



City of Santa Clara

Council and Authorities Concurrent Meeting

Call and Notice of Special

Santa Clara Stadium Authority Meeting

Tuesday, October 26, 2021

4:30 PM

Virtual Meeting
Closed Session 4:30 PM
Open Session 7:00 PM

Pursuant to California Government Code section 54953(e) and City of Santa Clara Resolution 21-9013, the City Council meeting will be held by teleconference only. No physical location will be available for this meeting; however, the City of Santa Clara continues to have methods for the public to participate remotely:

• Via Zoom:

o <https://santaclaraca.zoom.us/j/99706759306>

Meeting ID: 997-0675-9306 or

o Phone: 1(669) 900-6833

• Via the City's eComment (now available during the meeting)

• Via email to PublicComment@santaclaraca.gov

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

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Chair calls for a Special Meeting of the Governing Board of the Stadium Authority, to commence and convene on October 26, 2021, at 4:30 p.m. for a Special Meeting to be held virtually via Zoom, to consider the following matter(s) and to potentially take action with respect to them.

4:30 PM CLOSED SESSION

Call to Order

Roll Call

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.

- 1.A 21-1512** [Conference with Labor Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54957.6](#)
[City representative: Deanna J. Santana, City Manager \(or designee\)](#)
[Employee Organization\(s\):](#)
[Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171](#)
[Unit #2-Santa Clara Police Officer's Association](#)
[Unit #3-IBEW Local 1245 \(International Brotherhood of Electrical Workers\)](#)
[Unit #4-City of Santa Clara Professional Engineers](#)
[Units #5, 7 & 8-City of Santa Clara Employees Association](#)
[Unit #6-AFSCME Local 101 \(American Federation of State, County and Municipal Employees\)](#)
[Unit #9-Miscellaneous Unclassified Management Employees](#)
[Unit #9A-Unclassified Police Management Employees](#)
[Unit #9B-Unclassified Fire Management Employees](#)
[Unit #10-PSNSEA \(Public Safety Non-Sworn Employees Association\)](#)
- 1.B 21-1529** [Conference with Legal Counsel-Existing Litigation \(SA\)](#)
[Pursuant to Gov't Code § 54956.9\(d\)\(1\)](#)
[Forty Niners SC Stadium Company LLC, et al., v. Santa Clara Stadium Authority, Demand for Arbitration through JAMS, 07/26/2019](#)
- 1.C 21-1531** [Conference with Legal Counsel-Anticipated Litigation \(CC\)](#)
[Pursuant to Gov. Code § 54956.9\(d\)\(2\) - Exposure to litigation](#)
[Number of potential cases: 1](#)
[Facts and Circumstances: Pursuant to Gov. Code § 54956.9\(e\) \(1\) - Not disclosed on agenda](#)

Convene to Closed Session

7:00 PM COUNCIL REGULAR and SPECIAL STADIUM AUTHORITY MEETING

**Open Session is to begin at 7:00 PM or shortly thereafter*

Pledge of Allegiance and Statement of Values

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

2. 21-1537 [Action to Defer the Adoption and Certification of an Environmental Impact Report; Adoption of a Mitigation Monitoring and Reporting Program; and Architectural Approval of a Data Center project located at 1200-1310 Memorex Drive to a Future Date](#)

Recommendation: Defer the Adoption and Certification of an Environmental Impact Report; Adoption of a Mitigation Monitoring and Reporting Program; and Architectural Approval of a Data Center project located at 1200-1310 Memorex Drive to a Future Date

SPECIAL ORDER OF BUSINESS

- 3.A 21-0005 [Proclaim November 2021 as Sikh Awareness and Acceptance Month](#)
- 3.B 21-1255 [Proclaim Family Court Awareness Month](#)
- 3.C 21-1429 [Verbal Report from City Manager regarding COVID-19 Pandemic](#)
- 3.D 21-1430 [Verbal Report Update from City Manager Regarding the Local Drought Emergency](#)

STUDY SESSION

4. 21-1525 [Presentation on Business Tax Ballot Measure and Other Potential Revenue Measures for November 2022 Ballot \(Deferred from October 19, 2021\)](#)

Recommendation:

1. Provide feedback on key priorities for the development of recommendations on possible alternative tax structures for future Council consideration; and
2. Review and direct staff to explore other potential revenue measures to be placed on the November 2022 ballot.

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.]

5.A 21-537 [Action on Meeting Minutes of July 6, 2021 Council & Authorities Concurrent Meeting and July 13, 2021 Joint Council & Authorities Concurrent and Stadium Authority Meeting](#)

Recommendation: Approve the Meeting Minutes of July 6, 2021 Council & Authorities Concurrent Meeting and July 13, 2021 Joint Council & Authorities Concurrent and Stadium Authority Meeting.

5.B 21-21 [Board, Commissions and Committee Minutes](#)

Recommendation: Note and file the Minutes of:
Board of Library Trustees - September 13, 2021
Youth Commission - September 14, 2021
Parks & Recreation Commission - September 21, 2021

5.C 21-1042 [Action to Authorize the City Manager to Negotiate and Execute a Digital Services Agreement with Siemens Industry, Inc.](#)

Recommendation:

Authorize the City Manager to:

1. Negotiate and execute a Digital Services Agreement with Siemens Industry, Inc. for an initial term of five years for professional services to upgrade the EnergyIP (EIP) Meter Data Management (MDM) software system plus subscription (license) and support fees not to exceed \$1,200,000, subject to the appropriation of funds;
2. Execute five additional one-year options to extend the initial term of the agreement for ongoing subscription (license) and support fees, subject to the appropriation of funds; and
3. Add or delete licenses and services consistent with the scope of the agreement and allow future rate adjustments subject to request and justification by Siemens Industry, Inc., approval by the City, and the appropriation of funds.

5.D 21-1049 [Action on Amendments to Agreements with Smart Energy Systems, Inc. and InfoSend, Inc. for a Customer Service Portal and Bill Print and Mail Services, respectively](#)

- Recommendation:**
1. Authorize the City Manager to execute Amendment No. 1 to the Agreement with Smart Energy Systems, Inc. for a cloud-hosted Customer Self-Service Portal to extend the term of the agreement by three years ending on December 31, 2024 and increase maximum compensation by \$396,194 for a revised not to exceed amount of \$1,653,343, subject to the appropriation of funds;
 2. Authorize the City Manager to execute future amendments to the agreement with Smart Energy Systems, Inc. to extend the term and adjust compensation in the event staff's estimates of usage are exceeded and to cover any changes to system requirements, subject to the appropriation of funds; and
 3. Authorize the City Manager to execute Amendment No. 3 to the Agreement with InfoSend, Inc. for Bill Print and Mail Services to extend the term of the agreement by two years ending on June 30, 2024, and increase maximum compensation by \$680,000 for a revised not to exceed amount of \$2,380,000, subject to the appropriation of funds.

5.E 21-1413 [Action on an Agreement for Services with Hill Brothers Chemical Company for As-Needed Ammonia Delivery and Related Services](#)

- Recommendation:**
1. Authorize the City Manager to execute an Agreement for Services with Hill Brothers Chemical Company for as-needed ammonia delivery and related services, for a term starting on or about November 1, 2021 and ending on or about October 31, 2026, for a total maximum amount not-to-exceed \$1,500,000 during the initial five-year term, subject to the annual appropriation of funds;
 2. Authorize the City Manager to make minor changes to the attached Agreement for Services subject to approval of the City Attorney as to form;
 3. Authorize the City Manager to execute up to five one-year options to extend the term of the Agreement for Services after the initial term, ending on or about October 31, 2031, assuming all options are exercised, and subject to the annual appropriation of funds; and
 4. Authorize the City Manager to take actions to add or delete services consistent with the scope of the Agreement for Services and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

5.F 21-1274 [Action on an Agreement with First Shield Security and Patrol, Inc. for Citywide Security Guard Services](#)

- Recommendation:**
1. Authorize the City Manager to execute an agreement with First Shield Security and Patrol Inc. to provide security guard services at sites managed by the Department of Public Works for a not-to-exceed amount of \$656,543 during the initial three-year term and subject to the appropriation of funds;
 2. Authorize the City Manager to execute an agreement with First Shield Security and Patrol Inc. to provide security guard services at sites managed by the Parks & Recreation Department, for a not-to-exceed amount \$801,000 during the initial three-year term and subject to the appropriation of funds;
 3. Authorize the City Manager to amend or execute additional agreement(s) with First Shield Security and Patrol Inc. for additional sites that may be required, subject to the same terms and conditions and appropriation of funds; and
 4. Authorize the City Manager to execute up to five one-year options to extend the term of the Agreements after the initial three-year term, for a total of eight years ending on or about October 31, 2029 assuming all option years are exercised and subject to the appropriation of funds.

5.G 21-1181 [Action on Historic Resource Inventory Property Designation and Historic Preservation Agreement \(Mills Act Contract\) for 794 Park Court](#)

- Recommendation:**
1. Add the subject property to the City's Historic Resource Inventory (HRI); and
 2. Authorize the City Manager to execute a Historic Preservation Agreement (Mills Act Contract) including a 10-Year Restoration and Maintenance Plan for the property at 794 Park Court with property owner Megan L. Carter.

5.H 21-1201 [Action to Adopt Resolution to Set the Regular Meeting Schedule and Dates of the Board of Library Trustees for Calendar Year 2022](#)

Recommendation: Adopt the attached resolution setting the 2022 Calendar of Regular Meetings for the Board of Library Trustees.

SANTA CLARA STADIUM AUTHORITY CONSENT CALENDAR

6. Action on Request submitted by the Stadium Manager to Award Purchase Order to EYEP Solutions, Inc. for Genetec Omnicast Training and Synergic Technical Certification

A. 21-1465 [Request from the Stadium Manager to Award Purchase Order to EYEP Solutions, Inc. for Genetec Omnicast Training and Synergic Technical Certification](#)

B. 21-14660 [Report from the Stadium Authority Regarding Stadium Manager's Request to Award Purchase Order to EYEP Solutions, Inc. for Genetec Omnicast Training and Synergic Technical Certification](#)

Recommendation:

1. Approve the Stadium Manager's request to award a purchase order to EYEP Solutions, Inc. for Genetec Omnicast training and Synergic Technical Certification, in the amount of \$5,520, and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager.

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

7. 21-14001 [Discussion and Possible Direction on Consideration of the Sale of the Loyalton Ranch Property](#)

Recommendation: Staff has no recommendation and is seeking Council direction on whether additional steps toward the sale of the Loyalton Ranch Property should be implemented.

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

21-1122 [Informational Report Regarding an Amendment to the Santa Clara Police Department's Automated License Plate Reader \(ALPR\) Policy](#)

Recommendation: Note and file Information Report.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

ADJOURNMENT

The next regular scheduled meeting is on Tuesday evening, November 9, 2021.

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.

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

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

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

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

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

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

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

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



City of Santa Clara

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

Agenda Report

21-1512

Agenda Date: 10/26/2021

SUBJECT

Conference with Labor Negotiators (CC)
Pursuant to Gov. Code § 54957.6
City representative: Deanna J. Santana, City Manager (or designee)
Employee Organization(s):
Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2-Santa Clara Police Officer's Association
Unit #3-IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4-City of Santa Clara Professional Engineers
Units #5, 7 & 8-City of Santa Clara Employees Association
Unit #6-AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9-Miscellaneous Unclassified Management Employees
Unit #9A-Unclassified Police Management Employees
Unit #9B-Unclassified Fire Management Employees
Unit #10-PSNSEA (Public Safety Non-Sworn Employees Association)



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Agenda Report

21-1529

Agenda Date: 10/26/2021

SUBJECT

Conference with Legal Counsel-Existing Litigation (SA)

Pursuant to Gov't Code § 54956.9(d)(1)

Forty Niners SC Stadium Company LLC, et al., v. Santa Clara Stadium Authority, Demand for Arbitration through JAMS, 07/26/2019



City of Santa Clara

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Agenda Report

21-1531

Agenda Date: 10/26/2021

SUBJECT

Conference with Legal Counsel-Anticipated Litigation (CC)
Pursuant to Gov. Code § 54956.9(d)(2) - Exposure to litigation
Number of potential cases: 1
Facts and Circumstances: Pursuant to Gov. Code § 54956.9(e)(1) - Not disclosed on agenda



Agenda Report

21-1537

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action to Defer the Adoption and Certification of an Environmental Impact Report; Adoption of a Mitigation Monitoring and Reporting Program; and Architectural Approval of a Data Center project located at 1200-1310 Memorex Drive to a Future Date

COUNCIL PILLAR

Enhance Community Engagement and Transparency

DISCUSSION

This item is being deferred to a later City Council agenda, yet to be determined, to provide adequate time to the post the Final EIR as required by the California of Environmental Quality Act. Hearing notices will be mailed to adjacent properties and residents in advance of the rescheduled City Council hearing date.

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 impact to the City to defer this item.

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>> .

RECOMMENDATION

Defer the Adoption and Certification of an Environmental Impact Report; Adoption of a Mitigation Monitoring and Reporting Program; and Architectural Approval of a Data Center project located at 1200-1310 Memorex Drive to a Future Date

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager



City of Santa Clara

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Agenda Report

21-0005

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Proclaim November 2021 as Sikh Awareness and Acceptance Month

BACKGROUND AND DISCUSSION

The month of November is celebrated as Sikh Appreciation and Awareness Month in California. Sikhism is the fifth largest religion in the world, with over 25 million Sikhs worldwide. An estimated 250,000 Americans of Sikh origin, comprising nearly 40 percent of the nation's estimated Sikh population, reside in California. Sikh Americans have distinguished themselves by fostering respect and understanding among all people through faith and service.

As a Special Order of Business on October 26, 2021, the City Council will proclaim the month of November as Sikh Awareness and Acceptance Month.

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council; no environmental review under the California Environmental Quality Act ("CEQA") is required.

FISCAL IMPACT

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

PUBLIC CONTACT

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Reviewed by: Julie Minot, Executive Assistant to the City Manager

Approved by: Deanna J. Santana, City Manager



Agenda Report

21-1255

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Proclaim Family Court Awareness Month

BACKGROUND AND DISCUSSION

November is Family Court Awareness Month. The month of November provides an excellent opportunity to demonstrate support in recognizing the importance of a family court system that prioritizes child safety and acts in the best interest of children.

During the inaugural Family Court Awareness Month (2020), the top advocates in the family court system joined forces in a united effort to honor the 758 children who had been murdered by a separating or divorcing parent (2008-2020, Center for Judicial Excellence).

This collaboration was organized by Tina Swithin of One Mom's Battle and Sandra Ross of California Protective Parents Association. Joining in this awareness campaign was The National Family Violence Law Center, The Court Said USA, Kayden's Korner Foundation, Kyra Franchetti Foundation, Pollack Group LLC, Center for Judicial Excellence, and the Stop Abuse Campaign.

Efforts to coin the month of November as Family Court Awareness Month received recognition and endorsements from California Congresswoman Judy Chu, Senator Susan Rubio, and Assemblywoman Blanca Rubio.

