
| 16       | Schools & Colleges                               | 7.31      | 8.05      | 9.16      |
|          | <b>Major Commercial and Industrial Users</b>     |           |           |           |
|          | Operating and Maintenance Cost Recovery          |           |           |           |
| 1        | Volume (\$/MG)                                   | 3,671.11  | 4,020.89  | 4,192.10  |
| 2        | BOD (\$/1,000 lbs)                               | 561.28    | 773.87    | 807.45    |
| 3        | SS (\$/1,000 lbs)                                | 651.81    | 898.69    | 937.67    |
| 4        | NH3 (\$/1,000 lbs)                               | 4,980.00  | 6,866.22  | 7,164.09  |
|          | Annual Capital Cost Recovery                     |           |           |           |
| 5        | Volume (\$/MGD)                                  | 1,306,599 | 1,212,316 | 1,673,838 |
| 6        | BOD (\$/1,000 lbs/day)                           | 124,262   | 144,032   | 144,561   |
| 7        | SS (\$/1,000 lbs/day)                            | 114,880   | 131,162   | 131,597   |
| 8        | NH3 (\$/1,000 lbs/day)                           | 538,093   | 585,442   | 586,786   |



## Water and Recycled Water Utilities

### 2.0 Revenue and Revenue Requirements

To meet the costs associated with providing water services to its customers, the Water and Recycled Water Utilities derive revenue from a variety of sources, including water user charges (rates), developer contributions, solar water heating, interest earned from the investment of available funds, engineering fees, and other miscellaneous revenues. Both utilities are constantly looking for other sources of revenue, such as grants, to fund infrastructure investments. Black & Veatch has projected the level of future revenue generated in the Study through an analysis of historical and future system growth in terms of the number of bills and water consumption. This section also projects the expenses, or revenue requirements, necessary to operate and maintain the system, invest in capital improvements, make debt service payments, and cover other water and recycled water systems expenses.

#### 2.1 Customer and Water Consumption

##### 2.1.1 Customer Classes

The Water Utility’s customer base includes both residential and non-residential accounts. The City has three distinct customer classes: General Customer, Fire Service, and Cross Connection.

The Recycled Water Utility’s customers are mainly non-residential. The City has two distinct customer classes: General Customer and Industrial Process. The City is working on transitioning Industrial Process to General Customer.

##### 2.1.2 Minimum Bills

The City provides potable water services to 26,804 customers and recycled water services to 272 customers. All customers connected to the water and recycled water systems do so through metered connections. The City bills customers based on water consumption, but several bills do not meet the consumption allowance identified by meter size. Therefore, the City refers to these bills as minimum monthly service bills. Since the City bills customers based on minimum bills generated, the analysis included a review of historical bill patterns for customers and anticipated growth within the City. The projected total number of bills is expected to remain constant each year for the Water Utility and increase by an average of 1.0% for the Recycled Water Utility.

Table 2-1 summarizes the projected number of minimum bills for the Water and Recycled Water Utilities.

**Table 2-1 Minimum Bills**

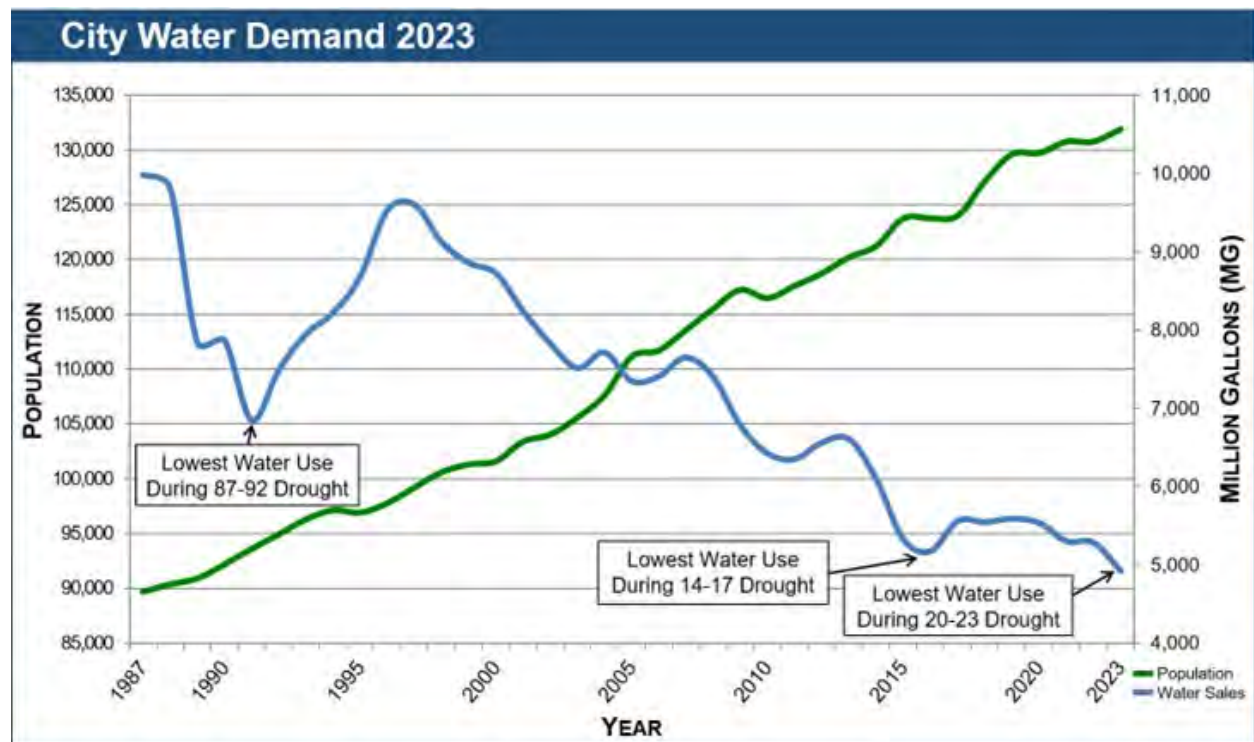
| Line No.                      | Description       | Fiscal Year Ending June 30, |                    |                    |
|-------------------------------|-------------------|-----------------------------|--------------------|--------------------|
|                               |                   | FY 2025<br>(Bills)          | FY 2026<br>(Bills) | FY 2027<br>(Bills) |
| <b>Water Utility</b>          |                   |                             |                    |                    |
| 1                             | General Customers | 54,607                      | 54,607             | 54,607             |
| 2                             | Total             | 54,607                      | 54,607             | 54,607             |
| <b>Recycled Water Utility</b> |                   |                             |                    |                    |
| 3                             | General Customers | 904                         | 913                | 922                |
| 4                             | Total             | 904                         | 913                | 922                |

### 2.1.3 Water Consumption

Table 2-2 shows the projected water and recycled water consumption for the Study period. In determining the projected water and recycled water consumption, Black & Veatch analyzed historical water consumption patterns in conjunction with future water conservation requirements set by the City’s Water Shortage Contingency Plan. In 2017, the State of California formally lifted the water restrictions as it declared the drought over. Unfortunately, in 2022 after another three year of dry weather, Governor Newsom called for local water suppliers to move to Level 2 of their Water Shortage Contingency Plans to drive water conservation. The City then moved to Level 2 in conjunction with Valley Water. In July 2023, after increased rainfall, the City rescinded Level 2 and have returned to normal. Despite this, the City and Valley Water work together to maintain a 15% voluntary water use reduction.

Figure 2-1 below represents the population growth and a decline in water consumption. Many factors have contributed to the City’s steady decline in consumption despite the increase in population. The City’s primary conservation goals can be found in the Water Shortage Contingency Plan, and Santa Clara’s Council codified the continuing goal to conserve in July of 2017. The City offers a rain barrel rebate program and works with the Valley Water on other outreach and rebate programs for water conservation. Expanding the use of recycled water to existing and new customers has also been important for the City in supplementing the use of potable water. Overall, customers have done well to increase efficiency in the use of water resources.

Figure 2-1 Water Sales



Recognizing that the City’s water conservation goals, the City anticipates flat consumption for the Water Utility and 1.0% per year for the Recycled Water Utility over the Study period. The City currently bills water consumption in hundred cubic feet (HCF) and only charges for consumption more than the allowance.

**Table 2-2 Billed Water Consumption**

| Line No.                      | Description       | Fiscal Year Ending June 30, |                  |                  |
|-------------------------------|-------------------|-----------------------------|------------------|------------------|
|                               |                   | FY 2025<br>(HCF)            | FY 2026<br>(HCF) | FY 2027<br>(HCF) |
| <b>Water Utility</b>          |                   |                             |                  |                  |
| 1                             | General Customers | 6,300,168                   | 6,300,168        | 6,300,168        |
| 2                             | Total Usage (HCF) | 6,300,168                   | 6,300,168        | 6,300,168        |
| 3                             | Total Usage (AF)  | 14,463                      | 14,463           | 14,463           |
| <b>Recycled Water Utility</b> |                   |                             |                  |                  |
| 4                             | General Customers | 1,566,335                   | 1,581,998        | 1,597,818        |
| 5                             | Total             | 1,566,335                   | 1,581,998        | 1,597,818        |
| 6                             | Total Usage (AF)  | 3,596                       | 3,632            | 3,668            |

## 2.2 Revenue under Existing Rates

Water and recycled water user rates serve as the primary source of revenue for the Water and Recycled Water Utilities. Therefore, the level of future rate revenue is important in developing a long-range financial plan. To determine rate revenue, the projected system growth in terms of the number of minimum bills and billed water consumption is multiplied by the applicable rates to determine water and recycled water rate revenue.

Table 2-3 shows the current Water and Recycled Water Utilities rate schedules. It is important to note that the minimum monthly service charge applies to customers that do not exceed the consumption allowance within the meter sizes. Therefore, the minimum monthly service charge serves as a baseline cost that the City needs to recover.

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Table 2-3 Existing Water and Recycled Water Rates

| Description                        | All City<br>FY 2024 | Description                   | All City<br>FY 2024 |
|------------------------------------|---------------------|-------------------------------|---------------------|
| <b>Minimum Monthly Meter Rates</b> |                     | <b>Consumption Charges</b>    |                     |
|                                    | (\$/mo)             |                               |                     |
| 5/8" x 3/4"                        | 21.48               | <b>Water Utility</b>          | (\$/HCF)            |
| 1"                                 | 33.66               | General Customers             | 7.97                |
| 1-1/2"                             | 64.10               |                               |                     |
| 2"                                 | 100.64              | <b>Recycled Water Utility</b> | (\$/HCF)            |
| 3"                                 | 198.07              | General Customers             | 4.53                |
| 4"                                 | 307.67              |                               |                     |
| 6"                                 | 612.14              |                               |                     |
| 8"                                 | 977.49              |                               |                     |
| 10"                                | 1,464.63            |                               |                     |
| 12"                                | 2,058.33            |                               |                     |
| <b>Fire Service Charges</b>        |                     |                               |                     |
|                                    | (\$/mo)             |                               |                     |
| 2"                                 | 2.95                |                               |                     |
| 4"                                 | 16.71               |                               |                     |
| 6"                                 | 49.15               |                               |                     |
| 8"                                 | 104.68              |                               |                     |
| 10"                                | 188.23              |                               |                     |
| 12"                                | 304.21              |                               |                     |
| <b>Cross Connection Charges</b>    |                     |                               |                     |
|                                    | (\$/mo)             |                               |                     |
| 1"                                 | 6.73                |                               |                     |
| 2"                                 | 10.78               |                               |                     |
| 3"                                 | 21.55               |                               |                     |
| 4"                                 | 33.67               |                               |                     |
| 6"                                 | 67.34               |                               |                     |
| 8"                                 | 107.75              |                               |                     |
| 10"                                | 161.63              |                               |                     |

Table 2-4 summarizes projected water and recycled water rate revenue under existing rates. As shown, the revenue generated is projected to increase for recycled water over the Study period in conjunction with the increase in the number of minimum bills and water consumption. The projected Water Utility revenues will remain constant at \$53.0M from FY 2025 to FY 2027, while the projected Recycled Water Utility revenue increases from \$7.0M in FY 2025 to \$7.1M in FY 2027, reflecting an overall increase of 2.0% over the three-year Study period.

**Table 2-4 Projected Revenue under Existing Rates**

| Line No.                      | Description       | Fiscal Year Ending June 30, |               |               |
|-------------------------------|-------------------|-----------------------------|---------------|---------------|
|                               |                   | FY 2025                     | FY 2026       | FY 2027       |
|                               |                   | (\$)                        | (\$)          | (\$)          |
| <b>Water Utility</b>          |                   |                             |               |               |
| 1                             | General Customers | 50,893,400                  | 50,893,400    | 50,893,400    |
| 2                             | Fire Service      | 1,000,700                   | 1,001,600     | 1,002,600     |
| 3                             | Cross Connection  | 1,058,200                   | 1,059,300     | 1,060,500     |
| 4                             | Total             | \$ 52,952,300               | \$ 52,954,300 | \$ 52,956,500 |
| <b>Recycled Water Utility</b> |                   |                             |               |               |
| 5                             | General Customers | 6,990,300                   | 7,060,200     | 7,130,700     |
| 6                             | Total             | \$ 6,990,300                | \$ 7,060,200  | \$ 7,130,700  |

### 2.3 Other Revenue

Other sources of operating revenue include charges for hydrant flow tests, meter tests, engineering plan review, water installation and relocation, interest on investments, and other miscellaneous revenues. In total, other operating revenues represent 3.5% of the Water Utility’s total revenue and 8.4% of the Recycled Water Utility’s total revenue. The City anticipates that these revenues will remain relatively constant for the duration of the Study period.

### 2.4 Operating and Maintenance Expenses

Table 2-5 summarizes the Water and Recycled Water Utilities’ projected O&M expense for the Study period. These expenses include costs related to salaries and benefits, materials and supplies, contract and professional services, water supply costs, indirect and direct costs, and routine capital outlay. The City anticipates that all O&M expenditures, excluding water supply costs, will increase on average by 3.9% annually for the Water Utility and an average of 6.1% annually for the Recycled Water Utility from the FY 2025.

Water supply costs include water produced and water purchased costs. In the case of the Water Utility, the City has three main sources of water: 1) groundwater pumped from City-owned wells; 2) surface water from the Valley Water and 3) imported water from the Hetch Hetchy watershed from SFPUC. The City operates 26 groundwater wells that tap the underground aquifers, which make up a targeted amount of approximately 60% of the City's water supply. The City imports the remainder of its water supplies from the two wholesale water agencies. Based on estimates of groundwater and wholesale rates provided by Valley Water and SFPUC, the City expects water production and purchased water costs to increase by at least 21.0% over the Study period.

Recycled water is a reliable drought-proof source of water that helps offset the use of potable sources, especially in drought-prone years in California. In the case of the Recycled Water Utility, the City has one main source of recycled water: The San Jose-Santa Clara Regional Wastewater Facility. This facility produces highly treated water delivered through separate pipelines. Based on estimates from the facility, the City expects purchased recycled water costs to increase by at least 30.2% over the Study period.

Table 2-5 O&M Expenses

| Line No.                      | Description                 | Fiscal Year Ending June 30, |               |               |
|-------------------------------|-----------------------------|-----------------------------|---------------|---------------|
|                               |                             | FY 2025                     | FY 2026       | FY 2027       |
|                               |                             | (\$)                        | (\$)          | (\$)          |
| <b>Water Utility</b>          |                             |                             |               |               |
| 1                             | Salaries                    | 6,119,600                   | 6,425,700     | 6,727,700     |
| 2                             | Benefits                    | 3,519,800                   | 3,674,100     | 3,674,100     |
| 3                             | Materials/Services/Supplies | 3,768,300                   | 3,843,600     | 3,920,400     |
| 4                             | Interfund Services          | 8,206,000                   | 8,661,460     | 9,030,180     |
| 5                             | Resource & Production       | 37,359,400                  | 40,910,200    | 45,187,500    |
| 6                             | Capital Outlay              | 0                           | 0             | 0             |
| 7                             | Total                       | \$ 58,973,100               | \$ 63,515,060 | \$ 68,539,880 |
| <b>Recycled Water Utility</b> |                             |                             |               |               |
| 8                             | Salaries                    | 614,000                     | 643,400       | 674,900       |
| 9                             | Benefits                    | 353,300                     | 368,300       | 368,300       |
| 10                            | Materials/Services/Supplies | 39,100                      | 39,900        | 40,700        |
| 11                            | Interfund Services          | 522,300                     | 577,050       | 637,380       |
| 12                            | Resource & Production       | 7,636,200                   | 8,716,200     | 9,942,800     |
| 13                            | Capital Outlay              | 0                           | 0             | 0             |
| 14                            | Total                       | \$ 9,164,900                | \$ 10,344,850 | \$ 11,664,080 |

As shown in Table 2-5, the Water Utility’s O&M expenses increase from \$59.0M in FY 2025 to \$68.5M in FY 2027, while the Recycled Water Utility’s O&M expenses increase from \$9.2M in FY 2025 to \$11.7M in FY 2027.

## 2.5 Capital Improvement Program

The Water and Recycled Water Utilities develop five-year Capital Improvement Plans annually to identify water and recycled water system needs, including assessments, inspections, maintenance, and rehabilitation and replacement requirements.

Table 2-6 summarizes the Water and Recycled Water Utilities CIP for FY 2025 through FY 2027. The Water Utility is projecting \$18.4M in CIP, and the Recycled Water Utility is projecting \$523.8k in CIP over the Study period, which includes both capital and replacement projects. The City has posted the CIP Budget on its website for complete details associated with each CIP project.

**Table 2-6 Capital Improvement Projects**

| Line No.                      | Description                          | Fiscal Year Ending June 30, |                     |                     |
|-------------------------------|--------------------------------------|-----------------------------|---------------------|---------------------|
|                               |                                      | FY 2025                     | FY 2026             | FY 2027             |
|                               |                                      | (\$)                        | (\$)                | (\$)                |
| <b>Water Utility</b>          |                                      |                             |                     |                     |
| 1                             | 7005 Buildings and Grounds           | 1,088,100                   | 2,416,100           | 55,600              |
|                               | 7054 Distribution System             |                             |                     |                     |
| 2                             | Replacement/Restoration              | 3,419,600                   | 3,221,400           | 3,338,200           |
| 3                             | 7057 Asset Management Program        | 0                           | 0                   | 0                   |
| 4                             | 7058 SCADA Improvements              | 253,900                     | 349,000             | 389,500             |
| 5                             | 7059 New and Replacement Wells       | 1,243,500                   | 644,300             | 2,002,900           |
| 6                             | <b>Total</b>                         | <b>\$ 6,005,100</b>         | <b>\$ 6,630,800</b> | <b>\$ 5,786,200</b> |
| <b>Recycled Water Utility</b> |                                      |                             |                     |                     |
|                               | 7505 Recycled Water System Mains and |                             |                     |                     |
| 7                             | Services                             | 414,500                     | 53,700              | 55,600              |
| 8                             | <b>Total</b>                         | <b>\$ 414,500</b>           | <b>\$ 53,700</b>    | <b>\$ 55,600</b>    |

### 2.5.1 Capital Improvement Financing Plan

The City funds annual expenditures for the CIP from a combination of available funds on hand, connection charges, developer contributions, and revenues derived from user rates. As shown in Table 2-7 and Table 2-8, the average annual CIP expenditure is \$6.1M for the Water Utility and \$174.6k for the Recycled Water Utility. There is no planned annual CIP contribution from the Water Utility Operating Fund and Recycled Water Utility over the Study period. The CIP will be funded through funds on hand.

**Table 2-7 Construction Fund Financing Plan (Water)**

| Line No.               | Description                                 | Fiscal Year Ending June 30, |                     |                     |
|------------------------|---|-----------------------------|---------------------|---------------------|
|                        |   | FY 2025                     | FY 2026             | FY 2027             |
|                        |   | (\$)                        | (\$)                | (\$)                |
| <b>Source of Funds</b> |   |                             |                     |                     |
| 1                      | Intra Transfer In - Debt Financing          | 0                           | 0                   | 0                   |
| 2                      | Intra Transfer In - Customer Service Charge | 4,550,000                   | 5,750,000           | 5,750,000           |
| 3                      | Connection Charges                          | 0                           | 0                   | 0                   |
| 4                      | Developer Contributions                     | 0                           | 0                   | 0                   |
| 5                      | <b>Total Sources</b>                        | <b>\$ 4,550,000</b>         | <b>\$ 5,750,000</b> | <b>\$ 5,750,000</b> |
| <b>Use of Funds</b>    |   |                             |                     |                     |
| 6                      | Improvements Projects                       | 6,005,100                   | 6,630,800           | 5,786,200           |
| 7                      | <b>Total Uses</b>                           | <b>\$ 6,005,100</b>         | <b>\$ 6,630,800</b> | <b>\$ 5,786,200</b> |
| 8                      | Net Annual Cash Balance                     | (1,455,100)                 | (880,800)           | (36,200)            |
| 9                      | Beginning Unrestricted Fund Balance         | 8,258,818                   | 6,803,718           | 5,922,918           |
| 10                     | <b>Net Cumulative Fund Balance</b>          | <b>\$ 6,803,718</b>         | <b>\$ 5,922,918</b> | <b>\$ 5,886,718</b> |
| 11                     | Minimum Construction Reserves               | \$ 6,630,800                | \$ 5,786,200        | \$ 5,880,700        |

**Table 2-8 Construction Fund Financing Plan (Recycled Water)**

| Line No.               | Description                                 | Fiscal Year Ending June 30, |            |           |
|------------------------|---|-----------------------------|------------|-----------|
|                        |   | FY 2025                     | FY 2026    | FY 2027   |
|                        |   | (\$)                        | (\$)       | (\$)      |
| <b>Source of Funds</b> |   |                             |            |           |
| 1                      | Intra Transfer In - Debt Financing          | 0                           | 0          | 0         |
| 2                      | Intra Transfer In - Customer Service Charge | 0                           | 0          | 0         |
| 3                      | Connection Charges                          | 0                           | 0          | 0         |
| 4                      | Developer Contributions                     | 0                           | 0          | 0         |
| 5                      | <b>Total Sources</b>                        | \$ 0                        | \$ 0       | \$ 0      |
| <b>Use of Funds</b>    |   |                             |            |           |
| 6                      | Improvements Projects                       | 414,500                     | 53,700     | 55,600    |
| 7                      | <b>Total Uses</b>                           | \$ 414,500                  | \$ 53,700  | \$ 55,600 |
| 8                      | <b>Net Annual Cash Balance</b>              | (414,500)                   | (53,700)   | (55,600)  |
| 9                      | <b>Beginning Unrestricted Fund Balance</b>  | 587,400                     | 172,900    | 119,200   |
| 10                     | <b>Net Cumulative Fund Balance</b>          | \$ 172,900                  | \$ 119,200 | \$ 63,600 |
| 11                     | <b>Minimum Construction Reserves</b>        | \$ 53,700                   | \$ 55,600  | \$ 57,700 |

## 2.6 Transfers

The Water and Recycled Water Utilities will each conduct transfers from their respective Operating Funds and other funds over the Study period. Table 2-9, Lines 18 to 21 for the Water Utility and Table 2-10, Lines 13 to 15 for Recycled Water Utility summarize these associated amounts, respectively. The other funds consist of the Rate Stabilization Fund, Pension Stabilization Fund, and Construction Fund. See Section 2.7 for further explanation on Rate Stabilization and Pension Stabilization Funds. The Construction Fund transfers represent money to cover planned CIP project expenditures. These transfers do not represent direct operating expenses for either enterprise; therefore, Black & Veatch includes these costs as “below-the-line” cash flow items and does not include them as O&M expenses.

## 2.7 Reserves

A utility typically establishes reserves for several reasons, such as covering shortfalls in operating revenues, maintaining strong bond ratings, covering day-to-day operating costs, and easing the burden on ratepayers associated with large rate increases. Per the reserve level recommendations, the Water and Recycled Water Utilities will maintain the following four reserves:

- Operating Reserve represents working capital maintained by the Operating Fund to cover day-to-day expenses and maintain enough funds to cover accounts receivables if there are supplier issues, periods of lower-than-expected water sales, or unforeseen cost increases. The reserve will maintain a minimum balance of 90 days of operating expenses once fully funded.
- Construction Reserve represents funds used for unforeseen and unbudgeted capital costs. Once fully funded, this reserve will maintain a minimum balance of 12-months of the following year’s planned CIP.
- Rate Stabilization Reserve represents funds used to absorb revenue shortfall due to short-term decreases in water sales. This reserve stabilizes water and recycled water rate revenue and is an effort to avoid wide swings in rates charged to customers over time. The reserve will maintain a minimum balance of 10% of water and recycled water sales revenue when fully funded.



- Pension Stabilization Reserve represents funds used to pay for the unfunded pension liabilities and the increase in the City’s share of pension costs due to factors such as higher CalPERS rates and negotiated pay increases. The reserve target is \$3.0M for the Water Utility and \$150,000 for the Recycled Water Utility by FY 2030.

Appropriate reserve levels help the Water and Recycled Water Utilities with liquidity, provide operational flexibility, and demonstrate fiscal responsibility to the rating agencies, which allows the City to access lower-cost funds.

## 2.8 Projected Operating Results

The revenue requirements of the Water and Recycled Water Utilities consist of O&M expenses, debt service, capital expenditures, and reserve requirements.

To fully understand the current condition of the Water and Recycled Water Utilities, it is important to examine the cash flow projections under the status quo scenario. As shown in Figure 2-2 and Figure 2-3, the status quo conditions would project that both utilities would operate from an annual deficit position, thus requiring the use of reserves to keep operating. In this scenario, the Water and Recycled Water Utilities would not impose any revenue increases over the Study Period and continue to incur O&M expenses, pay for the execution of the planned CIP, and transfer to reserves.

Figure 2-2 Status Quo Operating Cash Flow (Water)

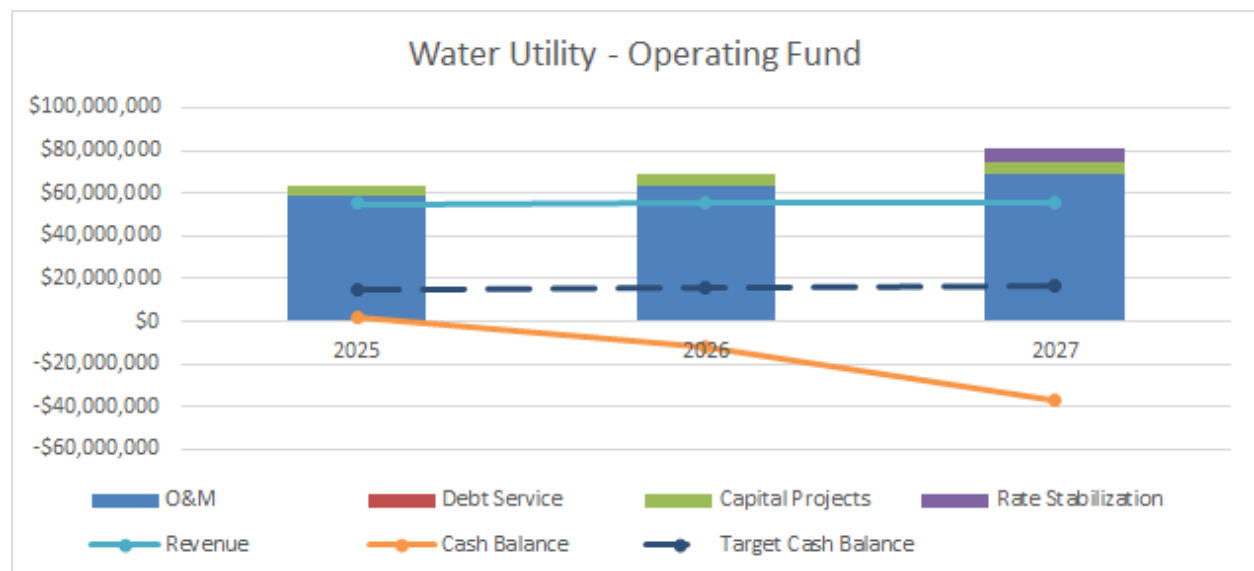
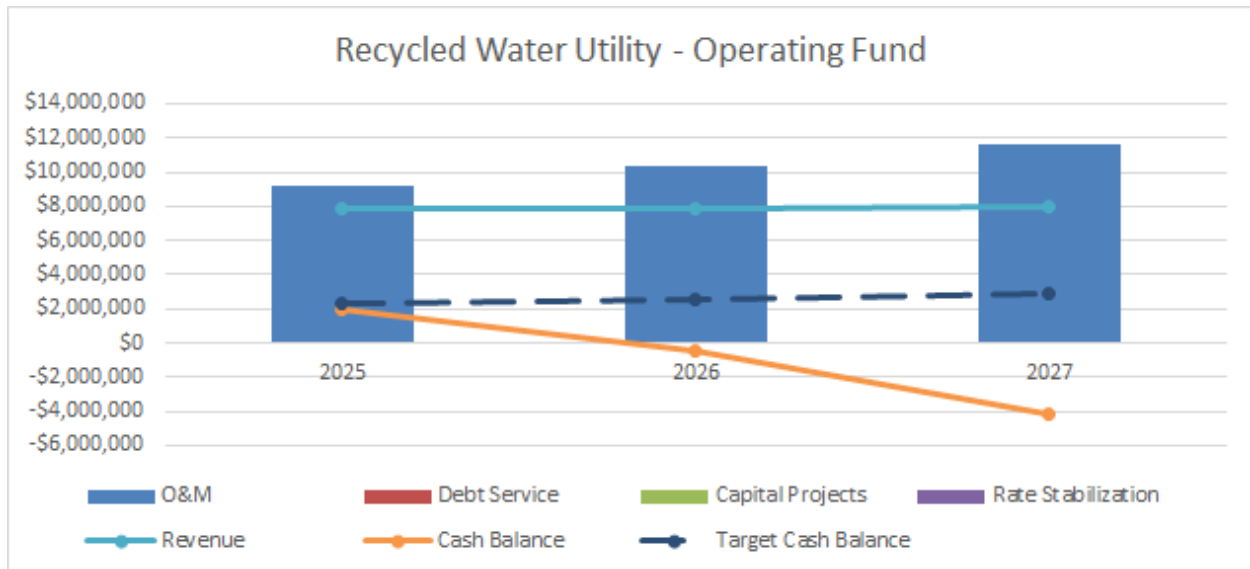


Figure 2-3 Status Quo Operating Cash Flow (Recycled Water)



The analyses performed for the Study indicate that the City should implement the proposed revenue increases shown in Table 2-9 and Table 2-10 if it wishes to keep the Water and Recycled Water Utilities in a balance financial condition. The revenue increases represent the overall total revenue adjustment needed to meet revenue requirements. The revenue adjustment does not represent adjustments to the individual rates but reflects the overall level of revenue needed to meet the Water and Recycled Water Utilities’ obligations.

The suggested revenue increases help the Water and Recycled Water Utilities meet the following goals:

- Meet budgeted operating obligations in the three FYs.
- Meet planned capital investments in the three FYs.
- Maintain an operating reserve of 90 days of operating expenses.
- Maintain construction reserve of 12-months of next year’s CIP.
- Continue transfers for the rate stabilization reserve to meet the goal of 10% of rate revenues.
- Continue transfers for the pension stabilization reserve to meet the FY 2030 goal.

Table 2-9 and Table 2-10 summarize proposed Operating Funds for the Study Period. The Operating Funds consist of 1) Revenue and 2) Revenue Requirements.

Revenue

- Line 1 is the revenue under existing rates.
- Lines 2 through 4 are the additional revenues generated from the required annual revenue increases. The additional revenue generated is a direct reflection of the number of months the increase is effective for, and therefore amount might calculate at less than that stated amount.
- Line 6 is the total revenue generated from user charges.
- Line 14 for the Water Utility and Line 9 for the Recycled Water Utility represent other operating revenues.

- Line 15 for the Water Utility and Line 10 for the Recycled Water Utility represent total revenues for the enterprises.

#### Revenue Requirements

- Line 17 for the Water Utility and Line 12 for the Recycled Water Utility represent O&M expenses. The O&M expenses include water production and water purchase.
- Line 22 for the Water Utility and Line 16 for the Recycled Water Utility represent transfers. The transfers include money to the Rate Stabilization Fund, Pension Fund, and Construction Fund.
- Line 23 for the Water Utility and Line 17 for the Recycled Water Utility represent total revenue requirements for the enterprises.

Line 26 for the Water Utility and Line 20 for the Recycled Water Utility represent the net cumulative cash balance within the Operating Funds. The net cumulative cash balance intends to match, to the extent possible, Line 27 for the Water Utility and Line 21 for the Recycled Water Utility. The cash balance reserve is required to ensure the Operation Fund can continue in the event of a supplier interruption, market price fluctuations of critical equipment or supplies, or an abrupt drop in account receivables. The reserve target minimum is 90 days of O&M expenses.

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Table 2-9 Operating Fund (Water)

| Line No.                    | Description                            | Fiscal Year Ending June 30, |                      |                      |
|-----------------------------|--|-----------------------------|----------------------|----------------------|
|                             |  | FY 2025                     | FY 2026              | FY 2027              |
|                             |  | (\$)                        | (\$)                 | (\$)                 |
| <b>Revenue</b>              |  |                             |                      |                      |
| Rate Revenue                |  |                             |                      |                      |
| 1                           | Revenue from Existing Rates            | 53,326,400                  | 53,328,400           | 53,330,600           |
|                             | Year Months Effective Rate Adj         |                             |                      |                      |
| 2                           | FY 2025 12 15.30%                      | 8,158,900                   | 8,159,200            | 8,159,600            |
| 3                           | FY 2026 12 15.30%                      |                             | 9,407,600            | 9,408,000            |
| 4                           | FY 2027 12 15.30%                      |                             |                      | 10,847,400           |
| 5                           | Increased Revenue Due to Adjustments   | 8,158,900                   | 17,566,800           | 28,415,000           |
| 6                           | Subtotal Rate Revenue                  | \$ 61,485,300               | \$ 70,895,200        | \$ 81,745,600        |
| Other Operating Revenue     |  |                             |                      |                      |
| 7                           | Solar System Maintenance               | 85,000                      | 85,000               | 85,000               |
| 8                           | Water System Maintenance               | 1,102,500                   | 1,102,500            | 1,102,500            |
| 9                           | Water Construction                     | 0                           | 0                    | 0                    |
| 10                          | Water System Operations                | 0                           | 0                    | 0                    |
| 11                          | Administration Design                  | 1,396,200                   | 1,403,200            | 1,410,300            |
| 12                          | Water Quality                          | 0                           | 0                    | 0                    |
| 13                          | Water Resources                        | 0                           | 0                    | 0                    |
| 14                          | Subtotal Other Operating Revenue       | \$ 2,583,700                | \$ 2,590,700         | \$ 2,597,800         |
| 15                          | <b>Total Revenue</b>                   | <b>\$ 64,069,000</b>        | <b>\$ 73,485,900</b> | <b>\$ 84,343,400</b> |
| <b>Revenue Requirements</b> |  |                             |                      |                      |
| Operating & Maintenance     |  |                             |                      |                      |
| 16                          | O&M Expenses                           | 58,973,100                  | 63,515,100           | 68,539,900           |
| 17                          | Subtotal O&M                           | \$ 58,973,100               | \$ 63,515,100        | \$ 68,539,900        |
| Transfers                   |  |                             |                      |                      |
| 18                          | Transfer to Other Funds                | 278,900                     | 278,900              | 278,900              |
| 19                          | Transfer to Rate Stabilization Fund    | 0                           | 0                    | 6,350,000            |
| 20                          | Transfer to Pension Stabilization Fund | 199,400                     | 199,400              | 199,400              |
| 21                          | Transfer to Water Construction Fund    | 4,550,000                   | 5,750,000            | 5,750,000            |
| 22                          | Total Transfers                        | \$ 5,028,300                | \$ 6,228,300         | \$ 12,578,300        |
| 23                          | <b>Total Revenue Requirements</b>      | <b>\$ 64,001,400</b>        | <b>\$ 69,743,400</b> | <b>\$ 81,118,200</b> |
| 24                          | Net Annual Cash Balance                | 67,600                      | 3,742,500            | 3,225,200            |
| 25                          | Beginning Fund Balance                 | 9,891,600                   | 9,959,200            | 13,701,700           |
| 26                          | Net Cumulative Fund Balance            | \$ 9,959,200                | \$ 13,701,700        | \$ 16,926,900        |
| 27                          | Minimum Operating Reserves (90 Days)   | \$ 14,541,300               | \$ 15,661,300        | \$ 16,900,200        |

Table 2-10 Operating Fund (Recycled Water)

| Line No.                    | Description                                | Fiscal Year Ending June 30, |                      |                      |
|-----------------------------|--|-----------------------------|----------------------|----------------------|
|                             |  | FY 2025                     | FY 2026              | FY 2027              |
|                             |  | (\$)                        | (\$)                 | (\$)                 |
| <b>Revenue</b>              |  |                             |                      |                      |
| Rate Revenue                |  |                             |                      |                      |
| 1                           | Revenue from Existing Rates                | 6,990,300                   | 7,060,200            | 7,130,700            |
|                             | Year Months Effective Rate Adj             |                             |                      |                      |
| 2                           | FY 2025 12 15.00%                          | 1,048,500                   | 1,059,000            | 1,069,600            |
| 3                           | FY 2026 12 15.00%                          |                             | 1,217,900            | 1,230,000            |
| 4                           | FY 2027 12 15.00%                          |                             |                      | 1,414,500            |
| 5                           | Increased Revenue Due to Adjustments       | 1,048,500                   | 2,276,900            | 3,714,100            |
| 6                           | Subtotal Rate Revenue                      | \$ 8,038,800                | \$ 9,337,100         | \$ 10,844,800        |
| Other Operating Revenue     |  |                             |                      |                      |
| 7                           | System Maintenance                         | 97,600                      | 99,600               | 101,600              |
| 8                           | South Bay Water Recycling System Maintenan | 728,400                     | 760,200              | 782,800              |
| 9                           | Subtotal Other Operating Revenue           | \$ 826,000                  | \$ 859,800           | \$ 884,400           |
| 10                          | <b>Total Revenue</b>                       | <b>\$ 8,864,800</b>         | <b>\$ 10,196,900</b> | <b>\$ 11,729,200</b> |
| <b>Revenue Requirements</b> |  |                             |                      |                      |
| Operating & Maintenance     |  |                             |                      |                      |
| 11                          | O&M Expenses                               | 9,164,900                   | 10,344,900           | 11,664,100           |
| 12                          | Subtotal O&M                               | 9,164,900                   | 10,344,900           | 11,664,100           |
| Transfers                   |  |                             |                      |                      |
| 13                          | Transfer to Rate Stabilization Fund        | 0                           | 0                    | 0                    |
| 14                          | Transfer to Pensiotn Stabilization Fund    | 0                           | 9,800                | 9,800                |
| 15                          | Transfer to Recycled Water Const Fund      | 0                           | 0                    | 0                    |
| 16                          | Total Transfers                            | 0                           | 9,800                | 9,800                |
| 17                          | <b>Total Revenue Requirements</b>          | <b>\$ 9,164,900</b>         | <b>\$ 10,354,700</b> | <b>\$ 11,673,900</b> |
| 18                          | Net Annual Cash Balance                    | (300,100)                   | (157,800)            | 55,300               |
| 19                          | Beginning Fund Balance                     | 3,295,300                   | 2,995,200            | 2,837,400            |
| 20                          | Net Cumulative Fund Balance                | \$ 2,995,200                | \$ 2,837,400         | \$ 2,892,700         |
| 21                          | Minimum Operating Reserves (90 Days)       | \$ 2,259,800                | \$ 2,550,800         | \$ 2,876,100         |

Figure 2-4 presents the proposed Water Utility Operating Fund, and Figure 2-5 presents the Recycled Water Utility Operating Fund.

Figure 2-4 Water Operating Cash Flow

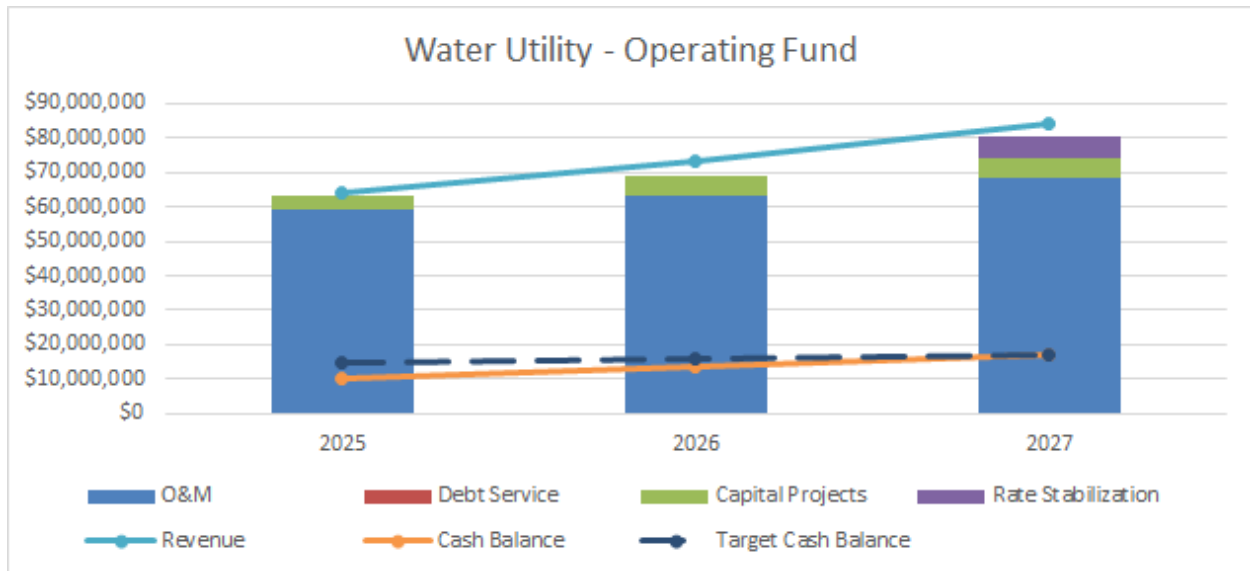
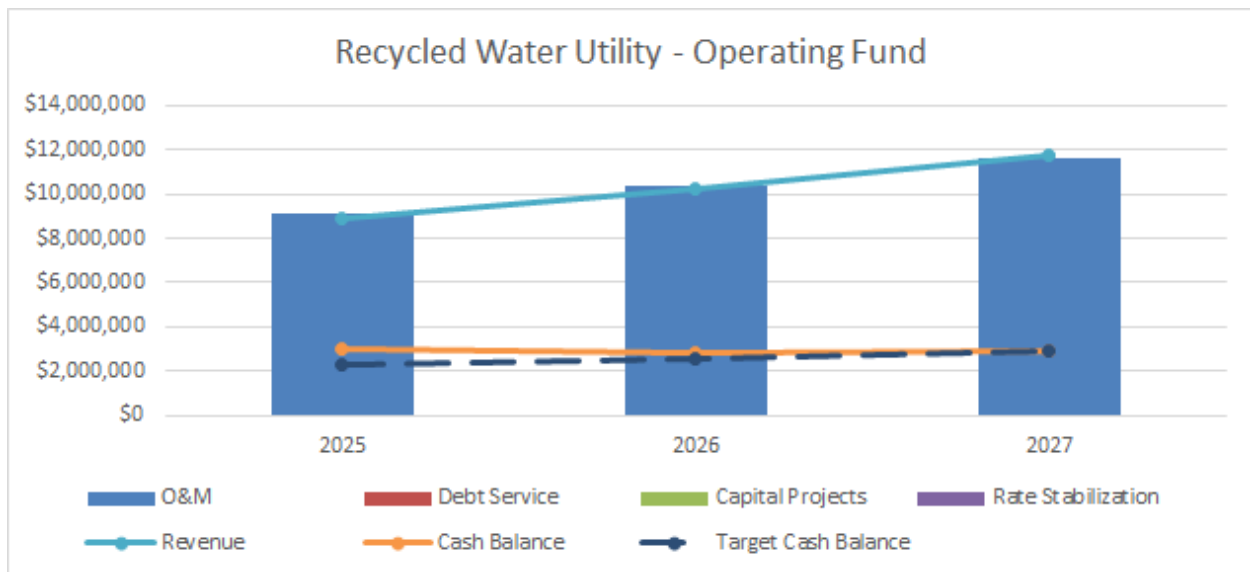


Figure 2-5 Recycled Water Operating Cash Flow



### 3.0 Cost of Service Analysis

The cost-of-service analysis requires recovery of the City’s needed revenues from water and recycled water service rates, allocated to customer classes according to the service rendered. An equitable rate structure allocates the capture of revenue requirements to customer classes based on the quantity of water consumed, peak flows, the number of customer connections, and other relevant factors.