Currently, many families in our community are struggling in silence and facing the reality that child safety is not being prioritized. Our family court system lacks the proper training on domestic violence, childhood trauma and post separation abuse. In fact, many are shocked to discover that most states do not have domestic violence training requirements prior to a judicial officer presiding over family court cases and ultimately, determining the fate of innocent children. In the states that do have requirements for domestic violence training, it is very minimal.

On October 26, 2021, the Santa Clara City Council will proclaim the month of November 2021 as Family Court Awareness Month.

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council; no environmental review under the California Environmental Quality Act ("CEQA") is required.

FISCAL IMPACT

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

PUBLIC CONTACT

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Reviewed by: Julie Minot, Executive Assistant to the City Manager

Approved by: Deanna J. Santana, City Manager



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Agenda Report

21-1429

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Verbal Report from City Manager regarding COVID-19 Pandemic

COUNCIL PILLAR

Enhance Community Engagement and Transparency



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Agenda Report

21-1430

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Verbal Report Update from City Manager Regarding the Local Drought Emergency

COUNCIL PILLAR

Enhance Community Engagement and Transparency



Agenda Report

21-1525

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Presentation on Business Tax Ballot Measure and Other Potential Revenue Measures for November 2022 Ballot (Deferred from October 19, 2021)

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

At the 2021 Council Priority Setting Session, information was requested by Council on a potential business tax ballot measure which would update the City's current business tax structure. As part of the May 25, 2021 Budget Study Session and at the June 22, 2021 City Council meeting, Staff presented information and a timeline to pursue a measure that could be placed on the November 2022 General Election ballot. At the June 22nd Council meeting, Council directed staff to 1) begin work on a potential November 2022 ballot measure, including exploring other potential revenue measures, and 2) agendize a study session for Fall 2021. This direction was affirmed at the August Council Priority Setting check-in meeting.

Currently, all businesses operating within Santa Clara (including those businesses operating but located outside of the City), must have a license to transact business or occupy space in the city. The City's business tax program was last updated in 1992. The business tax program does not allow for a cost escalator and therefore has not changed in almost 30 years. The City's current charge for business tax ranges from \$15 to \$500 per company and as a result receives annual revenue of approximately \$0.9 million.

DISCUSSION

In preparation for a potential November 2022 ballot measure, City staff has started a procurement for Business Tax and Ballot Measure Consulting Services by releasing a Request for Statement of Qualifications in September 2021. Staff anticipates completing the procurement process shortly with a contract award expected later this month. The services to be provided include 1) a comprehensive study on the current business tax structure and recommending alternative tax structures/methods in addition to exploring other tax measures, 2) professional polling/public opinion research services and, 3) corporate and community outreach.

As staff proceeds with the analysis for a November 2022 ballot measure, it is important Council input is gathered on some key priorities and/or guidelines for the consultant to take into consideration when making recommendations on possible alternative tax structures. During this study session, staff will provide a brief overview of business tax structures, benchmark comparative cities and briefly discuss other possible tax measures the Council may want to explore for the November 2022 ballot given the projected deficit and on-going infrastructure needs.

At the August 2021 Council Priorities check-in meeting, Council was advised of the projected \$17.6 million deficit in fiscal year 2023/24 along with close to \$1 billion of unfunded infrastructure needs. A critical part of the budget balancing strategies presented to Council was increasing revenues, which included exploring tax measures. While the Business License Tax was prioritized, there are other tax measure options that may need to be explored including the Utility User Tax, Documentary Transfer Tax and a General Obligation Bond or Parcel Tax.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no fiscal impact associated with this report other than administrative staff time.

COORDINATION

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

PUBLIC CONTACT

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RECOMMENDATION

1. Provide feedback on key priorities for the development of recommendations on possible alternative tax structures for future Council consideration; and
2. Review and direct staff to explore other potential revenue measures to be placed on the November 2022 ballot.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Post Meeting Material from October 19, 2021 Council and Authorities Concurrent Meeting

10/19/21

Item #5



Study Session

**Presentation on Business Tax
Ballot Measure and Other
Potential Revenue Measures
for November 2022 Ballot**

Item #5
RTC: 21-1269

October 19, 2021

Agenda

- Overview
- Background
- Santa Clara Business Tax Overview
- Procurement Update
- Business Tax Structures
- Other Potential Ballot Measures
- Timeline
- Recommendations

Overview

- February 2021:** Council expressed interest at its Priority Setting Session in updating the City's business license tax structure and ranked it as "Important"
- May 25, 2021:** Staff presented information and a timeline to pursue a business license tax measure for the November 2022 General Election ballot at the Budget Study Session
- June 22, 2021:** Staff presented the business license tax measure information at this City Council meeting

Overview

- At the June 22, 2021, Council meeting, Council directed staff to:
 1. Begin work on a potential November 2022 ballot measure, including exploring other potential revenue measures; and
 2. Agendize a study session for Fall 2021
- This direction was affirmed at the August Council Priority Setting check-in meeting

Today's Goals

- In today's session we are seeking:
 1. Feedback on key priorities for the development of recommendations on possible alternative business tax structures for future Council consideration
 2. Direction on pursuing other potential revenue measures to be placed on the November 2022 ballot

Background

Progress to Date: Budget Balancing through FY 2021/22 and Ongoing Forecast

General Fund Forecast Timeline – COVID – 19 Induced Impact

	January 2020 Forecast	April 2020 Forecast	January 2021 Forecast	April 2021 (With Phase 1)	Ongoing Shortfall w/Adopted Actions
General Fund Shortfall	(\$13 M)	(\$34 M)	(\$42 M)	(\$29 M)	(\$17.6 M)

Progress to Date: Cost Control Measures Implemented

- Multi-phased fee schedule update
- Hiring freeze, with limited exceptions
- Stricter expenditure controls
- Decreased temporary staffing (down 400 staff or 43%) and removed approx. 400,000 productivity hours
- Organizational capacity loss of approximately 26% through 56.5 reduced full-time positions and considering vacancies – approx. 360,000 productivity hours
- Limited travel and training
- Reduced expenditures for IT, equipment, and vehicle/fleet purchases
- Evaluating current contracts and other non-personnel expenditures

Where Do We Need to Go

- Continued Fiscal Discipline
- Budget Balancing Actions
- Revenue Growth
- Infrastructure Needs
- Long-Term Fiscal Stability



Santa Clara Business Tax Overview

Santa Clara Business Tax Overview

- All businesses, including those located outside of the city, but operating in the City, must have a license to transact business or occupy space in the city
- Business Tax last updated in 1992
- Business Tax ranges from \$15 to \$500 per company and varies by business type
- No cost escalator
- Current annual revenue of approx. \$0.9 M

Santa Clara Business Tax Overview

Current Rates by Type of Business/Number of Employees

Schedule No. 100 - Commercial/Industrial		
	Employee(s)	\$
1		15
2-5	"	30
6-10	"	70
11-15	"	90
16-20	"	115
21-25	"	175
26-30	"	225
31-40	"	280
41-55	"	330
56-75	"	380
76-100	"	460
101+	"	500

Schedule No. 200 - Professional		
	Employee(s)	\$
1		15
2-3	"	30
4-6	"	70
7-10	"	90
11-20	"	115
21-25	"	175
26-35	"	225
36-40	"	280
41-45	"	330
46-50	"	380
51-55	"	460
56+	"	500

Schedule No. 300 - Manufacturing		
	Employee(s)	\$
1-3		15
4-20	"	45
21-30	"	65
31-50	"	100
51-75	"	135
76-100	"	175
101-125	"	225
126-175	"	280
176-225	"	330
226-300	"	380
301-400	"	460
401+	"	500

Santa Clara Business Tax Overview

Alternate Fees

Ambulance service plus \$15.00 per ambulance used in such service	\$ 45.00
Carnival, per day	150.00
Carnival concession, ride, sideshow, per each, per day	15.00
Christmas tree sales (as defined in SCCC 5.15.030)	150.00
Circus, per day	150.00
Circus concession, ride, sideshow, per each, per day	15.00
Detective agency	150.00

Entertainment permit Class I	
First year	263.00
Annual renewal	210.00
Entertainment permit Class II	
First year	90.00
Annual renewal	75.00
Entertainment permit Class III	
First year	413.00
Annual renewal	360.00
Escort service (personal)	150.00
Escort service (funeral)	150.00

Santa Clara Business Tax Overview

Alternate Fees

Fortuneteller, (as defined in SCCC 5.45.010)	15.00
Intracity bus service and public transportation	150.00
Itinerant merchant (maximum 190 days)	225.00
Parade vendor (per parade)	15.00
Pawnbroker (as defined in SCCC 5.30.020)	150.00
Peddler (as defined in SCCC 5.05.010)	113.00
Promotional show, per day	150.00

Promotional show concession, ride, or sideshow, per each, per day	15.00
Pumpkin sales lots (as defined in SCCC 5.15.030)	150.00
Seasonal item sales lot (as defined in SCCC 5.15.030)	150.00
Secondhand dealer (as defined in SCCC 5.30.020)	150.00
Solicitor (as defined in SCCC 5.05.010)	113.00
State-licensed contractors	45.00
Taxicab, per vehicle	15.00
Taxicab stand	90.00

Santa Clara Business Tax Overview

- We have approximately 8,500 businesses with active business licenses
- About 6,100 businesses are subject to the employee-based business license tax
 - This equates to approximately 137,000 employees
- The remaining 2,400 businesses are exempt or pay alternate-based fees (e.g., pawn shops, taxicabs, theaters, apartments and hotel/motel rental units)

Santa Clara Business Tax Overview

Employee Count Range	Number of Employee-Based Business Licenses	Number of Employees
1 - 49	5,700	36,000
50 - 99	170	12,000
101 - 499	180	39,000
500 - 10,000	50	50,000



Procurement Update

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Business Tax & Ballot Measure Consulting Services

- Released Statement of Qualifications procurement in September 2021
- Proposal evaluation underway; contract award(s) expected by November
- Services to be provided include:
 1. Comprehensive study on the current business tax structure and recommending alternative tax structures/methods in addition to exploring other tax measures
 2. Professional polling/public opinion research services
 3. Corporate and community outreach



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Business Tax Structures

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Structure Types

- **Employee Count** - assessed on employee head count
- **Parcel Tax** - assessed on square footage developed on a given property
- **Square Footage** - assessed on square footage occupied and used by a specific business
- **Gross Receipts** – assessed based on the gross receipts of a business
- **Payroll** - business tax based on an organization's total payroll



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Benchmarking

CITY	BUSINESS LICENSE TYPE	YEAR ADOPTED
Cupertino	Square Footage	1992
East Palo Alto	Gross Receipts	2016
Mountain View	Employee Count	2018
Redwood City	Employee Count	1990
San Francisco	Gross Receipts Payroll	2011
San Jose	Employee Count	2016
San Mateo	Gross Receipts	1976
Santa Clara	Employee Count	1992
Sunnyvale	Employee Count	1976



**City of
Santa Clara**
The Center of What's Possible

Source: Matrix Consulting Business License Tax Program Comparative Assessment and Initial Revenue Projections for the City of Palo Alto, December 2019

* Santa Clara's tax structure was adopted in 1992. The source data incorrectly noted 2003

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Benchmarking

City	Annual Rate	FY 21/22 Budget
Cupertino	\$155 - \$306 plus per unit costs in limited cases	\$0.6 M
Gilroy	\$40 - \$2,000	\$0.6 M
Los Altos	\$75 - \$335 plus addtl. amt. per employee/unit; \$3,200 max.	\$0.5 M
Mountain View	\$75 - \$584K + \$150/employee (tiered by no. employees)	\$6.0 M
San Jose	\$207 - \$166K (tiered by no. employees/units)	\$25.7 M
Santa Clara	\$15 - \$500 (tiered by no. employees/units)	\$0.9 M
Sunnyvale	\$41 - \$13K (tiered by no. employees/units)	\$1.9 M



**City of
Santa Clara**
The Center of What's Possible

22

Ballot Measure Considerations

General Tax Measure

- Levied to be expended on any program, service, or capital need, at the discretion of the local government's governing body
- A **simple majority** vote (50 percent of voters plus one additional voter) is required for approval of a general tax
- Non-property related taxes which cities and counties are authorized to levy may be imposed as a general tax

Ballot Measure Considerations

Special Purpose Tax Measure

- Dedicated to a specific purpose, including a special tax for a specific purpose that is deposited into a city's general fund
- Requires a **2/3 supermajority vote**
- Taxes levied on property, excluding ad valorem but including parcel taxes, are considered special taxes

Recent Business License Tax Ballot Measures

Nov 2018			Nov 2020		
Agency	Ballot Measure	Pass/Fail	Agency	Ballot Measure	Pass/Fail
Cudahy	Casinos	Pass	San Jose	Cardroom Tax	Pass
Daly City	Business Tax	Pass	Richmond	Business Tax	Pass
Mountain View	Business Tax	Pass	San Francisco	Business Tax – various changes	Pass
Sausalito	Business Tax	Pass	San Francisco	Business Tax – employee pay	Pass
Grover Beach	Business Tax	Pass	Berkeley	Transportation Network Companies	Pass
San Francisco	Citizen Initiative – Business Tax	Pass	Long Beach	Oil Production Tax	Pass
County of San Benito	Business Tax	Pass	Lynwood	For-Profit Hospitals	Fail

City Council Feedback

Key Priorities for Consideration

- Ease of Administration?
- Ease of Implementation?
- Progressive v. regressive structure?
- Stability of tax structure?
- Revenue generation?
- General Tax v. Special Tax?



Other Potential Ballot Measures

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Reminder - Where Do We Need to Go

- Continued Fiscal Discipline
- Budget Balancing Actions
- Revenue Growth
- Infrastructure Needs
- Long-Term Fiscal Stability



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Where Do We Need to Go: Budget Balancing Other Potential Ballot Measures

- Utility User Tax / SVP Charter Language Clarification
- Documentary Transfer Tax
- General Obligation Bond or Parcel Tax

Note: City Council will need to prioritize ballot measures as there are many being considered.

Where Do We Need to Go: Budget Balancing Utility Users Tax

- Common tax imposed by a City on the consumption of utility services
- The rate and use is determined by the City
- Tax is levied on the utility customer
- The City does not currently have a UUT
- Voter approval required
- UUT rates vary in the area
 - The most common rate is 5%
 - The rates in Santa Clara County range from 2% to 5%
- Potential estimated revenue of \$4 M - \$6 M (Water, Gas, Telephone)

Where Do We Need to Go: Budget Balancing Documentary Transfer Tax

- Documentary Transfer Tax is imposed on the transfer of the title of real property from one person (or entity) to another within the jurisdiction
- Based on the property's sale price
- Current County Transfer Tax is \$1.10 for each \$1,000 sale amount
 - City receives \$0.55 and the County receives \$0.55
 - Tax increase would go to the City but the entire \$1.10 would stay with the County
 - Current revenue of approximately \$1.4 million
- Increase of \$3.30 (for a total tax of \$4.40 for each \$1,000) would generate \$7 million annually; for a \$1.5 million property sale, the tax would increase from \$1,650 to \$6,600

Where Do We Need to Go: Budget Balancing Documentary Transfer Tax

Documentary Transfer Tax Comparison for Santa Clara County Charter Cities*

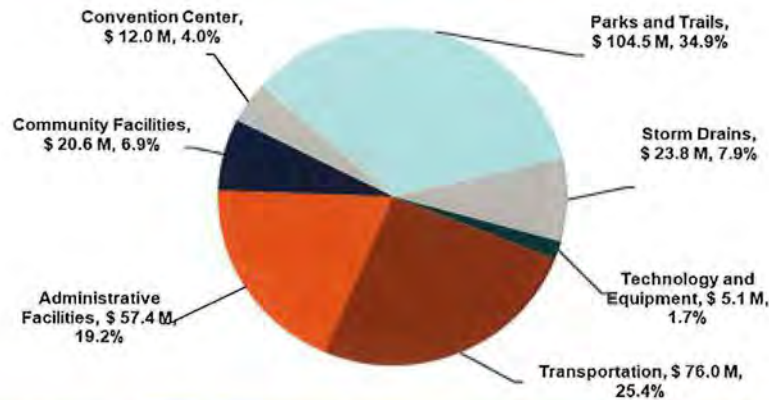
City	City Rate	FY 2021/22 Budget
Gilroy	\$0.55 per \$1,000 (base set for all counties)	\$0.5 M
Mountain View	\$3.30 per \$1,000	\$4.0 M
Palo Alto	\$3.30 per \$1,000	\$7.1 M
San Jose – Conveyance Tax	\$3.30 per \$1,000	\$38.0 M
San Jose – Transfer Tax	\$7.50 - \$15.00 per \$1,000 (tiered - over \$2 M)	\$40.0 M
Santa Clara	\$0.55 per \$1,000 (base set for all counties)	\$1.5 M
Sunnyvale	\$0.55 per \$1,000 (base set for all counties)	\$1.8 M

* Only Charter Cities may impose a transfer tax above the amount set by State

Where Do We Need to Go: Infrastructure Needs

Significant Unfunded Infrastructure Needs

Five-Year CIP Unfunded Needs = \$299.4 M



Where Do We Need to Go: Infrastructure Needs

Close to \$1 billion of identified capital needs beyond CIP:

- Parks Assessment (December 2017-Kitchell Report) identified \$100 M of parks grounds and building needs (\$156 M w/ escalation)
- 2015 Storm Drain Master Plan identified \$343 M in projects (2018 dollars), including almost \$68 M in high priority projects
- Transportation infrastructure (e.g., traffic signal infrastructure replacement (\$50 M), uncontrolled crosswalks (\$50 M), Bicycle Plan (\$40 M), Creek Trail Master Plan (\$50 M), pavement (\$9 M annually beyond CIP)
- Public Buildings (New City Hall (\$236 M – \$300 M), existing City Hall (\$39 M); fire stations, historic buildings, corporation yard, ADA plan)
- Expand capacity (e.g., library)

Where Do We Need to Go: Infrastructure Needs

General Obligation (GO) Bond

Key Features:

- Used for long-term capital project financing
- Requires two-thirds supermajority vote
- One-time revenue, up front
- Secured by levying ad valorem property taxes in addition to the 1% general ad valorem property tax



Swim Center Boiler



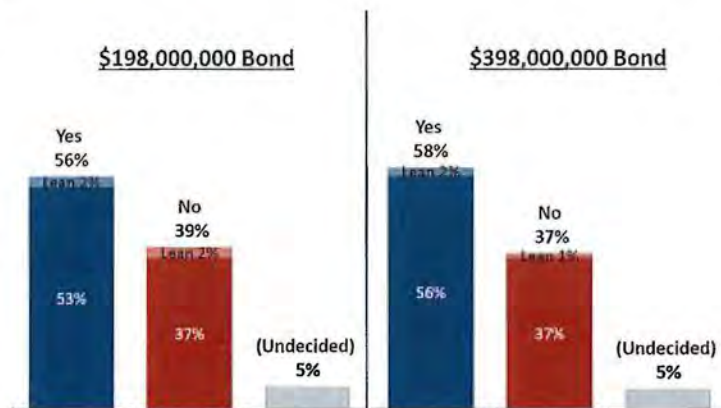
Fire Training Tower

Initial Interest: Bond Measure



Initial-interest in a bond measure is similar regardless of the proposed amount. Neither version reaches the two-thirds threshold required to pass.

To maintain healthy, safe neighborhoods and improve quality of life in Santa Clara, shall a measure to repair aging fire stations, fix streets/potholes, improve flood protection, enhance bicycle/pedestrian safety, and upgrade park, recreation and library facilities by issuing [A:] \$198,000,000 / [B]: \$398,000,000 in bonds at legal rates, at an estimated [A:] 28 cents / [B]: 56 cents per \$100 of assessed value, raising approximately [A:] \$140,490,000/ [B]: \$282,390,000 annually while bonds are outstanding, with oversight/audits, and no funds for salaries/benefits/pensions, be adopted?



Where Do We Need to Go: Infrastructure Needs General Obligation (GO) Bond

Considerations:

- Recent polling has not supported broad-based GO bond measure
- Targeted measure (e.g., public safety and/or storm infrastructure focused) may be more supported by residents
- Additional education, polling, and outreach would be necessary
- Consultant to determine the likelihood of success of one or more ballot measures/combination of measures

Council Feedback

Other Ballot Measures

- Determine which other measures Council would like to pursue and prioritization of measures



Timeline

Estimated Timeline for Business License Tax Ballot Measure

Tentative Actions	Tentative Date
Receive Initial Findings on Business License Tax study from Consultant	January/February 2022
Polling/outreach to determine community interest/priorities	March - June 2022
Evaluate options and make final determination	May - June 2022
Submit final measure for Nov. 2022 ballot	July 2022
Conduct community/business outreach on ballot measures	July 2022 - November 2022
Election Date	November 2022



Recommendation

1. Provide feedback on key priorities for the development of recommendations on possible alternative tax structures for future Council consideration.
2. Review and direct staff to explore other potential revenue measures to be placed on the November 2022 ballot.



Study Session

Presentation on Business Tax Ballot Measure and Other Potential Revenue Measures for November 2022 Ballot

Item #5
RTC: 21-1269

October 19, 2021



City of Santa Clara

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

Agenda Report

21-537

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action on Meeting Minutes of July 6, 2021 Council & Authorities Concurrent Meeting and July 13, 20201 Joint Council & Authorities Concurrent and Stadium Authority Meeting

COUNCIL PILLAR

Enhance Community Engagement and Transparency

RECOMMENDATION

Approve the Meeting Minutes of July 6, 2021 Council & Authorities Concurrent Meeting and July 13, 20201 Joint Council & Authorities Concurrent and Stadium Authority Meeting.

ATTACHMENTS

1. 07-06-2021 DRAFT CC
2. 07-13-2021 DRAFT CC SA



City of Santa Clara

Meeting Minutes

Council and Authorities Concurrent Meeting

07/06/2021

4:00 PM

Virtual Meeting
 Closed Session 4:00 PM
 Open Session 6:30 PM

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, to prevent the spread of COVID-19, the City of Santa Clara has implemented methods for the public to participate remotely:

- Via Zoom:
 - o <https://santaclaraca.zoom.us/j/99706759306>
- Meeting ID: 997-0675-9306 or
- o Phone: 1(669) 900-6833
- Via the City's eComment (now available during the meeting)
- Via email to PublicComment@santaclaraca.gov

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

4:00 PM CLOSED SESSION

Call to Order

Mayor Gillmor called the meeting to order at 4:00 PM.

Roll Call

Present: 7 - Councilmember Kathy Watanabe, Vice Mayor Raj Chahal, Councilmember Karen Hardy, Councilmember Kevin Park, Councilmember Suds Jain, Councilmember Anthony Becker, and Mayor Lisa M. Gillmor

Public Comment

Public Speaker(s): Carolyn McAllister

- 1.A [21-929](#) CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: Buzzell v. City of Santa Clara
(WCAB Case Nos. ADJ12998780, ADJ14200898, ADJ14260301,
ADJ14260283, ADJ14322249)
- 1.B [21-928](#) Public Employee Performance Evaluation pursuant to Government Code
Section 54957(b)(1)
Title: City Attorney

Convene to Closed Session

Council convened to Closed Session.

6:30 PM COUNCIL REGULAR MEETING

Pledge of Allegiance and Statement of Values

Council recited the Pledge of Allegiance.

Councilmember Hardy recited the Statement of Values.

Assistant City Clerk Pimentel recited the Behavioral Standards.

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

Mayor Gillmor noted that there was no reportable action from Closed Session Item 1.B.

City Attorney Doyle noted that there was no reportable action from Closed Session Item 1.A.

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

Kelly Macy requested reconsideration of previous action on June 22, 2021 to Take No Action on the Written Petition on the Republic Metropolitan Project at 500 Benton Street.

A motion was made by **Councilmember Park** (on the Prevailing Side), seconded by **Councilmember Watanabe**, to reconsider the Written Petition on Republic Metropolitan Project.

The following Public Speakers expressed being in favor of reconsideration of Republic Metropolitan Project:

Mike Walke
Deb
Jerry Smith
Steve Kelly
Brian Gregory

City Attorney Doyle reviewed the Reconsideration Policy.

Council discussion and questions followed.

City Manager Santana addressed **Council** questions.

A motion was made by Councilmember Park, seconded by Councilmember Watanabe, to place reconsideration of Written Petition of Republic Metropolitan Project at 500 Benton Street on the July 13, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

City Manager Santana noted that there are time sensitive Items that and must be heard this evening: Items 3.F, 3.G, 3.I, 4.5, 6, 8.C and 8.D.

SPECIAL ORDER OF BUSINESS

2.A 21-812 Action on Silicon Valley Power Logo Temporary Redesign in Recognition of 125th Anniversary

Chief Electric Utilities Officer Pineda gave a verbal presentation on Silicon Valley Power logo redesign in celebration of its 125th Anniversary year.

Public Speaker(s): Public Speaker (1)

Recognize Local Youth Author Paarth Bansal

2.B [21-950](#)

Mayor Gillmor presented a Special Mayoral Recognition to local youth author **Paarth Bansal** on his book: *The Amazing World of Magnets*.

Paarth Bansal provided an overview on the inspiration of his book.

Council expressed comments of encouragement and noted how proud they are his accomplishment.

2.A [21-812](#)

Action on Silicon Valley Power Logo Temporary Redesign in Recognition of 125th Anniversary

Recommendation: Approve and authorize the temporary usage of the alternate Silicon Valley Power logo redesign in celebration of its 125th Anniversary year.

City Manager Santana and **Chief Electric Utilities Officer Pineda** presented the temporary Logo in celebration of the 125th Anniversary year.

Council questions and comments followed.

Chief Electric Utilities Officer Pineda addressed questions.

A motion was made by Councilmember Hardy, seconded by Vice Mayor Chahal, to approve and authorize the temporary usage of the alternate Silicon Valley Power logo redesign in celebration of its 125th Anniversary year.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

CONSENT CALENDAR

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve the Balance of the Consent Calendar (except Items 3.E, 3.F, 3.H, and 3.I)

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

3.A [21-932](#) Action on April 6, 2021 Council and Authorities Concurrent Meetings Minutes

Recommendation: Approve the Meeting Minutes of:
Council & Authorities Concurrent Meeting - April 6, 2021

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve staff recommendation.

3.B [21-14](#) Board, Commissions and Committee Minutes

Recommendation: Note and file the Minutes of:
Parks & Recreation Commission - May 18, 2021
Historical and Landmarks Commission - May 6, 2021
Senior Advisory Commission - May 24, 2021

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve staff recommendation.

3.C [21-845](#) Action on Bills and Claims Report (CC) for the period May 29th, 2021 - June 11th, 2021

Recommendation: Approve the list of Bills and Claims for May 29, 2021 - June 11, 2021.

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve staff recommendation.

3.D [21-234](#) Action on an Agreement with Gates and Associates Landscape Architecture, Inc. for Design Professional Services for the Westwood Oaks Playground Rehabilitation Project

Recommendation: 1. Approve and authorize the City Manager to execute an agreement with Gates and Associates Landscape Architecture, Inc. for the Westwood Oaks Playground Rehabilitation Project in the amount not-to-exceed \$92,817; and
2. Authorize the City Manager to make minor modifications, if needed.

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve staff recommendation.

- 3.G** [21-543](#) Approval of the 2021 Santa Clara County Multi-Jurisdictional Program for Public Information; a program under the Community Rating System of the Federal Emergency Management Agency's National Flood Insurance Program

Recommendation: Approve the implementation of the 2021 Santa Clara County Multi-Jurisdictional Program for Public Information 5-Year Plan for the Community Rating System Program.

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve staff recommendation.

- 3.J** [21-938](#) Action on a Resolution Revising the Council and Authorities/Stadium Authority Regular Meeting Dates for the 2021 Calendar Year

Recommendation: Adopt a Resolution revising the Council and Authorities/Stadium Authority regular meeting dates for the 2021 calendar year to reflect the cancellation of the August 31, 2021 Council and Authorities regular meeting and to set August 24, 2021 as a Joint Council and Authorities and Stadium Authority regular meeting.

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to adopt Resolution No. 21-8987 revising the Council and Authorities/Stadium Authority regular meeting dates for the 2021 calendar year to reflect the cancellation of the August 31, 2021 Council and Authorities regular meeting and to set August 24, 2021 as a Joint Council and Authorities and Stadium Authority regular meeting.

PUBLIC PRESENTATIONS

None.

- 21-1024** Public Presentations eComment

CONSENT ITEMS PULLED FOR DISCUSSION

- 3.F [21-758](#) Action on Amendment No. 2 to the Agreement with Orchard Commercial, Inc. for Property Management Services for the Santa Clara Convention Center Complex located at 5001, 5101, and 5201 Great America Parkway

Recommendation: Authorize the City Manager to execute Amendment No. 2 to the Agreement with Orchard Commercial, Inc. for property management services to increase the amount of the agreement by \$77,400 and to extend the term of the agreement through July 31, 2022 for a revised not-to-exceed maximum compensation of \$472,918, subject to the appropriation of funds.

Councilmember Jain pulled this item for further clarification regarding costs for the common areas for the Convention Center.

Assistant Director of Public Works Liw addressed **Council** questions.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to Authorize the City Manager to execute Amendment No. 2 to the Agreement with Orchard Commercial, Inc. for property management services to increase the amount of the agreement by \$77,400 and to extend the term of the agreement through July 31, 2022 for a revised not-to-exceed maximum compensation of \$472,918, subject to the appropriation of funds.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

- 3.1 [21-735](#) Action on the Award of Purchase Orders with Technology, Engineering & Construction, Inc. and California Hazardous Services, Inc. for Fuel Storage Tank Services

- Recommendation:**
1. Authorize the City Manager to execute a blanket purchase order with Technology, Engineering & Construction, Inc. to provide fuel storage tank compliance services for an initial term starting on July 1, 2021 and ending on June 30, 2022, with maximum compensation not-to-exceed \$60,000;
 2. Authorize the City Manager to execute a blanket purchase order with California Hazardous Services, Inc. to provide fuel maintenance services for an initial term starting on July 1, 2021 and ending on June 30, 2022, with maximum compensation not-to-exceed \$12,000;
 3. Authorize the City Manager to approve contingency amounts of 20 percent, or \$12,000 and \$2,400 on the purchase orders with Technology, Engineering & Construction, Inc. and California Hazardous Services, Inc., respectively, in the event additional or unexpected repairs or compliance services are required during the initial term; and
 4. Authorize the City Manager to exercise up to four one-year options to renew the purchase orders through June 30, 2026, if all options are exercised, and subject to the annual appropriation of funds.