In analyzing the Water and Recycled Water Utilities’ cost of service for allocation to its customer classes, Black & Veatch selected the annual revenue requirements for FY 2025 as the Test Year (TY) requirements to demonstrate the development of cost-of-service water and recycled water rates. Table 3-1 summarizes the total costs of service that need to be recovered from water user rates. Table 3-2 summarizes the total costs of service that need to be recovered from recycled water user rates. Both tables represent TY 2025.

**Table 3-1 Cost of Service Revenue from Rates (Water)**

| Line No.  | Description                                | Operating Expense | Capital Cost | Total Cost    |
|---|--|-------------------|--------------|---------------|
|   |  | (\$)              | (\$)         | (\$)          |
| <b>Revenue Requirements</b>                             |  |                   |              |               |
| 1   | O&M Expenses                               | 58,973,100        | 0            | 58,973,100    |
| 2   | Debt Service                               | 0                 | 0            | 0             |
| 3   | Transfers                                  | 478,300           | 4,550,000    | 5,028,300     |
| 4   | Subtotal                                   | 59,451,400        | 4,550,000    | 64,001,400    |
| <b>Less Revenue Requirements Met from Other Sources</b> |  |                   |              |               |
| 5   | Solar System Maintenance                   | 85,000            | 0            | 85,000        |
| 6   | Water System Maintenance                   | 1,102,500         | 0            | 1,102,500     |
| 7   | Water Construction                         | 0                 | 0            | 0             |
| 8   | Water System Operations                    | 0                 | 0            | 0             |
| 9   | Administration Design                      | 1,396,200         | 0            | 1,396,200     |
| 10  | Water Quality                              | 0                 | 0            | 0             |
| 11  | Water Resources                            | 0                 | 0            | 0             |
| 12  | Subtotal                                   | 2,583,700         | 0            | 2,583,700     |
| <b>Adjustments</b>                                      |  |                   |              |               |
| 13  | Adjustment for Annual Cash Balance         | (67,600)          | 0            | (67,600)      |
| 14  | Subtotal                                   | (67,600)          | 0            | (67,600)      |
| 15  | Cost of Service to be Recovered from Rates | \$ 56,935,300     | \$ 4,550,000 | \$ 61,485,300 |

**Table 3-2 Cost of Service Revenue from Rates (Recycled Water)**

| Line No.  | Description                                | Operating Expense (\$) | Capital Cost (\$) | Total Cost (\$) |
|---|--|------------------------|-------------------|-----------------|
| <b>Revenue Requirements</b>                             |  |                        |                   |                 |
| 1   | O&M Expenses                               | 9,164,900              | 0                 | 9,164,900       |
| 2   | Debt Service                               | 0                      | 0                 | 0               |
| 3   | Transfers                                  | 0                      | 0                 | 0               |
| 4   | Subtotal                                   | 9,164,900              | 0                 | 9,164,900       |
| <b>Less Revenue Requirements Met from Other Sources</b> |  |                        |                   |                 |
| 5   | System Maintenance                         | 97,600                 | 0                 | 97,600          |
| 6   | South Bay Water Recycling System Mainte    | 728,400                | 0                 | 728,400         |
| 7   | Subtotal                                   | 826,000                | 0                 | 826,000         |
| <b>Adjustments</b>                                      |  |                        |                   |                 |
| 8   | Adjustment for Annual Cash Balance         | 300,100                | 0                 | 300,100         |
| 9   | Subtotal                                   | 300,100                | 0                 | 300,100         |
| 10  | Cost of Service to be Recovered from Rates | \$ 8,038,800           | \$ 0              | \$ 8,038,800    |

The total revenue requirement is shown in Line 4, which corresponds with Table 2-9, Line 23, and Table 2-10, Line 17. As shown in Line 12 for the Water Utility and Line 7 for the Recycled Water Utility, we deduct revenues from other sources to derive the net revenue requirement recovered through rates, which correspond with Table 2-9, Line 14 and Table 2-10, Line 9, respectively.

Line 13 for the Water Utility and Line 8 for the Recycled Water Utility represent the net annual cash balance during the TY. If the enterprise is drawing down funds already in the Operating Fund, this number is positive. The number will be negative if the enterprise is replacing funds. In the case of the Water Utility, the \$67.6k figure indicates that the forecast is projecting a positive cash balance for the year. In the case of the Recycled Water Utility, the \$300.1k figure indicates that the forecast is projecting a negative cash balance for the year.

### 3.1 Functional Cost Components

The first step in conducting a cost-of-service analysis involves analyzing the cost of providing water and recycled water service by system function to properly allocate the costs to the various customer classes and, subsequently, design rates. As a basis for allocating costs of service among customer classes, the study separates costs into the following four basic functional cost components: (1) Base; (2) Extra Capacity; (3) Customer; and (4) Direct Assignment, described as follows:

- Base costs represent operating and capital costs of the system associated with service to customers to the extent required under constant or average annual load conditions without the elements necessary to meet water consumption variations or peak demands.
- Extra Capacity costs represent those operating and capital costs incurred in meeting peaking demands. Peaking demands represent water consumption more than the average rate of use.
- Customer costs are those expenditures that tend to vary in proportion to the number of customers connected to the system. These include meter reading, billing, collecting, accounting, maintenance, and capital costs associated with meters and services.



- Directly assigned costs are specifically identified as those incurred to serve specific customers. These costs include fire protection and cross-connections for the Water Utility. The Recycled Water Utility has no direct assigned categories.

### 3.2 Allocation to Cost Components

The next step of the cost-of-service process involves allocating each cost element to functional cost components based on the parameter or parameters having the most significant influence on the magnitude of that cost element. O&M expenses are allocated directly to appropriate cost components. A detailed allocation of related capital investment is used as a proxy for allocating capital and replacement costs. The separation of costs into functional components provides a means for distributing such costs to the various classes of customers based on their respective responsibilities for each type of service.

#### 3.2.1 System Base, Max Day, and Max Hour Allocations

The water and recycled water systems consist of various facilities designed and operated to fulfill a given function. For the systems to provide adequate service to its customers, it must be capable of meeting the annual volume requirements and the maximum demand rates placed on the system. Because not all customers and types of customers exert maximum demand at the same time, the capacities of the various facilities must meet the maximum coincidental demand of all classes of customers. Each water and recycled water service facility within the systems has an underlying average demand exerted by the customers for whom the base cost component applies. For those facilities designed solely to meet average day demand, 100% of the costs go to the base cost component. Extra capacity requirements associated with coincidental demands more than average use consist of maximum daily and maximum hourly demand subcomponents.

The first step in determining the allocation percentages for volume-related cost allocations is to assign system peaking factors. The base element is equal to the average daily demand (ADD) and assigned a value of 1.0. Based on the City's 2002 Water Master Plan, the Water Utility's maximum day (max day) demand is 1.5 times the ADD. The maximum hourly (max hour) demand is 1.8 times the ADD. Based on the City's 2014 Strategic and Master Planning Report, 2002 Water Master Plan, the Recycled Water Utility's max day demand is 1.7 times the ADD. The max hour demand is 2.38 times the ADD.

The costs associated with facilities required to meet maximum day demand are allocable to base and maximum day extra capacity as shown below for the Water Utility. Recycled Water Utility would use a similar allocation based on its respective max day and max hour ratios.

- Base =  $(1.0/1.5) \times 100 = 66.7\%$
- Max Day =  $(1.5 - 1.0)/1.5 \times 100 = 33.3\%$

These calculations indicate that the average or base use requires 66.7% of the capacity of facilities designed and generated to meet maximum day demand, and the remaining 33.3% meets maximum day extra capacity requirements.

The costs associated with facilities required to meet maximum hour demand are allocable to base, maximum day extra capacity and maximum hour extra capacity as follows:

- Base =  $(1.0/1.8) \times 100 = 55.6\%$
- Max Day =  $(1.5 - 1.0)/1.8 \times 100 = 27.7\%$
- Max Hour =  $(1.8 - 1.5)/1.8 \times 100 = 16.7\%$

### 3.2.2 Allocation of Operating and Maintenance Expenses

In allocating O&M expenses for TY 2025, costs are directly allocated to the cost components to the extent possible. The Water and Recycled Water Utilities book operating costs by functional categories. Therefore, Black & Veatch used the factors noted in Section 3.1 to allocate the operating expenses to the cost components. The study based the allocation of Administration and Transfer cost elements on the average of all other costs. The direct assignment represents fire protection and cross-connections for the Water Utility. Table 3-3 and Table 3-4 represent the allocation of O&M to the cost components. Next, revenues are subtracted from other sources as shown in Table 3-1, Lines 12 and 14 and Table 3-2, Lines 7 and 9. The analysis deducts any drawdown of available cash balances and normalizes the rate adjustments for a full year to determine the net O&M costs for each utility.

**Table 3-3 Allocation of O&M Expenditures (Water)**

| Line No.             | Description                      | Total Costs   | Common to All Customers |                |              |              | Fire Protection | Cross Connection |              |
|----------------------|----------------------------------|---------------|-------------------------|----------------|--------------|--------------|-----------------|------------------|--------------|
|                      |                                  |               | Base                    | Extra Capacity |              | Customer     |                 |                  |              |
|                      |                                  | (\$)          | (\$)                    | (\$)           | (\$)         | (\$)         | (\$)            | (\$)             |              |
| <b>Water Utility</b> |                                  |               |                         |                |              |              |                 |                  |              |
| Operating Expenses   |                                  |               |                         |                |              |              |                 |                  |              |
|                      | 1532 Solar System Maintenance    | 274,500       | 0                       | 0              | 0            | 274,500      | 0               | 0                | 0            |
| 1                    | 1422 Water System Maintenance    |               |                         |                |              |              |                 |                  |              |
| 2                    | Customer Service                 | 470,900       | 0                       | 0              | 0            | 0            | 470,900         | 0                | 0            |
| 3                    | Backflow Prevention              | 1,222,500     | 0                       | 0              | 0            | 0            | 0               | 0                | 1,222,500    |
| 4                    | All Other                        | 997,400       | 544,800                 | 276,400        | 166,200      | 0            | 0               | 10,000           | 0            |
|                      | 1423 Water Construction          | 9,938,100     | 2,150,900               | 1,091,400      | 656,400      | 0            | 0               | 39,400           | 0            |
| 5                    | 1424 Water System Operations     |               |                         |                |              |              |                 |                  |              |
| 6                    | Generation & Pumping             | 1,268,500     | 833,900                 | 421,900        | 0            | 0            | 0               | 12,700           | 0            |
| 7                    | Customer Billing & Meter Reading | 792,800       | 0                       | 0              | 0            | 0            | 792,800         | 0                | 0            |
| 8                    | Meters                           | 371,700       | 0                       | 0              | 0            | 371,700      | 0               | 0                | 0            |
|                      | Hydrants                         | 1,424,300     | 0                       | 0              | 0            | 0            | 0               | 1,424,300        | 0            |
| 9                    | All Other                        | 7,100,800     | 3,878,400               | 1,967,900      | 1,183,500    | 0            | 0               | 71,000           | 0            |
| 10                   | 1411 Administration Design       | 3,946,800     | 2,663,900               | 269,500        | 143,900      | 552,800      | 90,600          | 138,400          | 87,700       |
| 11                   | 1412 Water Quality               | 579,600       | 463,700                 | 0              | 0            | 110,100      | 0               | 5,800            | 0            |
| 12                   | 1413 Water Resources             |               |                         |                |              |              |                 |                  |              |
|                      | Water Purchase                   | 36,090,900    | 28,872,700              | 0              | 0            | 6,857,300    | 0               | 360,900          | 0            |
| 13                   | All Other                        | 494,300       | 395,500                 | 0              | 0            | 93,900       | 0               | 4,900            | 0            |
| 14                   | Transfers                        | 478,300       | 322,800                 | 32,700         | 17,400       | 67,000       | 11,000          | 16,800           | 10,600       |
| 15                   | Total O&M Expenses               | \$ 59,451,400 | \$ 40,126,600           | \$ 4,059,800   | \$ 2,167,400 | \$ 8,327,300 | \$ 1,365,300    | \$ 2,084,200     | \$ 1,320,800 |
| Less Other Revenue   |                                  |               |                         |                |              |              |                 |                  |              |
| 16                   | Miscellaneous Revenues           | 2,583,700     | 1,743,900               | 176,400        | 94,200       | 361,900      | 59,300          | 90,600           | 57,400       |
| 17                   | Other Adjustments                | (67,600)      | (45,500)                | (4,600)        | (2,500)      | (9,500)      | (1,600)         | (2,400)          | (1,500)      |
| 18                   | Net Operating Expenses           | \$ 56,935,300 | \$ 38,428,200           | \$ 3,888,000   | \$ 2,075,700 | \$ 7,974,900 | \$ 1,307,600    | \$ 1,996,000     | \$ 1,264,900 |

**Table 3-4 Allocation of O&M Expenditures (Recycled Water)**

| Line No.                      | Description                           | Total Costs  | Common to All Customers |                |           |            | Meters   | Cust/Bill. |
|-------------------------------|---------------------------------------|--------------|-------------------------|----------------|-----------|------------|----------|------------|
|                               |                                       |              | Base                    | Extra Capacity |           | Customer   |          |            |
|                               |                                       | (\$)         | (\$)                    | (\$)           | (\$)      | (\$)       | (\$)     |            |
| <b>Recycled Water Utility</b> |                                       |              |                         |                |           |            |          |            |
| Operating Expenses            |                                       |              |                         |                |           |            |          |            |
| 1                             | 1522 System Maintenance               |              |                         |                |           |            |          |            |
| 2                             | Water Purchase                        | 7,636,200    | 7,636,200               | 0              | 0         | 0          | 0        |            |
| 3                             | Customer Billing & Meter Reading      | 3,600        | 0                       | 0              | 0         | 0          | 3,600    |            |
| 4                             | Meters                                | 533,600      | 0                       | 0              | 0         | 533,600    | 0        |            |
| 5                             | All Other                             | 283,100      | 118,900                 | 83,300         | 80,900    | 0          | 0        |            |
| 6                             | 1525 South Bay Water Recycling System | 708,400      | 416,700                 | 291,700        | 0         | 0          | 0        |            |
| 7                             | Transfers                             | 0            | 0                       | 0              | 0         | 0          | 0        |            |
| 8                             | Total O&M Expenses                    | \$ 9,164,900 | \$ 8,171,800            | \$ 375,000     | \$ 80,900 | \$ 533,600 | \$ 3,600 |            |
| Less Other Revenue            |                                       |              |                         |                |           |            |          |            |
| 9                             | Miscellaneous Revenues                | 826,000      | 736,500                 | 33,800         | 7,300     | 48,100     | 300      |            |
| 10                            | Other Adjustments                     | 300,100      | 267,600                 | 12,300         | 2,600     | 17,500     | 100      |            |
| 11                            | Net Operating Expenses                | \$ 8,038,800 | \$ 7,167,700            | \$ 328,900     | \$ 71,000 | \$ 468,000 | \$ 3,200 |            |

### 3.2.3 Allocation of Capital Investments

In allocating the capital investment for TY 2025, the existing fixed assets (which serve as a proxy for the current capital investments) are allocated directly to cost components to the extent possible. The allocation of costs in this manner provides a basis for annual investment in water and recycled water system facilities. Plan capital costs can be allocated using the distribution of total net system investment across the functional cost components. Table 3-5 and Table 3-6 show the total allocation of existing system investment serving water and recycled water customers. The total net system investment of \$61.2M shown on Line 11 for the Water Utility and \$1.1M on Line 9 for the Recycled Water Utility represents the Test Year original cost less accumulated depreciation of the system in service. The total net system investment reflects the Water and Recycled Water Utilities fixed asset listing ending June 30, 2023. This value represents the original cost (book value) of the assets.

**Table 3-5 Allocation of Capital Costs (Water)**

| Line No.                  | Description                 | Total Costs<br>(\$)  | Common to All Customers |                     |                     |                      |                    | Fire Protection<br>(\$) | Cross Connection<br>(\$) |
|---------------------------|-----------------------------|----------------------|-------------------------|---------------------|---------------------|----------------------|--------------------|-------------------------|--------------------------|
|                           |                             |                      | Base                    | Extra Capacity      |                     | Customer             |                    |                         |                          |
|                           |                             |                      | Base<br>(\$)            | Max. Day<br>(\$)    | Max. Hour<br>(\$)   | Meters<br>(\$)       | Cust/Bill.<br>(\$) |                         |                          |
| <b>Water Utility</b>      |                             |                      |                         |                     |                     |                      |                    |                         |                          |
| <b>Plant Assets</b>       |                             |                      |                         |                     |                     |                      |                    |                         |                          |
| 1                         | Water Production            | 19,000,900           | 15,200,700              | 0                   | 0                   | 3,610,200            | 0                  | 190,000                 | 0                        |
| 2                         | Pumping                     | 2,891,300            | 1,900,900               | 961,500             | 0                   | 0                    | 0                  | 28,900                  | 0                        |
| 3                         | Treatment                   | 1,790,700            | 1,177,300               | 595,500             | 0                   | 0                    | 0                  | 17,900                  | 0                        |
| 4                         | Transmission & Distribution | 28,759,500           | 15,708,400              | 7,970,200           | 4,793,300           | 0                    | 0                  | 287,600                 | 0                        |
| 5                         | Meters & Services           | 6,604,100            | 0                       | 0                   | 0                   | 6,604,100            | 0                  | 0                       | 0                        |
| 6                         | Fire Hydrants               | 589,900              | 0                       | 0                   | 0                   | 0                    | 0                  | 589,900                 | 0                        |
| 7                         | General Plant               | 1,542,700            | 879,200                 | 246,500             | 124,000             | 264,200              | 0                  | 28,800                  | 0                        |
| 8                         | <b>Total Plant Assets</b>   | <b>\$ 61,179,100</b> | <b>\$ 34,866,500</b>    | <b>\$ 9,773,700</b> | <b>\$ 4,917,300</b> | <b>\$ 10,478,500</b> | <b>\$ 0</b>        | <b>\$ 1,143,100</b>     | <b>\$ 0</b>              |
| <b>Less Other Revenue</b> |                             |                      |                         |                     |                     |                      |                    |                         |                          |
| 9                         | Miscellaneous Revenues      | 0                    | 0                       | 0                   | 0                   | 0                    | 0                  | 0                       | 0                        |
| 10                        | Other Adjustments           | 0                    | 0                       | 0                   | 0                   | 0                    | 0                  | 0                       | 0                        |
| 11                        | <b>Net Capital Expenses</b> | <b>\$ 61,179,100</b> | <b>\$ 34,866,500</b>    | <b>\$ 9,773,700</b> | <b>\$ 4,917,300</b> | <b>\$ 10,478,500</b> | <b>\$ 0</b>        | <b>\$ 1,143,100</b>     | <b>\$ 0</b>              |

**Table 3-6 Allocation of Capital Costs (Recycled Water)**

| Line No.                      | Description                 | Total Costs<br>(\$) | Common to All Customers |                   |                   |                |                    |
|-------------------------------|-----------------------------|---------------------|-------------------------|-------------------|-------------------|----------------|--------------------|
|                               |                             |                     | Base                    | Extra Capacity    |                   | Customer       |                    |
|                               |                             |                     | Base<br>(\$)            | Max. Day<br>(\$)  | Max. Hour<br>(\$) | Meters<br>(\$) | Cust/Bill.<br>(\$) |
| <b>Recycled Water Utility</b> |                             |                     |                         |                   |                   |                |                    |
| <b>Plant Assets</b>           |                             |                     |                         |                   |                   |                |                    |
| 1                             | Water Production            | 0                   | 0                       | 0                 | 0                 | 0              | 0                  |
| 2                             | Pumping                     | 0                   | 0                       | 0                 | 0                 | 0              | 0                  |
| 3                             | Treatment                   | 0                   | 0                       | 0                 | 0                 | 0              | 0                  |
| 4                             | Transmission & Distribution | 1,072,600           | 450,600                 | 315,500           | 306,500           | 0              | 0                  |
| 5                             | Meters                      | 0                   | 0                       | 0                 | 0                 | 0              | 0                  |
| 6                             | <b>Total Plant Assets</b>   | <b>\$ 1,072,600</b> | <b>\$ 450,600</b>       | <b>\$ 315,500</b> | <b>\$ 306,500</b> | <b>\$ 0</b>    | <b>\$ 0</b>        |
| <b>Less Other Revenue</b>     |                             |                     |                         |                   |                   |                |                    |
| 7                             | Miscellaneous Revenues      | 0                   | 0                       | 0                 | 0                 | 0              | 0                  |
| 8                             | Other Adjustments           | 0                   | 0                       | 0                 | 0                 | 0              | 0                  |
| 9                             | <b>Net Capital Expenses</b> | <b>\$ 1,072,600</b> | <b>\$ 450,600</b>       | <b>\$ 315,500</b> | <b>\$ 306,500</b> | <b>\$ 0</b>    | <b>\$ 0</b>        |

### 3.3 Units of Service

To properly recognize the cost of service, each customer class receives its share of base, maximum day, peak hour, and customer costs. Following the allocation of costs, the total cost responsibility for each customer class is developed using unit costs of service for each cost function and subsequently assigning those costs to the customer classes based on the respective service requirements of each. The number of units of service required by each customer class provides a means for the proportionate distribution of costs previously allocated to respective cost categories.

Table 3-7 summarizes the estimated TY 2025 units of service for the various customers. Base costs vary with the volume of water consumed and distributed to the customers on that basis. Extra Capacity costs are those associated with meeting peak demand rates of water use and distributed to the customers based on the respective class capacity requirements more than average rates of use. Black & Veatch followed the capacity factor methodology outlined in Appendix A of the AWWA M1 Manual to derive peak consumption information from the monthly consumption records in the City’s Customer Information System which helps provide the basis for estimating maximum day and peak hour ratios. The number of bills for each customer serves as the basis for distributing customer billing requirements. Customer meter requirements are allocated on an equivalent meter’s basis for each customer. The estimated number of equivalent meters for each customer relies on the total number of meters serving respective classes and the hydraulic capacity ratio of the meters to the 5/8 x 3/4-inch meter. The equivalent meter ratios adopted in this analysis are consistent with the AWWA M1 Manual. Private fire-protection costs allocations use equivalent fire hydrants.

### 3.4 Cost of Service Allocations

The Study applies the unit costs of service to each customer class’s respective service requirements to determine the cost of service for each customer class. The total unit costs of service applied to the respective requirements for each customer class results in the total cost of service for each customer class.

#### 3.4.1 Units Costs of Service

The TY 2025 unit cost of service for each functional cost component is simply the total cost divided by the applicable units of service, as shown in Table 3-8 and Table 3-10. On Line 4, the total costs represent the cost that rates need to recover, as demonstrated in Table 3-1, Line 16 for the Water Utility, and Table 3-2, Line 11 for the Recycled Water Utility. The net O&M cost includes O&M (including water purchase) less revenue from other sources and adjustments. The total capital cost includes debt service payments and transfers to the Construction Fund. Line 6 represents the unit costs for the entire water and recycled water systems regardless of customer classes. After that, the unit costs are used to allocate the costs to the specific customer classes.

#### 3.4.2 Distribution of Costs of Service to Customer Classes

Applying the unit costs to the units for each customer class produces the customer class costs. This process is illustrated in Table 3-9 and Table 3-11, in which unit costs are applied to the customer class units of service for TY 2025. The costs attributable to each customer class reflect the functional cost components described in Section 3.1. Each customer class places a burden on the system in different ways, and thus the allocation of the units is representative of this burden.

An example of the application of unit costs is shown below for illustrative purposes.

|  | Base Component  |
|--|-----------------|
| Unit Cost (Table 3-5, Line 6)                    | \$ 6.45 per HCF |
| General Customer Consumption (Table 3-6, Line 2) | 6,358,416 HCF   |
| Total Allocated Cost                             | \$ 41,021,300   |

Please note that the numbers within the tables are rounded, yet the calculations are done based on non-rounded values; therefore, results might vary.

**Table 3-7 Units of Service (Water and Recycled Water)**

| Line No.                      | Description        | Consumption |           | Maximum Day |           |           | Maximum Day |           |           | Meters | Cust/Bills | Fire Protection | Cross Connection |
|-------------------------------|--------------------|-------------|-----------|-------------|-----------|-----------|-------------|-----------|-----------|--------|------------|-----------------|------------------|
|                               |                    | Annual      | Avg. Day  | Factor      | Total     | Extra     | Factor      | Total     | Extra     |        |            |                 |                  |
|                               | Column Reference   | (1)         | (2)       | (3)         | (4)       | (5)       | (6)         | (7)       | (8)       | (9)    | (10)       | (11)            | (12)             |
|                               | Units of Measure   | (HCF)       | (HCF/day) |             | (HCF/day) | (HCF/day) |             | (HCF/day) | (HCF/day) | (EMs)  | (bills)    | (EHs)           | (EMs)            |
| <b>Water Utility</b>          |                    |             |           |             |           |           |             |           |           |        |            |                 |                  |
| 1                             | General Customer   | 6,358,416   | 17,420    | 166%        | 28,918    | 11,497    | 249%        | 43,377    | 14,459    | 45,352 | 316,985    | 0               | 0                |
| 2                             | Subtotal           | 6,358,416   | 17,420    |             | 28,918    | 11,497    |             | 43,377    | 14,459    | 45,352 | 316,985    |                 |                  |
| <b>Fire Service</b>           |                    |             |           |             |           |           |             |           |           |        |            |                 |                  |
| 3                             | Public Fire        | 0           | 0         |             | 558       | 558       |             | 4,468     | 3,909     | 0      | 0          | 3,437           | 0                |
| 4                             | Private Fire       | 0           | 0         |             | 284       | 284       |             | 2,270     | 1,987     | 0      | 15,285     | 1,747           | 0                |
| 5                             | Subtotal           | 0           | 0         |             | 842       | 842       |             | 6,738     | 5,896     | 0      | 15,285     | 5,184           | 0                |
| <b>Cross Connection</b>       |                    |             |           |             |           |           |             |           |           |        |            |                 |                  |
| 6                             | Cross Connection   |             |           |             |           |           |             |           |           |        | 35,556     | 0               | 8,424            |
| 7                             | Subtotal           | 0           | 0         |             | 0         | 0         |             | 0         | 0         | 0      | 35,556     | 0               | 8,424            |
| 8                             | Total Water System | 6,358,416   | 17,420    |             | 29,760    | 12,340    |             | 50,115    | 20,355    | 45,352 | 367,826    | 5,184           | 8,424            |
| <b>Recycled Water Utility</b> |                    |             |           |             |           |           |             |           |           |        |            |                 |                  |
| 9                             | General Customer   | 1,566,335   | 4,291     | 130%        | 5,579     | 1,287     | 195%        | 8,368     | 2,789     | 2,366  | 3,341      | 0               | 0                |
| 10                            | Subtotal           | 1,566,335   | 4,291     |             | 5,579     | 1,287     |             | 8,368     | 2,789     | 2,366  | 3,341      | 0               | 0                |

**Table 3-8 Units Cost of Service (Water)**

| Line No.             | Description              | Total Costs   | Common to All Customers |                |              |               |              | Fire Protection | Cross Connection |
|----------------------|--------------------------|---------------|-------------------------|----------------|--------------|---------------|--------------|-----------------|------------------|
|                      |                          |               | Base                    | Extra Capacity |              | Customer      |              |                 |                  |
|                      |                          |               | Base                    | Max. Day       | Max. Hour    | Meters        | Cust/Bill.   |                 |                  |
|                      |                          | (\$)          | (\$)                    | (\$)           | (\$)         | (\$)          | (\$)         | (\$)            |                  |
| <b>Water Utility</b> |                          |               |                         |                |              |               |              |                 |                  |
| 1                    | Net Operating Expense    | 56,935,300    | 38,428,200              | 3,888,000      | 2,075,700    | 7,974,900     | 1,307,600    | 1,996,000       | 1,264,900        |
| 2                    | Debt Service             | 0             | 0                       | 0              | 0            | 0             | 0            | 0               | 0                |
| 3                    | Capital Costs            | 4,550,000     | 2,593,100               | 726,900        | 365,700      | 779,300       | 0            | 85,000          | 0                |
| 4                    | Total Cost of Service    | \$ 61,485,300 | \$ 41,021,300           | \$ 4,614,900   | \$ 2,441,400 | \$ 8,754,200  | \$ 1,307,600 | \$ 2,081,000    | \$ 1,264,900     |
| 5                    | Units of Service (Total) |               | 6,358,416               | 12,340         | 20,355       | 45,352        | 367,826      | 5,184           | 8,424            |
|                      |                          |               | HCF                     | HCF/Day        | HCF/Day      | Eq. Meters    | Bills        | Eq. Hydrants    | Eq. Meters       |
| 6                    | Cost per Unit            |               | \$ 6.45                 | \$ 373.99      | \$ 119.94    | \$ 193.03     | \$ 3.55      | \$ 401.46       | \$ 150.15        |
|                      |                          |               | per HCF                 | per HCF/Day    | per HCF/Day  | per Eq. Meter | per Bill     | per Eq. Hydrant | per Eq. Meter    |

**Table 3-9 Distribution of Costs to Customer Classes (Water)**

| Line No.                | Description                    | Total Costs<br>(\$)  | Common to All Customers |                     |                     |                     |                     | Fire Protection<br>(\$) | Cross Connection    |
|-------------------------|--------------------------------|----------------------|-------------------------|---------------------|---------------------|---------------------|---------------------|-------------------------|---------------------|
|                         |                                |                      | Base                    | Extra Capacity      |                     | Customer            |                     |                         |                     |
|                         |                                |                      | Base<br>(\$)            | Max. Day<br>(\$)    | Max. Hour<br>(\$)   | Meters<br>(\$)      | Cust/Bill.<br>(\$)  |                         |                     |
| <b>Water Utility</b>    |                                |                      |                         |                     |                     |                     |                     |                         |                     |
| <b>General Customer</b> |                                |                      |                         |                     |                     |                     |                     |                         |                     |
| 1                       | Units                          |                      | 6,358,416               | 11,497              | 14,459              | 45,352              | 316,985             | 0                       | 0                   |
| 2                       | Allocation of costs of service | 56,936,500           | 41,021,300              | 4,299,900           | 1,734,200           | 8,754,200           | 1,126,900           | 0                       | 0                   |
| <b>Public Fire</b>      |                                |                      |                         |                     |                     |                     |                     |                         |                     |
| 3                       | Units                          |                      | 0                       | 558                 | 3,909               | 0                   | 0                   | 3,437                   | 0                   |
| 4                       | Allocation of costs of service | 2,057,600            | 0                       | 208,900             | 468,900             | 0                   | 0                   | 1,379,800               | 0                   |
| <b>Private Fire</b>     |                                |                      |                         |                     |                     |                     |                     |                         |                     |
| 5                       | Units                          |                      | 0                       | 284                 | 1,987               | 0                   | 15,285              | 1,747                   | 0                   |
| 6                       | Allocation of costs of service | 1,099,900            | 0                       | 106,100             | 238,300             | 0                   | 54,300              | 701,200                 | 0                   |
| <b>Cross Connection</b> |                                |                      |                         |                     |                     |                     |                     |                         |                     |
| 7                       | Units                          |                      | 0                       | 0                   | 0                   | 0                   | 35,556              | 0                       | 8,424               |
| 8                       | Allocation of costs of service | 1,391,300            | 0                       | 0                   | 0                   | 0                   | 126,400             | 0                       | 1,264,900           |
| 7                       | <b>TOTAL COSTS OF SERVICE</b>  | <b>\$ 61,485,300</b> | <b>\$ 41,021,300</b>    | <b>\$ 4,614,900</b> | <b>\$ 2,441,400</b> | <b>\$ 8,754,200</b> | <b>\$ 1,307,600</b> | <b>\$ 2,081,000</b>     | <b>\$ 1,264,900</b> |

**Table 3-10 Units Cost of Service (Recycled Water)**

| Line No.                      | Description              | Total Costs  | Common to All Customers |                |             |               |            |
|-------------------------------|--------------------------|--------------|-------------------------|----------------|-------------|---------------|------------|
|                               |                          |              | Base                    | Extra Capacity |             | Customer      |            |
|                               |                          |              | Base                    | Max. Day       | Max. Hour   | Meters        | Cust/Bill. |
|                               |                          | (\$)         | (\$)                    | (\$)           | (\$)        | (\$)          | (\$)       |
| <b>Recycled Water Utility</b> |                          |              |                         |                |             |               |            |
| 1                             | Net Operating Expense    | 8,038,800    | 7,167,700               | 328,900        | 71,000      | 468,000       | 3,200      |
| 2                             | Debt Service             | 0            | 0                       | 0              | 0           | 0             | 0          |
| 3                             | Capital Costs            | 0            | 0                       | 0              | 0           | 0             | 0          |
| 4                             | Total Cost of Service    | \$ 8,038,800 | \$ 7,167,700            | \$ 328,900     | \$ 71,000   | \$ 468,000    | \$ 3,200   |
| 5                             | Units of Service (Total) |              | 1,566,335               | 1,287          | 2,789       | 2,366         | 3,341      |
|                               |                          |              | HCF                     | HCF/Day        | HCF/Day     | Eq. Meters    | Bills      |
| 6                             | Cost per Unit            |              | \$ 4.58                 | \$ 255.48      | \$ 25.45    | \$ 197.82     | \$ 0.96    |
|                               |                          |              | per HCF                 | per HCF/Day    | per HCF/Day | per Eq. Meter | per Bill   |

**Table 3-11 Distribution of Costs to Customer Classes (Recycled Water)**

| Line No.                      | Description                    | Total Costs  | Common to All Customers |                |           |            |            |
|-------------------------------|--------------------------------|--------------|-------------------------|----------------|-----------|------------|------------|
|                               |                                |              | Base                    | Extra Capacity |           | Customer   |            |
|                               |                                |              | Base                    | Max. Day       | Max. Hour | Meters     | Cust/Bill. |
|                               |                                | (\$)         | (\$)                    | (\$)           | (\$)      | (\$)       | (\$)       |
| <b>Recycled Water Utility</b> |                                |              |                         |                |           |            |            |
| <b>General Customer</b>       |                                |              |                         |                |           |            |            |
| 1                             | Units                          |              | 1,566,335               | 1,287          | 2,789     | 2,366      | 3,341      |
| 2                             | Allocation of costs of service | 8,038,800    | 7,167,700               | 328,900        | 71,000    | 468,000    | 3,200      |
| 3                             | TOTAL COSTS OF SERVICE         | \$ 8,038,800 | \$ 7,167,700            | \$ 328,900     | \$ 71,000 | \$ 468,000 | \$ 3,200   |



## 4.0 Rate Design

The initial consideration in the derivation of rate schedules for water and recycled water service is establishing equitable charges to the customers commensurate with the cost of providing that service. While the cost-of-service allocations to customer classes should not be construed as literal or exact determinations, they offer a guide to the necessity for, and the extent of, rate adjustments. Practical considerations sometimes modify rate adjustments by considering additional factors such as the extent of bill impacts, existing contracts, and historical local policies and practices.

### 4.1 Existing Rates

The existing rates of the Water and Recycled Water Utilities consist of a fixed component in the form of a minimum monthly service charge and a variable component in the form of a consumption charge. The minimum monthly service charge is based on meter size and applied when consumption does not exceed the consumption allowance. The consumption charge is based on units of consumption (1 unit = 1 HCF = 748 gallons). The City has separate fixed charges for fire services and cross-connections. Table 2-3, presented earlier in this report, summarizes the existing water and recycled water rates.

### 4.2 Proposed Rates

The cost-of-service analysis described in the preceding sections of this report provides a basis for the design of water and recycled water rates.

#### 4.2.1 Monthly Service Charge

Black & Veatch used meter ratios based on maximum operating capacities by meter size as shown in AWWA M1, Table B-1, which recognizes that as meter size increases, so does the capacity. For example, customers with a 4" meter expects to be able to use more water (at a higher flow capacity) than customers with a ¾" meter. Consequently, the City's water system must maintain assets sized accordingly and capable of providing customers the level of service expected from their meter connection when the tap turns on. The minimum monthly service charge recovers a portion of the costs associated with wholesale water purchase, meter maintenance and services, meter reading, bill issuance, and maintenance and capacity costs associated with public fire protection regardless of the level of water consumed.

Table 4-1 demonstrates the water cost elements incorporated into the minimum monthly service charge for FY 2025. Table 4-2 shows the Water Utility three-year fixed service charge rate schedule.

**Table 4-1 Costs within the Minimum Monthly Service Charge for FY 2025 (Water)**

| Meter Size  | Meter & Public Fire Protection |              |             |                    | Billing   |            |                    | Total Service Charge |
|-------------|--------------------------------|--------------|-------------|--------------------|-----------|------------|--------------------|----------------------|
|             | Mtr Unit Cost                  | FP Unit Cost | Meter Ratio | Adjusted Unit Cost | Unit Cost | Bill Ratio | Adjusted Unit Cost |                      |
|             | per EM                         | per EM       |             | \$                 | per Bill  |            | \$                 | \$/Month             |
| 5/8" x 3/4" | 16.09                          | 3.78         | 1.00        | 19.87              | 3.55      | 1.00       | 3.55               | 23.42                |
| 1"          | 16.09                          | 3.78         | 1.67        | 33.11              | 3.55      | 1.00       | 3.55               | 36.67                |
| 1-1/2"      | 16.09                          | 3.78         | 3.33        | 66.22              | 3.55      | 1.00       | 3.55               | 69.78                |
| 2"          | 16.09                          | 3.78         | 5.33        | 105.95             | 3.55      | 1.00       | 3.55               | 109.51               |
| 3"          | 16.09                          | 3.78         | 10.67       | 211.91             | 3.55      | 1.00       | 3.55               | 215.46               |
| 4"          | 16.09                          | 3.78         | 16.67       | 331.11             | 3.55      | 1.00       | 3.55               | 334.66               |
| 6"          | 16.09                          | 3.78         | 33.33       | 662.21             | 3.55      | 1.00       | 3.55               | 665.77               |
| 8"          | 16.09                          | 3.78         | 53.33       | 1,059.54           | 3.55      | 1.00       | 3.55               | 1,063.09             |
| 10"         | 16.09                          | 3.78         | 80.00       | 1,589.31           | 3.55      | 1.00       | 3.55               | 1,592.86             |
| 12"         | 16.09                          | 3.78         | 112.50      | 2,234.96           | 3.55      | 1.00       | 3.55               | 2,238.52             |

**Table 4-2 Proposed Minimum Monthly Service Charge (Water)**



| Customer Class                                | Proposed        |                 |                 |
|---|-----------------|-----------------|-----------------|
|   | FY 2025         | FY 2026         | FY 2027         |
| <b>Minimum Monthly Meter Rates (\$/Month)</b> | <b>\$/month</b> | <b>\$/month</b> | <b>\$/month</b> |
| 5/8" x 3/4"                                   | 23.42           | 26.89           | 30.90           |
| 1"  | 36.67           | 42.24           | 48.66           |
| 1-1/2"  | 69.78           | 80.61           | 93.06           |
| 2"  | 109.51          | 126.65          | 146.33          |
| 3"  | 215.46          | 249.43          | 288.41          |
| 4"  | 334.66          | 387.56          | 448.24          |
| 6"  | 665.77          | 771.26          | 892.22          |
| 8"  | 1,063.09        | 1,231.69        | 1,425.00        |
| 10"   | 1,592.86        | 1,845.60        | 2,135.37        |
| 12"   | 2,238.52        | 2,593.80        | 3,001.13        |

Table 4-3 demonstrates the recycled water cost elements incorporated into the minimum monthly service charge for FY 2025. Table 4-4 shows the Recycled Water Utility three-year fixed service charge rate schedule.

**Table 4-3 Costs within the Minimum Monthly Service Charge for FY 2025 (Recycled Water)**

| Meter Size  | Meter Services |             |                    | Billing   |            |                    | Total Service Charge |
|-------------|----------------|-------------|--------------------|-----------|------------|--------------------|----------------------|
|             | Mtr Unit Cost  | Meter Ratio | Adjusted Unit Cost | Unit Cost | Bill Ratio | Adjusted Unit Cost |                      |
|             | per EM         |             | \$                 | per Bill  |            | \$                 |                      |
| 5/8" x 3/4" | 16.49          | 1.00        | 16.49              | 0.96      | 1.00       | 0.96               | 17.44                |
| 1"          | 16.49          | 1.67        | 27.48              | 0.96      | 1.00       | 0.96               | 28.43                |
| 1-1/2"      | 16.49          | 3.33        | 54.95              | 0.96      | 1.00       | 0.96               | 55.91                |
| 2"          | 16.49          | 5.33        | 87.92              | 0.96      | 1.00       | 0.96               | 88.88                |
| 3"          | 16.49          | 10.67       | 175.84             | 0.96      | 1.00       | 0.96               | 176.80               |
| 4"          | 16.49          | 16.67       | 274.75             | 0.96      | 1.00       | 0.96               | 275.71               |
| 6"          | 16.49          | 33.33       | 549.50             | 0.96      | 1.00       | 0.96               | 550.46               |
| 8"          | 16.49          | 53.33       | 879.20             | 0.96      | 1.00       | 0.96               | 880.16               |
| 10"         | 16.49          | 80.00       | 1,318.81           | 0.96      | 1.00       | 0.96               | 1,319.76             |
| 12"         | 16.49          | 112.50      | 1,854.57           | 0.96      | 1.00       | 0.96               | 1,855.53             |

**Table 4-4 Proposed Minimum Monthly Service Charge (Recycled Water)**

| Customer Class                                | Proposed        |                 |                 |
|---|-----------------|-----------------|-----------------|
|   | FY 2025         | FY 2026         | FY 2027         |
| <b>Minimum Monthly Meter Rates (\$/Month)</b> | <b>\$/month</b> | <b>\$/month</b> | <b>\$/month</b> |
| 5/8" x 3/4"                                   | 17.44           | 20.06           | 23.11           |
| 1"  | 28.43           | 32.77           | 37.83           |
| 1-1/2"  | 55.91           | 64.57           | 74.63           |
| 2"  | 88.88           | 102.72          | 118.79          |
| 3"  | 176.80          | 204.47          | 236.55          |
| 4"  | 275.71          | 318.93          | 369.04          |
| 6"  | 550.46          | 636.89          | 737.05          |
| 8"  | 880.16          | 1,018.44        | 1,178.66        |
| 10"   | 1,319.76        | 1,527.17        | 1,767.47        |
| 12"   | 1,855.53        | 2,147.18        | 2,485.09        |

### 4.2.2 Fire Service

The fire service charge includes costs of issuing bills and maintenance and capacity costs associated with private fire protection. The fire service charge increases as pipeline diameter size increases. The Water Utility provides fire service to approximately 1,274 private fire service accounts. These customers have a water line connection to the water system specifically for fire protection. The Water Utility must design, operate, and maintain a water system that can meet peak fire demand requirements to meet fire protection demands. The Water Utility charges these accounts a fire service charge based on the diameter of the line that connects their fire protection system to the water system. Table 4-5 demonstrates the costs incorporated into the fire service charge, and Table 4-6 shows the three-year rate schedule based on unit costs in future years.

**Table 4-5 Costs within the Fire Service Charge for FY 2025**

| Meter Size | Private Fire Protection |             |                    | Total Service Charge |
|------------|-------------------------|-------------|--------------------|----------------------|
|            | Unit Cost               | Meter Ratio | Adjusted Unit Cost |                      |
|            | per EH                  |             |                    | \$/Month             |
| 2"         | 52.48                   | 0.06        | 3.15               | 3.15                 |
| 4"         | 52.48                   | 0.34        | 17.84              | 17.84                |
| 6"         | 52.48                   | 1.00        | 52.48              | 52.48                |
| 8"         | 52.48                   | 2.13        | 111.78             | 111.78               |
| 10"        | 52.48                   | 3.83        | 201.00             | 201.00               |
| 12"        | 52.48                   | 6.19        | 324.85             | 324.85               |

**Table 4-6 Proposed Fire Service Charge**

| Customer Class                 | Proposed |          |          |
|--------------------------------|----------|----------|----------|
|                                | FY 2025  | FY 2026  | FY 2027  |
| <b>Fire Service (\$/Month)</b> | \$/month | \$/month | \$/month |
| 2"                             | 3.15     | 3.55     | 3.95     |
| 4"                             | 17.84    | 20.09    | 22.39    |
| 6"                             | 52.48    | 59.09    | 65.86    |
| 8"                             | 111.78   | 125.86   | 140.28   |
| 10"                            | 201.00   | 226.31   | 252.23   |
| 12"                            | 324.85   | 365.76   | 407.66   |

### 4.2.3 Cross Connection

The cross-connection charge includes costs of issuing bills and maintenance and replacement costs associated with backflow devices. The cross-connection charge increases as pipeline diameter size increases. The Water Utility provides backflow services to approximately 2,963 accounts. These customers have a backflow device that prevents possible contaminated water from entering the water system. The Water Utility maintains and replaces the devices accordingly to ensure that the devices are working properly. The Water Utility charges the accounts a cross-connection charge based on the diameter of the line that connects their service to the water system. Table 4-7 demonstrates the costs incorporated into the cross-connection charge, and Table 4-8 shows the three-year rate schedule.

**Table 4-7 Costs within the Cross-Connection Charge for FY 2025**

| Meter Size | Cross Connection |             |                    | Total Service Charge |
|------------|------------------|-------------|--------------------|----------------------|
|            | Unit Cost        | Meter Ratio | Adjusted Unit Cost |                      |
|            | per EM           |             |                    | \$/Month             |
| 1"         | 13.76            | 0.63        | 8.60               | 8.60                 |
| 2"         | 13.76            | 1.00        | 13.76              | 13.76                |
| 3"         | 13.76            | 2.00        | 27.53              | 27.53                |
| 4"         | 13.76            | 3.13        | 43.01              | 43.01                |
| 6"         | 13.76            | 6.25        | 86.02              | 86.02                |
| 8"         | 13.76            | 10.00       | 137.63             | 137.63               |
| 10"        | 13.76            | 15.00       | 206.44             | 206.44               |

**Table 4-8 Proposed Cross Connection Charge**

| Customer Class                     | Proposed |          |          |
|------------------------------------|----------|----------|----------|
|                                    | FY 2025  | FY 2026  | FY 2027  |
| <b>Cross Connection (\$/Month)</b> | \$/month | \$/month | \$/month |
| 1"                                 | 8.60     | 9.45     | 10.42    |
| 2"                                 | 13.76    | 15.11    | 16.68    |
| 3"                                 | 27.53    | 30.23    | 33.36    |
| 4"                                 | 43.01    | 47.23    | 52.12    |
| 6"                                 | 86.02    | 94.46    | 104.25   |
| 8"                                 | 137.63   | 151.14   | 166.79   |
| 10"                                | 206.44   | 226.71   | 250.19   |

### 4.2.4 Consumption Charge

This consumption charge is designed to recover costs associated with the base and extra capacity demands. These costs include fixed and variable costs incurred by the water and recycled water system while providing the average annual usage and peaking demands. While most of the costs are fixed, such as personnel and direct and indirect charges, variable costs represent most of the costs through water production and water purchase. Table 4-9 shows the three-year rate schedule for both the Water and Recycled Water Utilities. For the Recycled Water Utility, the industrial process is part of general customers.

**Table 4-9 Proposed Consumption Charges**

| Customer Class                      | Proposed |         |         |
|-------------------------------------|----------|---------|---------|
|                                     | FY 2025  | FY 2026 | FY 2027 |
| <b>Consumption Charges (\$/HCF)</b> | \$/HCF   | \$/HCF  | \$/HCF  |
| <b>Water Utility</b>                |          |         |         |
| General Customer                    | 8.90     | 10.27   | 11.87   |
| <b>Recycled Water Utility</b>       |          |         |         |
| General Customers                   | 5.06     | 5.82    | 6.69    |

### 4.3 Typical Monthly Costs under Proposed Charges

Table 4-10 and Table 4-11 compare typical monthly costs under existing rates and the proposed schedule of water and recycled water user rates derived in this study.

Table 4-10 Typical Monthly Bill (Water)

| Customer Class       | Typical Monthly Usage (HCF) | FY 2024 Existing Rates (\$) | FY 2025 Proposed Rates (\$) |
|----------------------|-----------------------------|-----------------------------|-----------------------------|
| <b>Water Utility</b> |                             |                             |                             |
| General Customer     | 0                           | \$21.48                     | \$23.42                     |
|                      | 3                           | \$21.48                     | \$23.42                     |
|                      | 5                           | \$39.85                     | \$44.48                     |
|                      | 10                          | \$79.70                     | \$88.97                     |
|                      | 12                          | \$95.64                     | \$106.76                    |
|                      | 20                          | \$159.40                    | \$177.94                    |
|                      | 30                          | \$239.10                    | \$266.91                    |
|                      | 40                          | \$318.80                    | \$355.88                    |
|                      | 50                          | \$398.50                    | \$444.85                    |

Table 4-11 Typical Monthly Bill (Recycled Water)

| Customer Class                | Typical Monthly Usage (HCF) | FY 2024 Existing Rates (\$) | FY 2025 Proposed Rates (\$) |
|-------------------------------|-----------------------------|-----------------------------|-----------------------------|
| <b>Recycled Water Utility</b> |                             |                             |                             |
| General Customer              | 0                           | \$16.64                     | \$17.44                     |
|                               | 3                           | \$16.64                     | \$17.44                     |
|                               | 5                           | \$22.65                     | \$25.31                     |
|                               | 10                          | \$45.30                     | \$50.63                     |
|                               | 12                          | \$54.36                     | \$60.75                     |
|                               | 20                          | \$90.60                     | \$101.25                    |
|                               | 30                          | \$135.90                    | \$151.88                    |
|                               | 40                          | \$181.20                    | \$202.50                    |
|                               | 50                          | \$226.50                    | \$253.13                    |

#### 4.4 Neighboring Water Utilities

Presented in Figure 4-1 are the proposed rates compared to rates of neighboring cities for a single-family residential customer with a 5/8" x 3/4" meter consuming 12 units of water. Based on the comparison, the City is currently one of the lowest water providers in the area. With the proposed rate increases, the City remains the lowest water provider of the surveyed communities. All surveyed community rates are current as of April 2024.

Figure 4-1 Comparison to Neighboring Water Utilities



\*All rates are proposed for FY24-25

## Sewer Utility

### 5.0 Revenue and Revenue Requirements

To meet the costs associated with providing sewer services to its customers, the Sewer Utility derives revenue from a variety of sources, including sewer user charges (rates), outlet charges, conveyance fees, connection charges, interest earned from the investment of available funds, engineering fees, and other miscellaneous revenues. The Sewer Utility is constantly looking for other sources of revenue, such as loans, bonds, and grants. Black & Veatch has projected the level of future revenue generated in the Study through an analysis of historical and future system growth in terms of the number of EDUs, bills, and contributed sewage flow. This section also projects the expenses, or revenue requirements, necessary to operate and maintain the system, invest in capital improvements, make debt service payments, and cover other sewer system expenses.

#### 5.1 Customer and Water Consumption Projections

##### 5.1.1 Customer Classes

The Sewer Utility’s customers include both residential and non-residential customers. The City has the following customer classes:

- Residential: Single-family residential and multi-family residential.
- Non-Residential: Amusement Parks; Auto Dealers & Service Stations; Churches; Electric & Electronic Equipment; Food & Kindred Products; Hospitals & Convalescent Homes; Industrial Chemical; Industrial Water Treatment; Laundries; Machinery Manufacturers; Metal Plating; Motels & Hotels; Paper; Repair Shops & Car Washes; Restaurants; Schools & Colleges; and Commercial/Industrial/Miscellaneous (catch-all for remainder of non-residential customers).
- Major Users: Major Users customer class is composed of major commercial and industrial users who are identified based on the following:<sup>1</sup>
  - Have a sewage discharge of at least 25,000 gallons per day; or
  - Have a daily discharge that is intermittent or irregular in strength, amount, or nature.

##### 5.1.2 Equivalent Dwelling Units

The City provides sewer services to over 25,547 customers. All customers generating sewage flow connect to the sewer system. Since the City bills residential customers based on EDUs, a review of historical EDUs patterns for customers, and anticipated growth within the City, the projected total number of EDUs is expected to grow at 0.2% annually over the Study period. An EDU represents a single-family residential customer equivalent with a flow of 245 gallons per day and strengths of 250 mg/L of Biological Oxygen Demand (BOD), 250 mg/L of Total Suspended Solids (TSS), and 35 mg/L of Ammonia (NH<sub>3</sub>).

Table 5-1 summarizes the projected number of EDUs for the Sewer Utility.

**Table 5-1 EDUs**

<sup>1</sup> City Website, Schedule S-16 Monthly Sewer Service Charges, <<http://www.santaclaraca.gov/government/departments/water-sewer-utilities/water-sewer-and-recycled-water-rates/sewer-rates>>

| Line No. | Description   | Fiscal Year Ending June 30, |                   |                   |
|----------|---------------|-----------------------------|-------------------|-------------------|
|          |               | FY 2025<br>(EDUs)           | FY 2026<br>(EDUs) | FY 2027<br>(EDUs) |
| 1        | Single Family | 256,944                     | 257,586           | 258,230           |
| 2        | Multi Family  | 318,449                     | 319,245           | 320,043           |
| 3        | Total         | 575,393                     | 576,831           | 578,273           |

### 5.1.3 Minimum Bills

The City bills non-residential customers primarily on contributed sewage flow and imposes a minimum bill on those whose flow charges do not exceed the included volume allowance within the monthly service charge. The City refers to these bills as minimum monthly service bills. Therefore, a review of historical minimum bills patterns for non-residential customers and anticipated growth within the City, the projected total number of minimum bills is expected to remain constant over the Study period.

Table 5-2 summarizes the projected number of minimum monthly service bills for the Sewer Utility.

**Table 5-2 Minimum Monthly Service Bills**

| Line No. | Description                         | Fiscal Year Ending June 30, |                    |                    |
|----------|-------------------------------------|-----------------------------|--------------------|--------------------|
|          |                                     | FY 2025<br>(Bills)          | FY 2026<br>(Bills) | FY 2027<br>(Bills) |
| 1        | Amusement Parks                     | 115                         | 115                | 115                |
| 2        | Auto Dealers & Service Station      | 386                         | 386                | 386                |
| 3        | Churches                            | 268                         | 268                | 268                |
| 4        | Commercial/Industrial/Miscellaneous | 10,262                      | 10,262             | 10,262             |
| 5        | Electric & Electronic Equip.        | 425                         | 425                | 425                |
| 6        | Food and Kindred Products           | 29                          | 29                 | 29                 |
| 7        | Hospitals & Convalescent Homes      | 316                         | 316                | 316                |
| 8        | Industrial Chemical                 | 43                          | 43                 | 43                 |
| 9        | Laundries                           | 138                         | 138                | 138                |
| 10       | Machinery Manufacturers             | 721                         | 721                | 721                |
| 11       | Metal Plating                       | 93                          | 93                 | 93                 |
| 12       | Motels & Hotels                     | 53                          | 53                 | 53                 |
| 13       | Paper                               | 13                          | 13                 | 13                 |
| 14       | Repair Shops & Car Washes           | 469                         | 469                | 469                |
| 15       | Restaurants                         | 264                         | 264                | 264                |
| 16       | Schools & Colleges                  | 533                         | 533                | 533                |
| 17       | Total                               | 14,128                      | 14,128             | 14,128             |

### 5.1.4 Contributed Sewage Flow

The City charges all its non-residential customers based on contributed sewage flow, which is determined by multiplying water consumption by a return factor. In determining the projected sewage flow, Black & Veatch analyzed historical sewage flow patterns in conjunction with a projected estimate of future water consumption. In conjunction with water consumption, contributed sewage flow has fluctuated based on drought conditions in the state. In addition, the City’s Water Shortage Contingency Plan remains in effect, and customers have made conservation a way of life. Therefore, the City projects that sewage flow will remain flat over the Study period.

Table 5-3 shows the projected sewage flow generated for the Study period. The City contributed sewage flow in units of HCF for non-residential customers.

**Table 5-3 Contributed Sewage Flow**

| Line No. | Description                         | Fiscal Year Ending June 30, |                  |                  |
|----------|-------------------------------------|-----------------------------|------------------|------------------|
|          |                                     | FY 2025<br>(HCF)            | FY 2026<br>(HCF) | FY 2027<br>(HCF) |
| 1        | Amusement Parks                     | 67,629                      | 67,629           | 67,629           |
| 2        | Auto Dealers & Service Station      | 27,029                      | 27,029           | 27,029           |
| 3        | Churches                            | 14,991                      | 14,991           | 14,991           |
| 4        | Commercial/Industrial/Miscellaneous | 1,273,399                   | 1,273,399        | 1,273,399        |
| 5        | Electric & Electronic Equip.        | 454,347                     | 454,347          | 454,347          |
| 6        | Food and Kindred Products           | 16,571                      | 16,571           | 16,571           |
| 7        | Hospitals & Convalescent Homes      | 90,459                      | 90,459           | 90,459           |
| 8        | Industrial Chemical                 | 14,718                      | 14,718           | 14,718           |
| 9        | Laundries                           | 24,247                      | 24,247           | 24,247           |
| 10       | Machinery Manufacturers             | 36,854                      | 36,854           | 36,854           |
| 11       | Metal Plating                       | 6,441                       | 6,441            | 6,441            |
| 12       | Motels & Hotels                     | 101,779                     | 101,779          | 101,779          |
| 13       | Paper                               | 45                          | 45               | 45               |
| 14       | Repair Shops & Car Washes           | 11,076                      | 11,076           | 11,076           |
| 15       | Restaurants                         | 72,265                      | 72,265           | 72,265           |
| 16       | Schools & Colleges                  | 44,683                      | 44,683           | 44,683           |
| 17       | Total (HCF)                         | 2,256,533                   | 2,256,533        | 2,256,533        |
| 18       | Total (AF)                          | 5,180                       | 5,180            | 5,180            |

### 5.1.5 Major Users

The City charges major commercial and industrial sewer customers based on contributed sewage flow and strength loadings. Major users are identified individually, as each customer places different burdens on the sewer system. In the 2023, the City’s last major user customer left the City, therefore there are no major users for the duration of the Study period.

## 5.2 Revenue under Existing Rates

Sewer user rates serve as the primary source of revenue for the Sewer Utility. Therefore, the level of future rate revenue is important in developing a long-range financial plan. Rate revenue is determined by multiplying the projected system growth in terms of the number of EDUs, minimum monthly service bills, contributed sewage flow, and major user flow and loadings by the applicable rates to determine sewer rate revenue.

Table 5-4 shows the Sewer Utility’s current schedule of charges. It is important to note that the minimum monthly service charge applies to non-residential customers that do not exceed the base amount. Therefore, the minimum monthly service charge serves as a baseline cost that the City needs to recover. The City maintains a separate schedule of rates based on the customer classes identified in Section 5.1.



**Table 5-4 Existing Sewer Rates**

| Description                    | Existing<br>FY 2024 | Description                                  | Existing<br>FY 2024 |
|--------------------------------|---------------------|--|---------------------|
| <b>Residential</b>             | (\$/EDU)            | <b>Major Commercial and Industrial Users</b> |                     |
| Single Family                  | 48.28               | Annual Capital Cost Recovery                 |                     |
| Multi-Family                   | 45.88               | Volume (per MGD)                             | 1,147,617           |
| <b>Non-Residential [1]</b>     | (\$/HCF)            | BOD [2] (per 1,000 lbs/day)                  | 85,145              |
| Amusement Parks                | 6.15                | SS [3] (per 1,000 lbs/day)                   | 77,042              |
| Auto Dealers & Service Station | 6.76                | NH3 [4] (per 1,000 lbs/day)                  | 466,740             |
| Churches                       | 5.55                | Operating and Maintenance Cost Recovery      |                     |
| Com/Ind/Misc                   | 5.87                | Volume (per MG)                              | 3,315.00            |
| Electric & Electronic Equip.   | 5.55                | BOD [2] (per 1,000 lbs)                      | 502.00              |
| Food and Kindred Products      | 13.45               | SS [3] (per 1,000 lbs)                       | 625.00              |
| Hospitals & Convalescent Homes | 6.72                | NH3 [4] (per 1,000 lbs)                      | 5,125.00            |
| Industrial Chemical            | 10.02               |  |                     |
| Laundries                      | 6.02                |  |                     |
| Machinery Manufacturers        | 8.16                |  |                     |
| Metal Plating                  | 4.50                |  |                     |
| Motels & Hotels                | 7.09                |  |                     |
| Paper                          | 13.82               |  |                     |
| Repair Shops & Car Washes      | 5.15                |  |                     |
| Restaurants                    | 13.70               |  |                     |
| Schools & Colleges             | 6.54                |  |                     |

1. In no case shall the minimum charge be less than \$48.28 per month.

Table 5-5 summarizes projected sewer rate revenue under existing rates. As shown, the revenue generated stays relatively flat over the Study period in conjunction with the number of EDUs, minimum bills, billed sewage flow, and major user volume and loadings. The projected Sewer Utility revenues increase from \$41.0M in FY 2025 to \$41.1M in FY 2027.

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**Table 5-5 Projected Revenue under Existing Rates**

| Line No. | Description                    | Fiscal Year Ending June 30, |                      |                      |
|----------|--------------------------------|-----------------------------|----------------------|----------------------|
|          |                                | FY 2025                     | FY 2026              | FY 2027              |
|          |                                | (\$)                        | (\$)                 | (\$)                 |
| 1        | Single Family                  | 12,240,400                  | 12,270,900           | 12,301,600           |
| 2        | Multi-Family                   | 14,262,000                  | 14,297,700           | 14,333,400           |
| 3        | Amusement Parks                | 411,400                     | 411,400              | 411,400              |
| 4        | Auto Dealers & Service Station | 196,600                     | 196,600              | 196,600              |
| 5        | Churches                       | 93,800                      | 93,800               | 93,800               |
| 6        | Com/Ind/Misc                   | 7,780,000                   | 7,780,000            | 7,780,000            |
| 7        | Electric & Electronic Equip.   | 2,481,400                   | 2,481,400            | 2,481,400            |
| 8        | Food and Kindred Products      | 191,500                     | 191,500              | 191,500              |
| 9        | Hospitals & Convalescent Homes | 608,300                     | 608,300              | 608,300              |
| 10       | Industrial Chemical            | 104,600                     | 104,600              | 104,600              |
| 11       | Laundries                      | 149,000                     | 149,000              | 149,000              |
| 12       | Machinery Manufacturers        | 327,500                     | 327,500              | 327,500              |
| 13       | Metal Plating                  | 32,700                      | 32,700               | 32,700               |
| 14       | Motels & Hotels                | 706,900                     | 706,900              | 706,900              |
| 15       | Paper                          | 1,200                       | 1,200                | 1,200                |
| 16       | Repair Shops & Car Washes      | 77,800                      | 77,800               | 77,800               |
| 17       | Restaurants                    | 978,800                     | 978,800              | 978,800              |
| 18       | Schools & Colleges             | 310,400                     | 310,400              | 310,400              |
| 19       | Major Users - Customer 1       | 0                           | 0                    | 0                    |
| 20       | <b>Total</b>                   | <b>\$ 40,954,300</b>        | <b>\$ 41,020,500</b> | <b>\$ 41,086,900</b> |

### 5.3 Other Revenue

Other operating sources include charges for revenue from other agencies served by Santa Clara, sewer lateral video inspections, sewer clean-out installations, interest on investments, and other miscellaneous revenues. In total, other operating revenues represent 2.9% of the Sewer Utility’s total revenue. The City anticipates that these revenues will remain relatively constant for the duration of the Study period.

### 5.4 Operating and Maintenance Expenses

Table 5-6 summarizes the Sewer Utility’s projected O&M expenses for the Study Period. These expenses include costs related to salaries and benefits, materials and supplies, contract and professional services, RWF costs, indirect and direct costs, and routine capital outlay. The City anticipates that all O&M expenditures, excluding Water Pollution Control Plant costs, will increase on average by 5.1% annually from the FY 2025.

The Sewer Utility receives treatment services from the RWF operated and maintained by the City of San Jose. While the City has an ownership stake in the RWF, the City must still pay for O&M associated with operating the facility. Based on the City of San Jose estimates, the City expects RWF O&M costs to increase by approximately 3.0% annually over the Study period.

**Table 5-6 O&M Expenses**

| Line No. | Description                 | Fiscal Year Ending June 30, |                      |                      |
|----------|-----------------------------|-----------------------------|----------------------|----------------------|
|          |                             | FY 2025                     | FY 2026              | FY 2027              |
|          |                             | (\$)                        | (\$)                 | (\$)                 |
| 1        | Salaries                    | 3,129,800                   | 3,292,700            | 3,467,300            |
| 2        | Benefits                    | 1,790,500                   | 1,876,100            | 1,881,500            |
| 3        | Materials/Services/Supplies | 603,700                     | 615,700              | 627,900              |
| 4        | Interfund Services          | 3,525,965                   | 3,817,140            | 4,017,030            |
| 5        | Resource & Production       | 21,024,700                  | 21,655,500           | 22,305,000           |
| 6        | Capital Outlay              | 0                           | 0                    | 0                    |
| 7        | <b>Total</b>                | <b>\$ 30,074,665</b>        | <b>\$ 31,257,140</b> | <b>\$ 32,298,730</b> |

As shown in Table 5-6, the Sewer Utility’s O&M expenses increase from \$30.1M in FY 2025 to \$32.3M in FY 2027.

### 5.5 Debt Service Requirements

Table 5-7 represents the Sewer Utility’s existing and proposed debt service obligations. This table shows the combined principal and interest requirements on the existing debt over the Study period. It is common practice for utilities to debt finance large capital improvement projects, such as in the case of Trimble Road sewer trunk line replacement in Santa Clara. By financing the cost of the projects, the City can fund large projects immediately and spread the payment over a specified time frame, thereby helping to offset the impact on ratepayers.

**Table 5-7 Long-Term Debt Service**

| Line No. | Description                       | Fiscal Year Ending June 30, |                     |                     |
|----------|-----------------------------------|-----------------------------|---------------------|---------------------|
|          |                                   | FY 2025                     | FY 2026             | FY 2027             |
|          |                                   | (\$)                        | (\$)                | (\$)                |
| 1        | Existing Short and Long-Term Loan | 3,298,500                   | 3,296,800           | 3,298,300           |
| 2        | Proposed Short-Term and Rev Bonds | 0                           | 0                   | 972,300             |
| 3        | <b>Total</b>                      | <b>\$ 3,298,500</b>         | <b>\$ 3,296,800</b> | <b>\$ 4,270,600</b> |

### 5.6 Capital Improvement Program

The Sewer Utility annually develops a five-year Capital Improvement Plan to identify sewer system needs, including ongoing assessments, maintenance, and renewal and replacement requirements.

Table 5-8 summarizes the Sewer Utility’s CIP for FY 2025 through FY 2027. The Sewer Utility is projecting \$41.6M in CIP over the Study period, including capital and replacement projects. The City has posted the CIP Budget on its website for complete details associated with each CIP project.

**Table 5-8 Capital Improvement Projects**

| Line No. | Description  | Fiscal Year Ending June 30, |                      |                      |
|----------|--|-----------------------------|----------------------|----------------------|
|          |  | FY 2025                     | FY 2026              | FY 2027              |
|          |  | (\$)                        | (\$)                 | (\$)                 |
| 1        | 1908 SJ-SC Regional Wastewater Facility                  | 9,290,500                   | 13,918,400           | 6,296,500            |
| 2        | 1909 Sanitary Sewer Capacity Improvements                | 0                           | 0                    | 0                    |
| 3        | 1911 Sanitary Sewer System Condition Assessment          | 1,036,200                   | 1,073,800            | 1,112,700            |
| 4        | 1912 Sanitary Sewer System Improvements                  | 3,212,400                   | 1,181,200            | 2,225,500            |
| 5        | 1919 Sanitary Sewer Hydraulic Modeling As Needed Support | 127,600                     | 322,100              | 137,000              |
| 6        | <b>Total</b>   | <b>\$ 14,183,200</b>        | <b>\$ 17,052,900</b> | <b>\$ 10,365,200</b> |

### 5.6.1 Capital Improvement Financing Plan

The City funds annual expenditures for the CIP from a combination of available funds on hand, outlet charges, conveyance fees, debt financing, connection charges, developer contributions, and revenues derived from user rates. As shown in Table 5-9, the average annual CIP expenditure is \$13.9M for the Sewer Utility. The planned average annual CIP contribution from the Sewer Utility Operating Fund is \$17.4M per year over the Study period.

**Table 5-9 Construction Fund Financing Plan**

| Line No.               | Description                                 | Fiscal Year Ending June 30, |                      |                      |
|------------------------|---|-----------------------------|----------------------|----------------------|
|                        |   | FY 2025                     | FY 2026              | FY 2027              |
| <b>Source of Funds</b> |   |                             |                      |                      |
| 1                      | Sanitary Outlet Charge                      | 0                           | 0                    | 0                    |
| 2                      | Sewer Conveyance Fee                        | 0                           | 0                    | 0                    |
| 3                      | Intra Transfer In - Debt Financing          | 0                           | 0                    | 18,000,000           |
| 4                      | Intra Transfer In - Customer Service Charge | 16,250,000                  | 16,000,000           | 20,000,000           |
| 5                      | Refund from San Jose/Cupertino              | 0                           | 0                    | 0                    |
| 6                      | <b>Total Sources</b>                        | <b>\$ 16,250,000</b>        | <b>\$ 16,000,000</b> | <b>\$ 38,000,000</b> |
| <b>Use of Funds</b>    |   |                             |                      |                      |
| 7                      | Improvements Projects                       | 14,183,200                  | 17,052,900           | 10,365,200           |
| 8                      | <b>Total Uses</b>                           | <b>\$ 14,183,200</b>        | <b>\$ 17,052,900</b> | <b>\$ 10,365,200</b> |
| 9                      | Net Annual Cash Balance                     | 2,066,800                   | (1,052,900)          | 27,634,800           |
| 10                     | Beginning Unrestricted Fund Balance         | 8,190,827                   | 10,257,627           | 9,204,727            |
| 11                     | <b>Net Cumulative Fund Balance</b>          | <b>\$ 10,257,627</b>        | <b>\$ 9,204,727</b>  | <b>\$ 36,839,527</b> |
| 12                     | <b>Minimum Construction Reserves</b>        | <b>\$ 10,093,700</b>        | <b>\$ 7,216,950</b>  | <b>\$ 23,675,000</b> |

### 5.7 Transfers

The Sewer Utility will perform transfers over the Study period from the Operating Fund and other funds. The other funds consist of the Rate Stabilization Fund, Pension Stabilization Fund, and Construction Fund. See Section 5.8 for further explanation on Rate Stabilization and Pension Stabilization Funds. The

Construction Fund transfers represent money to cover planned CIP project expenditures. All these transfers do not represent direct operating expenses for the enterprise. Therefore Black & Veatch includes these costs as “below-the-line” cash flow items and not included as O&M expenses. Table 5-10, Lines 19 to 23 for the Sewer Utility reflect these associated amounts.

## 5.8 Reserves

A utility typically establishes reserves for several reasons, such as covering shortfalls in operating revenues, maintaining strong bond ratings, covering day-to-day operating costs, and easing the burden on ratepayers associated with large rate increases. Per the reserve policy, the Sewer Utility will maintain the following four reserves:

- Operating Reserve represents working capital maintained by the Operating Fund to cover day-to-day expenses and maintain enough funds to cover accounts receivables if there are supplier issues, periods of lower-than-expected sewer revenues, or unforeseen cost increases. The reserve will maintain a minimum balance of 90 days of operating expenses once fully funded.
- Infrastructure Reserve represents funds used for unforeseen and unbudgeted capital costs. Once fully funded, this reserve will maintain a minimum balance of 12-months of the following year’s planned City CIP and 6-months of the following year’s planned RWF CIP.
- Rate Stabilization Reserve represents funds used to absorb revenue shortfalls due to short-term decreases in sewer sales. This reserve is designed to stabilize sewer rate revenue and avoid wide swings in rates charged to customers over time. The reserve will maintain a minimum balance of 10% of sewer rate revenue when fully funded.
- Pension Stabilization Reserve represents funds used to pay for the unfunded pension liabilities and the increase in the City’s share of pension costs due to factors such as higher CalPERS rates and negotiated pay increases. The reserve target is \$1.2M for the Sewer Utility by FY 2030.

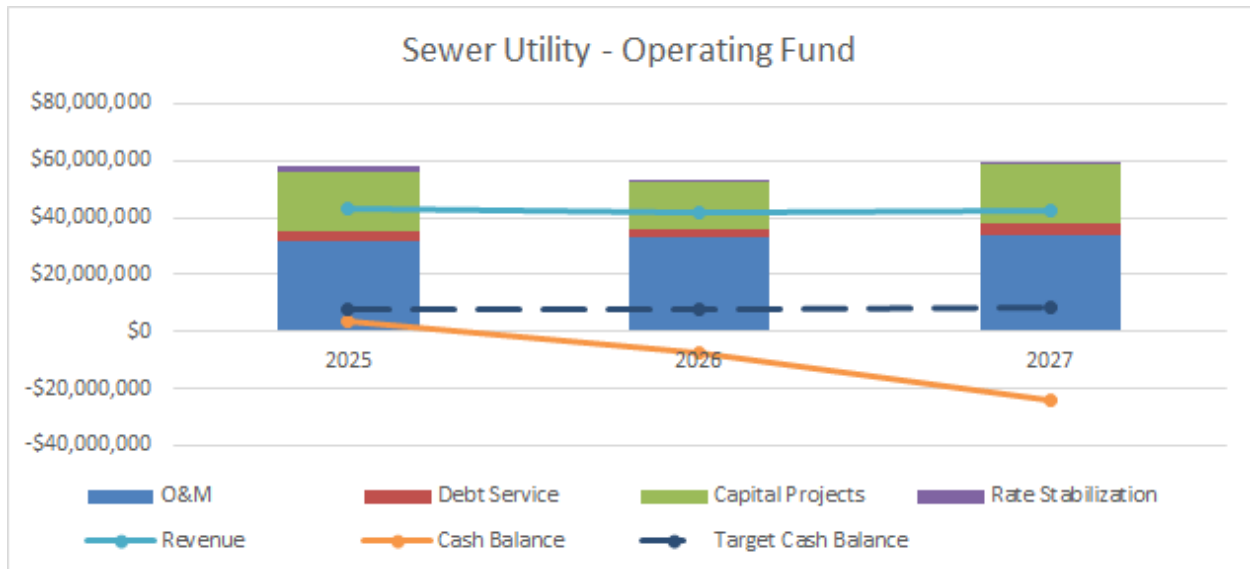
Appropriate reserve levels help the Sewer Utility maintain liquidity and demonstrate to the rating agencies that the City’s financial policies and practices are focused on maintaining a balanced financial position.

## 5.9 Projected Operating Results

The revenue requirements of the Sewer Utility consist of O&M expenses, debt service, capital expenditures, and reserve requirements.

It is important to examine the cash flow projections under the status quo scenario to fully understand the current condition of the Sewer Utility and the need for revenue adjustments. As shown in Figure 5-1, the status quo conditions would project that the Sewer Utility would operate from an annual deficit position, thus tapping into its reserves. In this scenario, the Sewer Utility would not impose any revenue increases over the Study Period and continue to incur O&M expenses, pay for the execution of the planned CIP, and transfer to reserves.

Figure 5-1 Status Quo Operating Cash Flow



The Sewer Utility will fall into a deficit position if the City does not implement the revenue increases, as shown in Figure 5-1. The revenue increases represent the overall total revenue adjustment needed to meet revenue requirements. The revenue adjustment does not represent adjustments to the individual rates but reflects the overall level of revenue needed to meet the Sewer Utility’s obligations.

The suggested revenue increases help the Sewer Utility meet the following goals:

- Meet budgeted operating obligations in the three FYs.
- Meet planned capital investments in the three FYs.
- Maintain an operating reserve of 90 days of operating expenses.
- Maintain construction reserve of 12-months of next year’s CIP for City projects and 6-months of next year’s CIP for the RWF.
- Continue to fund the rate stabilization reserve to reach its goal of 10% of rate revenues.
- Continue transfers for the pension stabilization reserve to meet the FY 2030 goal.

Shown in Table 5-10 is a summary of the proposed Operating Fund for the Study Period. The Operating Fund consists of 1) Revenue and 2) Revenue Requirements.

#### Revenue

- Line 1 is the revenue under existing rates.
- Lines 2 through 4 are the additional revenue generated from the required annual revenue increases. The additional revenue generated is a direct reflection of the number of months the increase is effective for, and therefore amount might calculate at less than that stated amount.
- Line 6 is the total revenue generated from user charges.
- Line 12 represents other operating revenues.
- Line 13 represents total revenues for the enterprise.

### Revenue Requirements

- Line 15 represents O&M expenses. The O&M expenses include RWF costs.
- Line 18 represents debt service payments.
- Line 24 represents transfers. The transfers include money to the Rate Stabilization Fund, Other Fund, Pension Fund, and Construction Fund.
- Line 25 represents total revenue requirements.

Line 28 represents the net cumulative cash balance within the Operating Funds. The net cumulative cash balance intends to match, to the extent possible, Line 29. The cash balance reserve is required to ensure the Operation Fund can continue in the event of a supplier interruption, market price fluctuations of critical equipment or supplies or an abrupt drop in account receivables. The reserve target minimum is 90 days of O&M expenses. Line 30 represents the debt service coverage. Currently, the City does not have debt coverage requirements for the short-term loans, but the operating cash flow is set up to achieve a debt service coverage of 1.25x requirement is met in all years. The requirement will come into effect when long-term debt is used to refinance the short-term loans. The lending financial institution sets the debt service coverage ratio via a rate covenant that will also obligate the City to increase revenues as needed to meet the minimum debt service coverage requirement.

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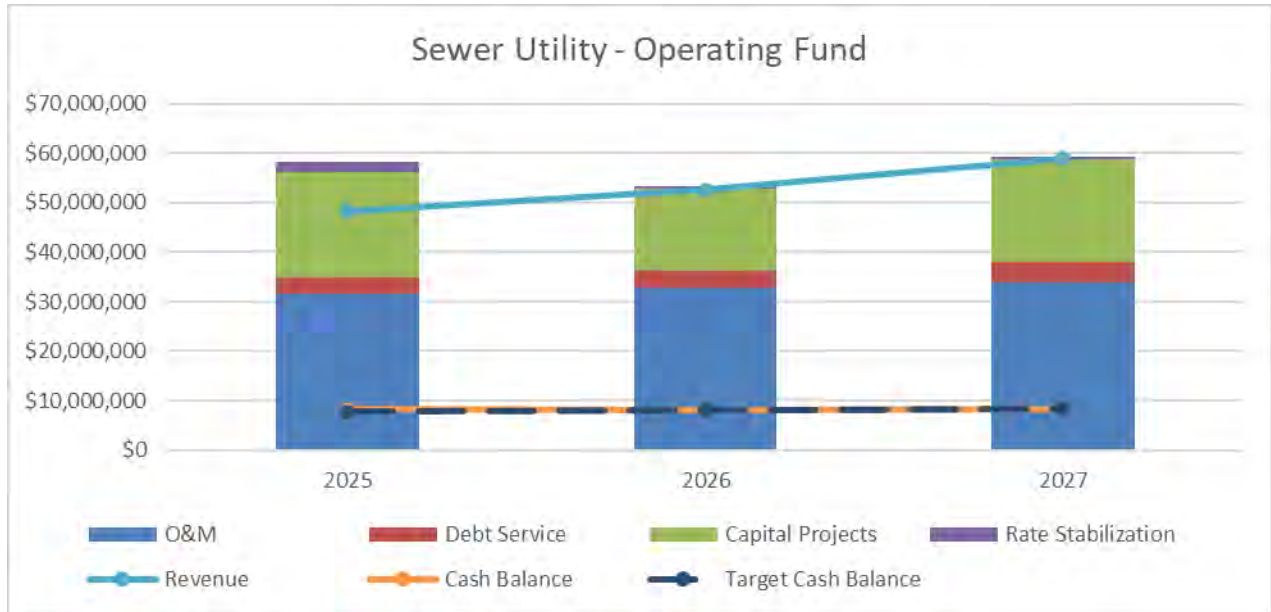
Table 5-10 Operating Fund (Sewer)

| Line No.                    | Description                             | Fiscal Year Ending June 30, |            |                      |                      |                      |
|-----------------------------|---|-----------------------------|------------|----------------------|----------------------|----------------------|
|                             |   | FY 2025                     | FY 2026    | FY 2027              |                      |                      |
| <b>Revenue</b>              |   |                             |            |                      |                      |                      |
| Rate Revenue                |   |                             |            |                      |                      |                      |
| 1                           | Revenue from Existing Rates             | 40,954,300                  | 41,020,500 | 41,086,900           |                      |                      |
|                             | Months                                  |                             |            |                      |                      |                      |
|                             | Year                                    | Effective                   | Rate Adj   |                      |                      |                      |
| 2                           | 2025                                    | 12                          | 12.15%     | 4,975,900            | 4,984,000            | 4,992,100            |
| 3                           | 2026                                    | 12                          | 12.15%     |                      | 5,589,500            | 5,598,600            |
| 4                           | 2027                                    | 12                          | 12.15%     |                      |                      | 6,278,800            |
| 5                           | Increased Revenue Due to Adjustments    |                             |            | 4,975,900            | 10,573,500           | 16,869,500           |
| 6                           | Subtotal Rate Revenue                   |                             |            | \$ 45,930,200        | \$ 51,594,000        | \$ 57,956,400        |
| Other Operating Revenue     |   |                             |            |                      |                      |                      |
| 7                           | System Administration (Interest Income) |                             |            | 636,700              | 648,500              | 660,600              |
| 8                           | System Maintenance                      |                             |            | 20,000               | 20,000               | 20,000               |
| 9                           | Operations                              |                             |            | 1,750,000            | 375,000              | 375,000              |
| 10                          | SJ SC Water Pollution Control Plant     |                             |            | 0                    | 0                    | 0                    |
| 11                          | Storm Pump Maintenance                  |                             |            | 0                    | 0                    | 0                    |
| 12                          | Subtotal Other Operating Revenue        |                             |            | \$ 2,406,700         | \$ 1,043,500         | \$ 1,055,600         |
| 13                          | <b>Total Revenue</b>                    |                             |            | <b>\$ 48,336,900</b> | <b>\$ 52,637,500</b> | <b>\$ 59,012,000</b> |
| <b>Revenue Requirements</b> |   |                             |            |                      |                      |                      |
| Operating & Maintenance     |   |                             |            |                      |                      |                      |
| 14                          | O&M Expenses                            |                             |            | 31,605,200           | 32,818,200           | 33,891,000           |
| 15                          | Subtotal O&M                            |                             |            | \$ 31,605,200        | \$ 32,818,200        | \$ 33,891,000        |
| Debt Service                |   |                             |            |                      |                      |                      |
| 16                          | Existing Loans/Bonds                    |                             |            | 3,298,500            | 3,296,800            | 3,298,300            |
| 17                          | Proposed Loans/Bonds                    |                             |            | 0                    | 0                    | 972,300              |
| 18                          | Total Debt Service                      |                             |            | \$ 3,298,500         | \$ 3,296,800         | \$ 4,270,600         |
| Transfers                   |   |                             |            |                      |                      |                      |
| 19                          | Transfer to Other Fund                  |                             |            | 50,300               | 50,300               | 50,300               |
| 20                          | Transfer to Settlement Reserve          |                             |            | 3,000,000            | 0                    | 0                    |
| 21                          | Transfer to Rate Stabilization Fund     |                             |            | 2,000,000            | 500,000              | 500,000              |
| 22                          | Transfer to Pension Stabilization Fund  |                             |            | 78,200               | 78,200               | 78,200               |
| 23                          | Transfer to Sewer Construction Fund     |                             |            | 16,250,000           | 16,000,000           | 20,000,000           |
| 24                          | Total Transfers                         |                             |            | \$ 21,378,500        | \$ 16,628,500        | \$ 20,628,500        |
| 25                          | <b>Total Revenue Requirements</b>       |                             |            | <b>\$ 56,282,200</b> | <b>\$ 52,743,500</b> | <b>\$ 58,790,100</b> |
| 26                          | Net Annual Cash Balance                 |                             |            | (7,945,300)          | (106,000)            | 221,900              |
| 27                          | Beginning Fund Balance                  |                             |            | 16,233,478           | 8,288,178            | 8,182,178            |
| 28                          | Net Cumulative Fund Balance             |                             |            | \$ 8,288,178         | \$ 8,182,178         | \$ 8,404,078         |
| 29                          | Minimum Operating Reserves (90 Days)    |                             |            | \$ 7,793,100         | \$ 8,092,200         | \$ 8,356,700         |
| 30                          | Debt Service Coverage (Min 1.25)        |                             |            | 5.07                 | 6.01                 | 5.88                 |



Figure 5-2 presents the proposed Operating Fund.