Councilmember Jain pulled this item for further clarification on expenses for Fuel Storage Tanks.

Assistant Director of Public Works Liw addressed **Council** questions.

Public Speaker(s): Name Not Required

A motion was made by Councilmember Jain, seconded by Councilmember Hardy, to (1) authorize the City Manager to execute a blanket purchase order with Technology, Engineering & Construction, Inc. to provide fuel storage tank compliance services for an initial term starting on July 1, 2021 and ending on June 30, 2022, with maximum compensation not-to-exceed \$60,000; (2) authorize the City Manager to execute a blanket purchase order with California Hazardous Services, Inc. to provide fuel maintenance services for an initial term starting on July 1, 2021 and ending on June 30, 2022, with maximum compensation not-to-exceed \$12,000; (3) authorize the City Manager to approve contingency amounts of 20 percent, or \$12,000 and \$2,400 on the purchase orders with Technology, Engineering & Construction, Inc. and California Hazardous Services, Inc., respectively, in the event additional or unexpected repairs or compliance services are required during the initial term; and (4) authorize the City Manager

to exercise up to four one-year options to renew the purchase orders through June 30, 2026, if all options are exercised, and subject to the annual appropriation of funds.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

PUBLIC HEARING/GENERAL BUSINESS

4. [21-899](#) Adopt a Resolution Establishing an Independent Redistricting Commission to Conduct Public Engagement and Adoption of City Council District Election Map as a Result of the 2020 U.S. Census

Recommendation: Staff recommends City Council adopt a Resolution Establishing and Independent Redistricting Commission to Conduct Public Engagement and Adoption of City Council District Election Map as a Result of the 2020 U.S. Census

City Clerk Haggag gave a PowerPoint Presentation.

Council comments and questions followed.

City Clerk Haggag and **City Manager Santana** addressed **Council** questions.

A motion was made by **Councilmember Jain**, seconded by **Councilmember Hardy**, to adopt the proposed Resolution with the following adjustments: (1) each applicant be required to live in their district for a minimum of one year; (2) allow the Redistricting Commissioner to serve on a City commission upon completion of service; (3) apply a \$150 stipend for each public hearing meeting attended by Commissioner; and (4) approve the selection process as presented by **City Clerk Haggag**.

Councilmember Watanabe requested a friendly amendment to the motion to change the stipend to \$25 for each public hearing meeting.

Councilmember Jain did not accept the friendly amendment.

Council comments and questions followed.

City Manager Santana and **City Attorney Doyle** addressed **Council** questions.

Public Speaker(s): Betsy Megas
Name Not Required
Ben
Chadwick
Steve Kelly
Lee
Linda

Council comments followed.

Mayor Gillmor requested a friendly amendment to the motion to change the stipend to \$50 for each public hearing meeting.

Councilmember Jain did not accept the friendly amendment.

Public Speaker(s): Lee
Linda

Council comments followed.

A motion was made by Councilmember Jain, seconded by Councilmember Hardy, to adopt the proposed Resolution with the following adjustments: (1) each applicant be required to live in their district for a minimum of one year; (2) allow the Redistricting Commissioner to serve on a City commission upon completion of service; (3) apply a \$150 stipend for each public hearing meeting attended by Commissioner; and (4) approve the selection process as presented by City Clerk Haggag.

Aye: 3 - Vice Mayor Chahal, Councilmember Hardy, and Councilmember Jain

Nay: 4 - Councilmember Watanabe, Councilmember Park, Councilmember Becker, and Mayor Gillmor

Motion Fails.

A motion was made by **Councilmember Park**, seconded by **Vice Mayor Chahal**, to adopt the proposed resolution with the following adjustments: (1) each applicant be required to live in their district for a minimum of one year; (2) allow the Redistricting Commissioner to serve on a City Commission upon completion of service; (3) apply a \$50 stipend for each public hearing meeting attended by Commissioner and a \$50 bonus upon completion of service; and (4) approve the selection process as presented by City Clerk Haggag.

Council comments followed.

Councilmember Park removed his recommendation of a \$50 bonus upon completion of service.

A motion was made by Councilmember Park, seconded by Vice Mayor Chahal, to adopt the proposed Resolution No. 21-8988 with the following adjustments: (1) each applicant be required to live in their district for a minimum of one year; (2) allow the Redistricting Commissioner to serve on a City Commission upon completion of service; (3) apply a \$50 stipend for each public hearing meeting attended by Commissioner; and (4) approve selection process as presented by City Clerk Haggag.

Aye: 4 - Vice Mayor Chahal, Councilmember Park, Councilmember Jain, and Mayor Gillmor

Nay: 3 - Councilmember Watanabe, Councilmember Hardy, and Councilmember Becker

Mayor Gillmor called a recess at 8:55 PM and reconvened the meeting at 9:06 PM.

5. [21-887](#) Direction on the Next Steps for the El Camino Real Specific Plan.

Recommendation: 2. Prepare an alternative form of the Specific Plan that reduces densities from the prior draft Specific Plan, but maintains an overall average density greater than 35 units per acre.

Director of Community Development Crabtree gave a PowerPoint Presentation on the El Camino Real Specific Plan.

Council comments and questions followed.

Director of Community Development Crabtree and **City Attorney Doyle** addressed questions and concerns.

Public Speaker(s): Jeff Houston	Justin Wang
Tom Quaglia	Xinyu Zhao
Ksinai	Name Not Required
Lee	Samiullah Memon
Atisha Varshney	Miten Patel
Betsy Megas	Steve Kelly
Joey Penniman	Zainab
Kathy Robinson	Linda Zazzarra (E-Mail)

Director of Community Development Crabtree addressed Public comments.

Council questions and comments followed.

Director of Community Development Crabtree addressed **Council** questions.

A motion was made by Councilmember Hardy, seconded by Councilmember Jain, to approve Alternative 2: Prepare an alternative form of the Specific Plan that reduces densities from the prior draft Specific Plan, but maintains an overall average density greater than 35 units per acre.

Aye: 3 - Councilmember Hardy, Councilmember Park, and Councilmember Jain

Nay: 4 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Becker, and Mayor Gillmor

Motion Fails.

A motion was made by Councilmember Watanabe, seconded by Vice Mayor Chahal, to approve Alternative 1: proceed with modification of the Specific Plan to include the height limits directed by the City Council and described above in terms of the resulting development types and densities. Appropriate funding (\$200,000) from the General Fund to support preparation of a VMT analysis and recirculation of the EIR, economic feasibility analysis, and the rewriting of development standards.

Aye: 3 - Councilmember Watanabe, Vice Mayor Chahal, and Mayor Gillmor

Nay: 4 - Councilmember Hardy, Councilmember Park, Councilmember Jain, and Councilmember Becker

Motion Fails.

Council questions and comments followed.

City Manager Santana and **Director of Community Development** addressed **Council** questions.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to reconsider the previous action take on Alternative 1: proceed with modification of the Specific Plan to include the height limits directed by the City Council and described above in terms of the resulting development types and densities and appropriate funding (\$200,000) from the General Fund to support preparation of a VMT analysis and recirculation of the EIR, economic feasibility analysis, and the rewriting of development standards.

Aye: 5 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Becker, and Mayor Gillmor

Nay: 2 - Councilmember Park, and Councilmember Jain

Motion Passes.

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to approve Alternative #1: proceed with modification of the Specific Plan to include the height limits directed by the City Council and described above in terms of the resulting development types and densities and appropriate funding (\$200,000) from the General Fund to support preparation of a VMT analysis and recirculation of the EIR, economic feasibility analysis, and the rewriting of development standards.

Aye: 4 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Becker, and Mayor Gillmor

Nay: 3 - Councilmember Hardy, Councilmember Park, and Councilmember Jain

Mayor Gillmor called for a recess at 10:55 PM and reconvened the meeting at 11:06 PM.

City Manager Santana confirmed that budget for Item #5 will return with action for appropriate budget allocation.

6. [21-757](#) Action on Amendment No. 4 to the Agreement for Professional Services with Perkins + Will for the Tasman East Specific Plan and Related Budget Amendment

- Recommendation:**
1. Consistent with **City Charter Section 1305**, *“At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,”* approve the FY 2021/22 budget amendment in the Other City Departments Operating Grant Trust Fund to recognize grant revenue in the amount of \$310,000 and establish a Planning Grants Program appropriation in the amount of \$310,000 (five affirmative council votes required to appropriate additional revenue); and
 2. Authorize the City Manager to execute Amendment No. 4 to the Agreement with Perkins + Will for professional services to prepare the Amendment to the Tasman East Specific Plan to allow up to 1,500 additional units in the Tasman East area, along with preparation of the associated environmental clearance by increasing the amount of the agreement by \$275,000 and extending the term of the agreement through June 30, 2022 for a revised not-to-exceed maximum compensation of \$1,461,432.

City Manager Santana made introductory comments regarding the consideration of this item.

Director of Community Development Crabtree gave a PowerPoint Presentation.

Council comments and questions followed.

Public Speaker(s): Name Not Required

A motion was made by Councilmember Watanabe, seconded by Councilmember Jain, to approve (1) consistent with City Charter Section 1305, at any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not

included in the budget, approve the FY 2021/22 budget amendment in the Other City Departments Operating Grant Trust Fund to recognize grant revenue in the amount of \$310,000 and establish a Planning Grants Program appropriation in the amount of \$310,000 (five affirmative council votes required to appropriate additional revenue); and (2) authorize the City Manager to execute Amendment No. 4 to the Agreement with Perkins + Will for professional services to prepare the Amendment to the Tasman East Specific Plan to allow up to 1,500 additional units in the Tasman East area, along with preparation of the associated environmental clearance by increasing the amount of the agreement by \$275,000 and extending the term of the agreement through June 30, 2022 for a revised not-to-exceed maximum compensation of \$1,461,432.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

8. Written Petition's Submitted

- A. [21-912](#) Action on a Written Petition (Council Policy 030) submitted by Gabriela Landaveri Requesting the City of Santa Clara Adopt a "Vision Zero" Policy (Deferred from June 22, 2021)

Recommendation: Staff makes no recommendation.

A motion was made by Councilmember Becker, seconded by Councilmember Hardy, to defer this item to the August 17, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

- B. [21-891](#) Action on a Written Petition (Council Policy 030) Submitted by Councilmember Jain Requesting to Place an Agenda Item at a Future Meeting to have a Policy Discussion on Data Centers (Deferred from June 22, 2021)

Recommendation: Staff has no recommendation and seeks Council direction.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to defer this item to the August 17, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

7. [21-197](#) Consideration of Silicon Valley Power Quarterly Strategic Plan Update

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

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to continue this item to July 13, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

- 3.E [21-660](#) Action on Agreements with DKS Associates, Kimley-Horn and Associates, Inc., and W-Trans for Traffic Engineering Consulting Support

Recommendation:

1. Approve and authorize the City Manager to execute an agreement with DKS Associates for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds;
2. Approve and authorize the City Manager to execute an agreement with Kimley-Horn and Associates, Inc. for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds;
3. Approve and authorize the City Manager to execute an agreement with Whitelock & Weinberger Transportation, Inc., dba W-Trans, for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds;
4. Authorize the City Manager to make minor modifications to the agreements, including amending the not-to-exceed amounts, as long as the cumulative compensation of all three agreements does not exceed \$250,000 for the initial two-year term, if necessary; and
5. Authorize the City Manager to exercise up to two one-year options to extend the agreements after the initial two-year term, with the final term ending on July 1, 2025 if all options are exercised, and subject to the appropriation of funds.

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to continue this item to July 13, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

- 3.H [21-629](#) Action on the Appropriation of Asset Forfeiture Funds for FY 2021/22 and Related Budget Amendment

Recommendation:

1. Approve the appropriation of Asset Forfeiture Funds in the amount of \$182,500 pursuant to State and federal Regulations; and
2. Consistent with City Charter Section 1305 “*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*” approve the following FY 2021/22 budget amendments:
 - A. In the Expendable Trust Fund, recognize Beginning Fund Balance of \$182,500 from asset forfeiture funds received and establish a Transfer to the Police Operating Grant Trust Fund (**five affirmative Council votes required for the use of unused balances**); and
 - B. In the Police Operating Grant Trust Fund, establish a Transfer from the Expendable Trust Fund and establish a Seized Asset Funds appropriation in the amount of \$182,500 (**five affirmative Council votes required to appropriate additional revenue**).

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to continue this item to July 13, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

8. Written Petition's Submitted

- C. [21-926](#) Action on a Written Petition (Council Policy 030) submitted by Ana Vargas-Smith on June 28, 2021 to add an agenda item to consider financial and in-kind support for the Santa Clara Parade of Champions Plan A (Live Parade) or Plan B (Virtual Parade)

Recommendation: Staff makes no recommendation.

City Manager Santana provided comments about the time sensitivity of this item.

Ana Vargas-Smith provided comments regarding her Written Petition for the Parade of Champions in-kind and financial support.

Public Speaker(s): Mary Grizzle
Mike Walke
Taylor Amarante (E-Mail)
Andy Ratermann (E-Mail)
Skip Pearson (E-Mail)
Nancy Biagini (E-Mail)
Allen Loomis (E-Mail)
Patti Allmon (E-Mail)
Karen Ardizzone (E-Mail)
Teresa Sulcer (E-Mail)

A motion was made by Councilmember Becker, seconded by Councilmember Hardy, to agendize this item for the July 13, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

- D. [21-953](#) Action on a Written Petition (Council Policy 030) Submitted by Councilmember Watanabe Requesting to Place an Agenda Item at a Future Meeting to Discuss Preparation of a Letter from Mayor and Council to the California Citizens Redistricting Commission

Recommendation: Staff has no recommendation and seeks Council direction.

Councilmember Watanabe provided comments on her Written Petition request for preparation of a Letter from Mayor and Council to the California Citizens Redistricting Commission.

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to agendize this item for the July 13, 2021 Council and Authorities Concurrent Meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

Councilmember Hardy reported on the water main break on Warburton Avenue and Pomeroy Avenue and wanted to expressed gratitude for the Water & Sewer Utilities Department for restoring the water.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

None.

[21-889](#) Update on City Council and Stadium Authority Staff Referrals

[21-955](#) Tentative Meeting Agenda Calendar (TMAC)

ADJOURNMENT

The meeting was adjourned at 12:22 AM.

A motion was made by Councilmember Jain, seconded by Councilmember Watanabe, to adjourn the meeting.

Aye: 7 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Hardy, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

The next regular scheduled meeting is on Tuesday evening, July 13, 2021.

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.