**Figure 5-2 Sewer Operating Cash Flow**



## 6.0 Cost of Service Analysis

The cost-of-service analysis requires that the utility recover needed revenues from rates for sewer service, which are allocated to customer classes according to the service rendered. An equitable rate structure allocates the capture of revenue requirements to customer classes based on contributed sewage volume, strengths, number of customer connections, and other relevant factors.

In analyzing the Sewer Utility’s cost of service for allocation to its customer classes, Black & Veatch selected the annual revenue requirements for FY 2025 as the Test Year requirements to demonstrate the development of cost-of-service sewer rates. Table 6-1 summarizes the total costs of service that need to be recovered from sewer user rates. The table represents TY 2025.

**Table 6-1 Cost of Service Revenue from Rates**

| Line No.  | Description                                       | Operating Expense    | Capital Cost         | Total Cost           |
|---|---|----------------------|----------------------|----------------------|
|   |   | (\$)                 | (\$)                 | (\$)                 |
| <b>Revenue Requirements</b>                             |   |                      |                      |                      |
| 1   | O&M Expense                                       | 31,605,200           | 0                    | 31,605,200           |
| 2   | Debt Service Requirements                         | 0                    | 3,298,500            | 3,298,500            |
| 3   | Transfers   | 5,128,500            | 16,250,000           | 21,378,500           |
| 4   | Subtotal  | \$ 36,733,700        | \$ 19,548,500        | \$ 56,282,200        |
| <b>Less Revenue Requirements Met from Other Sources</b> |   |                      |                      |                      |
| 5   | System Administration                             | 636,700              | 0                    | 636,700              |
| 6   | System Maintenance                                | 20,000               | 0                    | 20,000               |
| 7   | Operations  | 1,750,000            | 0                    | 1,750,000            |
| 8   | SJ SC Water Pollution Control Plant               | 0                    | 0                    | 0                    |
| 9   | Storm Pump Maintenance                            | 0                    | 0                    | 0                    |
| 10  | Subtotal  | \$ 2,406,700         | \$ 0                 | \$ 2,406,700         |
| <b>Adjustments</b>                                      |   |                      |                      |                      |
| 11  | Adjustment for Annual Cash Balance                | 7,945,300            | 0                    | 7,945,300            |
| 12  | Subtotal  | \$ 7,945,300         | \$ 0                 | \$ 7,945,300         |
| 13  | <b>Cost of Service to be Recovered from Rates</b> | <b>\$ 26,381,700</b> | <b>\$ 19,548,500</b> | <b>\$ 45,930,200</b> |

To derive the net revenue requirement recovered through rates, it is necessary to deduct revenues from other sources as shown in Line 10 which corresponds with Table 5-11, Line 12. Shown in Line 4 is the total revenue requirement that corresponds with Table 5-11, Line 25. Line 11 represents the net annual cash balance during the TY. If the enterprise is drawing down funds already in the Operating Fund, this number is positive. The number will be negative if the enterprise is replacing funds. In the case of the Sewer Utility, the \$7.9M figure indicates that the forecast is projecting a negative cash balance for the year.

### 6.1 Functional Cost Components

The first step in conducting a cost-of-service analysis involves analyzing the cost of providing sewer service by system function to properly allocate the costs to the various customer classes and, subsequently, design rates. As a basis for allocating costs of service among customer classes, costs are separated into the following four basic functional cost components: (1) Base; (2) Strength; (3) Customer; and (4) Direct Assignment, described as follows:

- Base costs represent operating and capital costs of the system associated with collection. The collection costs vary directly with the quantity of sewage flow.
- Strength costs represent those operating and capital costs associated with treatment. The treatment costs are specifically related to strength parameters such as Biological Oxygen Demand, Total Suspended Solids, and Ammonia.
- Customer costs are those expenditures that tend to vary in proportion to the number of customers connected to the system. These include meter reading, billing, collecting, accounting, maintenance, and capital costs associated with meters and services.
- Directly assigned costs are specifically identified as those incurred to serve specific customers. The Sewer Utility has no directly assigned categories.

## 6.2 Allocation to Cost Components

The next step of the cost-of-service process involves allocating each cost element to functional cost components based on the parameter or parameters having the most significant influence on the magnitude of that element of cost. O&M expense items are allocated directly to appropriate cost components. A detailed allocation of related capital investment is used as a proxy for allocating capital and replacement costs. The separation of costs into functional components provides a means for distributing such costs to the various classes of customers based on their respective responsibilities for each type of service.

### 6.2.1 Volume and Strength Allocations

The sewer system consists of various facilities designed and operated to fulfill a given function. For the system to provide adequate service to its customers, it must be capable of meeting not only the annual volume requirements but also the strength loading demands placed on the system. Because not all customers and types of customers exert volume and strength loading demands similarly, the capacities of the various facilities must be designed to accommodate the demands of all classes of customers. Each sewer service facility within the system has an underlying volume demand exerted by all customers for whom the base cost component applies. For those facilities designed solely to meet volume demand, 100% of the costs go to the base cost component. For facilities designed to meet strength loading demands, the percentage of the costs is allocated to the different strength cost components based on their specific function.

### 6.2.2 Allocation of Operating and Maintenance Expenses

The Sewer Utility books operating costs by functional categories. Therefore, Black & Veatch used the factors noted in Section 5.1 to allocate the operating expenses to the cost components. In allocating O&M expenses for TY 2025, the costs are directly allocated to the cost components to the extent possible. The allocation of Administration and Transfer cost elements is based on the average of all other costs. Table 6-2 represents the allocation of O&M to the cost components. Revenues are subtracted from other sources as shown in Table 6-1, Lines 10, and any drawdown of the cash balance is deducted and normalized for partial rate adjustments as shown in Line 13 to determine the net O&M costs.

**Table 6-2 Allocation of O&M Expenditures**

| Line No.                | Description                              | Total Cost    | Common to All Customers |              |              |              |            |
|-------------------------|--|---------------|-------------------------|--------------|--------------|--------------|------------|
|                         |  |               | Volume                  | BOD          | TSS          | NH3          | Customer   |
|                         |  | (\$)          | (\$)                    | (\$)         | (\$)         | (\$)         | (\$)       |
| Operation & Maintenance |  |               |                         |              |              |              |            |
| 1                       | 1511 System Administration               | 5,416,900     | 2,553,500               | 917,600      | 926,500      | 942,100      | 77,200     |
| 2                       | 1512 System Maintenance                  | 2,201,200     | 2,201,200               | 0            | 0            | 0            | 0          |
| 3                       | 1514 Operations                          | 1,737,400     | 1,737,400               | 0            | 0            | 0            | 0          |
| 4                       | 1515 SJ SC Water Pollution Control Plant |               |                         |              |              |              |            |
| 5                       | Treatment                                | 20,482,100    | 7,011,900               | 4,436,200    | 4,479,400    | 4,554,600    | 0          |
| 6                       | Customer Billing & Meter Reading         | 373,000       | 0                       | 0            | 0            | 0            | 373,000    |
| 7                       | All Other                                | 1,206,700     | 1,206,700               | 0            | 0            | 0            | 0          |
| 8                       | 1516 Storm Pump Maintenance              | 187,900       | 187,900                 | 0            | 0            | 0            | 0          |
| 9                       | Transfers                                | 2,078,200     | 979,700                 | 352,000      | 355,500      | 361,400      | 29,600     |
| 10                      | Total O&M Expenses                       | \$ 33,683,400 | \$ 15,878,300           | \$ 5,705,800 | \$ 5,761,400 | \$ 5,858,100 | \$ 479,800 |
| Less Other Revenue      |  |               |                         |              |              |              |            |
| 11                      | Miscellaneous Revenues                   | 2,406,700     | 1,134,400               | 407,700      | 411,700      | 418,600      | 34,300     |
| 12                      | Other Adjustments                        | 7,945,300     | 3,745,400               | 1,345,900    | 1,359,000    | 1,381,800    | 113,200    |
| 13                      | Net Operating Expenses                   | \$ 23,331,400 | \$ 10,998,500           | \$ 3,952,200 | \$ 3,990,700 | \$ 4,057,700 | \$ 332,300 |

### 6.2.3 Allocation of Capital Investments

In allocating the capital investment for TY 2025, the existing fixed assets (which serve as a proxy for the current capital investments) are allocated directly to cost components to the extent possible. Plan capital costs can be allocated using the distribution of total net system investment across the functional cost components. The allocation of costs in this manner provides a basis for annual investment in sewer system facilities. Table 6-3 shows the total allocation of existing system investment serving sewer customers for the TY 2025. The total net system investment of \$1.3M shown on Line 7 represents the Test Year original cost less accumulated depreciation of the system in service. The total net system investment reflects the Sewer Utility’s fixed asset listing ending June 30, 2023. This value represents the original cost (book value) of the assets.

**Table 6-3 Allocation of Capital Costs**

| Line No.           | Description            | Total Cost   | Common to All Customers |      |      |      |          |
|--------------------|------------------------|--------------|-------------------------|------|------|------|----------|
|                    |                        |              | Volume                  | BOD  | TSS  | NH3  | Customer |
|                    |                        | (\$)         | (\$)                    | (\$) | (\$) | (\$) | (\$)     |
| Plant Assets       |                        |              |                         |      |      |      |          |
| 1                  | Collection             | 956,600      | 956,600                 | 0    | 0    | 0    | 0        |
| 2                  | Lift Station           | 275,800      | 275,800                 | 0    | 0    | 0    | 0        |
| 3                  | General Plant          | 101,100      | 101,100                 | 0    | 0    | 0    | 0        |
| 4                  | Total Plant Assets     | \$ 1,333,500 | \$ 1,333,500            | \$ 0 | \$ 0 | \$ 0 | \$ 0     |
| Less Other Revenue |                        |              |                         |      |      |      |          |
| 5                  | Miscellaneous Revenues | 0            | 0                       | 0    | 0    | 0    | 0        |
| 6                  | Other Adjustments      | 0            | 0                       | 0    | 0    | 0    | 0        |
| 7                  | Net Operating Expenses | \$ 1,333,500 | \$ 1,333,500            | \$ 0 | \$ 0 | \$ 0 | \$ 0     |

### 6.3 Units of Service

To properly recognize the cost of service, each customer class receives its share of base, strength, and customer costs. Following the allocation of costs, the total cost responsibility for each customer class is developed using unit costs of service for each cost function and subsequently assigning those costs to the customer classes based on the respective service requirements of each. The number of units of service required by each customer class provides a means for the proportionate distribution of costs previously allocated to respective cost categories.

Table 6-4 summarizes the estimated Test Year units of service for the various customer classes. Base costs vary with the volume of sewage flow produced and distributed to customer classes on that basis.

Black & Veatch derived sewage flow information from the monthly water consumption records in the City’s CIS multiplied by a return factor. Strength costs are those associated with pollutant characteristics, and the Study allocated these costs to customer classes based on loadings. The pollutant loadings for each customer class come from recommendations of the State Water Resources Control Board, Revenue Program Guidelines, Appendix G, and the City of San Jose. The City’s commercial and industrial class consists of 17 distinct types of businesses such as retail, offices, restaurants, and hospitals. Since sampling is not an immediate possibility, the City has relied on industry standards used by the State of California. The number of bills for each customer class serves as the basis for distributing customer billing requirements.

## 6.4 Cost of Service Allocations

Unit costs of service are applied to each customer class’s respective service requirements to determine the cost of service for each customer class. The total unit costs of service applied to the respective requirements for each customer class results in the total cost of service for each customer class.

### 6.4.1 Units Costs of Service

The TY 2025 unit cost of service for each functional cost component is simply the total cost divided by the applicable units of service, as shown in Table 6-5. The capital costs on Line 3 and 4 are associated with City projects and RWF projects. These costs have been separated to determine the collection and treatment costs independently. On Line 5, the total costs represent the cost that rates need to recover, as demonstrated in Table 6-1, Line 14. The net O&M cost includes O&M (including the RWF) less revenue from other sources and adjustments. The total capital cost includes debt service payments and transfers to the Construction Fund. Line 6 represents the unit costs for the entire sewer system regardless of customer classes. After that, these unit costs are applied in allocating the costs to the specific customer classes.

### 6.4.2 Distribution of Costs of Service to Customer Classes

Applying the unit costs to the units for each customer class produces the customer class costs. This process is illustrated in Table 6-6, in which the study applies the unit costs to the customer class units of service. The costs attributable to each customer class are based on the functional cost components described in Section 6.1. Each customer class places a burden on the system in different ways, and thus the allocation of the units is representative of this burden.

An example of the application of unit costs is shown below for illustrative purposes.

|  | Vol Component   |
|--|-----------------|
| Unit Cost (Table 6-5, Line 7)                    | \$ 5.36 per HCF |
| General Customer Consumption (Table 6-6, Line 5) | 67,629 HCF      |
| Total Allocated Cost                             | \$ 362,500      |

Please note that the numbers within the tables are rounded, yet the calculations are done based on non-rounded values; therefore, results might vary.

Table 6-4 Units of Service

| Line No.         | Description                    | Contributed    | Contributed | BOD Loadings |           | TSS Loadings |           | NH3 Loadings |         | Bills   |
|------------------|--------------------------------|----------------|-------------|--------------|-----------|--------------|-----------|--------------|---------|---------|
|                  |                                | Units          | Volume      | Factor       | Loading   | Factor       | Loading   | Factor       | Loading |         |
| Units of Measure |                                | (EDUs/M Bills) | (HCF)       | (mg/L)       | (lbs)     | (mg/L)       | (lbs)     | (mg/L)       | (lbs)   | (bills) |
| 1                | Single Family                  | 260,659        | 1,361,851   | 250          | 2,124,100 | 250          | 2,124,100 | 35           | 297,400 | 247,203 |
| 2                | Multi-Family                   | 318,461        | 1,618,390   | 250          | 2,524,200 | 250          | 2,524,200 | 35           | 353,400 | 27,543  |
| 3                | Amusement Parks                | 115            | 67,629      | 130          | 54,800    | 80           | 33,800    | 11           | 4,600   | 271     |
| 4                | Auto Dealers & Service Station | 386            | 27,029      | 180          | 30,400    | 280          | 47,200    | 11           | 1,900   | 719     |
| 5                | Churches                       | 268            | 14,991      | 130          | 12,200    | 80           | 7,500     | 11           | 1,000   | 590     |
| 6                | Com/Ind/Misc                   | 10,262         | 1,273,399   | 130          | 1,032,800 | 80           | 635,600   | 11           | 87,400  | 21,038  |
| 7                | Electric & Electronic Equip.   | 425            | 454,347     | 30           | 85,000    | 15           | 42,500    | 15           | 42,500  | 1,553   |
| 8                | Food and Kindred Products      | 29             | 16,571      | 1,120        | 115,800   | 690          | 71,300    | 0            | 0       | 165     |
| 9                | Hospitals & Convalescent Homes | 316            | 90,459      | 230          | 129,800   | 85           | 48,000    | 15           | 8,500   | 787     |
| 10               | Industrial Chemical            | 43             | 14,718      | 360          | 33,100    | 720          | 66,100    | 0            | 0       | 111     |
| 11               | Laundries                      | 138            | 24,247      | 150          | 22,700    | 110          | 16,600    | 5            | 800     | 353     |
| 12               | Machinery Manufacturers        | 721            | 36,854      | 290          | 66,700    | 550          | 126,500   | 0            | 0       | 1,667   |
| 13               | Metal Plating                  | 93             | 6,441       | 10           | 400       | 60           | 2,400     | 1            | 0       | 194     |
| 14               | Motels & Hotels                | 53             | 101,779     | 310          | 196,800   | 121          | 76,800    | 7            | 4,400   | 514     |
| 15               | Paper                          | 12             | 45          | 1,250        | 400       | 560          | 200       | 10           | 0       | 14      |
| 16               | Repair Shops & Car Washes      | 469            | 11,076      | 180          | 12,400    | 280          | 19,300    | 0            | 0       | 659     |
| 17               | Restaurants                    | 264            | 72,265      | 1,250        | 563,600   | 560          | 252,500   | 10           | 4,500   | 2,050   |
| 18               | Schools & Colleges             | 533            | 44,683      | 130          | 36,200    | 100          | 27,900    | 30           | 8,400   | 1,081   |
| 19               | Major Users - Customer 1       |                | 0           |              | 0         |              | 0         |              | 0       | 0       |
| 20               | Total                          |                | 5,236,774   |              | 7,041,400 |              | 6,122,500 |              | 814,800 | 306,512 |

**Table 6-5 Units Cost of Service**

| Line No. | Description           | Total Cost    | Common to All Customers |              |              |              |            |
|----------|-----------------------|---------------|-------------------------|--------------|--------------|--------------|------------|
|          |                       |               | Volume                  | BOD          | TSS          | NH3          | Customer   |
| 1        | Net Operating Expense | 26,381,700    | 14,048,800              | 3,952,200    | 3,990,700    | 4,057,700    | 332,300    |
| 2        | Debt Service          | 3,298,500     | 1,129,200               | 714,400      | 721,400      | 733,500      | 0          |
| 3        | Capital Costs (City)  | 5,605,700     | 5,605,700               | 0            | 0            | 0            | 0          |
| 4        | Capital Costs (SJSC)  | 10,644,300    | 7,288,200               | 1,682,800    | 1,205,600    | 467,700      | 0          |
| 5        | Total Cost of Service | \$ 45,930,200 | \$ 28,071,900           | \$ 6,349,400 | \$ 5,917,700 | \$ 5,258,900 | \$ 332,300 |
| 6        | Units of Service      |               | 5,236,774               | 7,041,400    | 6,122,500    | 814,800      | 306,541    |
|          |                       |               | HCF                     | lbs          | lbs          | lbs          | bill       |
| 7        | Cost per Unit         |               | \$ 5.36                 | \$ 0.90      | \$ 0.97      | \$ 6.45      | \$ 1.08    |
|          |                       |               | per HCF                 | per lbs      | per lbs      | per lbs      | per bill   |

**Table 6-6 Distribution of Costs to Customer Classes**

| Line No.                       | Description                    | Total Cost | Common to All Customers |           |           |           |          |
|--------------------------------|--------------------------------|------------|-------------------------|-----------|-----------|-----------|----------|
|                                |                                |            | Volume                  | BOD       | TSS       | NH3       | Customer |
| 1                              | Cost per Unit                  |            | \$ 5.36                 | \$ 0.90   | \$ 0.97   | \$ 6.45   | \$ 1.08  |
|                                |                                |            | per HCF                 | per lbs   | per lbs   | per lbs   | per bill |
| Single Family                  |                                |            |                         |           |           |           |          |
| 2                              | Units                          |            | 1,361,851               | 2,124,100 | 2,124,100 | 297,400   | 247,203  |
| 3                              | Allocation of costs of service | 13,456,100 | 7,300,300               | 1,915,500 | 2,053,000 | 1,919,400 | 267,900  |
| Multi-Family                   |                                |            |                         |           |           |           |          |
| 4                              | Units                          |            | 1,618,390               | 2,524,200 | 2,524,200 | 353,400   | 27,543   |
| 5                              | Allocation of costs of service | 15,702,100 | 8,675,400               | 2,276,100 | 2,439,800 | 2,280,900 | 29,900   |
| Amusement Parks                |                                |            |                         |           |           |           |          |
| 6                              | Units                          |            | 67,629                  | 54,800    | 33,800    | 4,600     | 271      |
| 7                              | Allocation of costs of service | 474,600    | 362,500                 | 49,400    | 32,700    | 29,700    | 300      |
| Auto Dealers & Service Station |                                |            |                         |           |           |           |          |
| 8                              | Units                          |            | 27,029                  | 30,400    | 47,200    | 1,900     | 719      |
| 9                              | Allocation of costs of service | 231,000    | 144,900                 | 27,400    | 45,600    | 12,300    | 800      |
| Churches                       |                                |            |                         |           |           |           |          |
| 10                             | Units                          |            | 14,991                  | 12,200    | 7,500     | 1,000     | 590      |
| 11                             | Allocation of costs of service | 105,700    | 80,400                  | 11,000    | 7,200     | 6,500     | 600      |
| Com/Ind/Misc                   |                                |            |                         |           |           |           |          |
| 12                             | Units                          |            | 1,273,399               | 1,032,800 | 635,600   | 87,400    | 21,038   |
| 13                             | Allocation of costs of service | 8,958,600  | 6,826,100               | 931,300   | 614,300   | 564,100   | 22,800   |
| Electric & Electronic Equip.   |                                |            |                         |           |           |           |          |
| 14                             | Units                          |            | 454,347                 | 85,000    | 42,500    | 42,500    | 1,553    |
| 15                             | Allocation of costs of service | 2,829,200  | 2,435,500               | 76,600    | 41,100    | 274,300   | 1,700    |
| Food and Kindred Products      |                                |            |                         |           |           |           |          |
| 16                             | Units                          |            | 16,571                  | 115,800   | 71,300    | 0         | 165      |
| 17                             | Allocation of costs of service | 262,300    | 88,800                  | 104,400   | 68,900    | 0         | 200      |
| Hospitals & Convalescent Homes |                                |            |                         |           |           |           |          |
| 18                             | Units                          |            | 90,459                  | 129,800   | 48,000    | 8,500     | 787      |
| 19                             | Allocation of costs of service | 704,100    | 484,900                 | 117,000   | 46,400    | 54,900    | 900      |

**Table 6-6 Distribution of Costs to Customer Classes (Con't)**

| Line No.                             | Description                    | Total Cost    | Common to All Customers |                    |                    |                    |                     |
|--------------------------------------|--------------------------------|---------------|-------------------------|--------------------|--------------------|--------------------|---------------------|
|                                      |                                |               | Volume                  | BOD                | TSS                | NH3                | Customer            |
| 1                                    | Cost per Unit                  |               | \$ 5.36<br>per HCF      | \$ 0.90<br>per lbs | \$ 0.97<br>per lbs | \$ 6.45<br>per lbs | \$ 1.08<br>per bill |
| <b>Industrial Chemical</b>           |                                |               |                         |                    |                    |                    |                     |
| 20                                   | Units                          |               | 14,718                  | 33,100             | 66,100             | 0                  | 111                 |
| 21                                   | Allocation of costs of service | 172,700       | 78,900                  | 29,800             | 63,900             | 0                  | 100                 |
| <b>Laundries</b>                     |                                |               |                         |                    |                    |                    |                     |
| 22                                   | Units                          |               | 24,247                  | 22,700             | 16,600             | 800                | 353                 |
| 23                                   | Allocation of costs of service | 172,100       | 130,000                 | 20,500             | 16,000             | 5,200              | 400                 |
| <b>Machinery Manufacturers</b>       |                                |               |                         |                    |                    |                    |                     |
| 24                                   | Units                          |               | 36,854                  | 66,700             | 126,500            | 0                  | 1,667               |
| 25                                   | Allocation of costs of service | 381,800       | 197,600                 | 60,100             | 122,300            | 0                  | 1,800               |
| <b>Metal Plating</b>                 |                                |               |                         |                    |                    |                    |                     |
| 26                                   | Units                          |               | 6,441                   | 400                | 2,400              | 0                  | 194                 |
| 27                                   | Allocation of costs of service | 37,400        | 34,500                  | 400                | 2,300              | 0                  | 200                 |
| <b>Motels &amp; Hotels</b>           |                                |               |                         |                    |                    |                    |                     |
| 28                                   | Units                          |               | 101,779                 | 196,800            | 76,800             | 4,400              | 514                 |
| 29                                   | Allocation of costs of service | 826,300       | 545,600                 | 177,500            | 74,200             | 28,400             | 600                 |
| <b>Repair Shops &amp; Car Washes</b> |                                |               |                         |                    |                    |                    |                     |
| 30                                   | Units                          |               | 11,076                  | 12,400             | 19,300             | 0                  | 659                 |
| 31                                   | Allocation of costs of service | 90,000        | 59,400                  | 11,200             | 18,700             | 0                  | 700                 |
| <b>Restaurants</b>                   |                                |               |                         |                    |                    |                    |                     |
| 32                                   | Units                          |               | 72,265                  | 563,600            | 252,500            | 4,500              | 2,050               |
| 33                                   | Allocation of costs of service | 1,170,900     | 387,400                 | 508,200            | 244,100            | 29,000             | 2,200               |
| <b>Schools &amp; Colleges</b>        |                                |               |                         |                    |                    |                    |                     |
| 34                                   | Units                          |               | 44,683                  | 36,200             | 27,900             | 8,400              | 1,081               |
| 35                                   | Allocation of costs of service | 354,500       | 239,500                 | 32,600             | 27,000             | 54,200             | 1,200               |
| 36                                   | TOTAL COSTS OF SERVICE         | \$ 45,930,200 | \$ 28,071,900           | \$ 6,349,400       | \$ 5,917,700       | \$ 5,258,900       | \$ 332,300          |



## 7.0 Rate Design

The initial consideration in the derivation of rate schedules for sewer service is establishing equitable charges to the customers commensurate with the cost of providing that service. While the cost-of-service allocations to customer classes should not be construed as literal or exact determinations, they offer a guide to the necessity for, and the extent of, rate adjustments. Practical considerations sometimes modify rate adjustments by considering additional factors such as the extent of bill impacts, existing contracts, and historical local policies and practices.

### 7.1 Existing Rates

The Sewer Utility’s existing rates consist of a fixed component in the form of a monthly service charge and a variable component in the form of a consumption charge. The monthly service charge is a flat fee based on EDUs and is applied to residential customers. The monthly service charge also is a minimum for non-residential customers and applies when the consumption charge is less than the monthly service charge. Non-residential customers also have a consumption charge based on units of water consumption (1 unit = 1 HCF = 748 gallons) multiplied by a return factor. The City has separate charges for major users consisting of O&M and capital components. Table 5 5, presented earlier in this report, summarizes the current sewer rates.

### 7.2 Proposed Rates

The costs of service analysis described in the preceding sections of this report provide a basis for designing sewer rates.

#### 7.2.1 Monthly Service Charge

The monthly service charge is designed to recover residential costs associated with contributed sewage flow, strength loadings, billing, collecting, accounting, and maintenance and capital costs. The charge is a flat monthly fee based on EDUs. An EDU is defined in Section 5.1. In FY 2023, the multi-family rate was separated from single-family and became a stand-alone customer class.

The monthly service charge also serves as the minimum monthly service charge for non-residential customers. The minimum service charge will recover non-residential costs associated with volume, strength, meter reading, billing, collecting, accounting, and maintenance and capital costs. The minimum monthly service charge incorporates an allowance for sewage flow. Once a customer exceeds the allowance, the minimum monthly service charge goes away.

Table 7-1 shows the forecasted proposed three-year monthly service charge rate schedule.

**Table 7-1 Proposed Monthly Service Charge**

| Line No. | Customer Class                                   | Proposed |          |          |
|----------|--|----------|----------|----------|
|          |  | FY 2025  | FY 2026  | FY 2027  |
|          | <b>Monthly Service Charge (\$/EDU)</b>           | \$/month | \$/month | \$/month |
| 1        | Single Family                                    | 52.37    | 59.79    | 66.30    |
| 2        | Multi-Family                                     | 49.31    | 56.09    | 62.30    |
|          | <b>Minimum Commercial Bill Charge (\$/Month)</b> | \$/month | \$/month | \$/month |
| 3        | All Customers                                    | 52.37    | 59.79    | 66.30    |

### 7.2.2 Consumption Charge

The consumption charges are designed to recover the remainder of the cost component costs not recovered through the monthly service charge for non-residential customers. Table 7-2 shows the forecasted proposed three-year rate schedule for the Sewer Utility.

**Table 7-2 Proposed Consumption Charges**

| Line No. | Customer Class                   | Proposed      |               |               |
|----------|----------------------------------|---------------|---------------|---------------|
|          |                                  | FY 2025       | FY 2026       | FY 2027       |
|          | <b>Commodity Charge (\$/HCF)</b> | <b>\$/HCF</b> | <b>\$/HCF</b> | <b>\$/HCF</b> |
| 1        | Amusement Parks                  | 6.93          | 7.46          | 8.59          |
| 2        | Auto Dealers & Service Station   | 7.80          | 8.70          | 9.81          |
| 3        | Churches                         | 6.12          | 6.54          | 7.56          |
| 4        | Com/Ind/Misc                     | 6.61          | 7.11          | 8.19          |
| 5        | Electric & Electronic Equip.     | 6.18          | 6.48          | 7.59          |
| 6        | Food and Kindred Products        | 15.74         | 18.89         | 20.38         |
| 7        | Hospitals & Convalescent Homes   | 7.60          | 8.35          | 9.50          |
| 8        | Industrial Chemical              | 11.58         | 13.53         | 14.83         |
| 9        | Laundries                        | 6.80          | 7.32          | 8.43          |
| 10       | Machinery Manufacturers          | 9.33          | 10.73         | 11.88         |
| 11       | Metal Plating                    | 5.05          | 5.12          | 6.12          |
| 12       | Motels & Hotels                  | 8.09          | 8.96          | 10.14         |
| 13       | Paper                            | 4.44          | 6.67          | 6.67          |
| 14       | Repair Shops & Car Washes        | 5.90          | 6.47          | 7.37          |
| 15       | Restaurants                      | 16.01         | 19.27         | 20.75         |
| 16       | Schools & Colleges               | 7.31          | 8.05          | 9.16          |

### 7.2.3 Major Users

The major commercial and industrial user charge is designed to recover the costs associated with O&M and capital for major users. Major users are classified based on requirements in Section 5.1. These customers are monitored monthly for volume and strength loadings. Major users are charged the unit charges identified in Table 6-5, Line 7. Note that the major user charges are specifically identified O&M and capital components. Charges for all other customers incorporate these charges, but the City has combined them into a single rate for simplicity. Table 7-3 shows the three-year rate schedule based on unit costs in future years. The City does not have any major users left within the City; therefore, these rates will be for any future customer.

**Table 7-3 Proposed Major User Charges**

| Line No.                                     | Customer Class         | Proposed  |           |           |
|--|------------------------|-----------|-----------|-----------|
|  |                        | FY 2025   | FY 2026   | FY 2027   |
| <b>Major Commercial and Industrial Users</b> |                        |           |           |           |
| Operating and Maintenance Cost Recovery      |                        |           |           |           |
| 1  | Volume (\$/MG)         | 3,671.11  | 4,020.89  | 4,192.10  |
| 2  | BOD (\$/1,000 lbs)     | 561.28    | 773.87    | 807.45    |
| 3  | SS (\$/1,000 lbs)      | 651.81    | 898.69    | 937.67    |
| 4  | NH3 (\$/1,000 lbs)     | 4,980.00  | 6,866.22  | 7,164.09  |
| Annual Capital Cost Recovery                 |                        |           |           |           |
| 5  | Volume (\$/MGD)        | 1,306,599 | 1,212,316 | 1,673,838 |
| 6  | BOD (\$/1,000 lbs/day) | 124,262   | 144,032   | 144,561   |
| 7  | SS (\$/1,000 lbs/day)  | 114,880   | 131,162   | 131,597   |
| 8  | NH3 (\$/1,000 lbs/day) | 538,093   | 585,442   | 586,786   |

### 7.3 Typical Monthly Costs under Proposed Charges

Table 7-4 compares typical monthly costs under existing rates and the proposed schedule of sewer user rates derived in this study for residential and non-residential customers.

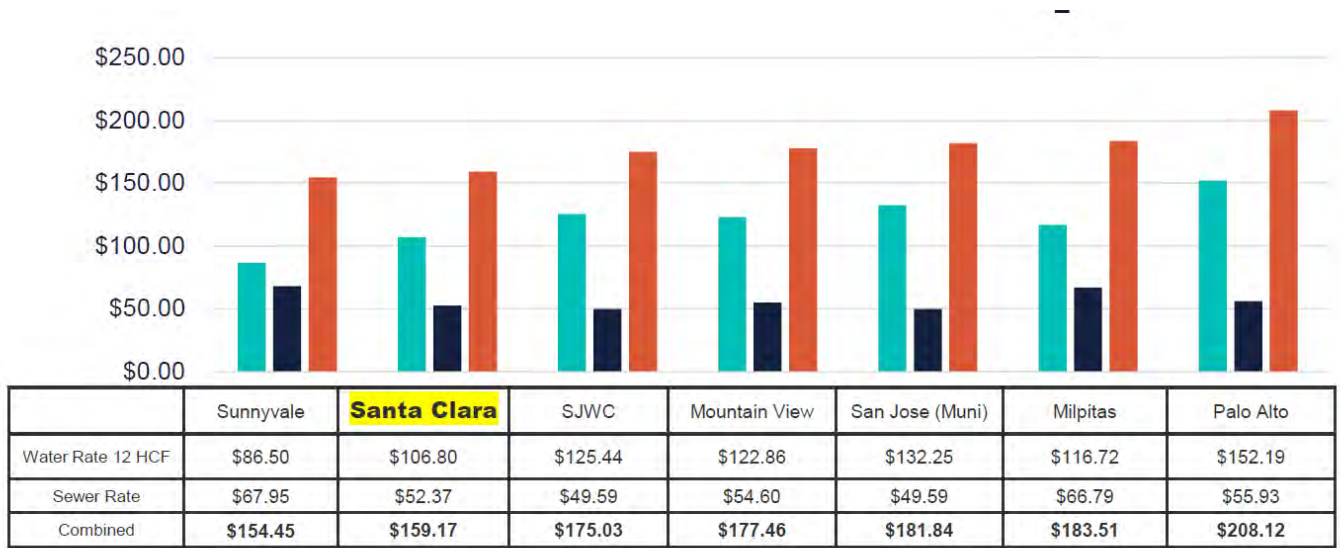
**Table 7-4 Typical Monthly Bill**

| Customer Class  | Typical Monthly Usage (HCF) | FY 2024 Existing Rates (\$) | FY 2025 Proposed Rates (\$) |
|-----------------|-----------------------------|-----------------------------|-----------------------------|
| Residential     |                             | \$48.28                     | \$52.37                     |
| Non-Residential | 0                           | \$48.28                     | \$52.37                     |
|                 | 10                          | \$64.04                     | \$74.33                     |
|                 | 20                          | \$128.09                    | \$148.65                    |
|                 | 30                          | \$192.13                    | \$222.98                    |
|                 | 40                          | \$256.18                    | \$297.31                    |
|                 | 50                          | \$320.22                    | \$371.63                    |
|                 | 100                         | \$640.45                    | \$743.27                    |
|                 | 250                         | \$1,601.12                  | \$1,858.17                  |

### 7.4 Neighboring Sewer Utilities

Presented in Figure 7-1 is the proposed rates compared to rates of neighboring jurisdictions, for a single-family residential customer. Based on the comparison, the City is currently a higher cost sewer provider in the area. With the proposed rate increases, the City remains one of the higher sewer providers of the surveyed communities. All surveyed community rates are best estimates as of April 2024.

**Figure 7-1 Comparison to Neighboring Sewer Utilities**



\*All rates are proposed for FY24-25

# Appendix A – Ten-Year Financial Plan

## Water Utility

| Line No.                           | Description                              | Fiscal Year Ending June 30, |                      |                      |                      |                      |                      |                      |                       |                       |                       |
|------------------------------------|--|-----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|-----------------------|
|                                    |  | FY 2025                     | FY 2026              | FY 2027              | FY 2028              | FY 2029              | FY 2030              | FY 2031              | FY 2032               | FY 2033               | FY 2034               |
|                                    |  | (\$)                        | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                  | (\$)                  | (\$)                  |
| <b>Revenue</b>                     |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| <b>Rate Revenue</b>                |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| 1                                  | Revenue from Existing Rates              | 53,326,400                  | 53,328,400           | 53,330,600           | 53,460,600           | 53,591,100           | 53,721,600           | 53,852,800           | 53,984,300            | 54,115,900            | 54,247,900            |
| 2                                  | Increased Revenue Due to Adjustments     | 8,158,900                   | 17,566,800           | 28,415,000           | 32,171,800           | 35,683,900           | 39,350,600           | 43,178,600           | 47,174,700            | 51,345,900            | 55,700,000            |
| 3                                  | <b>Subtotal Rate Revenue</b>             | <b>\$ 61,485,300</b>        | <b>\$ 70,895,200</b> | <b>\$ 81,745,600</b> | <b>\$ 85,632,400</b> | <b>\$ 89,275,000</b> | <b>\$ 93,072,200</b> | <b>\$ 97,031,400</b> | <b>\$ 101,159,000</b> | <b>\$ 105,461,800</b> | <b>\$ 109,947,900</b> |
| <b>Other Operating Revenue</b>     |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| 4                                  | Solar System Maintenance                 | 85,000                      | 85,000               | 85,000               | 85,000               | 85,000               | 85,000               | 85,000               | 85,000                | 85,000                | 85,000                |
| 5                                  | Water System Maintenance                 | 1,102,500                   | 1,102,500            | 1,102,500            | 1,102,500            | 1,102,500            | 1,102,500            | 1,102,500            | 1,102,500             | 1,102,500             | 1,102,500             |
| 6                                  | Water Construction                       | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| 7                                  | Water System Operations                  | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| 8                                  | Administration Design                    | 1,396,200                   | 1,403,200            | 1,410,300            | 1,417,600            | 1,425,000            | 1,432,600            | 1,440,300            | 1,448,200             | 1,456,200             | 1,464,400             |
| 9                                  | Water Quality                            | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| 10                                 | Water Resources                          | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| 11                                 | <b>Subtotal Other Operating Revenue</b>  | <b>\$ 2,583,700</b>         | <b>\$ 2,590,700</b>  | <b>\$ 2,597,800</b>  | <b>\$ 2,605,100</b>  | <b>\$ 2,612,500</b>  | <b>\$ 2,620,100</b>  | <b>\$ 2,627,800</b>  | <b>\$ 2,635,700</b>   | <b>\$ 2,643,700</b>   | <b>\$ 2,651,900</b>   |
| 12                                 | <b>Total Revenue</b>                     | <b>\$ 64,069,000</b>        | <b>\$ 73,485,900</b> | <b>\$ 84,343,400</b> | <b>\$ 88,237,500</b> | <b>\$ 91,887,500</b> | <b>\$ 95,692,300</b> | <b>\$ 99,659,200</b> | <b>\$ 103,794,700</b> | <b>\$ 108,105,500</b> | <b>\$ 112,599,800</b> |
| <b>Revenue Requirements</b>        |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| <b>Operating &amp; Maintenance</b> |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| 13                                 | O&M Expenses                             | 58,973,100                  | 63,515,100           | 68,539,900           | 74,474,200           | 80,770,600           | 87,518,300           | 92,310,800           | 97,407,700            | 101,676,200           | 106,147,500           |
| 14                                 | <b>Subtotal O&amp;M</b>                  | <b>\$ 58,973,100</b>        | <b>\$ 63,515,100</b> | <b>\$ 68,539,900</b> | <b>\$ 74,474,200</b> | <b>\$ 80,770,600</b> | <b>\$ 87,518,300</b> | <b>\$ 92,310,800</b> | <b>\$ 97,407,700</b>  | <b>\$ 101,676,200</b> | <b>\$ 106,147,500</b> |
| <b>Debt Service</b>                |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| 15                                 | Existing Loans/Bonds                     | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| 16                                 | Proposed Loans/Bonds                     | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| 17                                 | <b>Total Debt Service</b>                | <b>\$ -</b>                 | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>           | <b>\$ -</b>           | <b>\$ -</b>           |
| <b>Transfers</b>                   |  |                             |                      |                      |                      |                      |                      |                      |                       |                       |                       |
| 18                                 | Transfer to Rate Stabilization Fund      | 0                           | 0                    | 6,350,000            | 1,000,000            | 500,000              | 500,000              | 500,000              | 500,000               | 500,000               | 600,000               |
| 19                                 | Transfer to Pensiottn Stabilization Fund | 199,400                     | 199,400              | 199,400              | 199,400              | 199,400              | 199,400              | 199,400              | 199,400               | 199,400               | 199,400               |
| 20                                 | Transfer to Water Construction Fund      | 4,550,000                   | 5,750,000            | 5,750,000            | 5,000,000            | 5,000,000            | 5,500,000            | 6,000,000            | 6,500,000             | 6,500,000             | 6,500,000             |
| 21                                 | <b>Total Transfers</b>                   | <b>\$ 4,749,400</b>         | <b>\$ 5,949,400</b>  | <b>\$ 12,299,400</b> | <b>\$ 6,199,400</b>  | <b>\$ 5,699,400</b>  | <b>\$ 6,199,400</b>  | <b>\$ 6,699,400</b>  | <b>\$ 7,199,400</b>   | <b>\$ 7,199,400</b>   | <b>\$ 7,299,400</b>   |
| 22                                 | <b>Total Revenue Requirements</b>        | <b>\$ 63,722,500</b>        | <b>\$ 69,464,500</b> | <b>\$ 80,839,300</b> | <b>\$ 80,673,600</b> | <b>\$ 86,470,000</b> | <b>\$ 93,717,700</b> | <b>\$ 99,010,200</b> | <b>\$ 104,607,100</b> | <b>\$ 108,875,600</b> | <b>\$ 113,446,900</b> |
| 23                                 | Net Annual Cash Balance                  | 346,500                     | 4,021,400            | 3,504,100            | 7,563,900            | 5,417,500            | 1,974,600            | 649,000              | (812,400)             | (770,100)             | (847,100)             |
| 24                                 | Beginning Fund Balance                   | 9,891,600                   | 9,959,200            | 13,701,700           | 16,926,900           | 24,211,900           | 29,350,500           | 31,046,200           | 31,416,300            | 30,325,000            | 29,276,000            |
| 25                                 | <b>Net Cumulative Fund Balance</b>       | <b>\$ 10,238,100</b>        | <b>\$ 13,980,600</b> | <b>\$ 17,205,800</b> | <b>\$ 24,490,800</b> | <b>\$ 29,629,400</b> | <b>\$ 31,325,100</b> | <b>\$ 31,695,200</b> | <b>\$ 30,603,900</b>  | <b>\$ 29,554,900</b>  | <b>\$ 28,428,900</b>  |
| 26                                 | Minimum Operating Reserves (90 Days)     | \$ 14,541,300               | \$ 15,661,300        | \$ 16,900,200        | \$ 18,363,500        | \$ 19,916,000        | \$ 21,579,900        | \$ 22,761,600        | \$ 24,018,300         | \$ 25,070,800         | \$ 26,173,400         |

## Recycled Water Utility

| Line No.                           | Description                               | Fiscal Year Ending June 30, |                      |                      |                      |                      |                      |                      |                      |                      |                      |
|------------------------------------|---|-----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                                    |   | FY 2025                     | FY 2026              | FY 2027              | FY 2028              | FY 2029              | FY 2030              | FY 2031              | FY 2032              | FY 2033              | FY 2034              |
|                                    |   | (\$)                        | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 | (\$)                 |
| <b>Revenue</b>                     |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| <b>Rate Revenue</b>                |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 1                                  | Revenue from Existing Rates               | 6,990,300                   | 7,060,200            | 7,130,700            | 7,201,900            | 7,273,900            | 7,346,500            | 7,419,700            | 7,493,900            | 7,568,700            | 7,644,200            |
| 2                                  | Increased Revenue Due to Adjustments      | 1,048,500                   | 2,276,900            | 3,714,100            | 5,421,700            | 7,420,400            | 9,497,900            | 10,443,100           | 11,449,500           | 12,520,300           | 13,253,900           |
| 3                                  | <b>Subtotal Rate Revenue</b>              | <b>\$ 8,038,800</b>         | <b>\$ 9,337,100</b>  | <b>\$ 10,844,800</b> | <b>\$ 12,623,600</b> | <b>\$ 14,694,300</b> | <b>\$ 16,844,400</b> | <b>\$ 17,862,800</b> | <b>\$ 18,943,400</b> | <b>\$ 20,089,000</b> | <b>\$ 20,898,100</b> |
| <b>Other Operating Revenue</b>     |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 4                                  | System Maintenance                        | 97,600                      | 99,600               | 101,600              | 103,600              | 105,700              | 107,800              | 110,000              | 112,200              | 114,400              | 116,700              |
| 5                                  | South Bay Water Recycling System Maintena | 728,400                     | 760,200              | 782,800              | 812,600              | 846,800              | 873,900              | 901,800              | 930,600              | 960,300              | 991,100              |
| 6                                  | <b>Subtotal Other Operating Revenue</b>   | <b>\$ 826,000</b>           | <b>\$ 859,800</b>    | <b>\$ 884,400</b>    | <b>\$ 916,200</b>    | <b>\$ 952,500</b>    | <b>\$ 981,700</b>    | <b>\$ 1,011,800</b>  | <b>\$ 1,042,800</b>  | <b>\$ 1,074,700</b>  | <b>\$ 1,107,800</b>  |
| <b>Transfers From</b>              |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 7                                  | RW Capital Fund                           | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| 8                                  | <b>Subtotal Transfers From</b>            | <b>\$ -</b>                 | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          | <b>\$ -</b>          |
| 9                                  | <b>Total Revenue</b>                      | <b>\$ 8,864,800</b>         | <b>\$ 10,196,900</b> | <b>\$ 11,729,200</b> | <b>\$ 13,539,800</b> | <b>\$ 15,646,800</b> | <b>\$ 17,826,100</b> | <b>\$ 18,874,600</b> | <b>\$ 19,986,200</b> | <b>\$ 21,163,700</b> | <b>\$ 22,005,900</b> |
| <b>Revenue Requirements</b>        |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| <b>Operating &amp; Maintenance</b> |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 10                                 | O&M Expenses                              | 9,164,900                   | 10,344,900           | 11,664,100           | 13,167,600           | 14,877,700           | 16,748,500           | 18,041,300           | 19,435,500           | 20,582,900           | 21,798,400           |
| 11                                 | <b>Subtotal O&amp;M</b>                   | <b>9,164,900</b>            | <b>10,344,900</b>    | <b>11,664,100</b>    | <b>13,167,600</b>    | <b>14,877,700</b>    | <b>16,748,500</b>    | <b>18,041,300</b>    | <b>19,435,500</b>    | <b>20,582,900</b>    | <b>21,798,400</b>    |
| <b>Debt Service</b>                |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 12                                 | Existing Loans/Bonds                      | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| 13                                 | Proposed Loans/Bonds                      | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| 14                                 | <b>Total Debt Service</b>                 | <b>0</b>                    | <b>0</b>             | <b>0</b>             | <b>0</b>             | <b>0</b>             | <b>0</b>             | <b>0</b>             | <b>0</b>             | <b>0</b>             | <b>0</b>             |
| <b>Transfers</b>                   |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 15                                 | Transfer to Rate Stabilization Fund       | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| 16                                 | Transfer to Pension Stabilization Fund    | 0                           | 9,800                | 9,800                | 9,800                | 9,800                | 9,800                | 9,800                | 9,800                | 9,800                | 9,800                |
| 17                                 | Transfer to Recycled Water Const Fund     | 0                           | 0                    | 0                    | 100,000              | 200,000              | 200,000              | 200,000              | 200,000              | 200,000              | 200,000              |
| 18                                 | <b>Total Transfers</b>                    | <b>0</b>                    | <b>9,800</b>         | <b>9,800</b>         | <b>109,800</b>       | <b>209,800</b>       | <b>209,800</b>       | <b>209,800</b>       | <b>209,800</b>       | <b>209,800</b>       | <b>209,800</b>       |
| 19                                 | <b>Total Revenue Requirements</b>         | <b>\$ 9,164,900</b>         | <b>\$ 10,354,700</b> | <b>\$ 11,673,900</b> | <b>\$ 13,277,400</b> | <b>\$ 15,087,500</b> | <b>\$ 16,958,300</b> | <b>\$ 18,251,100</b> | <b>\$ 19,645,300</b> | <b>\$ 20,792,700</b> | <b>\$ 22,008,200</b> |
| 20                                 | Net Annual Cash Balance                   | (300,100)                   | (157,800)            | 55,300               | 262,400              | 559,300              | 867,800              | 623,500              | 340,900              | 371,000              | (2,300)              |
| 21                                 | Beginning Fund Balance                    | 3,295,300                   | 2,995,200            | 2,837,400            | 2,892,700            | 3,155,100            | 3,714,400            | 4,582,200            | 5,205,700            | 5,546,600            | 5,917,600            |
| 22                                 | <b>Net Cumulative Fund Balance</b>        | <b>\$ 2,995,200</b>         | <b>\$ 2,837,400</b>  | <b>\$ 2,892,700</b>  | <b>\$ 3,155,100</b>  | <b>\$ 3,714,400</b>  | <b>\$ 4,582,200</b>  | <b>\$ 5,205,700</b>  | <b>\$ 5,546,600</b>  | <b>\$ 5,917,600</b>  | <b>\$ 5,915,300</b>  |
| 23                                 | Minimum Operating Reserves (90 Days)      | \$ 2,259,800                | \$ 2,550,800         | \$ 2,876,100         | \$ 3,246,800         | \$ 3,668,500         | \$ 4,129,800         | \$ 4,448,500         | \$ 4,792,300         | \$ 5,075,200         | \$ 5,374,900         |



### Sewer Utility

| Line No.                           | Description                             | Fiscal Year Ending June 30, |                      |                      |                      |                      |                      |                      |                      |                      |                      |
|------------------------------------|---|-----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                                    |   | FY 2025                     | FY 2026              | FY 2027              | FY 2028              | FY 2029              | FY 2030              | FY 2031              | FY 2032              | FY 2033              | FY 2034              |
| <b>Revenue</b>                     |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| <b>Rate Revenue</b>                |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 1                                  | Revenue from Existing Rates             | 40,954,300                  | 41,020,500           | 41,086,900           | 41,189,500           | 41,292,500           | 41,395,900           | 41,499,100           | 41,602,800           | 41,706,700           | 41,810,900           |
| 2                                  | Increased Revenue Due to Adjustments    | 4,975,900                   | 10,573,500           | 16,869,500           | 19,235,600           | 19,283,700           | 19,332,000           | 19,380,200           | 19,428,700           | 19,477,200           | 19,525,800           |
| 3                                  | Subtotal Rate Revenue                   | \$ 45,930,200               | \$ 51,594,000        | \$ 57,956,400        | \$ 60,425,100        | \$ 60,576,200        | \$ 60,727,900        | \$ 60,879,300        | \$ 61,031,500        | \$ 61,183,900        | \$ 61,336,700        |
| <b>Other Operating Revenue</b>     |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 4                                  | System Administration (Interest Income) | 636,700                     | 648,500              | 660,600              | 672,900              | 685,400              | 698,200              | 711,200              | 724,500              | 738,100              | 751,900              |
| 5                                  | System Maintenance                      | 20,000                      | 20,000               | 20,000               | 20,000               | 20,000               | 20,000               | 20,000               | 20,000               | 20,000               | 20,000               |
| 6                                  | Operations                              | 1,750,000                   | 375,000              | 375,000              | 375,000              | 375,000              | 375,000              | 375,000              | 375,000              | 375,000              | 375,000              |
| 7                                  | SJ SC Water Pollution Control Plant     | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| 8                                  | Storm Pump Maintenance                  | 0                           | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| 9                                  | Subtotal Other Operating Revenue        | \$ 2,406,700                | \$ 1,043,500         | \$ 1,055,600         | \$ 1,067,900         | \$ 1,080,400         | \$ 1,093,200         | \$ 1,106,200         | \$ 1,119,500         | \$ 1,133,100         | \$ 1,146,900         |
| 10                                 | <b>Total Revenue</b>                    | <b>\$ 48,336,900</b>        | <b>\$ 52,637,500</b> | <b>\$ 59,012,000</b> | <b>\$ 61,493,000</b> | <b>\$ 61,656,600</b> | <b>\$ 61,821,100</b> | <b>\$ 61,985,500</b> | <b>\$ 62,151,000</b> | <b>\$ 62,317,000</b> | <b>\$ 62,483,600</b> |
| <b>Revenue Requirements</b>        |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| <b>Operating &amp; Maintenance</b> |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 11                                 | O&M Expenses                            | 31,605,200                  | 32,818,200           | 33,891,000           | 35,043,100           | 36,231,500           | 37,493,700           | 38,800,800           | 40,155,300           | 41,558,500           | 43,012,400           |
| 12                                 | Subtotal O&M                            | \$ 31,605,200               | \$ 32,818,200        | \$ 33,891,000        | \$ 35,043,100        | \$ 36,231,500        | \$ 37,493,700        | \$ 38,800,800        | \$ 40,155,300        | \$ 41,558,500        | \$ 43,012,400        |
| <b>Debt Service</b>                |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 13                                 | Existing Loans/Bonds                    | 3,298,500                   | 3,296,800            | 3,298,300            | 3,297,800            | 3,300,300            | 3,300,500            | 3,298,500            | 2,361,800            | 2,360,100            | 2,360,800            |
| 14                                 | Proposed Loans/Bonds                    | 0                           | 0                    | 972,300              | 1,351,800            | 1,351,800            | 1,351,800            | 1,351,800            | 1,351,800            | 1,351,800            | 1,351,800            |
| 15                                 | Total Debt Service                      | \$ 3,298,500                | \$ 3,296,800         | \$ 4,270,600         | \$ 4,649,600         | \$ 4,652,100         | \$ 4,652,300         | \$ 4,650,300         | \$ 3,713,600         | \$ 3,711,900         | \$ 3,712,600         |
| <b>Transfers</b>                   |   |                             |                      |                      |                      |                      |                      |                      |                      |                      |                      |
| 16                                 | Transfer to Rate Stabilization Fund     | 2,000,000                   | 500,000              | 500,000              | 500,000              | 250,000              | 0                    | 0                    | 0                    | 0                    | 0                    |
| 17                                 | Transfer to Pension Stabilization Fund  | 78,200                      | 78,200               | 78,200               | 78,200               | 78,200               | 78,200               | 78,200               | 78,200               | 78,200               | 78,200               |
| 18                                 | Transfer to Sewer Construction Fund     | 16,250,000                  | 16,000,000           | 20,000,000           | 20,000,000           | 20,000,000           | 12,500,000           | 10,000,000           | 10,000,000           | 10,000,000           | 10,000,000           |
| 19                                 | Total Transfers                         | \$ 18,328,200               | \$ 16,578,200        | \$ 20,578,200        | \$ 20,578,200        | \$ 20,328,200        | \$ 12,578,200        | \$ 10,078,200        | \$ 10,078,200        | \$ 10,078,200        | \$ 10,078,200        |
| 20                                 | <b>Total Revenue Requirements</b>       | <b>\$ 53,231,900</b>        | <b>\$ 52,693,200</b> | <b>\$ 58,739,800</b> | <b>\$ 60,270,900</b> | <b>\$ 61,211,800</b> | <b>\$ 54,724,200</b> | <b>\$ 53,529,300</b> | <b>\$ 53,947,100</b> | <b>\$ 55,348,600</b> | <b>\$ 56,803,200</b> |
| 21                                 | Net Annual Cash Balance                 | (4,895,000)                 | (55,700)             | 272,200              | 1,222,100            | 444,800              | 7,096,900            | 8,456,200            | 8,203,900            | 6,968,400            | 5,680,400            |
| 22                                 | Beginning Fund Balance                  | 16,233,478                  | 8,288,178            | 8,182,178            | 8,404,078            | 9,575,878            | 9,970,378            | 17,016,978           | 25,422,878           | 33,576,478           | 40,494,578           |
| 23                                 | Net Cumulative Fund Balance             | \$ 11,338,478               | \$ 8,232,478         | \$ 8,454,378         | \$ 9,626,178         | \$ 10,020,678        | \$ 17,067,278        | \$ 25,473,178        | \$ 33,626,778        | \$ 40,544,878        | \$ 46,174,978        |
| 24                                 | Minimum Operating Reserves (90 Days)    | 7,793,100                   | 8,092,200            | 8,356,700            | 8,640,800            | 8,933,800            | 9,245,000            | 9,567,300            | 9,901,300            | 10,247,300           | 10,605,800           |
| 25                                 | Debt Service Coverage (Min 1.25)        | 5.07                        | 6.01                 | 5.88                 | 5.69                 | 5.47                 | 5.23                 | 4.99                 | 5.92                 | 5.59                 | 5.24                 |





## Agenda Report

24-578

Agenda Date: 5/28/2024

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### REPORT TO CITY COUNCIL AND STADIUM AUTHORITY BOARD

#### SUBJECT

Action on Amendment No. 2 to the Ground Lease, and Amendment No. 1 to the Restated and Amended Stadium Lease, to Implement the Settlement Agreement and Mutual Release (Buffet and Public Safety Cost Arbitration) with Forty Niners SC Stadium Company LLC and Forty Niners Stadium Management Company LLC, and Approve Related Budget Amendments

#### COUNCIL AND BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

#### EXECUTIVE SUMMARY

After many months of negotiations, at the recent May 20, 2024 Closed Session, the Santa Clara Stadium Authority Board and City Council accepted terms for settlement of longstanding disputes with the 49ers over Stadium Authority obligations to reimburse the 49ers for "buffet costs" for certain NFL game ticket holders, and to reimburse "public safety costs" paid by the 49ers to the City above a contractual public safety costs "threshold". Council/Board action included direction to the Authority Executive Director/City Manager to finalize and execute a Settlement Agreement consistent with those terms in a final form approved by the Authority Counsel/City Attorney. That agreement was finalized and executed by all parties on May 23rd. A copy of the agreement was provided to the public that same evening.

Tonight's item presents for Authority Board and City Council consideration two lease amendments that are necessary to implement a number of the key terms in the Settlement Agreement. The first lease amendment is to the Stadium Lease between the Stadium Authority and the 49ers entity known as "StadCo." The second lease amendment is to the Ground Lease between the Stadium Authority and the City which owns the Stadium property. Authority Board/City Council approval is also sought for delegation to the Executive Director/City Manager to amend any other agreements required to implement the Settlement Agreement. Finally, approval is also requested for the necessary, related budget amendments.

In order to provide the public with an understanding of the context for these actions, this staff report first presents a brief history and summary of the terms for the development and operations of Levi's Stadium. A brief history and summary of the public safety costs and buffet costs disputes is then provided, followed by a summary of the terms in the Settlement Agreement that resolve these disputes. Finally, the terms for the required lease amendments and budgetary actions are presented.

#### BACKGROUND

On June 8, 2010, Santa Clara voters approved Measure J which provided for the development and operation of a stadium suitable for professional football games and other events on City-owned property and called for the creation of the Santa Clara Stadium Authority (Stadium Authority), a joint powers authority. Measure J's terms include, but are not limited to, the following pertinent terms:

- The City of Santa Clara (City) shall not use or pledge any money from the City's general fund or enterprise funds for the development of the stadium.
- The ground lease shall require payment by the Stadium Authority to the City's general fund of fixed base rent totaling \$40,875,000, in nominal dollars, over the initial forty (40) year term of the ground lease, with annual fixed base rent commencing in the first year of stadium operations and increasing periodically over the term of the ground lease to a minimum of \$1,000,000 beginning in the eleventh (11th) year of stadium operations.
- In addition to the fixed base rent, the ground lease shall require payment by the Stadium Authority into the City's general fund of performance-based rent which, together with the fixed base rent, the City Council has determined is projected to provide fair market rent to the City. Performance-based rent shall be pursuant to a formula that provides for sharing of the revenues less expenses of non-NFL events at the stadium.
- Neither the City nor its Redevelopment Agency shall be liable for the obligations of the Stadium Authority, including operating and maintenance expenses of the stadium.
- The private tenant's lease shall require the private tenant to pay rent to the Stadium Authority that will provide the Stadium Authority with funds to pay the ground rent and operating and maintenance expenses of the stadium.
- For the first season of NFL Games at the Stadium, Public Safety Costs attributable to NFL Games, including a charge for capital expenditures, will include a "Threshold" of \$170,000 per game. The Threshold increases every year by 4%. Public Safety Costs attributable to NFL Games that exceed the Threshold will be reimbursed by Stadium Authority from its Discretionary Fund or through "Credits" which reduce Performance-Based Rent payments to the City.
- If Public Safety Costs attributable to NFL Games exceed the Threshold for 3 consecutive seasons, the Parties may engage in good faith negotiations with respect to a possible increase in the Threshold, however, 49ers will not be obligated to agree to any increase.
- The ground lease shall require that following the opening of the stadium the City shall receive, in addition to the ground rent, a fee equal to thirty-five cents (\$0.35) per ticket on each ticket for professional football games in the stadium up to a maximum of \$250,000 per year (the "senior and youth program fee"). The senior and youth program fee is to be used for City programs for parks and recreation and libraries, such as senior activities and the youth championship team fund.

On March 28, 2012, the City and Stadium Authority entered into a Ground Lease that provides the Stadium Authority, as the Tenant, the exclusive right to use the Stadium Site (i.e., the ground under Levi's Stadium) for the development and operation of the Stadium for the hosting of NFL games and other events, use and permit Forty Niners SC Stadium Company LLC (StadCo) to use the Stadium Site for the permitted uses outlined in the Stadium Lease Agreement for an initial term of forty (40) years. The Ground Lease requires the Stadium Authority to make Fixed Ground Rent and

Performance Based Rent payments to the City, among other things. The City and Stadium Authority amended the Ground Lease on June 19, 2023, to modify certain definitions and terms.

On June 19, 2013, the Stadium Authority entered into a Reinstated and Amended Stadium Lease Agreement (Stadium Lease) with StadCo as the Tenant to use and occupy Levi’s Stadium for the operations of an NFL franchise for an initial term of forty (40) years. Per the terms of the Stadium Lease Agreement, StadCo leases the Stadium from the Stadium Authority for half of each fiscal year and is responsible for the Stadium Manager’s operating expenses during that period.

Through the Stadium Management Agreement (Management Agreement), the Stadium Authority and StadCo each engaged Forty Niners Stadium Management Company LLC to act as the Stadium Manager and to provide management services for the Stadium on its respective behalf in accordance with the Stadium Lease, including oversight of the day-to-day operations and maintenance of the Stadium. The Management Agreement also provides the Stadium Manager the responsibility of handling the marketing and booking of Non-NFL Events at the Stadium on behalf of the Stadium Authority.

In addition to the Management Agreement, the Stadium Authority and StadCo also entered into a Stadium Operations Agreement with the Stadium Manager which outlines Stadium operational terms including, but not limited to, procedures for scheduling Stadium events; the preparation and approval of the annual Stadium Operation and Maintenance Plan, Annual Shared Stadium Expense Budget, the Annual Stadium Capital Expenditure Plan and the Annual Statement of Stadium Operations; procurement guidelines; and rules and regulations regarding Stadium access by Suite licensees of their Suites and Premium Stadium Areas.

For reference, the table below shows the different stadium entities and roles:

**City of Santa Clara**

- Owns the land.
- Ground leases the land to Authority.

**Santa Clara Stadium Authority (Authority)**

- Owns the Stadium.
- Leases to StadCo for NFL Season (6 months).
- Receives net revenues from Non-NFL events.

**49ers Football Company (TeamCo)**

- Owns and operates 49ers Football team.
- Not a party to City or Authority contracts.

**49ers Stadium Company (StadCo)**

- Tenant of the Stadium for NFL Season (6 months).
- Lease with Authority.
- Sub-leases the Stadium to TeamCo.

**49ers Management Company (ManCo)**

- Management Agreement w/StadCo and Authority.
- Manages the Stadium, year-round for both NFL and non-NFL events.

There are many other Stadium Authority agreements that are connected to operations and financing of the Stadium that are not discussed above, but the agreements discussed above as well as some

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additional documents that are pertinent to day-to-day operations at the Stadium are available for reference on the Stadium Authority website at <https://www.santaclaraca.gov/our-city/santa-clara-stadium-authority/leases-and-agreements>.

#### 49ers and Stadium Authority Litigation Disputes

Disputes over the interpretation and implementation of a number of terms in the various Stadium agreements and the parties' actions related to the management and operations of the Stadium occurred over a four-year period, 2014-2019. Issues under dispute included accounting transparency, procurement procedures, fiscal and operational management of non-NFL events, and public safety and buffet costs calculations and payments. These management and operations disputes led to a 2019 Superior Court lawsuit and also arbitration proceedings between StadCo, Stadium Manager and Stadium Authority. Separately, in June 2019, StadCo initiated the Public Safety Costs Arbitration, which was followed by the Buffet Costs Arbitration in September 2020. The City is not a party to the arbitration claims.

Since 2018, because of the pending disputes, Stadium Authority has not reimbursed StadCo any NFL Public Safety Costs. That resulted in Performance-Based Rent to the City during this time period also being put on hold until the disputes were resolved. Starting in Lease Year 2021/22, an estimated amount of what could be Performance-Based Rent to the City (that might also be needed to pay StadCo for Public Safety Credits depending upon the outcome of the pending disputes) was held by Authority as a Legal Contingency Reserve. Separately, because of the pending disputes, Authority also did not pay StadCo eight of ten years worth of claimed Buffet Costs. Starting in Lease Year 2021/22, Stadium Authority also held in its Legal Contingency Reserve the claimed amounts of Buffet Costs that would have been due to StadCo.

On August 31, 2022, the City, Stadium Authority, StadCo and Stadium Manager reached a settlement agreement that resolved the management and operational disputes claimed in the 2019 Superior Court lawsuit and arbitration claims. Notably, however, that settlement did not resolve the Public Safety Costs and Buffet Costs disputes and arbitrations. Instead, as part of the settlement, the parties agreed to "stay" (put on hold) the arbitration proceedings for the Public Safety Costs and Buffet costs disputes to give the parties the opportunity to resolve those claims. While resolution efforts were ongoing, the parties agreed that no interest would accrue on the parties' claimed amounts or balances due.

#### Background of Public Safety Cost Dispute (NFL events)

The existing contracts between the parties require that the City provide public safety services for stadium events. StadCo, in turn, is obligated to reimburse the City in full for all such costs for NFL events. As provided in Paragraph 7.5.2(a) of the Stadium Lease, "StadCo is obligated to pay city actual and reasonable public safety costs." Public safety costs include police, fire, traffic management, and parking support.

To the extent the public safety costs for NFL events exceed a contractually determined "Threshold," StadCo is contractually entitled to be reimbursed the costs over such Threshold by the Stadium Authority, either through payments out of the Stadium Authority's "Discretionary Fund" or through credits against StadCo's future Facility Rent obligations. (Stadium Lease, Paragraph 7.5.3(a)) The Discretionary Fund is partially funded by non-NFL event ticket surcharges. (Stadium Lease, Paragraph 12.1.) Notably, any credits issued for public safety costs in excess of the public safety

costs “Threshold” not only reduce StadCo’s payment of Facility Rent to Authority, they also reduce the amount of Stadium Authority’s Performance-Based Rent payments owed to the City by the Stadium Authority under the Ground Lease. (Stadium Lease, Paragraph 7.5.3 (a)) As noted above, these terms follow the terms of Measure J terms which establish a public safety cost Threshold and provide that costs that exceed the Threshold are to be paid from Stadium Authority funds. Importantly, the Public Safety Costs dispute is only related to NFL events. For Stadium Authority’s non-NFL events, the City is reimbursed by the Stadium Authority for public safety costs and there is no applicable Threshold.

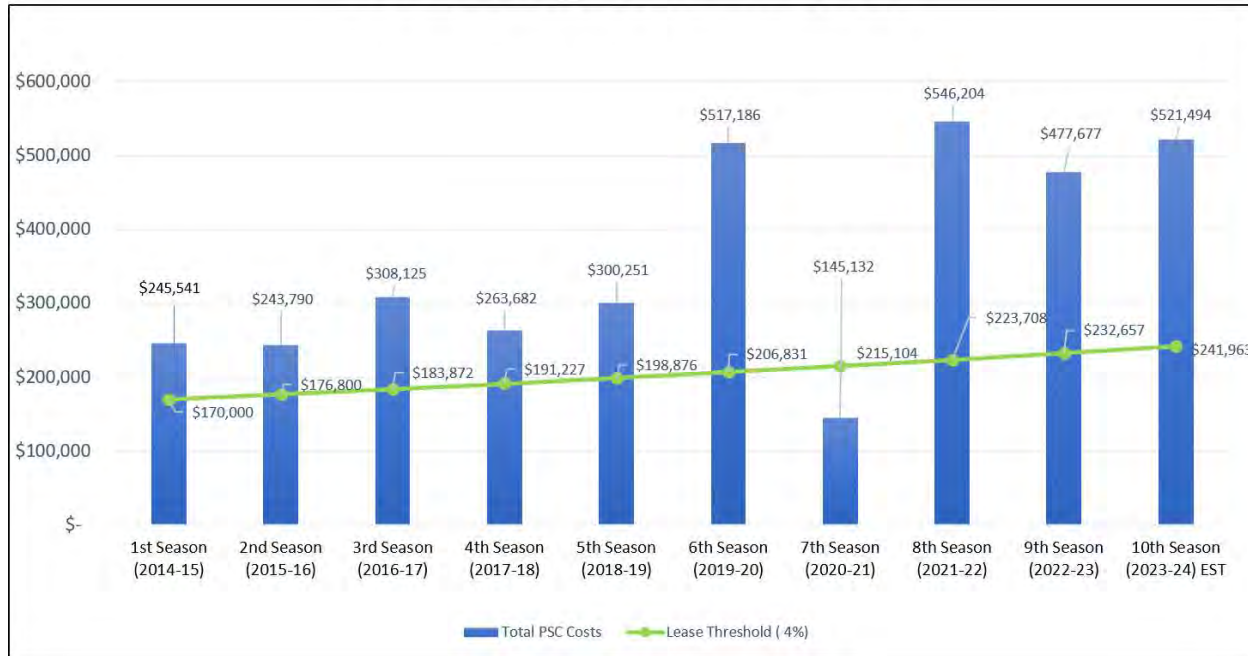
The Public Safety Costs “Threshold” described above (as initially set in Measure J and in Stadium Lease Section 7.5.3 (b)) was set at \$170,000 per game for the Stadium’s first NFL season (2014-15). Thereafter, it was set to increase at the rate of 4% per year. By the most recent (2023-24) football season, the Threshold had grown to \$241,963 per game. The yearly threshold amount, which is calculated by multiplying the per game threshold by the total number of pre-season, regular season and post-season NFL games played at the Stadium during the lease year, is the aggregate number used to calculate the total threshold amount, and any public safety credits for that year.

On September 14, 2014, the 49ers hosted their first regular-season game at Levi’s Stadium. By the end of the first season, 2014-15, the public safety costs exceeded the \$170,000 per game threshold by \$75,514 per game.

Public safety costs in the subsequent eight seasons (seasons 2-9) also exceeded the threshold, with the exception of the seventh season, 2020-21, which was impacted by COVID (see chart below). In 2023-24 (season 10), public safety costs, estimated at \$521,494 per game, are expected to exceed the \$241,963 threshold by \$279,531 per game (see diagram below). Under the terms of the agreements, this difference, from the very beginning and increasing over time, between the Public Safety Costs Threshold and the amount of actual public safety costs billed has had material adverse impacts on Stadium finances and the ability of the Stadium to generate Performance Based Rent for the City.



### Public Safety Costs – Threshold



The Stadium Lease does provide for a process to adjust and increase the Threshold after any three consecutive years of public safety costs exceeding the threshold (Paragraph 7.5.4(b)). However, under the terms of the contract, after good faith negotiations, StadCo retains “sole discretion” as to whether or not to increase or not increase the Threshold. The appropriate interpretation, performance and enforcement of this provision has been at the center of the parties’ public safety costs dispute.

In 2017, Stadium Authority and City initiated the Threshold adjustment process under the Stadium Lease with StadCo requesting an increase in the Threshold starting in Year 4. Stadium Authority disputed StadCo’s negotiations and handling of this request for the Year 4 threshold adjustment which ultimately lead to the 2019 Arbitration filing by StadCo against the Authority. Stadium Authority and StadCo also had other disputes pertaining to the interpretation and obligations of related PSC Threshold terms in the Stadium Lease (such as off-site parking permit fees and Capital Expenditure depreciations).

Since 2019, StadCo has continued to fulfill its obligations to pay the City for public safety costs incurred by the City in providing security for NFL Games. However, in light of the pending disputes between the parties regarding the appropriate adjustment to the Public Safety Costs Threshold, over that same time period the Stadium Authority has not reimbursed StadCo for any such Public Safety Costs payments over that Threshold.

StadCo’s public safety costs claim against Stadium Authority for the period spanning years 4 through 10 (2017-18 through 2023-24) amounts to approximately \$15.4M. This claim includes unresolved adjustments and fees that StadCo believes are owed under the terms of the agreements. Meanwhile, in light of the pending disputes over the correct amount of Public Safety Costs Threshold, and the related Performance Based Rent Credit amount that might need to go to StadCo, the City was not

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paid any Performance-Based Rent for years 2021/22 through 2023/24. Essentially, any Performance-Based Rent that might have been earned by the City during this time period could be negated by the accruing Public Safety Costs credits, hence the need for the creation of the litigation reserve, described in more details below.

#### Background of Buffet Costs Dispute

The Stadium Authority sells Stadium Builders' Licenses (SBLs) on all seats within the stadium. SBL holders are required to purchase season tickets for each season (i.e., all season ticket holders are also SBL holders). The cost of an SBL depends upon the location of the seat as well as the benefits associated with that seat. There are approximately 942 Legacy SBL holders, which are more expensive SBLs, that provide the SBL holders with a complimentary buffet on game days. The initial sale of the Legacy SBLs generated around \$75M for Stadium Authority. Because that access was "purchased" by the patron through their SBL, the cost of the buffet is allocated to the Stadium Authority in the Stadium Lease.

The Stadium Lease (Paragraph 4.6.1) provides that Authority will reimburse StadCo for the costs associated with the complimentary buffets provided to these SBL holders within 30 days of invoice. While SBL revenues are fixed, and resales and financing revenue decline over the lease term, the Stadium Lease does not contain provisions that cap, or provide Stadium Authority with any operational control over, buffet costs. Therefore, there is significant financial exposure to the Stadium Authority associated with the buffet costs. Projected buffet costs through the lease term, without a cap, can range from \$70M to over \$100M, with uncertain revenue sources to cover this expense.

For the first five years, StadCo did not invoice Authority for buffet costs and Stadium Manager did not include these costs in any Stadium Authority budget. 2019 was the first year StadCo invoiced Stadium Authority for these costs, which totaled approximately \$4.39M. In 2020, Stadium Authority paid \$1.39M for buffet costs related to the FY2019/20 season. In 2022, Stadium Manager paid through the Revolving Credit Agreement the \$902K of buffet costs due for FY 201/22. (The parties' disputes regarding Stadium Manager's use of the Revolving Credit Agreement was resolved in the August 2022 Settlement Agreement; including no charge of interest to the Stadium Authority.) For years other than Season 6 and Season 8, due to the pending litigation, the Stadium Authority has not paid the full invoiced amount of accrued annual buffet costs. Currently, accrued buffet costs total \$6.8M (see table below).

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| Year         | Season           | Games      | Buffet Costs        | Paid             | Avg/ Game         | Balance Due         | Litigation Contingency Reserve |
|--------------|------------------|------------|---------------------|------------------|-------------------|---------------------|--------------------------------|
| 2014-15      | 1st              | 10         | \$ 760,847          | \$ -             | \$ 76,085         | \$ 760,847          |                                |
| 2015-16      | 2nd              | 10         | \$ 766,070          | \$ -             | \$ 76,607         | \$ 766,070          |                                |
| 2016-17      | 3rd              | 10         | \$ 871,948          | \$ -             | \$ 87,195         | \$ 871,948          |                                |
| 2017-18      | 4th              | 10         | \$ 989,862          | \$ -             | \$ 98,986         | \$ 989,862          |                                |
| 2018-19      | 5th              | 10         | \$ 999,979          | \$ -             | \$ 99,998         | \$ 999,979          |                                |
| 2019-20      | 6th              | 12         | \$ 1,391,015        | \$ 1,391,015 (1) | \$ 115,918        | \$ -                |                                |
| 2020-21      | 7th              | 5          | \$ -                | \$ -             | \$ -              | \$ -                |                                |
| 2021-22      | 8th              | 10         | \$ 902,081          | \$ 902,081 (2)   | \$ 90,208         | \$ -                | \$ 902,081                     |
| 2022-23      | 9th              | 12         | \$ 1,164,667        | \$ -             | \$ 97,056         | \$ 1,164,667        | \$ 1,164,667                   |
| 2023-24      | 10th             | 12         | \$ 1,254,367        | \$ -             | \$ 104,531        | \$ 1,254,367        | \$ 1,254,367                   |
| <b>TOTAL</b> |                  | <b>101</b> | <b>\$ 9,100,836</b> | <b>\$ -</b>      | <b>\$ 846,583</b> | <b>\$ 6,807,740</b> | <b>\$ 3,321,115</b>            |
|              | (1) Paid by SCSA |            |                     |                  |                   |                     |                                |
|              | (2) Paid by RCA  |            |                     |                  |                   |                     |                                |

**Funds Held in Litigation Reserve**

Due to ongoing legal disputes, in 2021/22 Stadium Authority started to hold funds in a litigation reserve to offset accrued potential liability. The Finance department coordinated with the City Manager’s Office and the City Attorney’s Office to calculate the potential liability of the Stadium Authority, which is was estimated at \$11.1M and reflects the current balance in the litigation reserve. The proposed budget amendments address, in part, the allocation of the litigation reserve funds to implement the terms of the Settlement Agreement.

**DISCUSSION**

On May 20, 2024, the Stadium Authority, City of Santa Clara, StadCo and Stadium Manager reached an agreement to settle the public safety and buffet cost disputes. This agreement was finalized on May 23<sup>rd</sup>, with a copy of the agreement released to the public that day. The Settlement Agreement is also attached here. This settlement concludes all pending litigation between the parties.

In addition to resolving disputes over the claimed prior balances (described above) for buffets and public safety costs, the settlement also takes a forward-looking approach to these issues with the aim of mitigating future disputes. To achieve this goal, the settlement restructures cash flows into the City’s General Fund, increases ticket surcharge revenue, increases the senior and youth program fee, and includes a mutual release of claims except as expressly reserved. Some of these settlement terms require formalization in amendments to the Ground Lease and Stadium Lease because they arise from disputes over existing contract terms, and modify the terms and processes set forth therein.

The actions before City Council and the Stadium Authority Board at this time are to Approve the Amendment No. 2 to the Ground Lease, and to Approve the Amendment No. 1 to the Restated and



Amended Stadium Lease in order to implement the related terms in the Settlement Agreement. Delegated authority is also requested for the City Manager/Executive Director to make modifications to any related agreements among the parties that require conforming changes in order to implement the terms of the Settlement Agreement. In addition, in order to effectuate the transfer of funds currently in the litigation reserve and to make other related money transfers contemplated by the Settlement Agreement, certain budget amendments are also required.

As described above, in order to settle the outstanding disputes and simultaneously increase revenue and financial stability for the City and Stadium Authority Agreement, a number of settlement terms were negotiated. Such terms related directly to the disputes at issue, and went beyond. Many of these deal points must also be included in amendments to the Ground Lease and Stadium Lease. Each key required lease amendment term is discussed below.

### Public Safety Costs Terms

#### Carryforward and Payment of Accrued Public Safety Costs Credits out of Excess Revenues.

Under the Settlement Agreement, the approximate settlement amount of \$14.9M in accrued but unpaid Public Safety Cost Credits are partially paid down using approximately \$3.3M in litigation contingency funds. The remaining \$11.6M amount is redefined as the "Stadium Lease for Public Safety Costs - 2024 Outstanding Balance," and will be repaid through new provisions added in Section 14.7 of the Stadium Lease. Specifically, this amount will be paid over time out of "excess revenues" that, under existing terms of the Stadium Lease, would otherwise have gone into the Stadium Renovation/Demolition Fund. The lease amendment provides a restructuring of the Stadium Lease "waterfall" provisions governing the distribution of "Excess Revenues". Instead of 100% of excess revenues going into the Renovation/Demolition Fund until a \$70M balance is reached, "Excess Revenues are now distributed 50% to the demolition reserve fund, 25% to repay the balance of the Public Safety Costs 2024 Outstanding Balance, and 25% available for distribution to the City's General Fund. Once the Public Safety Costs 2024 Outstanding Balance is fully repaid, the waterfall will be restructured on an on-going basis with 50% of excess revenues to the demolition reserve fund and 50% available for distribution to the City's General Fund. With these modifications, the City's General Fund directly benefits by receiving "excess revenues" sooner during the lease term than otherwise projected. This restructuring is reflected in amendments to Paragraphs 14.7 and 14.8 of the Stadium Lease.

#### Increase in the Public Safety Cost Threshold.

Another key settlement term increases the Public Safety Costs Threshold starting in Fiscal Year 24/25 from \$251k/game to \$360k/game (an increase of approx. \$108,000/game). Over the course of ten games, this increase would equate to an additional \$1.09M in value. The existing 4% escalator remains in place. This is reflected in amendment to Paragraph 7.5.3 of the Stadium Lease.

#### Increase in the Non-NFL Ticket Surcharge.

The settlement also creates a new revenue source to address public safety costs that may exceed this new public safety cost threshold. The Non-NFL ticket Surcharge is currently \$4 per ticket and, as explained above, Measure J and the Stadium Lease always provided that this Stadium Authority's Discretionary Funded (which is partially funded by this surcharge) will be used to reimburse StadCo

for public safety costs that exceed the threshold. Under the settlement agreement, this ticket surcharge will increase to \$8 per ticket starting for events not yet booked in fiscal year 25/26, with a \$1.00 escalator every four years thereafter. The Stadium Manager will consider further one-time increases on an event-by-event basis. The “new” additional surcharge revenue (“Additional NNE Surcharge Revenues”) will be used to reimburse Public Safety Costs that exceed the Threshold. Once these costs-over-threshold are repaid, the remaining new ticket surcharge revenue will be used first to fund a \$2M Public Safety Costs offset reserve. If there are any remaining surcharge revenues, the parties will meet and confer to determine how to apply the monies. If no agreement is reached, any such excess funds will go into the Stadium Capital Expenditure reserve fund. These changes are reflected in amendments to Paragraphs 12.1 of the Stadium Lease as well as 8.4 and 8.5 of the Ground Lease. Using the current fiscal year 2024-25 projected budget for surcharge revenues as a reference point, this additional ticket surcharge could generate an additional \$1.35M annually once all the non-NFL events in the fiscal year are subject to the new surcharge.