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

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

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

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

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

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

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

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



City of Santa Clara

Draft

Meeting Minutes

Council and Authorities Concurrent Meeting & Santa Clara Stadium Authority

07/13/2021

4:00 PM

Virtual Meeting
Closed Session 4:00 PM
Open Session 6:00 PM

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, to prevent the spread of COVID-19, the City of Santa Clara has implemented methods for the public to participate remotely:

- Via Zoom:
 - o <https://santaclaraca.zoom.us/j/99706759306>
- Meeting ID: 997-0675-9306 or
- o Phone: 1(669) 900-6833
- Via the City's eComment (now available during the meeting)
- Via email to PublicComment@santaclaraca.gov

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

4:00 PM CLOSED SESSION

Call to Order

Mayor/Chair Gillmor called the meeting to order at 4:04 PM.

Roll Call

Present: 6 - Council/Boardmember Kathy Watanabe, Vice Mayor/Chair Raj Chahal, Council/Boardmember Kevin Park, Council/Boardmember Suds Jain, Council/Boardmember Anthony Becker, and Mayor/Chair Lisa M. Gillmor

Absent: 1 - Council/Boardmember Karen Hardy

A motion was made by Councilmember Jain, seconded by Vice Mayor Chahal, to excuse Councilmember Hardy from the meeting.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Absent: 1 - Councilmember Hardy

Public Comment

None.

- 1.A** [21-750](#) Conference with Legal Counsel-Existing Litigation (CC, SA)
Pursuant to Gov't Code § 54956.9(d)(1)
Nevarez v. City of Santa Clara, et al., United States District Court, Northern District of California Case No. 5:16-CV-07013-LHK

- 1.B** [21-922](#) Conference with Legal Counsel-Anticipated Litigation (SA)
Pursuant to Gov. Code § 54956.9(d)(4) - Initiation of litigation
Number of potential cases: 1

- 1.C** [21-979](#) Conference with Labor Negotiators (CC)
Pursuant to Gov. Code § 54957.6
City representative: Deanna J. Santana, City Manager (or designee)
Employee Organization(s):
Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2-Santa Clara Police Officer's Association
Unit #3-IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4-City of Santa Clara Professional Engineers
Units #5, 7 & 8-City of Santa Clara Employees Association
Unit #6-AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9-Miscellaneous Unclassified Management Employees
Unit #9A-Unclassified Police Management Employees
Unit #9B-Unclassified Fire Management Employees
Unit #10-PSNSEA (Public Safety Non-Sworn Employees Association)

Convene to Closed Session

Council convened to Closed Session at 4:06 PM.

6:00 PM COUNCIL REGULAR MEETING

Pledge of Allegiance and Statement of Values

Council/Board recited the Pledge of Allegiance.

Mayor/Chair Gillmor recited the Statement of Values.

Assistant City Clerk/Secretary Pimentel recited the AB23 Announcement and Behavioral Standards.

REPORTS OF ACTION TAKEN IN CLOSED SESSION

Chief Assistant City Attorney Reuter noted that there was no reportable action from Closed Session.

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

City Manager Santana noted the following items are not time sensitive and can be deferred if needed: Items # 5.A, 5.F, 5.S, 6, 7, 10, 11, 12, 13.A, and 13.B.

Councilmember Park noted (1) if there is an interest in hearing Item 11 following all the City Business Items that need to be heard, (2) anyone from the prevailing party reconsider Item 5 on El Camino Real Specific Plan from July 6, 2021 Council and Authorities Concurrent Meeting.

Councilmember Becker seconded the motion to hear Item 11 following all the City Business Items that need to be heard this evening.

A motion was made by Councilmember Park, seconded by Councilmember Becker, to hear Item #11 following all the City business items that need to be heard this evening (July 13, 2021).

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

Councilmember Park requested to reconsider Item 5 on El Camino Real Specific Plan (from July 6, 2021 Council and Authorities Concurrent Meeting).

Council questions and comments followed.

Chief Assistant City Attorney Reuter and **City Manager Santana** addressed **Council** questions.

Councilmember Park's request to reconsider Item 5 on El Camino Specific Plan (from July 6, 2021 Council and Authorities Concurrent Meeting) be heard at a future Council meeting failed for a lack of second.

2. [21-972](#) Per City Council Policy 042: Reconsideration of Council Action-Reconsideration of Council action taken at the June 22, 2021 City Council meeting regarding Council's action to take no action and not to place an item on a future agenda for the request submitted by Robert Mezzetti, under Council Policy 030: Adding An Item to the Agenda, requesting "discussion on Amendment No. 3 to the Exclusive Negotiation Agreement by and between the City, VTA and Republic Metropolitan LLC for a project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078)."

Recommendation: Staff's position is the same as the June 22, 2021 report and, based on Council Policy 042 alone, the requirements of new evidence or facts in support of Council reconsideration have not been met.

City Manager Santana gave a PowerPoint Presentation.

Kelly Macy (Representative on behalf of Written Petitioner Robert Mezzetti, II) gave a verbal report on the request for reconsideration of the Written Petition.

A motion was made by **Councilmember Watanabe**, seconded by **Vice Mayor Chahal**, to reconsider the Written Petition on the Republic Metropolitan Project at a future Council meeting based upon evidence/new information and indemnification that the developer will provide the City.

Public Speaker(s): Steve Kelly	Jonathan Evans
Brian Goldenberg	Jorge
Rob Mezzetti, II	Kirk Vartan
Name not required	Dan Ondrasek
Brian Goldenberg	Adam Thompson
Ruben Camacho	Donna W.
Robert Fitch	Rob Mayer
Richard Bonito	#9814
Mike Walke	Rod Diridon, Sr.
Jerry Smith	Hosam Haggag
Patricia Leung	#8181

City Manager Santana and **Assistant City Attorney Reuter** addressed Public questions and comments.

Council comments and questions followed.

Chief Assistant City Attorney Reuter addressed **Council** questions.

Kelly Macy addressed **Council** questions.

A motion was made by Councilmember Watanabe, seconded by Vice Mayor Chahal, to reconsider the Written Petition on the Republic Metropolitan Project at a future Council meeting based upon evidence/new information and indemnification that the developer will provide the City.

Aye: 3 - Councilmember Watanabe, Vice Mayor Chahal, and Mayor Gillmor

Nay: 3 - Councilmember Park, Councilmember Jain, and Councilmember Becker

Excused: 1 - Councilmember Hardy

Motion fails due to a tie.

STUDY SESSION

3. [21-933](#) Study Session on the California Department of Housing and Community Development's (HCD) Project HomeKey

Housing Manager Veach gave a PowerPoint Presentation.

Jo Price (LiveMoves, Vice President, Real Estate & Operations) gave a PowerPoint Presentation.

Council comments and questions followed.

Jo Price (LiveMoves, Vice President, Real Estate & Operations), Brian Greenberg (Livemoves, Vice President, Programs and Services), City Manager Santana and Housing & Community Services Manager Veach addressed **Council** questions.

Public Speaker(s): Name not required
Edward Strine

Jo Price (LiveMoves, Vice President, Real Estate & Operations) addressed Public questions.

SPECIAL ORDER OF BUSINESS

- 4.A [21-864](#) Presentation of 2021 City of Santa Clara/Silicon Valley Power Scholarships

Chief Electric Utilities Officer Pineda gave a PowerPoint Presentation on 2021 City of Santa Clara/Silicon Valley Power Scholarship Awards recipients **Amanda McDowell (Wilcox High School)** and **Cynthia Vo (San Jose State University)**.

- 4.B [21-973](#) Action on a Resolution of the City Council to Proclaim a Local Emergency Regarding the Drought

City Manager Santana reported that she proclaimed a Local Emergency Regarding the Water Drought requests that the Council ratify the Resolution to proclaim the Local Emergency.

Public Speaker(s): Betsy Megas
Name not required

A motion was made by Councilmember Becker, seconded by Councilmember Jain, to ratify Resolution No. 21-8989 to proclaim the Local Emergency Regarding the Water Drought.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

- 4.C [21-960](#) Verbal Report from City Manager regarding COVID-19 Pandemic

City Manager Santana provided the following verbal update on the COVID-19 update:

- July 1, 2021 daily Food Distribution at the Senior Center;
- City Hall reopening anticipated in the mid-August timeframe dependent on County of Santa Clara guidelines; and
- Senior Center opened on July 6, 2021 for limited hours for in-person services.

Chief Emergency Services Officer Schoenthal gave a PowerPoint Presentation on the status of COVID-19 Pandemic and current statistics, 76% of Santa Clara County residents are fully vaccinated, COVID-19 Testing available at Central Park Library.

CONSENT CALENDAR

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve the balance of the Consent Calendar (except Item 5.O).

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

5.A [21-15](#) Board, Commissions and Committee Minutes

Recommendation: Note and file the Minutes of:
Historical and Landmarks Commission - June 3, 2021

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

5.B [21-227](#)

Action on Contracts for Silicon Valley Power as follows, authorize the City Manager to:

1. Execute Amendment No. 1 to the Agreement for the Performance of Services with Precision IceBlast Corporation extending the term through July 31, 2023;
2. Execute Amendment No. 1 to the Agreement for the Performance of Services with Intelligent Technologies and Services, Inc. extending the term through July 31, 2023;
3. Execute Amendment No. 2 to Contract No. 2004D with Daleo, Inc. authorizing staff to issue call orders through July 31, 2022;
4. Execute Amendment No. 1 to the Agreement for the Performance of Services with Grid Subject Matter Experts, LLC to extend the term through July 26, 2024
5. Make minor changes to the proposed amendments attached subject to approval by City Attorney; and
6. Add or delete services consistent with the scope of the agreements and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

Recommendation:

1. Authorize the City Manager to execute Amendment No. 1 to the Agreement for the Performance of Services with Precision Ice Blast Corporation to extend the term of the Agreement through July 31, 2023 and increase the maximum compensation to \$650,000;
2. Authorize the City Manager to execute Amendment No. 1 to the Agreement for the Performance of Services with Intelligent Technologies and Services, Inc. to extend the term of the Agreement through July 31, 2023 and increase the maximum compensation to \$300,000;
3. Authorize the City Manager to execute Amendment No. 2 to Contract No. 2004D with Daleo, Inc. to authorize staff to issue call orders through July 31, 2022;
4. Authorize the City Manager to execute Amendment No. 1 to the Agreement for the Performance of Services with Grid Subject Matter Experts, LLC to extend the term of the Agreement through July 26, 2024 and increase the maximum compensation to \$300,000
5. Authorize the City Manager to make minor changes to the proposed amendments attached subject to approval by City Attorney
6. Authorize the City Manager to add or delete services consistent with the scope of the agreements, and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

- 5.C [21-326](#) Action on an Agreement with Santa Clara Valley Transportation Authority for 2016 Measure B Funding of the Lafayette Street Class IV Bikeway Project and Related Budget Amendment

- Recommendation:**
1. Approve and authorize the City Manager to execute the funding agreement between the City of Santa Clara and Santa Clara Valley Transportation Authority for the Lafayette Street Class IV Bikeway project;
 2. Consistent with City Charter Section 1305, “*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*” approve the FY 2021/22 budget amendment in the Streets and Highways Capital Fund to increase the Other Agencies Revenue estimate by \$180,000 to recognize grant funding for the VTA Measure B Bicycle/Pedestrian program category funds, establish an appropriation for the new Project - Lafayette Street Class IV Bikeway Project in the amount of \$200,000, and decrease the Pedestrian and Bicycle Enhancement Facilities Project by \$20,000; **(five affirmative Council votes required to appropriate additional revenue)** and;
 3. Authorize the City Manager to make minor modifications to the Agreement, if needed, within the approved cost of the project.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

- 5.D [21-725](#) Action on an Agreement for Services with Performance Mechanical, Inc. for As-needed Boilermaker and Pipefitter Services

- Recommendation:**
1. Authorize the City Manager to execute an Agreement for Services with Performance Mechanical, Inc. for as-needed Boilermaker/Pipefitter Services, for a term starting on or about July 1, 2021 and ending on or about June 30, 2026 for total maximum amount not-to-exceed \$2,000,000 during the initial five-year term, subject to the annual appropriation of funds;
 2. Authorize the City Manager to execute up to five one-year options to extend the term of the Agreement after the initial term, ending on or about June 30, 2031, assuming all options are exercised, and subject to the annual appropriation of funds;
 3. Authorize the City Manager to make minor changes to the proposed agreement attached subject to approval by City Attorney; and
 4. Authorize the City Manager to take actions to add or delete services consistent with the scopes of the Agreement, and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

- 5.E [21-444](#) Action on Agreement for Services with Ernie and Sons Scaffolding dba Unique Scaffold and Liberty Industrial Group, Inc. for As-needed Scaffolding Services

- Recommendation:**
1. Authorize the City Manager to execute Agreements for Services with Ernie and Sons Scaffolding dba Unique Scaffold, and Liberty Industrial Group, Inc., for as-needed scaffolding services, for a term starting on or about July 1, 2021 and ending on or about June 30, 2026 for a total maximum compensation not-to-exceed \$1,250,000 during the initial five-year term, subject to the annual appropriation of funds;
 2. Authorize the City Manager to execute up to five one-year options to extend the Agreements after their initial term, ending on or about June 30, 2031, assuming all options are exercised, and subject to the annual appropriation of funds;
 3. Authorize the City Manager to make minor changes to the attached proposed agreements subject to approval by City Attorney; and
 4. Authorize the City Manager to take actions to add or delete services consistent with the scopes of the Agreements and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

5.F [21-557](#) Action on Historical Preservation Agreement (Mills Act Contract) for 834 Main Street

Recommendation: Authorize the City Manager to execute a Mills Act contract and adopt the Ten-Year Restoration and Maintenance Plan associated with the Historic Property Preservation Agreement for the property at 834 Main Street with applicants Andrew and Rebecca Fung; PLN2021-14790.

Mayor Gillmor abstained from this item as her office is within 1000 ft. of this Item.

Councilmember Jain abstained from this item as his property is within 1000 ft. of this Item.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

Aye: 4 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, and Councilmember Becker

Excused: 1 - Councilmember Hardy

Abstained: 2 - Councilmember Jain, and Mayor Gillmor

5.G [21-796](#) Action on Agreements with Presidio Networked Solutions Group, LLC and Presidio Technology Capital, LLC for Equipment and Services to Upgrade the City's Metro Area Network

Recommendation:

1. Authorize the City Manager to negotiate and execute an agreement with Presidio Networked Solutions Group, LLC to provide services for a network upgrade including hardware, software subscriptions, implementation, project contingency of \$65,482.85, and ongoing maintenance and support, with maximum compensation not to exceed \$1,535,232.74, with a six-year term commencing on or about July 14, 2021, subject to the annual appropriation of funds;
2. Authorize the City Manager to negotiate and execute an agreement with Presidio Technology Capital, LLC to finance installment payments for software subscriptions maintenance and support, subject to the annual appropriation of funds;
3. Authorize the City Manager to execute amendments to the agreement as may be required for any future network needs, subject to the appropriation of funds; and
4. Authorize the City Manager to execute two additional five-year options to extend the term of the agreement to support future network needs, ongoing maintenance, and software subscriptions, subject to the appropriation of funds.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

5.H [21-861](#) Action on Additional Authorization to Execute Change Orders for the Serra Substation Construction Project Contract No. 2104 with the Newtron Group

Recommendation: Authorize the City Manager to execute additional change orders for a total contingency authorization of up to \$763,000 and a total not-to-exceed amount of \$7,339,773 for the Serra Substation Construction Project (Contract No. 2104A).