#### Modifications to the Performance-Based Rent Credits Formula.

The Settlement Agreement also modifies the existing formula for the payment of Performance-Based Rent to the City to make such payments more likely. Going forward, in any given year where there are sufficient Stadium Authority non-NFL net revenues, the City can now receive 50% of performance-based rent as if no public safety costs credits were applied. This is accomplished through modifications to the Stadium Lease. Under its existing terms, public safety credits that reduce performance-based rent are capped at 50% of non-NFL events' net revenue. Under the settlement agreement, the that cap will be reduced 25%. This lower cap can result in higher Performance-Based Rent to the City even when public safety credits are due. Deferred public safety credits are still carried forward and available to reduce StadCo's future Facility rent obligations. This is reflected in amendment to Paragraph 7.5.3 of the Stadium Lease and 1.94 of the Ground Lease. In exchange, the City/Stadium Authority agree to modify the Facility Rent credit carryforward expiration date from 5 years to 10 years in Paragraph 1.95 of the Ground Lease.

#### Other Public Safety Cost Related Terms.

Lastly, some other public safety cost related settlement terms are not reflected in any amendments to lease terms. The Capital Expenditure (CapEx) depreciation expenses on Non-NFL events will not be deducted from Non-NFL event revenue on an on-going basis. This avoids a double-charge because the Stadium Authority already accounts for the full value of Cap Ex expenditures in its fiscal budget as a Stadium Authority expense. Next, the City will engage its consultant to assess the overhead calculation for double-badgers (e.g. temporary police officers employed by the City to provide necessary supplemental public safety services for NFL games). StadCo will be consulted regarding the scope of the assessment, but the City and its consultants will have sole discretion over the findings and the overhead to charge. If the City concludes that these overhead rates should be reduced, the reduction will become effective for the 2024/25 Lease Year. Additionally, StadCo has agreed to pay for cancellation fees as long as they are included as public safety costs under the Stadium lease.

It is worth noting that a number of fundamental public safety terms in the original agreements have not been altered by the Settlement Agreement or the Lease Amendments. These include:

- StadCo remains obligated to pay the City its “actual and reasonable” public safety costs;

and

-- Santa Clara Police Department will continue to determine public safety needs and make deployment decisions.

### Buffet Costs Terms

The settlement of the Buffet Costs claims includes two components: (1) resolving the accrued buffet costs balance to date; and (2) setting a fixed payment of buffet costs going forward to limit Stadium Authority's liability for these expenses and establishing an accounting and verification process. Only the second component requires an amendment to the Stadium Lease (Paragraph 4.6.1).

As described above, the Stadium Authority has not paid all of the buffet costs over the past few years, due to pending litigation. The 49ers' claim against the Stadium Authority for accrued buffet costs through Fiscal Year 2023/24 totaled \$6.8M. Through the settlement, the 49ers have waived this balance in its entirety. Stadium Authority's obligations to reimburse buffet costs from Fiscal Years 2018/19 through 2023/24 is now confirmed as completed.

Going forward, Stadium Authority has confirmed its obligation to reimburse these Legacy SBL buffet expenses to StadCo. But starting on and after Fiscal Year 2024/25, these costs allocated to Stadium Authority will be fixed and limited, which reduces Stadium Authority's financial liability and exposure. As referenced in the Background Section, the Stadium Lease does not include a cap or limit on Buffet Costs charged to the Authority. As a result of the settlement, Stadium Authority will now pay a flat fee of \$90k per game for the buffet, with an increase of 3% annually.

Here's a financial analysis on how this flat fee will help mitigate risks and reduce costs to the Stadium Authority on an on-going basis vs. the terms stipulated in the Stadium lease:

- Actual buffet costs have exceeded \$90k per game in 6 of the last 9 years (no buffet provided in FY 2020-21 due to the pandemic).
- In the most recent season, the average buffet costs per game was \$104.5K per game. This equaled a \$1.2M Stadium Authority's liability the for 12-games season.
- If there was a limit of \$90K/game in the most recent season, the 12-games season would cost \$1.1M. Authority would have saved \$14.5K a game and \$174K for the year.

As shown, actual buffet expenses for the past few seasons have been higher than the \$90k a game fixed payment amount. Also, as part of the Settlement Agreement, StadCo provided a representation and warranty that all prior invoices were only related Legacy SBL buffet costs.

Nevertheless, the Settlement Agreement also provides Stadium Authority the rights to initiate an accounting process to verify that the \$90k per game flat payment obligation is not greater than actual buffet costs. The Authority also retains the right to audit such accounting. Based on that request, the 49ers will implement a system to track buffet expenses incurred for Legacy SBL Holders for NFL Games, and provide documents demonstrating the buffet expenses incurred for those SBL holders.

For any year in which the Authority requires the accounting process, an additional 5% accounting fee is added to the fixed payment to cover the administrative costs. (e.g., In a year where the total fixed payment owed is \$1M, the accounting fee would be \$50,000.) If the year-end accounting shows that buffet costs attributable to Legacy SBLs is less than the flat payment, then StadCo will refund to Stadium Authority the greater of the (i) Difference of actual costs v. fixed payment, or (ii) the 5% accounting fee.

To implement these terms, Paragraph 4.6.1, is proposed to be amended. The amendment implements the fixed payment for buffet costs at \$90K per game with a 3% annual escalator, and the Authority's optional accounting process.

#### Additional Revenues - Senior and Youth Program Fee.

As stated above, through the Settlement Agreement, the City and Stadium Authority were able to negotiate beneficial terms that would otherwise have been unavailable through the arbitration process. The increase to the Senior and Youth program fee is an example of such a beneficial term. The fee will undergo several adjustments to increase its contribution to the City. The fee will rise from \$0.35 to \$0.40 per ticket, with incremental increases of \$0.05 every ten years. Additionally, the annual cap of \$250,000 will be elevated to \$300,000 for the fiscal year 2024-25 and will further increase by \$50,000 every ten years. This is reflected in an amendment of Paragraph 12.2 in the Stadium Lease and Section 8.2 in the Ground Lease. This revised fee structure is expected to generate a minimum of \$2M in additional funds for the City over the next 30 years, providing further support the City's senior and youth programs provided by the Parks and Recreation Department.

#### Additional Revenues - Excess Revenues.

As stated above, the Settlement Agreement provides for a restructured waterfall of the use of Stadium Authority's year-end excess revenues (Paragraph 14 of the Stadium Lease). The Stadium Lease waterfall terms required that excess revenues first fill up the \$70M Renovation / Demolition Reserve Fund before any excess revenues flow to the General Fund. The Settlement Agreement provides for a restructured waterfall, so that excess revenues will continue to fill the Renovation / Demolition Reserve, while also repaying the Public Safety Costs 2024 Outstanding Balance due to StadCo, and also releasing excess revenues to the City's General Fund. Once the balance to StadCo is fully repaid, the restructured waterfall will then provide for 50% of excess revenues to flow to the Renovation / Demolition Reserve fund, with 50% available for distribution to the City's General Fund. It is estimated that these settlement terms will provide \$2.8M of funds to the City's General Fund at the end of this year, and expedite by four or five years the funds flowing to the General Fund in future years. The restructuring is reflected in amendments to Paragraphs 14.7 and 14.8 of the Stadium Lease.

#### 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

### Senior & Youth Program Fees

The Senior & Youth Program Fee will be increasing from \$0.35 to \$0.40 per NFL ticket sold starting in FY2024/25. As a result, Stadium Authority is projected to collect an additional \$35,000 in Senior & Youth Program Fee revenue which will subsequently be paid to the City's General Fund to support Senior & Youth Programs in the Parks & Recreation Department.

### Public Safety Costs

Through FY2023/24, it is estimated that Stadium Authority will owe StadCo \$15.5M as a Public Safety Costs (PSC) 2024 Outstanding Balance. StadCo has agreed to waive \$664,000 of these costs related to FY2017/18 and an additional \$9,296 of costs related to FY 2018/19. The remaining \$14.8M will be owed by Stadium Authority. Stadium Authority will pay \$3.4M to StadCo from the balance in the Legal Contingency Reserve and additional funds are projected to be paid to StadCo at the end of the FY2024/25 from Excess Revenue.

### Excess Revenue

In accordance with the adjustments to the lease regarding how excess revenues are distributed, the amount that was originally budgeted in FY2024/25 to be deposited into the Renovation/Demolition Reserve, will instead be distributed as follows (1) 50% to the Renovation/Demolition Reserve, (2) 25% to the PSC 2024 Outstanding Balance, and (3) 25% to the City's General Fund. The amount of Excess Revenue available for distribution to the Renovation/Demolition Reserve at the end of FY 2024/25 is now estimated to total \$12.3M. This is an increase from the FY 2024/25 Adopted SCSA Budget of \$11.4M due to net revisions in the estimate for FY 2024/25 buffet costs (\$221,000 savings) and a ground lease performance-based rent credit (\$736,000 savings). Therefore, based on the terms included in this report, it is currently projected that in FY 2024/25, \$6.1M will be transferred to the Renovation/Demolition Reserve, \$3.1M will be paid to StadCo to pay down the PSC 2024 Outstanding Balance, and \$3.1M will be transferred to the City's General Fund.

### Performance Based Rent

Stadium Authority will pay the City a projected \$7.1M for performance-based rent related for FYs 2022/23 and 2023/24 from the Legal Contingency Reserve. Additionally, it is projected that Stadium Authority will pay the City \$2.5M for performance-based rent related to FY2024/25; this was originally budgeted to go to the Legal Contingency Reserve and based on the terms included in this report a budget amendment is recommended to allocate the estimated payment for FY 2024/25.

### Buffet Costs

Stadium Authority originally budgeted \$1.1M to be transferred into the Legal Contingency Reserve related to FY2024/25 SBL Complementary Buffet costs. It is now projected that Stadium Authority will pay \$900,000 for SBL Complementary Buffet costs. The funding from these savings is now expected to flow through Excess Revenue at the end of the year.

### Legal Contingency Reserves

The Legal Contingency Reserves are budgeted with a \$14.7M balance at the end of the 2024/25 Fiscal Year. The settlement provides for the Legal Contingency Reserves to be liquidated and these funds appropriated for payments, planned expenditures or Excess Revenue transfers at the end of

the year.

Renovation/Demolition Reserve

The Renovation/Demolition Reserve was projected to have a balance of \$35.5M at the end of Fiscal Year 2024/25. As noted above, adjustments to the lease provide for Excess Revenue to be distributed differently from how originally budgeted. This, along with the liquidation of the Legal Contingency Reserves result in a net decrease of \$5.3M to this reserve.

FY 2024/25 Santa Clara Stadium Authority Operating Budget Amendments

| Description   | Current      | Increase/<br>Decrease | Revised      |
|---|--------------|-----------------------|--------------|
| <b>Sources</b>  |              |                       |              |
| Senior & Youth Program Fees                             | \$233,000    | \$35,000              | \$268,000    |
| Total Sources   | \$233,000    | \$35,000              | \$268,000    |
|   |              |                       |              |
| <b>Uses</b>   |              |                       |              |
| <b>Expenses</b>   |              |                       |              |
| Senior & Youth Program Fees (paid to City)              | \$233,000    | \$35,000              | \$268,000    |
| Performance Rent 2022/23 & 2023/24 (paid to City)       | \$0          | \$7,100,000           | \$7,100,000  |
| Performance Rent 2024/25 (paid to City)                 | \$0          | \$2,500,000           | \$2,500,000  |
| Public Safety Costs (from Settlement)                   | \$0          | \$3,400,000           | \$3,400,000  |
| Public Safety Costs (2024/25 Excess Revenues)           | \$0          | \$3,073,000           | \$3,073,000  |
| Transfer to City General Fund (2024/25 Excess Revenues) | \$0          | \$3,073,000           | \$3,073,000  |
| SBL Complementary Buffet                                | \$0          | \$900,000             | \$900,000    |
|   |              |                       |              |
| <b>Ending Fund Balance</b>                              |              |                       |              |
| Legal Contingency Reserve - Buffet Costs                | \$4,441,801  | (\$4,441,801)         | \$0          |
| Legal Contingency Reserve - Public Safety Costs         | \$10,305,725 | (\$10,305,725)        | \$0          |
| Renovation/Demolition Reserve                           | \$35,476,705 | (\$5,298,474)         | \$30,178,231 |
| Total Uses  | \$50,457,231 | \$35,000              | \$50,492,231 |

COORDINATION

This report was coordinated between the City Manager's Office/Executive Director's Office, City

Attorney's Office/Stadium Authority Counsel's Office, and Finance Department/Treasurer'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>>.

### ALTERNATIVES

1. Staff's recommendation; or
2. Any other direction from the City Council and Stadium Authority Board.

### RECOMMENDATION

1. Authorize the City Manager, on behalf of the City, and the Executive Director, on behalf of the Stadium Authority, to execute a First Amendment to the Ground Lease with the Santa Clara Stadium Authority to in substantially the form presented, in final forms approved by Agency Counsel/City Attorney.
2. Authorize the Executive Director to execute a First Amendment to the Amended and Restated Stadium Lease Agreement with Forty Niners SC Stadium Company, LLC to in substantially the forms presented, in final forms approved by Agency Counsel/City Attorney.
3. Authorize the City Manager, on behalf of the City, and Executive Director, on behalf of Stadium Authority, to negotiate and execute modifications to such other agreements as may be necessary to implement the terms of the Settlement Agreement, in final forms approved by Agency Counsel/City Attorney.
4. Approve the following FY 2024/25 net budget amendments in the Santa Clara Stadium Authority Operating Budget:
  - a. Increase the revenue estimate and corresponding payment to the City for Senior and Youth fees by \$35,000, and
  - b. Increase the Performance-Based Rent expense to the City by \$9,600,000, increase the Public Safety Cost expense by \$6,473,000, increase the transfer to the City's General Fund by \$3,073,000, increase the SBL Complementary Buffet expense by \$900,000, offset by the elimination of Legal Contingency Reserves in the amount of \$14,747,526 and a decrease to the Renovation/Demolition Reserve by \$5,298,474.

Reviewed by: Chuck Baker, Assistant City Manager

Approved by: Jovan D. Grogan, City Manager/Executive Director and Glen R. Googins, City Attorney/Stadium Authority Counsel

### ATTACHMENTS

1. Proposed Amendment No. 2 to the Ground Lease (Stadium Site)
2. Proposed Amendment No. 1 to the Restated and Amended Stadium Lease
3. May 23, 2024 Settlement Agreement and Mutual Releases (Buffet Arbitration and PSC Arbitration)





SECOND AMENDMENT TO GROUND LEASE  
(STADIUM SITE)

THIS SECOND AMENDMENT TO GROUND LEASE (this “**Second Amendment**”) is dated for reference purposes only as of \_\_\_\_\_, 2024, by and between the City of Santa Clara, California, a California municipal corporation (the “**City**”), as ground lessor, and the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code Section 6500 *et seq.* (“**Lessee**”), as ground lessee.

RECITALS

A. City and Lessee are parties to that certain Ground Lease (Stadium Site) dated as of March 28, 2012 (the “**Original Ground Lease**”), as amended by that certain First Amendment to Ground Lease (Stadium Site) dated as of June 19, 2013 (collectively, the “**Existing Ground Lease**”), pursuant to which City leases to Lessee certain premises generally located at the southwest corner of Tasman Boulevard and Centennial Drive in Santa Clara, California as more particularly described in Exhibit A, attached to the Existing Lease (the “**Stadium Site**”).

B. Lessee and Forty Niners SC Stadium Company LLC, a Delaware limited liability company (“**Stadium Tenant**”), are parties to that certain Amended and Restated Stadium Lease Agreement dated as of June 19, 2013 (the “**Existing Stadium Lease**”), pursuant to which Lessee leases to StadCo the Stadium Site and other improvements more particularly described therein. Concurrently herewith, the Existing Stadium Lease is being amended in accordance with the terms and conditions set forth in that certain First Amendment to Amended and Restated Stadium Lease Agreement dated as of even date herewith, by and between Lessee and Stadium Tenant (the “**Stadium Lease First Amendment**”).

C. The City and Lessee are parties to that certain Settlement Agreement and Mutual Release (Buffet and PSC Arbitration), dated May 23, 2024, pursuant to which City and Lessee are entering into this Second Amendment for the purposes of implementing certain terms of that Settlement Agreement.

D. Accordingly, the City and Lessee now desire to make certain amendments to the Existing Ground Lease, subject to, and on the basis of, the terms, covenants and conditions hereinafter set forth. The Existing Ground Lease, as amended by this Second Amendment, is sometimes referred to herein as the “**Ground Lease**.”

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the agreements of City and Lessee herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee hereby agree as follows:

1. Use of Defined Terms; Recitals; Effective Date.

1.1 Definitions; Recitals. All capitalized terms used and not defined herein shall have the defined meanings ascribed to them in the Existing Ground Lease or other agreements

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as specifically cited herein. The provisions of the Recitals above are fully incorporated herein by this reference.

1.2 Effective Date. Unless otherwise specifically provided herein, all provisions of this Second Amendment shall be effective as of the last date of the last signature herein, provided that the National Football League’s (NFL) and Stadium Lenders’ consent of this Second Amendment has been received (“**Effective Date**”).

2. Performance-Based Rent Credits Definition. Effective as of the commencement of Lease Year 11 (*i.e.*, April 1, 2024 – March 31, 2025; and, for clarity. Such Lease Year and other Lease Years shall sometimes hereinafter be referred to in this Second Amendment and in the modified provisions of the Existing Ground Lease set forth herein as, for example, “Lease Year 24/25”), Section 1.94 of the Existing Ground Lease is hereby deleted and replaced in its entirety with the following:

“1.94 “Performance Based Rent Credits” means, for any Lease Year, the sum of the following:

(a) Fifty percent (50%) of the Fixed Ground Rent (including the increase in Fixed Ground Rent specified in this Lease in the event that a Second Team plays and hosts NFL Home Games in the Stadium) payable for such Lease Year, plus

(b) The Credited Public Safety Costs (as defined in the Stadium Lease) for such Lease Year, provided that, if the Credited Public Safety Costs for such Lease Year exceed twenty-five percent (25%) of the Net Income from Non-NFL Events for such Lease Year, the amount of Credited Public Safety Costs exceeding twenty-five percent (25%) of the Net Income from Non-NFL Events for such Lease Year shall not be included in the calculation of Performance Based Rent Credits for such Lease Year and instead shall constitute a Permitted Credits Carry-forward (as defined below) applicable to subsequent Lease Years, plus

€ Following the Tax Allocation Termination Date, the amount of the Received PIT, plus

(d) The amount of any credit for Disproportionate Taxes for such Lease Year, as provided in Section 4.7; plus (e) Any Permitted Credits Carry-forward (as defined below) applicable to such Lease Year.”

3. Permitted Credits Carry-forward. Effective as of the commencement of Lease Year 24/25, the reference to “the next five (5) succeeding Lease Years” in Section 1.95 of the Original Ground Lease is hereby deleted and replaced with “the next ten (10) succeeding Lease Years”.

**FINAL DRAFT**

4. City of Santa Clara Senior and Youth Program Fee. Effective as of the commencement of Lease Year 24/25, Section 8.2 of the Original Ground Lease is hereby deleted and replaced in its entirety with the following:

“8.2 City of Santa Clara Senior and Youth Program Fee. Effective as of the commencement of Lease Year 24/25 and continuing through Lease Year 33/34, Lessee agrees to charge (or require StadCo or its Subtenants to charge) a fee of forty cents (\$0.40) on each Ticket for each NFL Game held in the Stadium (the “**City of Santa Clara Senior and Youth Program Fee**”), and to pay the annual proceeds collected, up to a maximum of Three Hundred Thousand Dollars (\$300,000) per Lease Year, to City as Additional Rent. Effective as of the commencement of Lease Year 34/35 and every ten (10) Lease Years thereafter, (a) the City of Santa Clara Senior and Youth Program Fee shall be increased by five cents (\$0.05) and (b) the maximum amount of the City of Santa Clara Senior and Youth Program Fee per Lease Year shall be increased by an additional Fifty Thousand Dollars (\$50,000.00). City agrees to use the funds received from the City of Santa Clara Senior and Youth Program Fee to fund City programs for parks and recreation and libraries, including, without limitation, senior activities and the Youth Championship Team Fund. To the extent Lessee receives in excess of the maximum amount of the City of Santa Clara Senior and Youth Program Fee applicable to any Lease Year from such fees, the excess will be refunded to StadCo, unless the Stadium Lease provides otherwise.”

5. Discretionary Fund. Effective as of the commencement of Lease Year 24/25, Sections 8.4 and 8.5 of the Original Ground Lease are hereby deleted and replaced in its entirety with the following; provided, however, that the increase in the Non-NFL Ticket Surcharge described in the following provision shall be implemented only for Non-NFL Events booked following the Effective Date of this Second Amendment (and, for purposes of the foregoing, “booked” means the time at which economic terms are agreed upon and accepted by the Stadium Manager and the promoter, and any other parties whose consent is needed to book the Non-NFL Event, regardless of whether a contract has been executed or not):

“8.4 Discretionary Fund. As additional consideration for City to enter into this Lease, Lessee shall impose, and will require the promoter or sponsor of any Non-NFL Events to collect on its behalf, a surcharge of Eight Dollars (\$8.00) per Ticket to all Non-NFL Events for which Tickets are sold or otherwise offered to the general public (the “**Non-NFL Ticket Surcharge**”); and, for Lease Year 28/29 and every four (4) Lease Years thereafter, the “Non-NFL Ticket Surcharge” shall increase by One Dollar (\$1.00) per Ticket. For every Lease Year, (a) the “**Base Non-NFL Ticket Surcharge Proceeds**” shall equal Four Dollars (\$4.00) per Ticket to all Non-NFL Events in such Lease Year for which Tickets are sold or otherwise offered to the general public; and (b) the “**Additional Non-NFL Ticket Surcharge Proceeds**” shall equal the amount by which the proceeds of the Non-NFL Event Ticket Surcharge in such Lease Year exceeds the Base Non-NFL Ticket Surcharge Proceeds. The Base Non-NFL Ticket Surcharge Proceeds and the Additional Non-NFL Ticket Surcharge Proceeds applicable to any Lease Year are,

## FINAL DRAFT

collectively, herein referred to as the “**Non-NFL Ticket Surcharge Proceeds**”. Notwithstanding the foregoing, Lessee and StadCo have agreed in the Stadium Lease First Amendment that the Stadium Manager shall be permitted to increase the Non-NFL Ticket Surcharge for one or more Non-NFL Events if the Stadium Manager determines, pursuant to the authority granted to it in Article 3 of the Initial Stadium Management Agreement (as defined in the Stadium Lease), that increasing the Non-NFL Ticket Surcharge will be in compliance with the standards of care set forth in Section 2.9 of the Initial Stadium Management Agreement. Additional proceeds generated by the Stadium Manager’s increasing the Non-NFL Event Ticket Surcharge beyond the amounts set forth above shall constitute Additional Non-NFL Ticket Surcharge Proceeds for purposes hereof.

Lessee shall maintain a separate account under the control of Lessee (the “**Discretionary Fund**”) that shall be funded annually in the amount of fifty percent (50%) of the Base Non-NFL Ticket Surcharge Proceeds received by Lessee in that Lease Year. Additional Non-NFL Ticket Surcharge Proceeds shall not be deposited into the Discretionary Fund, and shall be treated in accordance with Section 6 of the Stadium Lease First Amendment. Lessee may use the Discretionary Fund to pay Discretionary Expenses. In the event that the Unallocated Amount (as defined below in this Section) of the Discretionary Fund at any time exceeds One Million Dollars (\$1,000,000), then, in consultation with the Stadium Manager, Lessee will determine if adequate provision has been made, such as through a sinking fund, for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan; and, if not, Lessee will reserve funds in the Discretionary Fund for such purpose. If the remaining balance in the Discretionary Fund still exceeds One Million Dollars (\$1,000,000) after adequate provision has been made for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan, then up to one-half (1/2) of such excess may be transferred in the discretion of Lessee from the Discretionary Fund to City's General Fund, in which event an equal amount to that transferred to City's General Fund will be transferred from the Discretionary Fund to Lessee's operating fund. As used herein, the “Unallocated Amount” of the Discretionary Fund means, from time to time during the Term, the portion of the Discretionary Fund, if any, that is not then allocated to pay the costs of a Scheduled Civic Event or other Discretionary Expenses included in the then approved Annual Stadium Authority Budget (as that term is defined in the Stadium Lease) or for Emergency (as that term is defined in the Stadium Lease) expenses.”

“8.5 Discretionary Fund In Event of Transfer of Lessee's Interest. If there is an assignment, termination or other transfer of Lessee's interest under this Lease and the successor of Lessee is not Controlled by City, then following such assignment, termination or other transfer of Lessee's interest, the successor Lessee shall continue to impose the Non-NFL Event Ticket Surcharge and shall pay to City an amount equal to the 50% of the Base Non-NFL Ticket Surcharge Proceeds in each Lease Year as additional Rent.”

**FINAL DRAFT**

6. Ratification. Except as modified by this Second Amendment, all of the terms, conditions and provisions of the Existing Ground Lease shall remain in full force and effect and are hereby ratified and confirmed.

7. Counterparts. This Second Amendment may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute a binding agreement on the part of each of the undersigned. A facsimile or scanned (.pdf or .tiff file or equivalent) execution, including digital and electronic signatures, shall be deemed good and valid acceptance of this Second Amendment and shall be reasonably relied upon by all parties. Photocopies, PDFs, or faxed copies of original signature pages shall have the same force and effect as original signature pages.

[The remainder of this page has been intentionally left blank]

**FINAL DRAFT**

IN WITNESS WHEREOF, the City and Lessee have entered into this Second Amendment to Ground Lease as of the day and year first written above.

CITY:

**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

\_\_\_\_\_  
GLEN R. GOOGINS  
City Attorney

\_\_\_\_\_  
JÖVAN GROGAN  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210

LESSEE:

**SANTA CLARA STADIUM AUTHORITY,  
a joint exercise of powers entity,  
created through Government Code Sections 6500 *et seq.***

APPROVED AS TO FORM:

\_\_\_\_\_  
GLEN R. GOOGINS  
Stadium Authority Counsel

\_\_\_\_\_  
JÖVAN GROGAN  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210

**FIRST AMENDMENT TO AMENDED AND RESTATED  
STADIUM LEASE AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED STADIUM LEASE AGREEMENT (this “**First Amendment**”) is dated for reference purposes only as of \_\_\_\_\_, 2024, by and between the SANTA CLARA STADIUM AUTHORITY, a joint exercise of powers entity, created through Government Code sections 6500 *et seq.* (the “**Stadium Authority**” or “**Landlord**”), and FORTY NINERS SC STADIUM COMPANY LLC, a Delaware limited liability company (“**Tenant**”).

**RECITALS**

A. Landlord and Tenant are parties to that certain Amended and Restated Stadium Lease Agreement dated as of June 19, 2013 (the “**Existing Stadium Lease**”), pursuant to which Landlord leases to Tenant the Stadium and other improvements more particularly described therein.

B. Landlord and Tenant are parties to that certain Settlement Agreement and Mutual Release (Buffet and PSC Arbitration), dated May 23, 2024, pursuant to which Landlord and Tenant are entering into this First Amendment for the purposes of implementing certain terms of that Settlement Agreement.

C. Accordingly, Landlord and Tenant now desire to make certain amendments to the Existing Stadium Lease, subject to, and on the basis of, the terms, covenants and conditions hereinafter set forth. The Existing Stadium Lease, as amended by this First Amendment, is referred to herein as the “**Stadium Lease**”.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the agreements of Landlord and Tenant herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals; Effective Date. The provisions of the Recitals above are fully incorporated herein by this reference. Unless otherwise specifically provided herein, all provisions of this First Amendment shall be effective as of the last date of the last signature herein, provided that the National Football League’s (NFL) and Stadium Lenders’ consent of this First Amendment has been received (“**Effective Date**”).

2. Defined Terms. All capitalized terms used and not defined in this First Amendment shall have the meanings ascribed to them in the Existing Stadium Lease or other agreements as specifically cited herein; provided, however, that the following terms shall be defined as follows:

2.1.1 “**Ground Lease**” means the ground lease entered into concurrently with this Lease by the Stadium Authority and the City, pursuant to which the Stadium Authority shall lease the Stadium Site from the City, as the same may be amended, supplemented or modified

from time to time in accordance with the Ground Lease. In no event shall the Ground Lease be amended or otherwise modified without Tenant's prior written approval.

2.1.2 “**Public Safety Costs – 2024 Outstanding Balance**” means Fourteen Million Eight Hundred Twenty-Three Thousand One Hundred Seventy-Seven Dollars (\$14,823,177.00); provided, however, that (a) because the foregoing includes a current estimate of \$3,631,648 for Credited Public Safety Costs for Lease Year 23/24, if the Credited Public Safety Costs for Lease Year 23/24 are ultimately determined to be more than \$3,631,648, the Public Safety Costs – 2024 Outstanding Balance shall be increased by the amount of such increase, and if the Credited Public Safety Costs for Lease Year 23/24 are ultimately determined to be less than \$3,631,648, the Public Safety Costs – 2024 Outstanding Balance shall be decreased by the amount of such reduction; and (b) if and to the extent that Tenant reimburses the City after the Effective Date for Public Safety Costs for Lease Years prior to Lease Year 23/24, the Public Safety Costs – 2024 Outstanding Balance will increase by the amount of any such reimbursement.

### 3. Complimentary Buffets.

3.1 Annual Buffet Payment. Effective as of the commencement of Lease Year 11 (*i.e.*, April 1, 2024 – March 31, 2025; and, for clarity, such Lease Year and other Lease Years shall sometimes hereinafter be referred to in this First Amendment and in the modified provisions of the Existing Stadium Lease set forth herein as, for example, “Lease Year 24/25”), the fifth sentence of Paragraph 4.6.1 of the Existing Stadium Lease is deleted and replaced in its entirety with the following sentences:

“Subject to the terms and conditions of the Stadium Lease Documents, including without limitation, the provisions of Paragraph 7.3.1 of this Lease, Tenant shall also be responsible to make available to SBL Holders the amenities described in Exhibit D to each such SBL Agreement to the extent applicable to NFL Events, including providing a complimentary buffet to certain SBL Holders during NFL Games (as defined below); *provided, however,* that, beginning with Lease Year 24/25, and continuing for each Lease Year thereafter, the Stadium Authority shall, in consideration for Tenant’s providing such complimentary buffets to the approximate 942 SBL holders in Sections VIP 115, VIP 138, VIP 137 Rows 4, 5, and 6, and VIP 139 Rows 4, 5, and 6 (“**Select SBL Holders**”), pay Tenant the “Annual Buffet Payment” (as defined below) applicable to such Lease Year. Tenant shall invoice the Stadium Authority monthly for the portion of the Annual Buffet Payment applicable to the preceding calendar month (based on the number of NFL Games played during such calendar month), and the Stadium Authority shall pay the invoiced amount within thirty (30) days following receipt of such an invoice. For purposes hereof, the “**Annual Buffet Payment**” for Lease Year 24/25 shall equal the product of (a) Ninety Thousand Dollars (\$90,000.00) (the “**Per Game Buffet Factor**”) multiplied by (ii) the total number of NFL Games played at the Stadium during that Lease Year for which the complimentary buffet is provided to the Select SBL Holders. For example, if there were ten (10) such NFL Games during Lease Year 24/25, the Annual Buffet Payment for that Lease Year



shall equal Nine Hundred Thousand Dollars (\$900,000.00). For each Lease Year thereafter, the Per Game Buffet Factor referenced above shall be increased by three percent (3%). This 3% annual increase is applicable only to the Per Game Buffet Factor. As used in this Paragraph 4.6.1 [and in Section 3.2 of this First Amendment below], the term "**NFL Games**" means any pre-, regular, and post-season NFL games played by the Team in the Stadium, in which the Team is designated as the home team by the NFL (excluding League Events [as defined in Article 21 below]).

3.2 Stadium Authority Inspection and Audit Right. The Stadium Authority shall have the right, upon written notice to Tenant, delivered prior to the start of any Lease Year (*i.e.*, April 1) to require that Tenant implement a system to track buffet expenses incurred for the Select SBL Holders during NFL Games played at the Stadium during such Lease Year and also maintain books and records sufficient to document the actual cost of Tenant's providing complimentary buffets to the Select SBL Holders during Team Games played at the Stadium during such Lease Year ("**Complimentary Buffet Books and Records**"). For any Lease Year in which the Stadium Authority timely elects to have Tenant maintain Complimentary Buffet Books and Records, (a) the Stadium Authority shall pay to Tenant, in addition to the Annual Buffet Payment, an administrative fee equal to five percent (5%) of the Annual Buffet Payment for such Lease Year (the "**Complimentary Buffet Administrative Fee**", which shall be billed monthly by Tenant, together with the monthly invoice of the Annual Buffet Payment), and (b) by March 15 of that Lease Year, Tenant shall (i) provide to the Stadium Authority a statement for such Lease Year, together with commercially reasonable backup documentation, setting forth the actual cost of Tenant's providing complimentary buffets to the Select SBL Holders during NFL Games played at the Stadium during such Lease Year (the "**Annual Buffet Statement**"), and (ii) make available to the Stadium Authority such documents to demonstrate the reasonable allocation of such complimentary buffet costs to the Select SBL Holders. Tenant acknowledges and agrees that the Complimentary Buffet Administrative Fee shall be payable only for Lease Years in which the Stadium Authority timely elects to have Tenant maintain Complimentary Buffet Books and Records. Further, the Complimentary Buffet Administrative Fee is wholly independent of the 3% annual increase to the Per Game Buffet Factor. Within one hundred eighty (180) days following the Stadium Authority's receipt of any Annual Buffet Statement, the Stadium Authority or its representative, which representative must be a qualified, third-party independent certified public accountant, shall have the right to audit such Complimentary Buffet Books and Records at any time during normal Business Hours, upon written notice to Tenant, delivered at least ten (10) Business Days in advance. The Stadium Authority shall not have the right to receive the Annual Buffet Statement, or to exercise its right to review the documents described in clause (ii) above or audit the Complimentary Buffet Books and Records, unless it has paid the Annual Buffet Payment, plus the Complimentary Buffet Administrative Fee, for the Lease Year for which the Complimentary Buffet Books and Records were prepared. If it is determined either through Stadium Authority's review of the documents described in clauses (i) or (ii) above, or as the result of the Stadium Authority's audit, that the Annual Buffet Payment for the particular Lease Year exceeds the actual cost of Tenant's providing complimentary buffets to the Select SBL Holders during NFL Games played at the Stadium during such Lease Year ("**Actual Buffet Costs**"), and Tenant does not disagree with such determination, then Tenant shall promptly pay to the Stadium Authority the greater of: (x) the amount by which the Annual Buffet Payment exceeds the Actual

Buffet Costs for such Lease Year or (y) the Complimentary Buffet Administrative Fee charged in that Lease Year. If, however, Tenant disagrees with such determination, then Stadium Authority and Tenant shall resolve such disagreement in accordance with the Dispute Resolution Procedures. If it is determined as the result of the Dispute Resolution Procedures that the Annual Buffet Payment exceeds the Actual Buffet Costs for such Lease Year, Tenant shall promptly pay to the Stadium Authority the greater of: (x) the amount by which the Annual Buffet Payment exceeds the Actual Buffet Costs for such Lease Year or (y) the Complimentary Buffet Administrative Fee charged in that Lease Year.

4. Credited Public Safety Costs. Effective as of the commencement of Lease Year 24/25, Paragraph 7.5.3(a) of the Existing Stadium Lease is deleted and replaced in its entirety with the following:

“(a) If the amount of Public Safety Costs, including Public Safety Capital Expenditures (whether funded from the Stadium Capital Expenditure Reserve or otherwise), attributable to NFL Games for any Lease Year (which shall, in the case of Public Safety Capital Expenditures, include only the amortization thereof applicable to such Lease Year) exceed the Public Safety Costs Threshold applicable to such Lease Year, then, subject to the provisions of Paragraph 7.5.5 below and, except to the extent such excess is paid by the Stadium Authority out of the Stadium Authority Discretionary Fund, or paid from the Public Safety Costs Reserve pursuant to Paragraph 12.1.3 below (as applicable for any Lease Year, the “**PSC Reserve Payment**”), or paid from Net Hotel CFD Revenue pursuant to Paragraph 12.5 below, or, in the case of a League Event, paid by third parties, such as the "event host committee", the amount by which such Public Safety Costs exceed the Public Safety Costs Threshold shall constitute "**Credited Public Safety Costs.**" Such Credited Public Safety Costs, up to a maximum of twenty-five percent (25%) of the Net Income from Non-NFL Events for such Lease Year, shall be included among the Performance-Based Rent Credits for purposes of determining the amount of Performance-Based Rent payable by the Stadium Authority for such Lease Year pursuant to the Ground Lease (and, following the Tenant Season Expansion Date if the Stadium Authority Put Right is exercised, the Performance-Based Rent payable by Tenant for such Lease Year in accordance with Paragraph 6.4 above). If such Credited Public Safety Costs for any Lease Year exceed twenty-five percent (25%) of the Net Income from Non-NFL Events for such Lease Year, the additional amount of Credited Public Safety Costs shall constitute a Permitted Credits Carry-forward applicable to future Lease Years. Until the Tenant Season Expansion Date, if applicable, the Rent payable by Tenant for any Lease Year shall be reduced by the lesser of the following: (1) the amount of Credited Public Safety Costs for such Lease Year plus any Credited Public Safety Costs included among the Permitted Credits Carry-forward for the particular Lease Year or (2) twenty-five percent (25%) of the Net Income from Non-NFL Events for such Lease Year. If, for any reason, such a reduction in the Rent payable by Tenant is not permitted by any Permitted Landlord Financing or otherwise, the Stadium Authority shall, within thirty (30) days following application of the

Stadium Authority's credit against Performance-Based Rent pursuant to the Ground Lease, pay to Tenant the amount by which the Performance-Based Rent is so reduced.”

5. Public Safety Costs Threshold. Effective as of the commencement of Lease Year 24/25, Paragraph 7.5.3(b) of the Existing Stadium Lease is deleted and replaced in its entirety with the following:

“(b) Beginning in and for Lease Year 24/25, the “**Public Safety Costs Threshold**” shall equal the product of (i) Three Hundred Sixty Thousand Dollars (\$360,000.00) (the “**Per Game PSC Factor**”) multiplied by (ii) the total number of pre-season, regular season and post-season NFL Home Games played at the Stadium during that Lease Year. For example, if there were ten (10) NFL Home Games during Lease Year 24/25, the Public Safety Costs Threshold for that Lease Year shall equal Three Million Six Hundred Thousand Dollars (\$3,600,000.00). For Lease Year 25/26 and each Lease Year thereafter, the Per Game PSC Factor referenced above shall be increased by four percent (4%) per Lease Year, subject to adjustment as provided in Paragraph 7.5.6(b) below.”

For the sake of clarity, nothing contained in this Section 5 shall affect the amount of the Public Safety Costs Threshold for Lease Years 14/15 through 23/24.

6. Non-NFL Event Ticket Surcharge. Effective as of the commencement of Lease Year 24/25, Paragraph 12.1 of the Existing Stadium Lease is deleted and replaced in its entirety with the following; provided, however, that the increase in the Non-NFL Ticket Surcharge described in the following provision shall be implemented only for Non-NFL Events booked following the Effective Date of this First Amendment (and, for purposes of the foregoing, “booked” means the time at which economic terms are agreed upon and accepted by the Stadium Manager and the promoter, and any other parties whose consent is needed to book the Non-NFL Event, regardless of whether a contract has been executed or not):

“12.1 **Non-NFL Event Ticket Surcharge**.

12.1.1 The Stadium Authority (or, if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1, then, effective as of the Tenant Season Expansion Date, Tenant) will impose, and will require the promoter or sponsor of any Non-NFL Events to collect on its behalf, a surcharge of Eight Dollars (\$8.00) per Ticket to all Non-NFL Events for which Tickets are sold or otherwise offered to the general public (the “**Non-NFL Ticket Surcharge**”); and, for Lease Year 28/29 and every four (4) Lease Years thereafter, the “Non-NFL Ticket Surcharge” shall increase by One Dollar (\$1.00) per Ticket. For every Lease Year, (a) the “**Base Non-NFL Ticket Surcharge Proceeds**” shall equal Four Dollars (\$4.00) per Ticket to all Non-NFL Events in such Lease Year for which Tickets are sold or otherwise offered to the general public;

and (b) the “**Additional Non-NFL Ticket Surcharge Proceeds**” shall equal the amount by which the proceeds of the Non-NFL Event Ticket Surcharge in such Lease Year exceeds the Base Non-NFL Ticket Surcharge Proceeds. The Base Non-NFL Ticket Surcharge Proceeds and the Additional Non-NFL Ticket Surcharge Proceeds applicable to any Lease Year are, collectively, herein referred to as the “**Non-NFL Ticket Surcharge Proceeds**”. Notwithstanding the foregoing, the Stadium Authority and Tenant agree that the Stadium Manager shall be permitted to increase the Non-NFL Ticket Surcharge for one or more Non-NFL Events if the Stadium Manager determines, pursuant to the authority granted to it in Article 3 of the Initial Stadium Management Agreement, that increasing the Non-NFL Ticket Surcharge will be in compliance with the standards of care set forth in Section 2.9 of the Initial Stadium Management Agreement. Additional proceeds generated by the Stadium Manager’s increasing the Non-NFL Event Ticket Surcharge beyond the amounts set forth above shall constitute Additional Non-NFL Ticket Surcharge Proceeds for purposes hereof.

12.1.2 Except as expressly provided below in this Paragraph 12.1, the Non-NFL Ticket Surcharge Proceeds will be excluded from Non-NFL Event Revenue, and will be allocated as follows:

(i) One-half (1/2) of the Base Non-NFL Ticket Surcharge Proceeds will be included in Stadium Authority Revenue in the Lease Year received by the Stadium Authority, but shall not constitute Non-NFL Event Revenue.

(ii) The other one-half (1/2) of the Base Non-NFL Ticket Surcharge Proceeds will be deposited in the Stadium Authority Discretionary Fund, subject to the provisions of Paragraph 12.1.6 below, but shall not constitute Non-NFL Event Revenue.