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

5.I [21-506](#) Action on Cooperative Agreement #1 with the VTA and Adoption of a Resolution Adopting the Findings of the Final Supplemental Environmental Impact Report Completed by VTA for the BART Silicon Valley Phase II Extension Project

Recommendation: 1. Approve and authorize the City Manager to execute Cooperative Agreement #1 with the VTA for the BART Silicon Valley Phase II Extension Project and make minor modifications if needed; and
2. Adopt a resolution adopting the Findings of the Final Supplemental Environmental Impact Report completed by VTA for the BART Silicon Valley Phase II Extension Project.

Public Speaker(s): Jonathan Evans

A motion was made by Councilmember Jain, seconded by Councilmember Park, to (1) approve and authorize the City Manager to execute Cooperative Agreement #1 with the VTA for the BART Silicon Valley Phase II Extension Project and make minor modifications if needed; and (2) adopt Resolution No. 21- 8990 adopting the Findings of the Final Supplemental Environmental Impact Report completed by VTA for the BART Silicon Valley Phase II Extension Project.

5.J [21-881](#) Action on Amendments to Two Professional Service Agreements for the Related Santa Clara Development Project Increasing the Total Contract Amount with Milstone Geotechnical Consulting Services and Robert E. Van Heuit

Recommendation: Approve and authorize the City Manager to execute:
1. Amendment No. 4 with Barry Milstone DBA Milstone Geotechnical Consulting Services for the Related Santa Clara Development Project to increase the total contract amount to \$120,000.
2. Amendment No. 3 to Amended and Restated Agreement with Robert E. Van Heuit for Consulting Services for the Related Santa Clara Development Project to increase the total contract amount to \$300,000.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

- 5.K [21-880](#) Action on Amendment No. 2 to the Agreement for Services with HouseKeys Inc. Exercising the Second Option to Extend the Term for One Year for Administration of the City's Affordable Rental Program Approval of the City's Affordable Rental Housing Program Application Guide and Local Preference Policy

- Recommendation:**
1. Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement for Services with HouseKeys Inc. for Administration of the City's Affordable Rental Program in an amount not to exceed \$166,000 for the Fiscal Year 2021/22, and all related documents for the provision of administrative services for the Affordable Rental Program.
 2. Approve the City's Affordable Rental Housing Program Application Guide and Local Preference Policy

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

- 5.L [21-935](#) Action to Approve Amendment No.2 to the Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara and the City of Sunnyvale

- Recommendation:** Action to Approve Amendment No.2 to the Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara, and the City of Sunnyvale for support services associated with special events at Levi's Stadium.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

- 5.M [21-716](#) Action on Amendment No. 4 to the Agreement with Bates Group LLC for Calculation and Review of Employee Compensation under the Fair Labor Standards Act

- Recommendation:** Authorize the City Manager to execute Amendment No. 4 to the Agreement with Bates Group LLC for Calculation and Review of Employee Compensation under the Fair Labor Standards Act, to extend the term of the agreement through April 30, 2024 and increase compensation by \$189,450 for a revised not-to-exceed maximum compensation of \$289,450, subject to the appropriation of funds.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

5.N [21-934](#) Action on Amendment No. 5 to the Agreement with Hulberg and Associates, Inc., DBA Valbridge Property Advisors for consulting services associated with the Related Santa Clara Development Project

- Recommendation:**
1. Approve and authorize the City Manager to execute Amendment No. 5 to the Agreement with Hulberg and Associates, Inc., DBA Valbridge Property Advisors to extend the term to July 31, 2022.
 2. Approve and authorize the City Manager to execute subsequent amendments to extend the term of the agreement, without increasing the maximum compensation.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to approve staff recommendation.

5.P [21-902](#) Action to adopt a Resolution Authorizing the City Manager to Extend the Abandoned Vehicle Abatement Program

- Recommendation:**
1. Adopt a Resolution authorizing the City Manager to Extend the Abandoned Vehicle Abatement Program

A motion was made by Councilmember Jain, seconded by Councilmember Park, to adopt Resolution No. 21-8991 authorizing the City Manager to extend the Abandoned Vehicle Abatement Program.

5.Q [21-496](#) Action on a Resolution Declaring Silicon Valley Power's Intention to Issue Tax Exempt Revenue Bonds for Reimbursement of Expenditures from Several Capital Improvement Projects

- Recommendation:** Adopt a resolution declaring Silicon Valley Power's intention to reimburse expenditures for several Capital Improvement Projects within the Electric Utility Capital Fund from the proceeds of tax-exempt revenue bonds.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to adopt Resolution No. 21-8992 declaring Silicon Valley Power's intention to reimburse expenditures for several Capital Improvement Projects within the Electric Utility Capital Fund from the proceeds of tax-exempt revenue bonds.

- 5.R [21-870](#) Action on a Joint Resolution Delegating Authority to the City Manager/Executive Officer for Santa Clara Stadium Authority/Contract Administrator for Sports and Open Space Authority/Executive Director for Housing Authority During the Council Recess from July 14, 2021 to August 16, 2021

Recommendation: That the City Council/Stadium Authority Board/Sports and Open Space Authority/Housing Authority:

Adopt a Joint Resolution delegating authority to the City Manager/Executive Officer for Santa Clara Stadium Authority/Contract Administrator for Sports and Open Space Authority/Executive Director for Housing Authority to approve project related documents during the Council recess from July 14, 2021 to August 16, 2021 and requiring the City Manager/Executive Director/Contract Administrator to submit a report on actions taken during the Council recess at a City Council/Stadium Authority/Sports and Open Space Authority/Housing Authority meeting in September 2021.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to adopt Resolution No. 21-8993 delegating authority to the City Manager/Executive Officer for Santa Clara Stadium Authority/Contract Administrator for Sports and Open Space Authority/Executive Director for Housing Authority to approve project related documents during the Council recess from July 14, 2021 to August 16, 2021 and requiring the City Manager/Executive Director/Contract Administrator to submit a report on actions taken during the Council recess at a City Council/Stadium Authority/Sports and Open Space Authority/Housing Authority meeting in September 2021.

STADIUM AUTHORITY CONSENT CALENDAR

- 5.S [21-780](#) Action on Stadium Authority Bills and Claims for the Month of April 2021

Recommendation: Approve the list of Stadium Authority Bills and Claims for April 2021.

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

- 5.T [21-756](#) Action on Approval of Amendment No. 3 to the Design-Build Agreement with Forty Niners Stadium LLC and Turner/Devcon Joint Venture to Address ADA-Related Warranty and Remediation Work at Levi's Stadium

Recommendation: Approve Amendment No. 3 to the Design Build Agreement by and between SCSA, 49ers, and TDJV to address ADA-related warranty and remediation work at Levi's Stadium

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

- 5.U [21-781](#) Action to Execute Purchase Orders and Transact Procurement Card Purchases for Stadium Public Safety Supplies and Equipment and Approve Miscellaneous Expenses Incurred Between February 6 and June 17, 2021

Recommendation:

1. Authorize the Executive Director to execute purchase orders and transact procurement card purchases for the public safety products and services described above, in an aggregate amount not-to-exceed \$340,747, which is the budgeted amount in the Stadium Authority FY 2021/22 CapEx Budget for the items; and
2. Approve the miscellaneous expenses detailed in Attachment 2 totaling \$212 that were incurred by the City on behalf of the Stadium Authority for reimbursement between February 6 and June 17, 2021.

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

- 5.V [21-793](#) Action on Agreement with Disaster Response Solutions, Inc. for a Mass Casualty Incident Trailer

Recommendation:

1. Authorize the Executive Director to negotiate and execute an agreement with Disaster Response Solutions, Inc. for a Mass Casualty Incident trailer for a term of one year for an amount not-to-exceed \$99,250; and
2. Authorize the Executive Director to execute amendments for a not-to-exceed contingency amount of 10% or \$9,925 to cover unexpected costs, such as minor configuration changes, subject to the appropriation of funds.

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

5.W Approval to Award a Purchase Order to Dell Marketing , L.P. for Surveillance - Command Center Equipment CapEx Project

- A. [21-908](#) Request from the Stadium Manager for Approval to Award a Purchase Order to Dell Marketing, L.P. for Surveillance - Command Center Equipment CapEx Project

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

- B. [21-914](#) Report from the Stadium Authority Regarding the Stadium Manager's Request for Approval to Award a Purchase Order to Dell Marketing, L.P. for Surveillance - Command Center Equipment CapEx Project

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

5.X Approval to Execute Agreements with HD Supply Facilities Maintenance, LTD, Graybar Electric Company, Inc., Shred-It and FedEx for Operational Goods and Services

- A. [21-925](#) Request from the Stadium Manager for Approval to Award Purchase Orders to HD Supply Facilities Maintenance, LTD, Graybar Electric Company, Inc., and Shred-it and Leverage FedEx Cooperative Agreement for Operational Goods and Services at Levi's Stadium

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

- B. [21-915](#) Report from the Stadium Authority Regarding the Stadium Manager's Request for Approval to Award Purchase Orders to HD Supply Facilities Maintenance, LTD, Graybar Electric Company, Inc., Shred-it and Leverage FedEx Cooperative Agreement for Operational Goods and Services at Levi's Stadium

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

5.Y Approval to Execute Purchase Orders for CapEx Projects and Miscellaneous Good and Services

- A. [21-906](#) Request from the Stadium Manager for Approval to Award Purchase Orders for CapEx Projects and Miscellaneous Goods and Services

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

- B. [21-923](#) Report from the Stadium Authority Regarding the Stadium Manager's Request for Approval to Award Purchase Orders for CapEx Projects and Miscellaneous Goods and Services

A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.

5.Z Approval to Award Purchase Order to Astrophysics Inc. for Security X-Ray Scanners CapEx Project

- A. [21-946](#) Request from the Stadium Manager for Approval to Award a Purchase Order to Astrophysics Inc. for Security X-Ray Scanners CapEx Project
- A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.**
- B. [21-947](#) Report from the Stadium Authority Regarding the Stadium Manager's Request for Approval to Award a Purchase Order to Astrophysics Inc. for Security X-Ray Scanners CapEx Project
- A motion was made by Boardmember Jain, seconded by Boardmember Park, to approve staff recommendation.**

PUBLIC PRESENTATIONS

Kirk Vartan noted that the new Worker Cooperative Initiative Workshop will occur on July 14, 2021 at 12:30 PM and encouraged attendance and noted that a Slice of New York was nominated by Assemblymember Lee for Small Business of the Year for District 25.

Assistant City Clerk Pimentel read e-comment into the record on Item 5.I from **Jonathan Evans**.

Mayor Gillmor called for a recess at 8:50 PM and reconvened the meeting at 9:07 PM.

CONSENT ITEMS PULLED FOR DISCUSSION

- 5.O [21-657](#) Actions Related to Soil Stockpiling License Agreement with Related Santa Clara to Allow the Storage of Dirt on Parcel 4 of the former Santa Clara Municipal Landfill (former Santa Clara Golf and Tennis Club)

Recommendation: That the Council:

1. Adopt the EIR Addendum to CityPlace Santa Clara (Related Santa Clara) EIR for the soil import and earthwork activity; and
2. Approve and authorize the City Manager to execute Soil Stockpiling License Agreement with Related Santa Clara to Allow the Storage of Dirt on Parcel 4 of the former Santa Clara Municipal Landfill (former Santa Clara Golf and Tennis Club).

Councilmember Jain pulled this item to make comments regarding the storage of the dirt for the Related Santa Clara project.

A motion was made by Councilmember Jain, seconded by Councilmember Park, to 1. adopt the EIR Addendum to CityPlace Santa Clara (Related Santa Clara) EIR for the soil import and earthwork activity; and (2) approve and authorize the City Manager to execute Soil Stockpiling License Agreement with Related Santa Clara to Allow the Storage of Dirt on Parcel 4 of the former Santa Clara Municipal Landfill (former Santa Clara Golf and Tennis Club).

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

JULY 6, 2021 CONSENT ITEMS PULLED FOR DISCUSSION

5.AA [21-970](#)

Action on Agreements with DKS Associates, Kimley-Horn and Associates, Inc., and W-Trans for Traffic Engineering Consulting Support (Deferred from July 6, 2021)

Recommendation:

1. Approve and authorize the City Manager to execute an agreement with DKS Associates for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds;
2. Approve and authorize the City Manager to execute an agreement with Kimley-Horn and Associates, Inc. for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds;
3. Approve and authorize the City Manager to execute an agreement with Whitelock & Weinberger Transportation, Inc., dba W-Trans, for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds;
4. Authorize the City Manager to make minor modifications to the agreements, including amending the not-to-exceed amounts, as long as the cumulative compensation of all three agreements does not exceed \$250,000 for the initial two-year term, if necessary; and
5. Authorize the City Manager to exercise up to two one-year options to extend the agreements after the initial two-year term, with the final term ending on July 1, 2025 if all options are exercised, and subject to the appropriation of funds.

Councilmember Jain pulled this item for further clarification on different Scope of Work for these contracts.

Director of Public Works Director Mobeck addressed **Council** questions.

A motion was made Councilmember Jain, seconded by Vice Mayor Chahal, (1) approve and authorize the City Manager to execute an agreement with DKS Associates for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds; (2) approve and authorize the City Manager to execute an agreement with Kimley-Horn and Associates, Inc. for traffic engineering consulting support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds; (3) approve and authorize the City Manager to execute an agreement with Whitelock & Weinberger Transportation, Inc., dba W-Trans, for traffic engineering consulting

support services, for a term ending on or about July 1, 2023 for a total amount not-to exceed \$83,300, subject to the appropriation of funds; (4) authorize the City Manager to make minor modifications to the agreements, including amending the not-to-exceed amounts, as long as the cumulative compensation of all three agreements does not exceed \$250,000 for the initial two-year term, if necessary; and (5) authorize the City Manager to exercise up to two one-year options to extend the agreements after the initial two-year term, with the final term ending on July 1, 2025 if all options are exercised, and subject to the appropriation of funds.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

5.BB [21-975](#)

Action on the Appropriation of Asset Forfeiture Funds for FY 2021/22 and Related Budget Amendment (Deferred from July 6, 2021)

Recommendation:

1. Approve the appropriation of Asset Forfeiture Funds in the amount of \$182,500 pursuant to State and federal Regulations; and
2. Consistent with City Charter Section 1305 “*At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the **affirmative votes of at least five members** so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,*” approve the following FY 2021/22 budget amendments:
 - A. In the Expendable Trust Fund, recognize Beginning Fund Balance of \$182,500 from asset forfeiture funds received and establish a Transfer to the Police Operating Grant Trust Fund (**five affirmative Council votes required for the use of unused balances**); and
 - B. In the Police Operating Grant Trust Fund, establish a Transfer from the Expendable Trust Fund and establish a Seized Asset Funds appropriation in the amount of \$182,500 (**five affirmative Council votes required to appropriate additional revenue**).

Councilmember Jain pulled this item for further clarification the philosophy regarding the use of the Asset Forfeiture Fund.