(iii) All Additional Non-NFL Ticket Surcharge Proceeds will be deposited in the “Public Safety Costs Reserve” (as defined below), and will not be included in the calculation of Excess Revenues in Article 14 below, and will not constitute Non-NFL Event Revenue. For purposes hereof, the “**Public Safety Costs Reserve**” means the segregated fund to be held in a separate depository account maintained by the Stadium Authority (or, following the Tenant Season Expansion Date, Tenant) at an Acceptable Bank for the purpose of holding, applying, investing and transferring the Public Safety Costs Reserve (“**Public Safety Costs Reserve Account**”). The Public Safety Costs Reserve Account shall be separate from, and shall not be a part of, any other fund or account of the Stadium Authority, and the interest earned on the funds held in the Public Safety Costs Reserve

Account shall be retained as part of the Public Safety Costs Reserve, and shall not be Stadium Authority Revenue.

12.1.3 If, for any Lease Year on and after Lease Year 24/25, there are Credited Public Safety Costs included among the Permitted Credits Carry-forward, the Stadium Authority will pay to Tenant from the Public Safety Costs Reserve an amount equal to the lesser of (1) the amount of such Credited Public Safety Costs included among the Permitted Credits Carry-forward for such Lease Year or (2) the balance of the Public Safety Costs Reserve as of the end of such Lease Year (which, for this purpose and for purposes of Paragraphs 12.1.4 and 12.1.5 below, includes the amount of Additional Non-NFL Ticket Surcharge Proceeds for such Lease Year, whether or not such funds have been actually deposited in the Public Safety Costs Reserve as of the end of such Lease Year).

12.1.4 If, after the payment to Tenant set forth in Paragraph 12.1.3 relating to Credited Public Safety Costs included among the Permitted Credits Carry-forward for a particular Lease Year, there is a remaining balance in the Public Safety Costs Reserve, then such remaining balance shall be utilized as follows:

If the amount of Public Safety Costs, including Public Safety Capital Expenditures (whether funded from the Stadium Capital Expenditure Reserve or otherwise), attributable to NFL Games (which shall, in the case of Public Safety Capital Expenditures, include only the amortization thereof applicable to such Lease Year) exceed the Public Safety Costs Threshold applicable to such Lease Year, then, subject to the provisions of Paragraph 7.5.5 above and, except to the extent such excess is paid by the Stadium Authority out of the Stadium Authority Discretionary Fund, or paid from Net Hotel CFD Revenue pursuant to Paragraph 12.5 below, or, in the case of a League Event, paid by third parties, such as the "event host committee", the Stadium Authority will pay to Tenant from the remaining balance of the Public Safety Costs Reserve as of the end of such Lease Year an amount equal to the lesser of (1) the amount of such excess for such Lease Year or (2) the amount of such remaining balance of the Public Safety Costs Reserve.

If the balance of the Public Safety Costs Reserve as of the end of any Lease Year is not sufficient to pay Tenant (a) the full amount of Credited Public Safety Costs included among the Permitted Credits Carry-forward for such Lease Year pursuant to Paragraph 12.1.3 above and (b) the amount of Public Safety Costs above the Public Safety Costs Threshold that have not been reimbursed out of the Stadium Authority Discretionary Fund, the Net Hotel CFD Revenue or by third parties, pursuant to this

Paragraph 12.1.4, the Rent reduction terms and conditions as fully set forth in the last two (2) sentences of Paragraph 7.5.3(a) above shall apply.

12.1.5 If, after the Stadium Authority's payments to Tenant pursuant to Paragraphs 12.1.3 and 12.1.4 above for any Lease Year, there remains a balance in the Public Safety Costs Reserve, the Stadium Authority shall hold such balance in the Public Safety Costs Reserve to cover any Credited Public Safety Costs in subsequent Lease Years (including any Credited Public Safety Costs that may be included in Permitted Credits Carry-forward in subsequent Lease Years); provided, however, that, if, after the Stadium Authority's payment to Tenant pursuant to Paragraphs 12.1.3 and 12.1.4 above for any Lease Year, the balance in the Public Safety Costs Reserve exceeds Two Million Dollars (\$2,000,000) (the "**Excess PSC Reserve Funds**"), Tenant and the Stadium Authority shall meet and confer in good faith to mutually determine how the Excess PSC Reserve Funds shall be utilized. If Tenant and the Stadium Authority do not agree on the use of such Excess PSC Reserve Funds within one hundred eighty (180) days after Stadium Authority makes the payment(s) to Tenant pursuant to Paragraphs 12.1.3 and 12.1.4 above, the Stadium Authority shall, in addition to the amounts described in Paragraph 10.2 above, deposit, or cause to be deposited, the Excess PSC Reserve Funds into the Stadium Capital Expenditure Reserve. Upon the Lease Expiration Date or any earlier termination of this Lease, the Stadium Authority shall be entitled to retain any then-remaining Public Safety Costs Reserve and the same shall constitute Stadium Authority Revenue.

12.1.6 In the event that the Unallocated Amount (as defined below in this Paragraph) of the Stadium Authority Discretionary Fund at any time exceeds One Million Dollars (\$1,000,000.00), then, in consultation with the Stadium Manager, the Stadium Authority will determine if adequate provision has been made, such as through a sinking fund, for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan; and, if not, the Stadium Authority will reserve funds in the Stadium Authority Discretionary Fund for such purpose. If the remaining balance in the Stadium Authority Discretionary Fund still exceeds One Million Dollars (\$1,000,000.00) after adequate provision has been made for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan, then up to one-half (1/2) of such excess may, upon at least twenty (20) days' prior notice to Tenant, be transferred in the discretion of the Stadium Authority from the Stadium Authority Discretionary Fund to the City's General Fund, in which event an equal amount to that transferred to the City's General Fund will be transferred from the Stadium Authority Discretionary Fund to the Stadium Authority's operating fund and will be included in Stadium Authority Revenue in the Lease Year transferred. The amount so included in Stadium Authority

Revenue will be available to pay Stadium Authority Expenses. As used herein, the “**Unallocated Amount**” of the Stadium Authority Discretionary Fund means, from time to time during the Term, the portion of the Stadium Authority Discretionary Fund, if any, that is not then allocated to pay the costs of a Scheduled Civic Event or other Stadium Authority Discretionary Expenses included in the then-approved Annual Stadium Authority Budget or for Emergency expenses.”

7. City of Santa Clara Senior and Youth Program Fee. Effective as of the commencement of Lease Year 24/25, the City of Santa Clara Senior and Youth Program Fee referenced in Paragraph 12.2 of the Existing Stadium Lease shall be increased to forty cents (\$0.40) per Ticket, up to a maximum amount of Three Hundred Thousand Dollars (\$300,000.00) per Lease Year. Effective as of the commencement of Lease Year 34/35 and every ten (10) Lease Years thereafter, (a) the City of Santa Clara Senior and Youth Program Fee shall be increased by five cents (\$0.05) and (b) the maximum amount of the City of Santa Clara Senior and Youth Program Fee per Lease Year shall be increased by an additional Fifty Thousand Dollars (\$50,000.00).

8. Use of Excess Revenues. Effective as of the commencement of Lease Year 24/25, Paragraph 14.7 and Paragraph 14.8 of the Existing Stadium Lease are deleted and replaced in their entirety with the following paragraphs:

“14.7 Renovation/Demolition Reserve. Seventh, if, as of the end of the particular Lease Year, the balance of the Renovation/Demolition Reserve is less than Seventy Million Dollars (\$70,000,000.00) (the “**Required Renovation/Demolition Reserve Amount**”) (as defined below) for such Lease Year (the amount of any such deficiency for a particular Lease Year is herein referred to as the “**Renovation/Demolition Reserve Deficiency**”), then the Stadium Authority shall, to the extent there remain any Excess Revenues after the distributions required pursuant to Paragraphs 14.1 through Paragraph 14.6, disburse such Excess Revenues as follows (the “**Renovation/Demolition Reserve Distribution**”):

14.7.1 If, as of the end of the particular Lease Year, the Public Safety Costs – 2024 Outstanding Balance has not been fully reimbursed to Tenant, the Stadium Authority shall disburse such Excess Revenues as follows:

(a) The Stadium Authority shall transfer to the Renovation/Demolition Reserve an amount equal to the lesser of (i) fifty percent (50%) of the remaining Excess Revenues, or (ii) the then applicable Renovation/Demolition Reserve Deficiency;

(b) The Stadium Authority shall reimburse Tenant the lesser of the following (for any applicable Lease Year, the “**PSC 2024 Balance Reimbursement**”): (i) fifty percent (50%) of the remaining Excess Revenues (*i.e.*, after the transfer of Excess Revenues to the Renovation/Demolition Reserve

by the Stadium Authority pursuant to clause (a) above), or (ii) the then remaining unreimbursed portion of the Public Safety Costs – 2024 Outstanding Balance; and

(c) The Stadium Authority shall have the right to use the remaining amount of Excess Revenues (*i.e.*, after the transfer of Excess Revenues to the Renovation/Demolition Reserve by the Stadium Authority pursuant to clause (a) above, and the reimbursement of Tenant pursuant to clause (b) above) as provided in Paragraph 14.8 below.

14.7.2 If, as of the end of the particular Lease Year, the Public Safety Costs – 2024 Outstanding Balance has been fully reimbursed to Tenant, the Stadium Authority shall disburse such Excess Revenues as follows:

(a) The Stadium Authority shall transfer to the Renovation/Demolition Reserve an amount equal to the lesser of (i) fifty percent (50%) of the Excess Revenues, or (ii) the then applicable Renovation/Demolition Reserve Deficiency; and

(b) The Stadium Authority shall have the right to use the remaining amount of Excess Revenues (*i.e.*, after the transfer of any Excess Revenues to the Renovation/Demolition Reserve by the Stadium Authority pursuant to clause (a) above) as provided in Paragraph 14.8 below.

14.8 Additional Disbursements. After the distribution of Excess Revenues pursuant to Paragraph 14.1 through Paragraph 14.7, the Stadium Authority shall have the right, subject to any contrary covenants made by the Stadium Authority in connection with the Permitted Landlord Financing, to use the remaining Excess Revenues in such Lease Year, if any, to pay Stadium Authority Discretionary Expenses or for any other purposes, including the distribution of such Excess Revenues to the constituent partners of the Stadium Authority, including to the City’s general fund.

For illustrative purposes only, if, after the distributions of Excess Revenues pursuant to Paragraphs 14.1 through 14.6 above for a particular Lease Year, there remain Excess Revenues of **\$3,000,000**, the then remaining unreimbursed portion of the Public Safety Costs – 2024 Outstanding Balance is **\$2,000,000** and the balance of the Renovation/Demolition Reserve is **\$67,000,000**, then the following shall apply: (a) pursuant to Paragraph 14.7.1(a), the Stadium Authority shall transfer to the Renovation/Demolition Reserve an amount equal to **\$1,500,000** (*i.e.*, **50%** of the remaining Excess Revenues after the distributions pursuant to Paragraphs 14.1 through 14.6); (b) pursuant to Paragraph 14.7.1(b), the Stadium Authority shall reimburse Tenant **\$750,000** towards the then remaining Public Safety Costs – 2024 Outstanding Balance (*i.e.*, **50%** of the remaining Excess Revenues after the transfer to the Renovation/Demolition Reserve pursuant to clause (a) above); and (c) pursuant to Paragraph 14.7.1(c), the Stadium Authority



shall have the right to use the remaining amount of Excess Revenues equal to **\$750,000** as provided in Paragraph 14.8 above.

If, however (again for illustrative purposes only), after the distributions of Excess Revenues pursuant to Paragraphs 14.1 through 14.6 above for a particular Lease Year, there remain Excess Revenues of **\$3,000,000**, the Public Safety Costs – 2024 Outstanding Balance has been fully reimbursed to Tenant, and the balance of the Renovation/Demolition Reserve is **\$67,000,000**, then the following shall apply: (a) pursuant to Paragraph 14.7.2(a), the Stadium Authority shall transfer **\$1,500,000** (i.e., **50%** of the remaining Excess Revenues after the distributions pursuant to Paragraphs 14.1 through 14.6) to the Renovation/Demolition Reserve; and (b) pursuant to Paragraph 14.7.2(b), the Stadium Authority shall have the right to use the remaining amount of Excess Revenues equal to **\$1,500,000** as provided in Paragraph 14.8 above.”

9. Ratification. Except as modified by this First Amendment, all of the terms, conditions and provisions of the Existing Stadium Lease shall remain in full force and effect and are hereby ratified and confirmed.

10. Counterparts. This First Amendment may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute a binding agreement on the part of each of the undersigned. A facsimile or scanned (.pdf or .tiff file or equivalent) execution, including digital and electronic signatures, shall be deemed good and valid acceptance of this First Amendment and shall be reasonably relied upon by all parties. Photocopies, PDFs, or faxed copies of original signature pages shall have the same force and effect as original signature pages.

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IN WITNESS WHEREOF, the Landlord and Tenant have entered into this First Amendment to Amended and Restated Stadium Lease Agreement as of the day and year first written above.

LANDLORD:

**SANTA CLARA STADIUM AUTHORITY,  
a joint exercise of powers entity,  
created through Government Code Sections 6500 *et seq.***

APPROVED AS TO FORM:

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GLEN R. GOOGINS  
Stadium Authority Counsel

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JŌVAN GROGAN  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210

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*[Signature continued on next page]*

*[Signatures to First Amendment to Amended and Restated Stadium Lease Agreement  
continued from previous page]*

TENANT:

**FORTY NINERS SC STADIUM COMPANY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

4949 Marie P. DeBartolo Way  
Santa Clara, CA 95054

**COVER SHEET**

for

**Settlement Agreement and Mutual Release  
(Buffet and PSC Arbitration)**

By and Between:

Forty Niners SC Stadium Company LLC and Forty Niners Stadium Management Company LLC (“Manager”) (collectively, the “Forty Niners”), on the one hand, and the Santa Clara Stadium Authority and the City of Santa Clara, on the other hand

**Note from Agency Counsel/City Attorney:**

The terms set forth in the attached Settlement Agreement were approved by the Agency Board/City Council in Closed Session on May 20, 2024, with authorization and direction to the Executive Director/City Manager to execute a formal Settlement Agreement reflecting such terms in a final form approved by Agency Counsel/City Attorney. The Board/City Council vote was 5-2 in favor of the settlement terms, with Mayor/Chair Gillmor and Council/Board Member Watanabe opposed.

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**  
**(BUFFET AND PSC ARBITRATION)**

This Settlement Agreement and Mutual Release (the “Settlement Agreement”) is entered into by and among, on the one hand Forty Niners SC Stadium Company LLC (“StadCo”) and Forty Niners Stadium Management Company LLC (“Manager”) (collectively, the “Forty Niners”), and on the other hand, the Santa Clara Stadium Authority (“SCSA”) and the City of Santa Clara (the “City”), with respect to certain provisions specifically related to the City, on the date of the last signature herein (the “Interim Effective Date”). Each of them is referred to herein as a “Party” and collectively as the “Parties.” All defined terms not defined herein have the meanings given to them in the Stadium Lease or the Ground Lease (as defined below).

**RECITALS**

- A. WHEREAS, the City and SCSA entered into a Lease Agreement on or about March 28, 2012, and then subsequently entered into a First Amendment to Ground Lease on or about June 19, 2013 (together, the “Ground Lease”);
- B. WHEREAS, StadCo and SCSA entered into the Stadium Lease Agreement on or about March 28, 2012, and then subsequently entered into the Amended and Restated Stadium Lease Agreement (the “Stadium Lease”) on or about June 19, 2013;
- C. WHEREAS, StadCo, SCSA, and Manager entered into the Stadium Management Agreement on or about March 28, 2012, and subsequently entered into four amendments of the Management Agreement, dated respectively November 13, 2012, May 9, 2013, June 19, 2013 and May 18, 2014 (collectively, the “Management Agreement”);
- D. WHEREAS, SCSA and StadCo entered into the Stadium Operations Agreement on or about August 18, 2014 (the “Operations Agreement”);
- E. WHEREAS, on June 14, 2019, StadCo filed with JAMS its initial claim against SCSA pertaining to public safety costs for certain NFL Games played in the Stadium, titled *Forty Niners SC Stadium Company LLC v. Santa Clara Stadium Authority*. On August 2, 2019, SCSA filed its initial response, which included breach and declaratory relief cross-claims pertaining to the public safety costs claims and Stadium Lease terms. StadCo and SCSA have amended these initial claims several times; which are collectively referred to herein as the “PSC Arbitration”;
- F. WHEREAS, on September 4, 2020, StadCo filed with JAMS its initial claim against SCSA pertaining to reimbursement of expenses for buffets provided to certain Stadium Builder License (SBL) holders at certain NFL games, titled *Forty Niners SC Stadium Company LLC v. Santa Clara Stadium Authority*. On September 25, 2020, SCSA filed its initial response, which included cross-claims against StadCo and Manager concerning the buffet expenses, including claims in regards to buffet expenses in StadCo and SCSA’s prior and concluded arbitration to set StadCo’s Facility Rent under the Stadium Lease. StadCo, Manager and SCSA have amended these initial claims several times, which are collectively referred to herein as the “Buffet Arbitration”;

G. WHEREAS, on or about August 31, 2022, StadCo, Manager, and SCSA entered into a Stipulation to Stay Arbitration Matters, in order to try to resolve the Buffet Arbitration and PSC Arbitration (the “Stay”);

H. WHEREAS, the Parties hereto desire to compromise and settle, and to fully and finally resolve their claims and cross-claims in the Buffet Arbitration and the PSC Arbitration, and based upon this desire and the covenants, warranties and promises herein, the Parties mutually agree to the following settlement terms.

## **AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **1. RESOLUTION OF THE BUFFET ARBITRATION.**

a. StadCo and SCSA agree, and SCSA acknowledges, that Paragraph 4.6.1 of the Stadium Lease obligates SCSA to reimburse invoices from StadCo for all costs and expenses incurred by StadCo in providing any complimentary buffets to certain SBL holders (the “Buffet Reimbursement”). StadCo agrees and acknowledges that SCSA’s obligations under Paragraph 4.6.1 for Lease Years 14/15 through 23/24 are deemed satisfied.

b. StadCo represents and warrants that prior invoices sent to SCSA for the Buffet Reimbursement included only expenses attributable to the buffets provided to the “certain SBL holders” described in Paragraph 4.6.1 of the Stadium Lease.

c. Starting in Lease Year 24/25, and until the termination or expiration of the Stadium Lease, SCSA shall pay StadCo \$90,000 for each NFL Game at which complimentary buffets are provided to approximately 942 SBL holders in sections VIP 115, VIP 138, VIP 137 Rows 4, 5, and 6, and VIP 139 Rows 4, 5 and 6. NFL Games include any pre-, regular, and post-season NFL games played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. However, NFL Games does not include League Events (as defined by Article 21 of the Stadium Lease), regardless of which team is designated by the NFL as the “home” team.

d. The \$90,000 payment referenced in the subsection above shall grow at 3% per year, starting in Lease Year 25/26.

#### **e. Buffet Accounting Request.**

(i) No later than conclusion of any Lease Year, SCSA may require that StadCo account for the Buffet Reimbursement for the following Lease Year (*i.e.*, SCSA may demand the accounting for Lease Year 28/29 no later than March 31, 2028) (“Buffet Accounting Request”). If such a Buffet Accounting Request is made, StadCo shall implement a system to track buffet expenses incurred for NFL Games for those SBL holders in the seats identified in subsection (c) above, and by March 15 of the Lease Year in which the tracking occurred, provide documents demonstrating the buffet expenses incurred for NFL Games for those SBL holders, and make available documents demonstrating that such expenses were appropriately allocated

(i.e., if a Buffet Accounting Request is made no later than March 31, 2028, then the system will be implemented for the Lease Year 28/29 NFL Season, and the respective documents will be provided and made available no later than March 15, 2029). SCSA reserves the right to audit those provided documents, at SCSA's own cost.

(ii) In any Lease Year in which StadCo is required to perform the accounting based on the Buffet Accounting Request, the Buffet Reimbursement payment for that Lease Year only will be increased by an additional 5% as an administrative fee ("Buffet Acct Fee"). This Buffet Acct Fee shall be in addition to the 3% annual increase. The Buffet Acct Fee is a one-time fee for any Lease Year a Buffet Accounting Request is made. The Buffet Acct Fee is not included as part of the 3% annual escalator per Section d above.

(iii) If, at the conclusion of the accounting, it is determined that the actual expenses attributable to the provision of buffets to the SBL holders identified in subsection (c) for NFL Games were less than the Buffet Reimbursement paid by SCSA for that Lease Year, StadCo will reimburse the greater of either: (1) the Buffet Acct Fee or (2) the difference between the Buffet Reimbursement and the actual cost incurred in providing the buffets described in subsection (c), above.

f. StadCo and SCSA hereby confirm that they will take all necessary steps to cause StadCo's and SCSA's approval of an amendment to the Stadium Lease to reflect the terms set forth above. Other than the specific terms stated herein, all other terms and obligations in Paragraph 4.6.1 of the Stadium Lease are not changed and remain in effect.

g. Manager's March 21, 2022 draw under the Revolving Credit Agreement of \$902,081.46 to reimburse StadCo for StadCo's claimed amount of buffet expenses due from SCSA for Lease Year 21/22 will be treated as SCSA's reimbursement of that amount. StadCo is hereby waiving any claim for the reimbursement of buffet expenses due from SCSA for Lease Years 22/23 and 23/24. StadCo hereby confirms that SCSA has no further obligation to reimburse StadCo for any buffet expenses from Lease Year 14/15 through 23/24, and that SCSA's buffet expense reimbursement obligations is deemed fully satisfied for Lease Years 14/15 through 23/24.

2. **ADJUSTMENT TO PUBLIC SAFETY COSTS THRESHOLD.**

a. StadCo agrees to exercise its discretion pursuant to Paragraph 7.5.4(b) of the Lease, and to approve an increase to the Public Safety Costs Threshold.

b. For Lease Year 24/25, the Public Safety Costs Threshold shall equal Three Hundred Sixty Thousand Dollars (\$360,000) per Team Game. For each Lease Year thereafter, the Per Game Factor of the Public Safety Costs Threshold shall increase by four percent (4%), pursuant to Paragraph 7.5.3(b) of the Stadium Lease.

3. **RESOLUTION OF CREDITED PUBLIC SAFETY COSTS FOR LEASE YEARS 17/18 THROUGH 23/24.**

a. StadCo's claim against SCSA for Credited Public Safety Costs for Lease Years 17/18 through 23/24 is in the approximate amount of \$15,496,442 ("Pre-Existing Credited Public

Safety Costs”). The Pre-Existing Credited Public Safety Costs includes a current estimate of \$3,631,648 for Credited Public Safety Costs for the most recent Lease Year 23/24; as the Parties are continuing their efforts to calculate and confirm that final amount. To the extent that StadCo reimburses the City after the Interim Effective Date for Public Safety Costs for prior Lease Years, the Pre-Existing Credited Public Safety Costs will increase by the same amount.

b. StadCo agrees to waive from its Pre-Existing Credited Public Safety Costs claim against SCSA the Credited Public Safety Costs due in Lease Year 17/18 in the amount of \$663,969. StadCo also agrees to waive \$9,296 of Credited Public Safety Costs due for Lease Year 18/19, with the remaining amounts for Lease Year 18/19 due as Permitted Credits Carry-forwards, which are not waived. Based on these two waivers, the current amount of all outstanding Credited Public Safety Costs through Lease Year 23/24, including all Permitted Credits Carry-forward, is approximately \$14.8 million (“PSC 2024 Outstanding Balance”). The Pre-Existing Credited Public Safety Costs will no longer be considered Credited Public Safety Costs, or Permitted Credits Carry-forward. Rather, the PSC 2024 Outstanding Balance is hereby a SCSA contractual obligation arising from this Settlement Agreement, which SCSA shall owe to StadCo and pay from SCSA’s Litigation Contingency Reserve and Excess Revenues, as set forth below.

c. Payment of PSC 2024 Outstanding Balance.

i. Use of SCSA’s Litigation Contingency Reserve: Immediately after the Final Effective Date, SCSA will expeditiously take all steps to implement and perform the terms below, including effectuating SCSA budget amendment(s): First, SCSA agrees to liquidate its Litigation Contingency Reserve, which has a current balance of approximately \$7.4 million and is estimated to increase to a balance of approximately \$10.4 million in June 2024 based on Lease Year 23/24 final calculations and reconciliations. Any and all accrued interest from the Litigation Contingency Reserve balance has been and will be treated as Stadium Authority Revenue and transferred to the Authority Revenue Account identified in Section 3.13 of the Deposit and Disbursement Agreement. Second, from the remaining balance of that reserve, SCSA will:

(A) Pay to the City approximately \$7.1 million for Performance-Based Rent for Lease Years 22/23 and 23/24. The calculation of this Performance-Based Rent payment takes into account approximately \$735,000 of Performance-Based Rent Credits under Section 1.94(a) of the Lease (attributable to Fixed Ground Rent previously paid to the City in Lease Years 18/19-22/23), which funds shall be treated as Stadium Authority Revenue. In other words, from the remaining balance of the Litigation Contingency Reserve, approximately \$7.1 million shall be paid to the City, and approximately \$735,000 shall be retained by SCSA, transferred to the Authority Revenue Account identified in Section 3.13 of the Deposit and Disbursement Agreement and treated as Stadium Authority Revenue.

(B) Pay to StadCo the remaining balance of the Litigation Contingency Reserve as a partial payment of the PSC 2024 Outstanding Balance.

ii. Use of SCSA’s Excess Revenues: The remaining balance of the PSC 2024 Outstanding Balance shall be paid to StadCo from SCSA’s Excess Revenues in future years on the terms set forth herein below. Accordingly, StadCo and SCSA agree to take all necessary



steps to cause for StadCo's and SCSA's approval of an amendment to Article 14 of the Stadium Lease to provide for the following, for Lease Year 24/25 forward:

(A) Following the Final Effective Date, Excess Revenues shall be distributed according to Article 14 of the Stadium Lease, except for the distributions set forth in Paragraphs 14.7 and 14.8. For all Excess Revenues that would, under the current Stadium Lease, be deposited in the Renovation/Demolition Reserve Account described in Paragraphs 14.7 of the Stadium Lease (the "Reno/Demo Reserve"), the following order of deposits shall occur:

(1) Up to 50% of available Excess Revenues will be deposited into the Reno/Demo Reserve, until the limit currently stated in Paragraph 14.7 of the Stadium Lease is satisfied.

(2) Up to 50% of the remaining available Excess Revenues (after the deposit into the Reno/Demo Reserve set forth in section (1), above) will be transferred to StadCo, to repay the PSC 2024 Outstanding Balance, until that obligation is satisfied.

(3) The remaining available Excess Revenues (after the deposits in sections (1) and (2), above) will be available for the Additional Disbursements in Paragraph 14.8 of the Stadium Lease.

(B) Once the PSC 2024 Outstanding Balance is paid in full, the following order of deposits shall occur:

(1) Up to 50% of available Excess Revenues will be deposited into the Reno/Demo Reserve, until the limit currently stated in Paragraph 14.7 of the Stadium Lease is satisfied.

(2) The remaining available Excess Revenues (after the deposits in section (1) above) will be available for the Additional Disbursements in Paragraph 14.8 of the Stadium Lease.

4. **ADDITIONAL PUBLIC SAFETY PROVISIONS.**

a. **Permitted Credits Carry-Forward.**

i. **Expiration Date:** SCSA and City agree to take all necessary steps to cause SCSA's and City's approval of an amendment to the Ground Lease to provide for the following intended effect: beginning in Lease Year 24/25 and forward, Permitted Credits Carry-forward shall expire after ten years, not five years (*i.e.*, credits accrued as a result of public safety costs incurred during Lease Year 24/25 must be applied within the next ten succeeding Lease Years, by end of Lease Year 34/35).

ii. **Facility Rent and Performance-Based Rent Credits:** StadCo agrees to limit the amount of certain Rent credits potentially available to StadCo, which may increase the Performance-Based Rent paid to the City in those years in which the new limit is triggered, assuming such increase is not offset by other credits. Accordingly, StadCo and SCSA agree to take all necessary steps to cause an amendment to the Rent credit described in the second sentence of Paragraph 7.5.3(a) of the Stadium Lease, and, if necessary, SCSA and City agree to

take all necessary steps to cause for SCSA's and City's approval an amendment to any related definitions and terms in Ground Lease, to provide for the following intended effect: beginning in Lease Year 24/25 and forward, the Rent payable by StadCo for any Lease Year shall be reduced by the lesser of the following (1) the amount of Credited Public Safety Costs for such Lease Year, (i) less the amount of any Credited Public Safety Costs for that Lease Year paid from the Public Safety Costs Reserve (as defined in this Settlement Agreement, below), plus (ii) any Credited Public Safety Costs included among the Permitted Credits Carry-forward for the particular Lease Year; or (2) twenty-five percent (25%) of the Net Income from Non-NFL Events for such Lease Year.

b. Public Safety Capital Expenditures.

i. NFL Share: SCSA and the City acknowledge and affirm the manner in which NFL Event Public Safety Costs Capital Expenditures are treated in the Stadium Lease, the Stadium Operations Agreement, and any other contracts which bear on those expenses. Specifically, when the Stadium Capital Expenditure Reserve is used for public safety capital expenditures, StadCo need not reimburse the City for that expenditure (because those expenditures are not paid by the City, but out of the Stadium Capital Expenditure Reserve), but StadCo's "fair share" of that expenditure, calculated pursuant to Section 3.2 of the Stadium Operations Agreement, is included when calculating whether (and by what amount) Public Safety Costs have exceeded the Public Safety Cost Threshold, and is included when calculating the amount of Credited Public Safety Costs for which StadCo is entitled to be reimbursed, or to receive a Rent credit.

ii. Non-NFL Share: StadCo and Manager acknowledge and affirm that the depreciation for Non-NFL Event Public Safety Capital Expenditures is treated as a non-cash charge against Non-NFL Event revenue for purposes of calculating Performance Based Rent, but Manager does not and should not charge the SCSA for the amortized amounts as actual cash Non-NFL Event expenses. In accordance with this acknowledgement, Manager agrees, within 20 business days of the Final Effective Date, to transfer to the SCSA the Non-NFL Event Public Safety Capital Expenditures that were charged as cash Non-NFL Event expenses in Lease Years 18/19 through 23/24.

c. Off-Site Parking Permit Fees: In consideration for the Settlement Agreement terms, SCSA agrees to waive its claims pertaining to the application of Off-Site Parking Permit Fees, and SCSA hereby acknowledges and accepts StadCo's interpretation by which Off-Site Permit Parking Fees are treated in the Stadium Lease, Paragraph 7.5.3(a), and any other contracts which bear on those expenses. Specifically, offsite parking permit fees reduce the PSC reimbursement that StadCo pays to the City, but those fees do not reduce the Public Safety Cost total used in calculating whether (and by what amount) Public Safety Costs have exceeded the Public Safety Cost Threshold, and are included when calculating the amount of Credited Public Safety Costs for which StadCo is entitled to be reimbursed, or to receive a Rent credit.

d. Overhead for Double-Badgers: The Parties acknowledge that there have been disputes concerning the rate of overhead that the City has included in Public Safety Costs. Within 60 days after the Final Effective Date, the City agrees to engage, or re-engage, consultants with appropriate expertise in this matter to review the rate of overhead that should be charged on the As-Needed Per Diem Police Officer for NFL Games (who are permanently

employed by other agencies, but are temporary employees of the City for NFL Games), and the City further agrees to move forward in good faith with this analysis. To the extent that the City determines that it is appropriate to reduce the rate of overhead charged on such employees, this reduction will become effective as of Lease Year 24/25. The City further agrees to consult with StadCo regarding scoping of the consultants' work, and their final analyses. StadCo hereby confirms that the City and its consultants have sole and final discretion in regards to the consultant's final analyses and City's charging of these overhead rates. Nothing in this subsection is intended to diminish any of StadCo's pre-existing rights, including, for example, that Public Safety Costs can include only the "actual and reasonable costs of police, traffic control, fire, emergency services and similar services provided by the City for NFL Games in the Stadium in accordance with the Public Safety Plan, including a fair share of Public Safety Capital Expenditures attributable to NFL Games."

e. Public Safety Plan: As provided under Stadium Lease Paragraph 7.5.1, SCSA acknowledges that it has coordinated with the City regarding the traffic management, security and public safety at all Stadium Authority Events, and StadCo acknowledges that it has coordinated with the City regarding the traffic management, security and public safety at all Tenant Events. The Parties confirm that they will continue to engage in such coordination in order to provide appropriate levels of such services in accordance with the Stadium Operations Agreement and, for NFL Games, the Public Safety Plan.

f. Cancellation Pay: StadCo agrees not to object to the City's inclusion of reasonable cancellation pay for public safety personnel in the Public Safety Costs that are reimbursable pursuant to Stadium Lease Paragraph 7.5.2, and subject to the Public Safety Cost Threshold.

## 5. OTHER SETTLEMENT TERMS AND MATTERS.

a. Non-NFL Ticket Surcharge: StadCo, Manager and SCSA agree to amend the Stadium Lease and any other contracts that bear on these terms, to provide the following intended effect:

i. The Non-NFL Event Ticket Surcharge described in Paragraph 12.1 of the Stadium Lease shall be increased from \$4 to \$8, and shall be increased by an additional \$1 every four Lease Years thereafter (*i.e.*, as of Lease Year 29/30, the Non-NFL Event Ticket Surcharge will be \$9). This increased surcharge shall only apply to events booked after the Final Effective Date. For purposes of this provision, "booked" means the time at which economic terms are agreed upon and accepted by Manager and the promoter, and any other parties whose consent is needed to book the event, regardless of whether a contract has been executed or not.

ii. The additional revenues generated by the above-described increase in the Non-NFL Event Ticket Surcharge ("Additional NNE Surcharge Revenues") will be deposited into a newly created SCSA account managed by SCSA (the "Public Safety Costs Reserve"). The Public Safety Costs Reserve shall be used to reimburse StadCo for Credited Public Safety Costs generated on and after Lease Year 24/25. (For clarity, this Public Safety Costs Reserves will not be used to pay StadCo the PSC 2024 Outstanding Balance, which shall be repaid pursuant to Section 3 above.)

iii. To the extent that the increased surcharge generates revenue above that necessary to reimburse StadCo for the then-current Lease Year's Credited Public Safety Costs, such revenue, including interest accrued on such revenue, shall be retained in the Public Safety Costs Reserve. If, by the end of the following Lease Year, there is more than \$2 million in the Public Safety Costs Reserve, StadCo and SCSA will meet and confer in good faith to mutually determine how those excess funds will be used. In the event that StadCo and SCSA do not reach an agreement by the following July 1, the funds in excess of the \$2 million reserve will be transferred to the Stadium Capital Expenditure reserve, described in Paragraph 14.3 of the Stadium Lease. Upon the termination or expiration of the Stadium Lease, any and all amounts remaining in this Public Safety Costs Reserve will be treated as Stadium Authority Revenue.

iv. Manager is permitted to increase the Non-NFL Event Ticket surcharge beyond the minimum amounts set forth above, if it determines, pursuant to the authority granted to it in Article 3 of the Management Agreement, that increasing the surcharge will be in compliance with Section 2.9 of the Management Agreement. Additional revenues generated by increasing the Non-NFL Event Ticket surcharge beyond the minimum amounts shall be Additional NNE Surcharge Revenues.

b. Senior / Youth Fee: StadCo and SCSA hereby agree to amend the Stadium Lease and any other contract that bear on these terms, to provide the following intended effect: the amount of the City of Santa Clara Senior and Youth Program Fee, as set forth in Paragraph 12.2 of the Stadium Lease, shall be increased from \$0.35 to \$0.40 starting in Lease Year 24/25 and shall be further increased by \$0.05 every ten Lease Years (*i.e.*, the fee will be \$0.45 as of Lease Year 34/35 and \$0.50 as of Lease Year 44/45). The "maximum amount" per Lease Year, set forth in Paragraph 12.2 of the Stadium Lease, shall be increased by \$50,000 to \$300,000 in Lease Years 24/25, and will be increased by another \$50,000 every ten years (*i.e.*, the "maximum amount" will be \$350,000 in Lease Year 34/35 and \$400,000 in Lease Year 44/45).

c. Declaratory Relief Decision: After the Final Effective Date, StadCo, Manager and SCSA will make good faith, expeditious efforts to obtain a final binding decision in the PSC Arbitration ("Arbitration Decision"). StadCo, Manager and SCSA agree that the Arbitration Decision will not be confidential and may be made public. StadCo, Manager and SCSA also agree that obtaining the Arbitration Decision is not a condition precedent to the effectiveness of the Settlement Agreement, nor to the effectiveness of the Final Effective Date. Notwithstanding any of the foregoing, StadCo, Manager, and SCSA each reserve the sole discretion not to proceed with obtaining the Arbitration Decision. If any of them opt not to proceed, the PSC Arbitration shall be dismissed with prejudice, with each Party to bear its own fees and costs, within five (5) business days of a notice not to proceed. Upon such dismissal, the Stay will be terminated and have no further effect.

## 6. STADIUM LEASE AND CONTRACT AMENDMENTS, APPROVALS, AND CONDITIONS OF DISMISSAL OF ARBITRATION ACTIONS.

a. The implementation of this Settlement Agreement will require amendments to the Stadium Lease and the Ground Lease, and possibly to certain other contracts. The Parties have made a good faith effort to identify the specific contracts and provisions that will need to be amended in order to implement this Settlement Agreement, but they acknowledge that it is possible that contracts other than those specifically identified in this Settlement Agreement will

need to be amended. Accordingly, the Parties agree to take all necessary steps to prepare and cause for the approval all contractual amendments that materially conform to this Settlement Agreement in order to implement its provisions. However, except as strictly required to be amended in order to implement the terms and conditions of this agreement, this Settlement Agreement does not obligate the Parties to agree to amend any other terms of the Stadium Lease, the Ground Lease, or any other contract.

b. Such contract amendments require the consent of the National Football League (the “NFL”) and Stadium Lenders (together with the NFL, the “Approving Entities”). The Parties agree to expeditiously seek such consents, and to cooperate in good faith with each other in those efforts.

c. The Stay shall remain in effect while the Parties are seeking said consents. For clarity, the Parties agree that any requirement for StadCo or Manager to submit any claims pursuant to Government Code Sections 810 *et seq.*, or to file new or amended arbitration claims, for any existing or future claims related to buffet or public safety obligations are and have been stayed, subject to the terms of the Stay.

d. The Stay shall not be terminable, other than by mutual consent of the Parties, unless and until one or more of the Approving Entities formally and finally declines to approve the amendments necessary to implement this Settlement Agreement. For purposes of this Section 6, including all subsections thereof, an Approving Entity shall not be deemed to have formally and finally declined to approve any of said amendments by proposing a modification of any such amendment unless, after considering such proposed modification in good faith, the Parties decline to accept such proposed modification.

e. SCSA and the City agree to take all actions necessary to delegate authority to the City Manager and to the Executive Director of the SCSA to negotiate the amendments necessary to implement this Settlement Agreement, on behalf of SCSA and the City, for submission to SCSA Board and City Council for final approval and execution. Similarly, SCSA and the City agree to take all actions necessary to perform its obligations under this Settlement Agreement, on behalf of SCSA and the City, including the preparation and submission of any budget amendments to SCSA Board and City Council for final approval.

f. In the event that any of the Approving Parties fully and finally refuses to approve the contractual amendments necessary to implement this Settlement Agreement, or the Parties do not provide final approval and execution of the contractual amendments necessary to implement this Settlement Agreement, then all provisions of this Settlement Agreement as of that date shall be of no force or effect, and this Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all Parties, who shall to the extent possible be restored to their respective positions as of the date of this Settlement Agreement.

g. The Parties agree that while they pursue these approvals, and unless and until those approvals are fully and finally rejected by any of the Approving Entities or the Parties do not provide final approval and execution of the amendments necessary to implement this Settlement Agreement, none of them shall take actions inconsistent with this Settlement Agreement, or that would make it impossible or infeasible to implement the terms of the

Settlement Agreement, or that would make it impossible or infeasible to restore any of the Parties to their respective positions as of the Interim Effective Date. For example, SCSA agrees that it shall not withdraw funds from the Litigation Contingency Reserve.

h. Assuming the Approving Entities provide their full and final approvals of the contractual amendments, the date upon which the contractual amendments necessary to implement the terms of this Settlement Agreement have been fully and finally approved by and executed by SCSA, the City, StadCo and Manager shall be the “Final Effective Date” of this Settlement Agreement.

i. Within five (5) business days after the Final Effective Date, counsel for StadCo, Manager and SCSA will execute, file and serve a joint dismissal with prejudice of the Buffet Arbitration (with JAMS), with each Party to bear its own costs and fees.

j. The Parties hereby confirm that the City is not a party to the Stadium Lease, Management Agreement, and Stadium Operations Agreement, and the Settlement Agreement terms and obligations pertaining to the City are limited to those terms and obligations whereby the City has an underlying contractual right or obligation within the agreements described above.

7. **CONDITIONAL MUTUAL RELEASE TERMS.** The following release terms are subject to and on condition of the Final Effective Date:

a. Subject to and on condition of the Final Effective Date, SCSA and the City fully and forever release StadCo, Manager, and their respective present and former agents, members, employees, employers, officers, directors, shareholders, direct and indirect parents, related or affiliated corporations and business entities, partners, joint venturers, heirs, administrators, executors, representatives, predecessors, successors, transferees, licensees, assigns, insurers, sureties, and attorneys, and all those claiming by, through, under or in concert with any of them, either in their representative or individual capacities (collectively the “Forty Niners Releasees”) from any and all actual or potential claims, duties, obligations, or causes of action arising from or relating to the Stadium Lease, the Management Agreement, the Ground Lease, the Revolving Credit Agreement, the Disposition and Development Agreement, and any other agreements or obligations arising from or related to the development, management, or operation of the Stadium, arising or accruing at any time prior to the Interim Effective Date, whether presently known or unknown, suspected or unsuspected, that the releasing party may possess, including but not limited to all claims and causes of action that have been or could have been asserted in the PSC Arbitration and the Buffet Arbitration.

b. Subject to and on condition of the Final Effective Date, StadCo and Manager fully and forever release SCSA and the City, and their present and former agents, members, employees, employers, officers, directors, shareholders, direct and indirect parents, related or affiliated corporations and business entities, partners, joint venturers, heirs, administrators, executors, representatives, predecessors, successors, transferees, licensees, assigns, insurers, sureties, and attorneys, and all those claiming by, through, under or in concert with any of them, either in their representative or individual capacities (the “SCSA/City Releasees,” and collectively with the Forty Niners Releasees, the “Releasees”) from any and all actual or potential claims, duties, obligations, or causes of action arising from or relating to the Stadium Lease, the Management Agreement, the Ground Lease, the Revolving Credit Agreement, the

Disposition and Development Agreement, and any other agreements or obligations arising from or related to the development, management, or operation of the Stadium, arising or accruing at any time prior to the Interim Effective Date, whether presently known or unknown, suspected or unsuspected, that the releasing party may possess, including but not limited to all claims and causes of action that have been or could have been asserted in the PSC Arbitration and the Buffet Arbitration.

c. **WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542:** This Settlement Agreement is intended to be a full and unconditional settlement and compromise of all claims released in Sections 7(a) and 7(b) of this Settlement Agreement. StadCo, Manager, SCSA, and the City expressly agree that, to the extent this Settlement Agreement is interpreted, enforced, governed or applied under California law, they expressly waive and relinquish any and all rights conferred upon them by California Civil Code Section 1542 and expressly consent that this release shall be given full force and effect according to its express terms and provisions, including those relating to unknown and unsuspected claims, demands, and causes of action, if any, as well as those relating to any claims hereinabove specified. California Code Section 1542 provides:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

Having been so apprised, the Parties nevertheless hereby voluntarily: (a) elect to and do waive the rights described in California Civil Code Section 1542; (b) elect to accept and to assume all risks for claims that now exist in their favor that are released under this Settlement Agreement, including without limitation all claims not known or not expected at the time of the execution of this Settlement Agreement; and (c) elect to accept and to assume the risk of the facts turning out to be different, and agree that the instant settlement shall be in all respects effective and not subject to termination, rescission or modification by reason of any such change in facts.

d. **Limitations on Mutual Releases:** Notwithstanding the foregoing, the Parties agree that the releases and waivers provided in sections 7(a), 7(b) and 7(c) above shall not apply to:

i. Any increase to Pre-Existing Credited Public Safety Costs to the extent that StadCo reimburses the City after the Interim Effective Date for Public Safety Costs for prior Lease Years, as provided in Section 3(a) above;

ii. StadCo and SCSA’s final calculation of the Pre-Existing Credited Public Safety Costs for Lease Year 23/24;

iii. Payment rights, obligations and terms in regards to Insurance Premiums for Law Enforcement Liability coverage and Accidental Death & Dismemberment (AD&D) Liability coverage, including but not limited to related claims for refunds, reimbursements, reallocations or amounts due by and between StadCo, Manager and SCSA from and after Lease Year 14/15 (except that this carve-out shall not be deemed to revive any claims that are already time-barred);

- iv. SCSA's rights to confirm and dispute SSE charges and NNE revenue and charges for Lease Year 22/23 and 23/24, including but not limited to changes based on improper allocation, calculation, lack of support, or failure to comply with the Parties' contracts or California law;
- v. Manager's calculation, documentary support, and payments of non-NFL events ticket surcharge to SCSA for Lease Year 23/24;
- vi. The FIFA World Cup 2026 events;
- vii. Indemnification and defense obligations pertaining to any third party claims; and
- viii. The rights and obligations of this Settlement Agreement.

Except for these exceptions, which shall be strictly construed, the Parties waive all rights pursuant to Section 1542.

8. **EACH PARTY TO BEAR ITS OWN FEES AND COSTS.** Each Party shall bear all of its own costs, including attorneys' fees and any other fees, incurred in connection with the Buffet Arbitration, and the PSC Arbitration, pre-litigation activities relating to those matters, and the negotiation and implementation of this Settlement Agreement. Notwithstanding this provision, in the event any action or motion is filed to enforce any of the provisions of this Settlement Agreement, including without limitation, to enforce the releases specified herein, or to interpret any provision of this Settlement Agreement, the prevailing Party in any such action or motion shall be entitled to its actual attorneys' fees and costs incurred in connection with any such action or motion, to be determined by the court and assessed as part of the costs therein.

10. **DISPUTES ARISING FROM THIS AGREEMENT.** The Parties agree that any action to interpret or enforce this Settlement Agreement will be resolved pursuant to the procedures set forth in Exhibit L to the Stadium Lease. The City's agreement to follow and be bound by the Exhibit L of the Stadium Lease dispute resolution procedures is limited solely to actions to interpret or enforce this Settlement Agreement, and this agreement by the City does not constitute any agreement to be a party to the Stadium Lease or to be bound by its Exhibit L terms in any other dispute.

11. **SEVERABILITY.** Should any provision of this Settlement Agreement be held by a court of law to be illegal, invalid or unenforceable, each of the Parties reserve the right to void the entire Settlement Agreement based on a reasonable determination that such a ruling affects or impairs a material term of this Settlement Agreement. Otherwise, if any non-material provision of this Settlement Agreement is held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Settlement Agreement shall not be affected or impaired thereby.

12. **INTEGRATION.** This Settlement Agreement represents the entire agreement and understanding between the Parties regarding any matters discussed herein, as well as the releases set forth herein, and supersedes any and all prior and contemporaneous discussions, representations or negotiations regarding settlement of the aforesaid claims.



13. **GOVERNING LAW.** This Settlement Agreement shall be governed by the substantive laws of the State of California, without reference to choice of law principles.

14. **VOLUNTARY EXECUTION OF AGREEMENT.** This Settlement Agreement is executed voluntarily by each of the Parties, without any duress or undue influence on the part or behalf of any other Party, and with the full understanding and intent of releasing the claims on the terms as set forth herein. Each of the Parties acknowledges that it has read and understands the terms of this Settlement Agreement, has been provided a reasonable amount of time to consider whether to enter into this Settlement Agreement, has had the opportunity to consult with legal counsel with respect to the terms of this Settlement Agreement, and understands and acknowledges the terms and consequences of this Settlement Agreement and each of the terms thereof.

15. **SUCCESSORS.** This Settlement Agreement shall be binding on, and inure to the benefit of, the successors and assigns of any of the Parties hereto and, furthermore, shall inure to the benefit of the successors and assigns of any person or entity that is an intended third-party beneficiary of this Settlement Agreement.

16. **NO PRESUMPTION.** Each of the Parties had an opportunity to draft, review and edit the language of this Settlement Agreement, and no presumption for or against any of the Parties arising out of drafting all or any part of this Settlement Agreement will be applied in any action or proceeding arising out of, relating to, connected to, or involving this Settlement Agreement.

17. **AUTHORITY.** Each person executing this Settlement Agreement on behalf of a Party hereby warrants that he or she has full authority to do so.

18. **NO PRIOR ASSIGNMENT.** Each of the Parties represents and warrants that it is the sole and lawful owner of all rights, title and interest in and to all released matters, claims and demands referred to herein, and further represents and warrants that there has been no assignment or other transfer of any interest in any such matters, claims or demands which it may have against the other Parties to this Settlement Agreement. In the event that any of the Parties shall have assigned or transferred, or purported to assign or to transfer, any claim or other matter, that such Party shall indemnify, defend, and hold harmless the other Parties from and against any loss, cost, claim or expense (including, but not limited to, all costs related to the defense of any action, including reasonable attorneys' fees) based upon, arising out of, or occurring as a result of any such claim, assignment, or transfer.

19. **COMPROMISE.** This Settlement Agreement, and the documents executed pursuant to it, are the result of a compromise between and among the Parties and shall never at any time or for any purpose be considered an admission of liability, fault or responsibility of any of the Parties to the other with respect to any of the claims or defenses that the Parties have, or could have, asserted against each other in the claims being resolved in this litigation. It is expressly acknowledged and understood by the Parties that all Parties continue to deny all liability, fault or responsibility for the matters being settled by this Settlement Agreement.

20. **MODIFICATION AND WAIVER.** No amendment, modification or waiver of the provisions of this Settlement Agreement shall be valid and enforceable unless such amendment, modification or waiver is in writing and signed by all the Parties.

21. **COUNTERPARTS.** This Settlement Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute a binding settlement agreement on the part of each of the undersigned. A facsimile or scanned (.pdf or .tiff file or equivalent) execution, including digital and electronic signatures, shall be deemed good and valid acceptance of this Settlement Agreement and shall be reasonably relied upon by all Parties. Photocopies, PDFs, or faxed copies of original signature pages shall have the same force and effect as original signature pages.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the last date set forth below, which constitutes the Interim Effective Date.

Dated: May 23, 2024

**CITY OF SANTA CLARA**

DocuSigned by:  
*Jovan Grogan*  
By: \_\_\_\_\_  
5EAD88DED5C343A...  
**JÖVAN D. GROGAN**  
City Manager for City of Santa Clara

Dated: May 23, 2024

**SANTA CLARA STADIUM AUTHORITY**

DocuSigned by:  
*Jovan Grogan*  
By: \_\_\_\_\_  
5EAD88DED5C343A...  
**JÖVAN D. GROGAN**  
Santa Clara Stadium Authority Executive Director

Dated: May 23, 2024

**FORTY NINERS SC STADIUM COMPANY LLC,  
a Delaware limited liability company**

By: \_\_\_\_\_  
DocuSigned by:  
*[Signature]*  
62D365E0EB4D487...  
**BRENT SCHOEB**  
Chief Revenue and Marketing Officer

Dated: May 23, 2024

**FORTY NINERS STADIUM MANAGEMENT  
COMPANY LLC,  
a Delaware limited liability company**

DocuSigned by:  
*Francine Melendez Hughes*  
By: \_\_\_\_\_  
D00025EBC0A74A3...  
**FRANCINE HUGHES**  
Executive Vice President & General Manager

**APPROVAL AS TO FORM:**

Dated: May 23, 2024

**COBLENTZ PATCH DUFFY & BASS LLP**

DocuSigned by:  
*Charmaine Yu*  
By: EE85630D4CB74A5  
CHARMAINE YU  
Attorneys for FORTY NINERS SC STADIUM COMPANY  
LLC and FORTY NINERS STADIUM MANAGEMENT  
COMPANY LLC

Dated: May 23, 2024

**HANSON BRIDGETT LLP**

DocuSigned by:  
*Mohammad Walizadeh*  
By: AE7F3A2A707749F  
MOHAMMAD WALIZADEH  
Attorneys for CITY OF SANTA CLARA and the SANTA  
CLARA STADIUM AUTHORITY

Dated: May 23, 2024

DocuSigned by:  
*Glen Googins*  
By: D59467991D5F421...  
GLEN R. GOOGINS  
Santa Clara Stadium Authority Counsel and City Attorney



## Agenda Report

24-549

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Action on an Initial Grant Funding Agreement with Forty Niners SC Stadium Company LLC to Provide \$200,000 Annually in Grant Funding for an Initial Three Years to the Santa Clara Community and Santa Clara Organizations and Approve the Related Budget Amendments

#### COUNCIL PRIORITY

Enhance Community Engagement and Transparency

#### BACKGROUND

On May 9, 2013, the Santa Clara Stadium Authority (Stadium Authority) and Levi Strauss & Co. (Levi's®) entered into a Naming Rights Agreement. Under the 20-year agreement, Levi's® provides an annual payment to the Stadium Authority in exchange for exclusive naming rights and branding at the Stadium.

On January 30, 2024, the Stadium Authority Board approved the following actions related to the Naming Rights Agreement:

1. Approve a First Amendment to the Naming Rights Agreement with Levi Strauss & Co. that will provide a 10-year extension and additional Naming Rights revenue to the Stadium Authority on the terms presented, in a final form approved by Authority Counsel;
2. Approve a Levi's® Stadium Naming Rights Extension and Enhanced Signage Project Implementation Agreement with Forty Niners SC Stadium Company LLC (StadCo) to coordinate the Enhanced Sign Project and the share in the costs for the design, construction, and installation of the signage, and memorialize StadCo's \$4,000,000 charitable commitment over 20 years, on the terms presented, in a final form approved by Authority Counsel; and
3. Authorize the City Manager to negotiate and execute a grants agreement and take other actions as may be required to implement StadCo's charitable commitment, in final form(s) approved by the City Attorney.

As a result, the Stadium Authority and Levi's® entered into a First Amendment to Naming Rights Agreement that provided a 10-year extension of the Naming Rights Agreement, which will generate an additional \$119,000,000 in revenue over the 10 years for the Stadium Authority. As part of the 10-year extension, Levi's® required an enhancement of their existing Naming Rights signage (Enhanced Signage Project) by December 31, 2025 at no cost to Levi's®. The Enhanced Signage Project involves the replacement of all four Naming Rights signs which includes the Suite Tower Marquee Sign, East Façade Marquee Sign, and two interior signs above the Stadium scoreboards.

Concurrently, the Stadium Authority and StadCo entered into the Levi's® Stadium Naming Rights Extension and Enhanced Signage Project Implementation Agreement (Implementation Agreement) to

address each party’s share in the cost for the design, construction and installation of the Enhanced Signage Project and to formalize StadCo’s commitment to contribute \$200,000 annually for 20 years to non-profit organizations and community projects serving the City of Santa Clara community.

The City and StadCo have since engaged in subsequent discussions regarding the grants and require additional time to develop a long-term community grants process to distribute the grant funds. In the interim, to avoid delay in distributing the grant funds, StadCo is prepared to make its annual \$200,000 contribution to the Santa Clara community for the initial three years (Years 1-3).

The proposed Initial Grant Funding Agreement (Attachment 1) provides for the distribution of grant funds in the amount of \$200,000 annually for Years 1-3 and a process to develop a program to distribute grant funds for the subsequent years during StadCo’s 20-year commitment term. While the City Council authorized the City Manager to negotiate and execute a grants agreement and take other actions that may be required to implement StadCo’s charitable commitment as part of its January 30, 2024 action, the Initial Funding Agreement itself does not reflect the 20-year term that was contemplated as part of the January 30, 2024 agenda item. As such, the Initial Funding Agreement and budget amendments required to implement the agreement are being presented to Council for its consideration and approval.

**DISCUSSION**

The Initial Grant Funding Agreement sets forth key terms for Years 1-3 of StadCo’s commitment to provide grants and/or donations in the amount of \$200,000 annually for 20 years, through its related companies and/or charitable affiliates, to benefit non-profit organizations and community projects directly serving or impacting the Santa Clara community and outlines a process for developing a program for the distribution of StadCo’s remaining commitment for Years 4-20, as summarized below.

**Initial Grant Distribution for Years 1-3**

The grant distribution for Years 1-3 will be as follows:

**Year 1 (April 1, 2024 - March 31, 2025):**

|  |           |
|--|-----------|
| Santa Clara Swim Club                        | \$100,000 |
| Bill Wilson Center:                          | \$50,000  |
| City of Santa Clara Community Grant Program: | \$50,000  |

**Year 2 (April 1, 2025 - March 31, 2026):**

|   |           |
|---|-----------|
| Santa Clara Swim Club                               | \$100,000 |
| City of Santa Clara Community Grant Program:        | \$50,000  |
| Qualified Santa Clara Beneficiary To be Determined: | \$50,000  |

**Year 3 (April 1, 2026 - March 31, 2027):**

|   |           |
|---|-----------|
| Santa Clara Swim Club                               | \$100,000 |
| City of Santa Clara Community Grant Program:        | \$50,000  |
| Qualified Santa Clara Beneficiary To be Determined: | \$50,000  |

Due to the closing of George F. Haines International Swim Center (ISC) earlier this year, which served as a major regional hub for swimming events and a training site for multiple local swim clubs, Santa Clara swim club organizations are looking for alternative sites to support their swim activities.

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The grant funds provided to the Santa Clara Swim Club to support their swim program and facility costs.

The Bill Wilson Center is a non-profit organization located in Santa Clara that provides services to children, young adults, and families through their housing, education, counseling, and advocacy programs.

As noted above, the third beneficiary for Years 2 and 3 have not yet been determined. City distribution of amounts designated for any "Qualified Santa Clara Beneficiary To Be Determined" shall be made in the corresponding fiscal year at such times and to such beneficiaries as StadCo, or its designee, shall select through a process it shall determine such beneficiaries, after consultations with and subject to approval from City staff.

The City's Community Grant Program awards grants to qualifying nonprofit community organizations, athletic groups or organizations, educational groups or organizations, or individuals, for events, activities, and competitions that provide a public benefit to the City of Santa Clara and its residents. The Initial Grant Funding Agreement requires that beneficiaries receiving grant funds designated for the City's Community Grant Program through StadCo's commitment be selected by City staff after consultations with StadCo or its designee, in accordance with City's Community Grants Program guidelines. It should be noted that staff is preparing to bring forth proposed amendments to the Community Grant Policy (Attachment 2), which establishes the corresponding Community Grant Program, for consideration at the June 3, 2024 Governance and Ethics Committee meeting. The amendments will outline grant focus areas, expand and provide clarification on what grant funds can and can't be used for, among other things.

The grant funding for Years 1-3 will be paid to directly to the City as the fiscal agent distributing grant funds to the beneficiaries described above. Upon receipt of the annual grant funds, the City will ensure that these funds are distributed to the named and to be determined beneficiaries through the City's Community Grant Program. As the Santa Clara Swim Club is a beneficiary for both Years 1 and 2, and the grants for Year 1 may not be ready to be distributed until FY 2024/25, it is anticipated that the organization will receive their Years 1 and 2 grant allocations during the City's FY 2024/25, which runs from July 1, 2024 through June 30, 2025.

The City Manager has authority to enter into subsequent grant agreements with beneficiaries as needed to distribute the grant funds.

#### Grant Distribution for Years 4-20

The grants distributions for Years 4-20 will be made in accordance with the terms of future grant funding agreement(s) between the City and StadCo. The Initial Grant Funding Agreement requires the City and StadCo to meet and confer before April 1, 2026 to develop a Community Grant Funding Agreement for the distribution of grant funds for Years 4-20. At a minimum, the organizations will endeavor to complete the Community Grant Funding Agreement for at least Year 4 by October 31, 2026 in order to provide for the selection of the Year 4 beneficiaries.

Any such subsequent funding agreement(s) will be brought back to the City Council for its consideration and approval.

#### 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**

As the fiscal agent of StadCo’s annual \$200,000 commitment for Years 1-3, the City will be responsible for distributing the respective grant funds to the beneficiaries and through the City’s Community Grant Program for Years 1-3.

The budget amendments in the table below are recommended to recognize and appropriate the grant funding for FY 2023/24.

|   | Budget Amendment<br>FY 2023/24 |                         |           |
|---|--------------------------------|-------------------------|-----------|
|   | Current                        | Increase/<br>(Decrease) | Revised   |
| <u>General Fund Revenue</u>                 |                                |                         |           |
| Other Revenue                               | \$183,600                      | \$200,000               | \$383,600 |
| <u>Expenditure</u>                          |                                |                         |           |
| Non-Departmental - Community Grants Program | \$94,243                       | \$200,000               | \$294,243 |

As previously discussed, the Year 1 grants may not be disbursed before the end of the City’s fiscal year (June 30, 2024). In the event this occurs, City staff will bring additional budget amendments to carryover the Year 1 grant appropriations for City Council approval at a later date.

**COORDINATION**

This report has been coordinated with the Department of Finance 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>>.

**ALTERNATIVES**

1. Staff’s recommendation (see below); or
2. Such other actions as Council deems appropriate.

**RECOMMENDATION**

1. Authorize the City Manager to enter into an Initial Grant Funding Agreement with Forty Niners SC Stadium Company LLC (StadCo) to provide for 1) the distribution of \$200,000 annually



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over three years (Years 1-3) to non-profit organizations and community projects serving the Santa Clara community, as further described in the report and agreement, and 2) a process to develop a program, to be formalized through subsequent funding agreement(s) with StadCo, for the remaining grant distribution, in the amount of \$200,000 annually for the subsequent years during StadCo's 20-year commitment term, in a final form approved by the City Attorney; and

2. Approve the FY 2023/24 budget amendments in the General Fund to recognize other revenue in the amount of \$200,000 and increase the Non-Departmental Community Grants Program allocation in the amount of \$200,000 (five affirmative Council votes required to appropriate additional revenue).

Reviewed by: Chuck Baker, Assistant City Manager

Approved by: Jovan D. Grogan, City Manager

#### ATTACHMENTS

1. Proposed Initial Grant Funding Agreement
2. Community Grant Policy

**INITIAL GRANT FUNDING AGREEMENT  
BETWEEN THE  
FORTY NINERS SC STADIUM COMPANY LLC  
AND CITY OF SANTA CLARA**

This Initial Grant Funding Agreement ("Agreement") is entered into effective as of \_\_\_\_\_, 2024 ("Effective Date"), by and between the City of Santa Clara ("City"), and Forty Niners SC Stadium Company LLC ("StadCo"), (sometimes referred to collectively herein as the "Parties"), with reference to the following facts:

**RECITALS**

- A. The Santa Clara Stadium Authority ("SCSA") and Levi's Strauss & Co. ("Levi's") have previously entered into that certain Naming Rights Agreement dated May 9, 2013 ("Naming Rights Agreement") pursuant to which SCSA granted certain "Naming Rights Entitlements" as defined therein, to Levi's for a term of 20 years.
- B. On January 30, 2024, SCSA and Levi's entered into that certain First Amendment to Naming Rights Agreement pursuant to which the parties are agreeing to a 10 year extension of the Naming Rights Agreement.
- C. Concurrently, SCSA and StadCo entered into the Levi's Stadium Naming Rights Extension and Enhanced Signage Project Implementation Agreement ("Implementation Agreement") to address each party's share in the cost for the design, construction and installation of the Enhanced Signage and StadCo has agreed to formalize its ongoing commitment to support charitable causes impacting the City of Santa Clara community.
- D. Through the Implementation Agreement, StadCo committed to contributing, from StadCo or an affiliated entity, \$200,000 annually for twenty years to non-profit organizations and community projects serving or directly impacting the City of Santa Clara community.
- E. While the parties are developing the community grants process for the distribution of these annual grants, StadCo is prepared to make the initial \$200,000 annual funding commitment to the Santa Clara Community for years 1-3. This Agreement serves to address the distribution of the initial \$600,000 and a process for developing a program for the distribution of the remaining commitment in the ensuing years.

NOW, THEREFORE, in consideration of the above-recitals, and other valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, the Parties agree as follows:

- 1. In General: StadCo confirms its commitment under the terms of the Implementation Agreement to cause, through its related companies and/or charitable affiliates, grants and/or donations in the amount of \$200,000 annually for twenty (20) years commencing on or about April 1, 2024 (the "49ers Grant Commitment") for the benefit of non-profit organizations or community projects serving or directly impacting the City of Santa Clara community through the City's community grants program ("Community Grant Program").
- 2. Initial Grant Distribution for Years 1-3: The parties to this Agreement agree that additional time is required to develop the long-term Community Grant Program for

the distribution of the 49ers Grant Commitment. Pending the finalization of this program, the parties agree that the 49ers Grant Commitment distribution for the Years 1-3 (the “Initial Term Commitment”) shall be made as follows:

**Year 1 (April 1 2024 – March 31, 2025):**

|   |           |
|---|-----------|
| Santa Clara Swim Club:                        | \$100,000 |
| Bill Wilson Center:                           | \$50,000  |
| City of Santa Clara Community Grants Program: | \$50,000  |

**Year 2 (April 1, 2025 – March 31, 2026)**

|  |           |
|--|-----------|
| Santa Clara Swim Club:                             | \$100,000 |
| City of Santa Clara Community Grants Program:      | \$50,000  |
| Qualified Santa Clara Beneficiary To Be Determined | \$50,000  |

**Year 3 (April 1, 2026 – March 31, 2027):**

|  |           |
|--|-----------|
| Santa Clara Swim Club:                             | \$100,000 |
| City of Santa Clara Community Grants Program:      | \$50,000  |
| Qualified Santa Clara Beneficiary To Be Determined | \$50,000  |

3. Terms for Initial Donation and Distribution. The Initial Term Commitment shall be paid to directly to the City as the “fiscal agent” for the donations contemplated by this Agreement. In year one, StadCo shall cause the payment to occur within ten (10) business-days after the Effective Date. For years two and three, StadCo shall cause the payment to the City to occur by on or before April 1, 2025 and April 1, 2026, respectively. Upon receipt of such amounts, the City shall, in turn shall cause the donations to be made in accordance with schedule set forth in Section 2 of this Agreement, above. City shall make all scheduled donation payments to the “Santa Clara Swim Club” and the “Bill Wilson Center” as soon as possible after receipt of the corresponding Initial Term Commitment funds. In the event that the City has not made the distribution within thirty (30) business days following receipt of such funds from StadCo, the respective amounts shall immediately be returned to the entity that provided the funds and such entity shall make such payments directly to the “Santa Clara Swim Club” and the “Bill Wilson Center.”

City distribution of amounts designated for the “City of Santa Clara Community Grants Program” shall be made in the corresponding fiscal year at such times and to such beneficiaries as City staff shall determine, after consultations with StadCo, or its designee, in accordance with City Community Grants Program guidelines.

City distribution of amounts designated for any “Qualified Santa Clara Beneficiary To Be Determined” shall be made in the corresponding fiscal year at such times and to such beneficiaries as StadCo, or its designee, shall select through a process it shall determine such beneficiaries, after consultations with and subject to approval from City staff. In the event that the City has not made the distribution within thirty (30) business days following the designation of the recipient by StadCo or its designee, the respective amounts shall immediately be returned to the entity that provided the funds and such entity shall make such payments directly to the recipient(s).

4. Subsequent Grant Distribution for Years 4-20: The parties agree to that the grant distributions for Years 4-20 will be made in accordance with the terms of one or more subsequent Grant Funding Agreements between the parties. By no later than April 1, 2026, City staff and StadCo will meet and confer to develop the Community Funding Agreement for the distribution of the Grant Funds for Years 4-20. In order to provide, at a minimum, for the designation of the Year 4 grant recipients the parties shall endeavor to complete the Community Grant Funding Agreement for at least year 4 by on or before October 31, 2026.
5. Contract Administrator: The City Manager is hereby authorized to execute any grant agreements and other additional documents to effectuate the distribution of Initial Grant Distribution for Years 1-3. Any such documentation shall be reasonably approved by StadCo and reflect StadCo, or its designee, as the source of the funds being provided to the recipient and the City as the “fiscal agent” for StadCo.
6. Other Agreements; Further Assurances: As reasonably necessary to implement the terms of this Agreement, the parties agree to enter into such additional agreements, and take such additional actions as are reasonably necessary in order to fulfill their respective obligations under the terms of this Agreement.

**[NEXT PAGE IS SIGNATURE PAGE]**

**SIGNATURE PAGE TO  
GRANT FUNDING AGREEMENT  
BETWEEN THE  
FORTY NINERS SC STADIUM COMPANY LLC  
AND CITY OF SANTA CLARA**

IN WITNESS WHEREOF, the undersigned have executed this Agreement and agreed to be bound by its terms as of the Effective Date.

**FORTY NINERS SC STADIUM COMPANY  
LLC**

By: \_\_\_\_\_

Name: Jihad F. Beauchman

Title: Executive Vice President & General Counsel

**CITY OF SANTA CLARA**

By: \_\_\_\_\_

JÖVAN D. GROGAN

CITY MANAGER

Approved as to Form

By: \_\_\_\_\_

Glen R. Googins, City Attorney



## **COMMUNITY GRANT POLICY**

### **PURPOSE**

To establish a standardized process to award grants to qualifying non-profit community organizations, youth athletic groups or organizations, educational groups or organizations, or individuals, for events, activities, and competitions that provide a public benefit for the City of Santa Clara and its residents.

### **POLICY**

Annually, and subject to availability of funds, the City Council shall establish grant appropriation(s) as part of the approval of the budget. Community grants, subject to availability of funds, shall not exceed \$10,000 per applicant, per year. To receive grant funds, grant applications must be submitted at least ninety (90) days before the planned event/activity being funded, regardless of the form of the grant, and will be evaluated by the City Manager's Office on a case-by-case and "first come-first served" basis, throughout the fiscal year. Applicants are encouraged to submit their applications at the beginning of the fiscal year, for events or activities occurring at any time during that fiscal year, to maximize opportunity for availability of funds.

The City Manager's Office shall approve or deny an applicant's request based upon the eligibility criteria set forth below, and subject to funding availability as approved by the City Council through the adoption of the annual budget. Grants for community events shall not be provided for waiver of or reimbursement for already discounted permit fees.

Grants for attendance at youth state, national, or international competitions or performances shall be limited to costs of registration, hotel, transportation and food for participants and coaches/chaperones only. Due to short notice to advance to state, national, or international competitions, applicants shall submit an application within one week of advancing to such competitions.

In all cases, the City reserves the right to reject any and all applications in the event the City Manager's Office identifies a potential conflict of interest or the appearance of a conflict of interest. Submission of an application in no way obligates the City to award a grant and the City reserves the right to reject any or all applications, wholly or in part, at any time, without penalty.

## COMMUNITY GRANT POLICY (cont.)

### **ELIGIBILITY CRITERIA**

In addition to a timely and complete application, the applicant must demonstrate that the event or activity being funded (other than competition funding, described below) by the City's grant will satisfy all of the following criteria:

- a) Provides a benefit to Santa Clara residents
- b) Contributes positively to the recognition and image of the City of Santa Clara
- c) If the grant is for an event, then the event will be open to the general public and does not discriminate on the basis of race, gender, religion, sexual orientation, or any other protected characteristic under state or federal law
- d) Aligns with established Council goals
- e) Grant funds will not be used for political or religious purposes
- f) If the event or activity is a fundraising event, that the proceeds from the fundraising activity will support programs, services or events for residents of the City of Santa Clara

If the activity being funded is individual or group attendance at a youth competition or performance, then the applicant must demonstrate that the activity being funded by the City's grant will satisfy all of the following criteria:

- a) Funding the activity provides a benefit to Santa Clara residents, students or schools
- b) Contributes positively to the recognition and image of the City of Santa Clara
- c) Aligns with established Council goals
- d) Grant funds will not be used for political or religious purposes
- e) The grant funds requested will only be used for a specific state, national, or international title or performance
- f) The grant funds requested do not exceed 20% of the allowable expenses (registration, hotel, transportation, and food) and comport with the other requirements stated in the application
- g) Individuals, teams or groups should either be from Santa Clara schools or have at least 50% of the students from the teams or groups be residents in the City of Santa Clara
- h) The student-to-coach/chaperone ratio is six students to one coach/chaperone

## COMMUNITY GRANT POLICY (cont.)

### **PROCEDURE**

1. City Council approves an annual budget item for City grants, to be administered by the City Manager's Office
2. Applicants submit timely and complete grant applications to the City Manager's Office for review
3. City Manager's Office reviews application for compliance with eligibility criteria and availability of funds. City Manager may seek additional information from applicant as necessary.
4. If an application is approved by the City Manager's Office, then the approved application marked accordingly shall be transmitted to the applicant with additional instructions, if any.
5. If an application is not approved by the City Manager's Office, the City Manager shall notify the applicant in writing.
6. If the applicant has received a grant for an event/activity other than competition attendance, then applicant shall submit proof that the grant funds have been spent in the manner and for the purposes stated on the application within thirty (30) days after the event/activity.
7. If the applicant has received a grant for competition attendance, then proof of all allowable expenses actually incurred, as well as allocation of grant funds, shall be submitted to the City Manager's Office by the applicant within thirty (30) days after the competition.
8. If an applicant makes a grant request directly to a member of the City Council, whether individually or as a group, the Council shall refer the applicant to the City Manager's Office for application and review in accordance with this policy.
9. Staff shall report any distributions in accordance with applicable tax law.

Attachment: City of Santa Clara Community Grant Application





## Agenda Report

24-579

Agenda Date: 5/28/2024

### REPORT TO COUNCIL

#### SUBJECT

Update on the George F. Haines International Swim Center (ISC)

#### COUNCIL PILLAR

Enhance Community Sports, Recreational and Arts Assets

#### BACKGROUND

On January 18, 2024, after receiving a report on conditions at the ISC that presented substantial risks to public health and safety, the City Manager directed that the ISC be closed immediately. Since that time, staff has provided regular updates to the City Council on the status of reports from regulatory agencies and the feasibility of re-opening the ISC.

The purpose of this item is to provide the City Council with a status update on actions taken since the last update on April 23, 2024.

#### DISCUSSION

In the April 23, 2024 Report to Council (RTC 24-336), information was provided to the City Council regarding the corrective actions being required by the County Department of Environmental Health and the City's Building Official to re-open the ISC. In that report, it was noted that the estimated cost to temporarily re-open the ISC with a maximum occupancy of 200 would be approximately \$1.9 million. Also in that report, it was noted that staff was continuing to work with its consultant team to explore other options including temporary and permanent solutions. This work continues and staff has met with the three swim organizations that have historically used the ISC to engagement them in the process and receive feedback. We are planning for next month's update (June 2024) to include details on the temporary aquatic facility and permanent replacement options.

Two developments have occurred subsequent to the April 23<sup>rd</sup> meeting that will impact that schedule for a possible temporary re-opening of the ISC.

The first development is a letter the City received on May 13, 2024 from the Santa Clara County Department of Environment Health ("County") indicating that they would be conducting evaluations of all pools throughout the County to ensure enclosures are sufficient to prevent accidental access. (Attachment #1). In speaking with County staff, City staff was advised that all pools in the County would be assessed due to the critical nature of potential dangers; but that specific timelines would be determined by the individual inspectors. City staff was also advised that corrective action would be required should deficiencies in the enclosures be identified. If not corrected in the allotted time, the County would proceed to close down facilities.

On May 20, 2024, the County conducted its evaluation of the Mary Gomez pool. While deficiencies

were noted, the City has been given 30 days to correct the deficiencies. Staff has reviewed the work required and has determined that the work can be completed within the required timeframe at a cost in the range of \$3,000 to 4,000. Staff has been directed to proceed with those corrective actions.

Because the inspections are intended to be “unannounced inspections”, the City does not have a timeline for when the remaining City pools will be inspected. However, given the speed at which the initial inspection was conducted, it is anticipated that the additional inspections will be in the coming weeks.

Based on the comments made during the inspection of the Mary Gomez pool, staff has proceeded to evaluate the other pool sites and to develop corrective action plans in advance of the expected inspections. Until those inspections are completed, however, the cost associated with those corrective actions is unknown. Moreover, because the inspections are “unannounced”, the City does not know when the remaining pools will be evaluated. With summer swim programs scheduled to start in early June and the ongoing closure of the ISC, it is essential that the City’s other pools remain in compliance to avoid additional negative impact to both the City’s, and the swim clubs’, programming.

The second development is the completion of preliminary, high-level options for temporary and permanent solutions and a desire to obtain feedback from the three swim groups (Santa Clara Swim Club, Santa Clara Artistic Swimming and the Santa Clara Dive Club) prior to proceeding with the finalization of cost estimates.

On May 9, the City Manager and Assistant City Manager met with the swim groups to seek their input on the potential options. Based on those discussions, the parties have agreed to drop the acquisition of a temporary, modular pool from consideration due to cost and use requirements. Subsequent to the stakeholder meeting, staff proceeded to work with the consultant team to finalize cost estimates including a phased-in approach for development of a permanent solution. While this work has been completed, there has been a recent change to the consultant team which will delay presentation of the cost estimates. As noted above, we aim for next month’s update (June 2024) to include details on the temporary aquatic facility and permanent replacement options.

For the reasons noted above and to ensure the City Council can make informed decisions, the presentation of options will be heard at the June 25<sup>th</sup> Council meeting.

### ISC Remediation Efforts

Per the City Council’s direction, staff has continued to work on remediation efforts at the ISC. In addition to addressing minor deficiencies that were noted, the work to remediate the canopy is expected to be completed shortly after the Memorial Day weekend. Once complete, staff will arrange to have the work re-inspected. If the inspection is successful, both the north and south restrooms will be available for use. It is important to note that these restrooms can be accessed from the park side of the facility and will not require access to the pool areas which will remain closed. However, re-opening of the restrooms will allow for the removal of the porta-potties that were brought in to support park users.

### ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California

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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

This report does not have any fiscal impact as Council direction is not being requested at this time.

#### COORDINATION

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

#### 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

It is recommended that the City Council:

1. Note and file the report.

Reviewed by: Cynthia Bojorquez, Assistant City Manager/Acting Director of Parks & Recreation

Approved by: Jovan D. Grogan, City Manager

#### ATTACHMENTS

1. Letter from the Department of Environmental Health Dated May 2, 2024

**County of Santa Clara**  
**Department of Environmental Health**

1555 Berger Drive, Suite 300  
San José, CA 95112-2716  
(408) 918-3400  
www.EHinfo.org

**RECEIVED**  
MAY 13 2024



BY: .....

May 2, 2024

Dear Pool Operator,

We are writing to let you know that we will be evaluating all pools, including spas, to ensure the enclosures (i.e., fences, gates, walls, etc.) are sufficient to prevent accidental access. If we find that your pool poses safety hazards we will be requiring they be addressed. While most pools/spas do not pose a concern, those that do may require significant investment to address the matter. Some items may require closure until the safety hazards are addressed. Your immediate attention in this matter may prevent an accidental drowning from occurring at your property.

During the structural evaluation of your pool, DEH representatives will document their observations and the steps necessary for correction. If a representative is present at the time of the inspection, a copy of the report will be provided. If no representation is present, a copy will be left in the pool pump room and sent to the mailing address on record with the Department.

The report will identify necessary corrective actions to correct the hazards found at the time of the inspection and provide a deadline for completing those actions. In some cases, the risk may be so critical that it will require immediate closure of the pool(s). In these cases, DEH will suspend the DEH pool permit(s) to operate and post the pool(s) closed until corrections are made to address the hazard and authorization to reopen is issued by DEH. Corrections may range from making repairs to constructing structures to prevent access to the pool(s). Failure to make these necessary corrections can ultimately result in demolition of the pool.

Violations pertaining to pool access are serious and can result in serious injury or death. As the person/entity responsible for safe operation of the pool you should take immediate action to address the risk any time such a hazard occurs. For this reason, the Department is providing you the enclosed checklist (see reverse) so that you may check the enclosure(s) on your property to minimize the risk of a tragic accident occurring. Please note, this checklist is not all inclusive. "Yes" responses do not necessarily indicate the enclosure is completely safe. "No" responses may indicate that your enclosure is out of compliance and will require corrective action(s). For further information on operation requirements, please visit our website at [www.scc.info/dehpool](http://www.scc.info/dehpool).

If replacement or updating of any part of the enclosure is needed or if an enclosure needs to be installed, contact us at [dehplancheck@deh.sccgov.org](mailto:dehplancheck@deh.sccgov.org) for guidance and plan submittal (if required). You can also visit <https://cpd.sccgov.org/food/foodpool-plan-check-program> for information on the plan submittal process. Please be advised plans may also need to be submitted to your local building department for any construction work carried out on your pool.

We look forward to working with you to create a safer environment for all throughout the County of Santa Clara.

Sincerely,

Beatrice Santiago, MPA, REHS  
Director – Consumer Protection Division

Board of Supervisors: Sylvia Arenas, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian  
County Executive: James R. Williams





Pool Enclosure Self-Checklist

Note: This checklist is not required to be returned to the Department.

BY: .....

| #  | CHECK YES OR NO FOR EACH QUESTION BELOW:   | YES | NO |
|----|--|-----|----|
| 1  | Is the pool fully enclosed by a fence, building, wall, and/or other approved durable enclosure?  |     |    |
| 2  | Is the pool free from direct access from living units or private premises? Direct access may include doors, openable windows or gates from the living units or private premises.   |     |    |
| 3  | Measuring from the exterior of the enclosure starting at ground level (outside of the pool area), is the enclosure at least 5 feet tall at the shortest point?   |     |    |
| 4  | Do gaps in the enclosure prevent the passage of a 4-inch diameter sphere?  |     |    |
| 5  | Is the enclosure constructed over a hard and permanent material equivalent to concrete? (e.g. not over sand, dirt, or other materials that can easily erode)   |     |    |
| 6  | Does the enclosure's horizontal and diagonal component design prevent it from being used as a ladder for small children?   |     |    |
| 7  | Are the horizontal components of the enclosure spaced at least 48 inches (4 feet) apart?   |     |    |
| 8  | Is the area 5-feet outside of the pool enclosure, and within a 5-foot arc as measured from the top of the enclosure (see Figure 31B-5 below), free of climbable objects/structures (e.g. benches, planters, staircases, etc.)? |     |    |
| 10 | If chain link is used, are the horizontal openings equal to or less than 1 and 3/4 inches? Write "N/A" if chain link is not used.  |     |    |
| 11 | Are all gates and doors equipped with self-closing and self-latching devices?  |     |    |
| 12 | Do the self-latching device(s) keep all gates or doors securely closed? In other words, simply pulling/pushing the gate/door will not cause it to open.  |     |    |

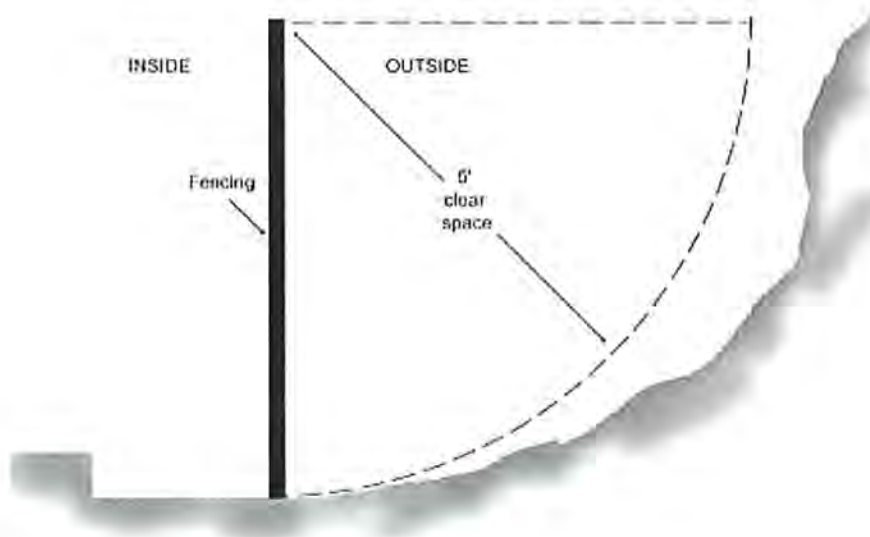


Figure 31B-5 Effective Fencing Height