Public Speaker(s): Hosam Haggag

Chief of Police Nikolai addressed **Council** and **Public** comments.

A motion was made by Councilmember Jain, seconded by Councilmember Park, (1) approve the appropriation of Asset Forfeiture Funds in the amount of \$182,500 pursuant to State and federal Regulations; and (2) consistent with City Charter Section 1305 “At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget,” approve the following FY 2021/22 budget amendments: (A) In the Expendable Trust Fund, recognize Beginning Fund Balance of \$182,500 from asset forfeiture funds received and establish a Transfer to the Police Operating Grant Trust Fund (five affirmative Council votes required for the use of unused balances); and (B) In the Police Operating Grant Trust Fund,

establish a Transfer from the Expendable Trust Fund and establish a Seized Asset Funds appropriation in the amount of \$182,500 (five affirmative Council votes required to appropriate additional revenue).

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

PUBLIC HEARING/GENERAL BUSINESS

8. [21-714](#) Confirmation on the Addition of New Actions to Achieve the Interim Target of 2035 for Climate Action Plan (CAP) Update

Recommendation: Staff recommendation is to adopt Alternative 2.

Director of Community Development Crabtree and Sustainability Manager Templeton gave a PowerPoint Presentation on the addition of new actions to achieve the interim Target of 2035 for Climate Action Plan (CAP) Update

Council comments and questions followed.

A motion was made by **Councilmember Becker** to approve Alternative 2: adopting the following measures to achieve the required GHG emissions reductions and develop an interim 2035 target including: (a) SVP to achieve 70% carbon neutrality by 2030 for the City to meet the SB32 emissions reduction target; (b) set a new 2035 interim CAP GHG emissions reduction target based on IRP results Establish a VMT reduction approach that identifies specific interim active TDM measures for new residential development and large employment projects until a TDM consultant can provide recommendations on specific measures to incorporate in a TDM Program; (c) adopt an all-electric reach code, with exceptions; (d) change the proposed All-Electric Reach Code requirement for the provision of EV ready parking spaces in new development from 25% Level 2 and 75% Level 1 chargers to 25% Level 2 and 75% Lite Level 2 at 3.8 Kw using an automatic load management software to balance the loads; (e) add a requirement for new development to include one secured bicycle parking spot for each multi-family residential unit with electrical outlets available in storage units; (f) prepare a policy to replace natural gas furnaces and water heaters upon burnout with an electric equivalent for City Facilities; (g) implement a Climate Action Tracking Dashboard; and have Data Centers become 100% Carbon Neutral.

Chief Electric Utility Officer Pineda addressed **Council** questions.

Public Speaker(s): Dashiell Leeds	Edward Strin
Betsy Megas	Carolyn Zhao
Bruce Naegel	Sindhu Saggeri
Mojgan M	Vanessa S.

Councilmember Becker withdrew his original motion.

A motion was made by Councilmember Jain, seconded by Councilmember Becker, to (1) adopt Council directive: (a) adopt an interim GHG reduction target of 80% by 2035 that may rely on: (i) SVP achieving a 100% carbon neutral electricity through rate increases of 44% to 55% (on top of the typical 3% yearly increase); (b) adopt a 25% reduction for large commercial employers (over 500 employees) and 20% for residential projects in project based VMT through active TDM measures including aggressive regulations to reduce parking in new development; (c) adopt an all-electric reach code, with exceptions; (d) change the proposed All-Electric Reach Code requirement for the provision of EV ready parking spaces in new development from 25% Level 2 and 75% Level 1 chargers to 25% Level 2 and 75% Lite Level 2 at 3.8 Kw using an automatic load management software to balance the loads; (e) add a requirement for new development to include one secured bicycle parking spot for each multi-family residential unit with electrical outlets available in storage units; (f) prepare a policy to replace natural gas furnaces and water heaters upon burnout with an electric equivalent; (g) implement a Climate Action Tracking Dashboard; and (h) have new Data Centers rely on 100% Carbon Neutral electricity, including offsets.

Chief Electric Utility Officer Pineda, Chief Assistant City Attorney Reuter, and Director of Community Development Crabtree addressed Council questions.

A motion was made by Councilmember Jain, seconded by Councilmember Becker, to (1) adopt Council directive: (a) adopt an interim GHG reduction target of 80% by 2035 that may rely on: (i) SVP achieving a 100% carbon neutral electricity through rate increases of 44% to 55% (on top of the typical 3% yearly increase); (b) adopt a 25% reduction for large commercial employers (over 500 employees) and 20% for residential projects in project based VMT through active TDM measures including aggressive regulations to reduce parking in new development; (c) adopt an all-electric reach code, with exceptions; (d) change the proposed All-Electric Reach Code requirement for the provision of EV ready parking spaces in new development from 25% Level 2 and 75% Level 1 chargers to 25% Level 2 and 75% Lite Level 2 at 3.8 Kw using an automatic load management software to balance the loads; (e) add a requirement for new development to include one secured bicycle parking spot for each multi-family residential unit with electrical outlets available in storage units; (f) prepare a policy to replace natural gas furnaces and water heaters upon burnout with an electric equivalent; (g)

implement a Climate Action Tracking Dashboard; and (h) have new Data Centers rely on 100% Carbon Neutral electricity, including offsets.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

9. [21-901](#) Public Hearing: Action on a Resolution Confirming the 2021 Weed Abatement Program and Assessment

Recommendation: Adopt a Resolution confirming the 2021 Weed Abatement Program Assessment Report and Assessment.

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to close the Public Hearing.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to adopt Resolution No. 21-8994 confirming the 2021 Weed Abatement Program Assessment Report and Assessment.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

10. [21-977](#) Discussion and Action on Councilmember Watanabe's Request to Prepare a Letter from the Mayor and the City Council to the California Citizens Redistricting Commission

Recommendation: Staff makes no Recommendation.

Councilmember Watanabe provided an overview of her Written Petition request to prepare a Letter from the Mayor and the City Council to the California Citizens Redistricting Commission.

A motion was made by Councilmember Watanabe, seconded by Vice Mayor Chahal, to approve the request to prepare a letter from the Mayor and the City Council to the California Citizens Redistricting Commission in support of Congressional District 17 and Assembly District 25.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

Excused: 1 - Councilmember Hardy

12. [21-980](#) Consideration and Council Action on Ana Vargas-Smith's Request for Financial Subsidy and Dedication of In-kind Services from the City of Santa Clara for Either Plan A or Plan B Event Concepts for the Parade of Champions to Take Place in October 2021.

Recommendation: Staff makes no recommendation.

Ana Vargas-Smith gave a PowerPoint Presentation request for Financial Subsidy and Dedication of In-kind Services from the City of Santa Clara for either Plan A or Plan B Event Concepts for the Parade of Champions to take place in October 2021.

A motion was made by **Councilmember Becker**, seconded by **Vice Mayor Chahal**, to approve Plan A and allow for Plan B as a backup plan dependent on the status of the COVID-19 Delta Variant.

Assistant City Manager Bojorquez gave a PowerPoint Presentation.

Councilmember Becker requested to amend his motion.

A motion was made by **Councilmember Becker**, seconded by **Vice Mayor Chahal**, to approve Option 2: Fund Plan A from Budget Stabilization Reserve (projected to be \$65,000, not including Village elements) and approve in-kind contribution of Plan B community heroes video package with limited updated 2021 elements.

Council comments and questions followed.

Ana Vargas-Smith addressed **Council** questions.

Public Speaker(s): Andy Ratermann (E-Mail)
Patti Allmon (E-Mail)
Karen Ardizzone (E-Mail)
Margaret Horoszko (E-Mail)
Tiffany Fournier (E-Mail)
Anthony Raffetto (E-Mail)
Mary Grizzle (E-Mail)

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to approve Option 2: Fund Plan A from Budget Stabilization Reserve (projected to be \$65,000, not including Village elements) and approve in-kind contribution of Plan B community heroes video package with limited updated 2021 elements.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

Mayor Gillmor called for a recess at 11:09 PM and reconvened the meeting at 11:15 PM.

11. [21-978](#) Discussion and Action on Councilmember Becker's request to Prepare a Public Apology to the Residents of Santa Clara for the CVRA Lawsuit

Recommendation: Staff makes no recommendation.

Councilmember Becker gave a verbal presentation on his draft letter of apology related to the CVRA lawsuit.

Council comments followed.

Public Speaker(s): Edward Strine
Kirk Vartan
Susan Hinton (e-Comment)

Council comments followed.

City Clerk Haggag provided comments regarding the CVRA lawsuit.

A motion was made by **Councilmember Becker** to take this letter into consideration to apologize to the residents of Santa Clara and have future discussion to make edits/additions to the letter.

The motion failed due to lack of second.

A motion was made by **Councilmember Jain**, seconded by **Councilmember Becker**, that the Council (1) issue an apology for having consumed the City's treasury for fighting a CVRA lawsuit, (2) establish a publicly noticed meeting of an Ad-Hoc Committee comprised of **Councilmember Becker** and **Councilmember Park**, and (3) return to **Council** for ratification of the letter at a later time.

Chief Assistant City Attorney Reuter requested clarification on the motion.

Mayor Gillmor noted she will be abstaining on this item due the potential implications of the letter.

City Manager Santana provided comments on establishing an Ad-Hoc Committee.

Public Speaker(s): Kirk Vartan

City Clerk Haggag provided comments on the drafting the letter.

A motion was made by Councilmember Jain, seconded by Councilmember Becker, that the Council (1) issue an apology for having consumed the City's treasury for fighting a CVRA lawsuit, (2) establish a publicly noticed meeting of an Ad-Hoc Committee comprised of Councilmember Becker and Councilmember Park, and (3) return to Council for ratification of the letter at a later time.

Aye: 4 - Vice Mayor Chahal, Councilmember Park, Councilmember Jain, and Councilmember Becker

Excused: 1 - Councilmember Hardy

Abstained: 2 - Councilmember Watanabe, and Mayor Gillmor

6. [21-976](#) Consideration of Silicon Valley Power Quarterly Strategic Plan Update (Deferred from July 6, 2021)

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

A motion was made by Councilmember Watanabe, seconded by Mayor Gillmor, to defer this item to a September 2021 Council and Authorities Concurrent Meeting.

Aye: 5 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Nay: 1 - Councilmember Park

Excused: 1 - Councilmember Hardy

7. [21-782](#) Update on Sustainability Program and Provide Feedback on Program Priorities

Recommendation: Note and file the overview of Sustainability Program and Provide Feedback on Program Priorities.

A motion was made by Councilmember Watanabe, seconded by Mayor Gillmor, to defer this item to a September 2021 Council and Authorities Concurrent Meeting.

Aye: 5 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Nay: 1 - Councilmember Park

Excused: 1 - Councilmember Hardy

13. Written Petition's Submitted

- A** [21-913](#) Action on a Written Petition (Council Petition 030) Submitted by Councilmember Jain Requesting to Place an Agenda Item at a Future Meeting to Discuss Creating a Special Ad Hoc Committee Consisting of Residents and Representatives of Housing Advocacy Groups to Discuss only the issues Concerning the Unhoused Population

Recommendation: Staff has no recommendation and seeks Council direction.

Councilmember Jain provided an overview of his Written Petition to place an agenda item on a future agenda meeting to discuss creating a Special Ad Hoc Committee consisting of Residents and Representatives of Housing Advocacy Groups to discuss only the issues concerning the Unhoused Population.

A motion was made by Councilmember Jain, seconded by Vice Mayor Chahal, to agendaize placing an agenda item at a future meeting to discuss creating a Special Ad Hoc Committee consisting of Residents and Representatives of Housing Advocacy Groups to discuss only the issues concerning the Unhoused Population.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

- B. [21-961](#) Action on a Written Petition (Council Petition 030) Submitted by Councilmember Jain Requesting to Place an Agenda Item at the August 17, 2021 Goal Setting Meeting to Consider Topics Such as Staffing and Resources, Consultants, Budget, Council Direction on Densities, Car Parking Strategy, Coordination with VTA and San Jose, and Timeline for Implementing a Station Area Plan.

Recommendation: Staff has no recommendation and seeks Council direction.

Councilmember Jain gave a verbal presentation on placing an agenda item at the August 17, 2021 Goal Setting meeting to consider topics such as Staffing and Resources, Consultants, Budget, Council Direction on Densities, Car Parking Strategy, Coordination with VTA and San Jose, and timeline for implementing a Station Area Plan.

City Manager Santana addressed **Council** questions.

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to place an agenda item on the August 17, 2021 Goal Setting meeting agenda to consider topics such as Staffing and Resources, Consultants, Budget, Council Direction on Densities, Car Parking Strategy, Coordination with VTA and San Jose, and timeline for implementing a Station Area Plan.

Aye: 5 - Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Nay: 1 - Councilmember Watanabe

Excused: 1 - Councilmember Hardy

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

Councilmember Becker expressed concern about the cancellation of the July 15, 2021 Special Meeting.

City Manager Santana addressed **Council** comments.

Councilmember Jain requested an update on the Redistricting Commission application process.

Mayor Gillmor expressed concern when meetings are scheduled that members mindful of attendance and quorum.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

City Manager Santana provided an update that the application process will launch on July 23, 2021 for the Redistricting Commission.

[21-958](#)

Update on City Council and Stadium Authority Staff Referrals

ADJOURNMENT

The meeting was adjourned at 12:45 AM in memory of **William Claude Edwards (Long Term Resident and Former City of Santa Clara Automotive Services Division Manager)**.

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to adjourn the meeting.

Aye: 6 - Councilmember Watanabe, Vice Mayor Chahal, Councilmember Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

Excused: 1 - Councilmember Hardy

[21-989](#)

Adjournment of the July 13, 2021 City Council and Stadium Authority Meeting Post Meeting Material

The next regular scheduled meeting is on Tuesday evening, August 17, 2021.

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.

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

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

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

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

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City of Santa Clara

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

Agenda Report

21-21

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Board, Commissions and Committee Minutes

COUNCIL PILLAR

Enhance Community Engagement and Transparency

RECOMMENDATION

Note and file the Minutes of:

Board of Library Trustees - September 13, 2021

Youth Commission - September 14, 2021

Parks & Recreation Commission - September 21, 2021

ATTACHMENTS

1. Board of Library Trustees - September 13, 2021

2. Youth Commission - September 14, 2021

3. Parks & Recreation Commission - September 21, 2021



City of Santa Clara

Meeting Minutes

Board of Library Trustees

09/13/2021

6:00 PM

Virtual Meeting

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, to prevent the spread of COVID-19, the City of Santa Clara has implemented methods for the public to participate remotely:

- Via Zoom:

- o <https://zoom.us/j/96309770871>

Webinar ID: 963 0977 0871 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 Ricossa called meeting to order at 6:01pm

Vice Chair Evans inquired about need to vote for a member's excusal.

Chair Ricossa called for a vote to excuse Trustee Broughman from the September 13, 2021 Board of Library Trustees meeting. The vote passed.

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

Excused: 1 - Trustee Broughman

CONSENT CALENDAR

1 [21-1205](#) Update Action on the Meeting Minutes of May 3, 2021 and June 10, 2021

Recommendation: Approve the meeting minutes of May 3, 2021 and June 10, 2021

Vice Chair Evans asked for item to be pulled for discussion.

Vice Chair Evans inquired about whether board members not present at a meeting needed to abstain from voting on that meeting's minutes. Guidance received from the City Attorney's Office to **Acting City Librarian Bojorquez** was that board members are not required to abstain from voting. **Vice Chair Evans** would like clarification on this procedure as it conflicts with guidance he has received in other commissions.

Trustee Hintermeister asks for the May 3, 2021 meeting minutes to be amended to reflect that his question during the public presentation by Santa Clara City Library Foundation and Friends **Executive Director JoAnn Davis** was specific to the acceptance of book donations.

Trustee Hintermeister would like meeting minutes to explicitly record if a motion passes or fails.

A motion was made by Trustee Hintermeister, seconded by Chair Ricossa, to approve the minutes of May 3, 2021 with corrections and the minutes of June 10, 2021. The motion passed.

Aye: 3 - Trustee Tryforos, Trustee Hintermeister, and Chair Ricossa

Excused: 1 - Trustee Broughman

Abstained: 1 - Vice Chair Evans

2 [21-1159](#) Action on the Meeting Minutes of August 2, 2021

Recommendation: Approve the meeting minutes of August 2, 2021.

A motion was made by Vice Chair Evans, seconded by Trustee Tryforos, to approve the meeting minutes of August 2, 2021. The motion passed.

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

Excused: 1 - Trustee Broughman

PUBLIC PRESENTATIONS

Santa Clara City Library Foundation and Friends **Executive Director, JoAnn Davis**, noted that there were two patio book sales recently at the Northside Branch Library and the Central Park Library. The Foundation and Friends have opened a pop-up bookstore in the Westfield Valley Fair Mall. The store is open until the end of September on Fridays from 3pm until 7pm, Saturdays from noon until 6pm and Sundays from noon until 4pm.

GENERAL BUSINESS

STAFF REPORT

3 [21-1168](#) Adult Services Division Update

Recommendation: No Recommendation for this item

Adult Services Program Coordinator, Theresa Campos, presented the **Board of Library Trustees (the Board)** with an update on the Division's recent activities and upcoming programs. Adult Services librarians **Nevin Alkaydin, Danny Le and Megan Tristao** aided in the presentation.

Trustee Hintermeister voiced an interest in the Library exploring ways to support local non-profit groups, particularly in relation to room use as the Library reopens. **Vice Chair Evans** added support for this idea. **Program Coordinator Campos** discussed how meeting rooms had been used pre-COVID. **Management Analyst Wasterlain** noted that community room use was an ongoing discussion across the City and could not be sufficiently addressed in this meeting.

Trustee Hintermeister asked about how young adult patrons utilized the reference desk. **Librarians Danny Le and Nevin Alkaydin** discussed some of the common behaviors of young adults using the Library.

Vice Chair Evans inquired about how programs are advertised. **Program Coordinator Campos** went over the multiple ways that program information is distributed online.

- 4 [21-1202](#) Statistical Report of Library Activity

Recommendation: No recommendations for this item.

Management Analyst Wasterlain presented a statistical report to **the Board** to provide comparisons between pre-COVID and current Library usage. The report also covered recent trends in patron activities showing increasing demand for library services.

Vice Chair Evans inquired whether e-media materials made up for the lower circulation numbers during the pandemic. **Management Analyst Wasterlain** discussed how the collections compliment each other, but don't necessarily replace one another.

Vice Chair Evans asked for an explanation of ebook pricing. **Management Analyst Wasterlain** spoke about the different distribution and pricing models vendors use to provide ebooks and how those models result in platform costs being variable.

- 5 [21-1160](#) Verbal Report on Library Programs and Activities

Recommendation: Note and file monthly update on Library activities.

Library Advisor, Jane Light, delivered an update on Library activities that included:

- Central Park Library expanded services on Aug 23, 2021
- Release of Library survey for feedback on hours and programming
- Recruitments of **Mission Branch Library Program Coordinator, Adina Aguirre** and **Young Adult Librarian, Michelle Grinstead**
- Recruitment of Assistant City Librarian
- **City Librarian, Patty Wong's** first day on October 4, 2021

Trustee Hintermeister voiced his appreciation of the work **Acting City Librarian Bojorquez** has done over the past year.

Trustee Hintermeister and **Chair Ricossa** discussed possible items of discussion for **the Board** to have with **City Librarian Wong** at the October 4, 2021 meeting.

TRUSTEES REPORT

ADJOURNMENT

A motion was made by Trustee Hintermeister, seconded by Vice Chair Evans, to adjourn the meeting. The motion passed.

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

Excused: 1 - Trustee Broughman

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City of Santa Clara

Meeting Minutes Youth Commission

09/14/2021

6:00 PM

Teen Center
2446 Cabrillo Avenue
Santa Clara, CA 95051

CALL TO ORDER AND ROLL CALL

Staff Liaison Jon Kawada called the meeting to order at 6:21 p.m.

- Present** 14 - Commissioner Mitchell Blanda, Commissioner Rishith Gopiseti, Commissioner Malia Martin, Commissioner Hiranya Parekh, Commissioner Samarth Suresh, Commissioner Kaitlyn Butcher, Commissioner Aarav Gupta, Commissioner Ahmad Ismail, Commissioner Khadeejah Khan, Commissioner Rajvi Khanjan Shroff, Commissioner Riya Mehta, Commissioner Palak Parikh, Commissioner Sarah Zuo, and Commissioner Jasmine Kelly-Tanti
- Absent** 1 - Commissioner Mitali Gaidhani

A motion was made by Commissioner Kelly-Tanti, seconded by Commissioner Mitchell to excuse Commissioner Gaidhani from the September 14, 2021 meeting. The motion carried by the following vote:

- Aye:** 14 - Commissioner Blanda, Commissioner Gopiseti, Commissioner Martin, Commissioner Parekh, Commissioner Suresh, Commissioner Butcher, Commissioner Gupta, Commissioner Ismail, Commissioner Khan, Commissioner Shroff, Commissioner Mehta, Commissioner Parikh, Commissioner Zuo, and Commissioner Kelly-Tanti

- Absent:** 1 - Commissioner Gaidhani

CONSENT CALENDAR

- 1.A. [21-5900](#) Youth Commission Minutes of May 11, 2021

Recommendation: Approve the Youth Commission Minutes of May 11, 2021.

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

Aye: 14 - Commissioner Blanda, Commissioner Gopisetti, Commissioner Martin, Commissioner Parekh, Commissioner Suresh, Commissioner Butcher, Commissioner Gupta, Commissioner Ismail, Commissioner Khan, Commissioner Shroff, Commissioner Mehta, Commissioner Parikh, Commissioner Zuo, and Commissioner Kelly-Tanti

Excused: 1 - Commissioner Gaidhani

PUBLIC PRESENTATIONS

None

GENERAL BUSINESS

2. [21-5901](#) Pruneridge Avenue Complete Streets Plan

Youth Commissioners were presented information on the status of the Pruneridge Avenue Complete Streets Plan from City staff and consultants. Draft concept plans were shared, along with analysis of each, which Commissioners were able to ask questions and provide feedback on. For more information:

<https://www.santaclaraca.gov/our-city/departments-g-z/public-works/engineering/traffic-engineering/pruneridge-avenue-complete-streets-plan>

3. [21-5902](#) Youth Commission FY2021/22 Work Plan & Goals

Commissioners began to share their ideas for the FY2021/22 work plan and goals. Ideas include, but are not limited to, promoting cultural diversity and inclusiveness, sharing mental health resources, improving the environment, addressing youth homelessness, and promoting teen job and career opportunities. Commissioners will continue their discussion at their next meeting and begin to focus their priorities for the term.

STAFF REPORT

Gayle Ichiho, Recreation Supervisor: Fall programs and activities have begun for the Parks & Recreation Department, Sunset Cinema outdoor movie night is on Friday, September 17, 2021 at Live Oak Park, the Children's Halloween Party is on Saturday, October 30, 2021 from 1-4 p.m. and volunteers are needed, and the S.O.S. school-year teen volunteer program has started. www.SantaClaraCA.gov/ParksandRec

Rachel Hughes, Librarian: Libraries are now open to the public, a new Teen Librarian has been hired for Central Library, a new City Librarian has been hired, and all teen programs are online. www.SCCL.SantaClaraCA.gov

Jon Kawada, Staff Liaison: Explained the roles of the Youth Commission Chair and Vice Chair and how the process will work to elect these officers at the October meeting and discussed the possibility of creating a social committee to organize and schedule team building and social activities for the Commission during the term.

COMMISSIONERS REPORT

None

ADJOURNMENT

A motion was made by Commissioner Ismail, second by Commissioner Gopisetti, that this meeting be adjourned at 8:23 p.m.

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City of Santa Clara

Meeting Minutes

Parks & Recreation Commission

09/21/2021

7:00 PM

Virtual Meeting

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, to prevent the spread of COVID-19, the City of Santa Clara has implemented methods for the public to participate remotely:

Via Zoom:

<https://santaclaraca.zoom.us/j/91316665755>

Meeting ID: 913 1666 5755 or

Phone: (669) 900-6833

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than ten (10) people gathering. The Chair will be present for the meeting with the staff liaison and commissioners participating remotely.

CALL TO ORDER AND ROLL CALL

Chair Forte called the Parks & Recreation Commission Meeting to order at 7:01 PM.

- Present** 4 - Commissioner Dana Caldwell, Commissioner Sajid Hai, Chair Eversley Forte, and Commissioner Kelly Gonzalez
- Absent** 3 - Commissioner Andrew Knaack, Commissioner Joe Martinez, and Vice Chair Burt Field

Commissioner Hai made a motion, seconded by Commissioner Gonzalez to excuse Commissioner Field, Commissioner Knaack, and Commissioner Martinez.

Aye: 4 - Commissioner Caldwell, Commissioner Hai, Chair Forte, and Commissioner Gonzalez

Excused: 3 - Commissioner Knaack, Commissioner Martinez, and Vice Chair Field

CONSENT CALENDAR

Note: Commissioner Field joined the meeting at 8:01 PM, right before the start of Item No. 4 (File ID No. 21-1225), then the Commission went back to the Consent Calendar (Items No. 1.A and 1.B. (File ID No. 21-1234 and 21-1280) for approval.

Commissioner Caldwell made a motion, seconded by Commissioner Field to approve the Consent Calendar.

- 1.A [21-1234](#) Approve the Parks & Recreation Commission Minutes of August 17, 2021

Recommendation: Approve the Parks & Recreation Commission Minutes of August 17, 2021

Commissioner Caldwell made a motion, seconded by Commissioner Field to approve the Consent Calendar.

Aye: 5 - Commissioner Caldwell, Vice Chair Field, Commissioner Hai, Chair Forte, and Commissioner Gonzalez

Excused: 2 - Commissioner Knaack, and Commissioner Martinez

- 1.B [21-1280](#) Parks & Recreation Commission Calendar of Meetings for 2022

Recommendation: Recommend that Council Approve a Resolution to Set the Parks & Recreation Commission Calendar of Meetings for 2022.

Commissioner Caldwell made a motion, seconded by Commissioner Field, to approve the Consent Calendar.

Aye: 5 - Commissioner Caldwell, Vice Chair Field, Commissioner Hai, Chair Forte, and Commissioner Gonzalez

Excused: 2 - Commissioner Knaack, and Commissioner Martinez

PUBLIC PRESENTATIONS

None.

GENERAL BUSINESS

2. [21-1020](#) Consideration of the Schematic Design for the New Public Neighborhood Park located at 3905 Freedom Circle (Greystar Development)

Recommendation: Recommend that City Council approve the Schematic Design for the New Public Neighborhood Park located at 3905 Freedom Circle.

Commissioner Gonzalez made a motion, seconded by Commissioner Hai, to recommend approval of the schematic design for the New Public Neighborhood Park, located at 3905 Freedom Circle.

Aye: 4 - Commissioner Caldwell, Commissioner Hai, Chair Forte, and Commissioner Gonzalez

Excused: 3 - Commissioner Knaack, Commissioner Martinez, and Vice Chair Field

3. [21-1151](#) Presentation and Input on the Pruneridge Avenue Complete Streets Plan

Recommendation: Receive presentation and provide input on the Pruneridge Avenue Complete Streets Plan.

Commissioner Field joined the Parks & Recreation Commission Meeting at 8:01 PM.

4. [21-1225](#) Westwood Oaks Park Playground Rehabilitation Project Initial Presentation

Recommendation: Discuss and provide input on the Project design principles and community outreach.

5. [21-1235](#) Recommend Nominee(s) for Consideration as the “Honorary Holiday Tree Lighter 2021” for the Annual Holiday Tree Lighting Ceremony on Friday, December 3, 2021

Recommendation: Recommend a nominee, or nominees to the Mayor for consideration as “Honorary Holiday Tree Lighter 2021.”

Commissioner Gonzalez made a motion, seconded by Commissioner Field, for this item to be continued to the October 19, 2021 Parks & Recreation Commission Meeting.

Aye: 5 - Commissioner Caldwell, Vice Chair Field , Commissioner Hai, Chair Forte, and Commissioner Gonzalez

Excused: 2 - Commissioner Knaack, and Commissioner Martinez

6. [21-1236](#) Parks & Recreation Commission Work Plan Goals for FY2021/22

Recommendation: Report on progress on the Parks & Recreation Commission Work Plan Goals for FY 2021/22 and appoint subcommittee(s) as needed.

The Commission received updates on Work Plan Goals B-1, and B-2 respectively, through the initial project presentation for Westwood Oaks Park Playground Rehabilitation Project including upcoming community outreach and online surveys commencing in September, receiving additional community input on developer proposed schematic design for the new public neighborhood park at Gateway Crossings, and considering the proposed schematic design for the new public neighborhood park located at 3905 Freedom Circle. The subcommittee for Work Plan Goal D agreed to meet at the proposed 30+ acre park site located on the old golf course, on October 7, at 4:00 PM.

STAFF REPORT

Deputy Director Seale provided an update on park projects and invited Commissioners to attend the Westwood Oaks Park Community Outreach Meeting on Saturday, September 25, from 10:00- 11:00 AM (location: 460 La Herran Dr.).

Recreation Manager Castro advised commissioners that programming updates are available in the Parks & Recreation newsletter and encouraged commissioners to subscribe. Westwood Oaks Park online survey will be launched tomorrow, Wednesday, September 22. The aged and failing International Swim Center is closed, as we are experiencing supply-chain delays for parts and equipment. Stay tuned for Halloween-related activities for next month.

COMMISSIONERS REPORT

Commissioner Forte: Visited and worked out at Westwood Oaks Park, and Maywood Park.

Commissioner Caldwell: Visited Westwood Oaks Park and plans to attend the community outreach on September 25, 2021. He also Visited Maywood Park and noticed some weak and diseased trees had been removed.

Commissioner Field: Visited Reed & Grant Sports Park for youth soccer and noticed how park use continues to increase. He also visited Maywood Park.

Chair Gonzalez: Visited Redwood Trail, and Meadow Park in Santa Clara Square and noticed the good design of the parks there and how it merges spaces between the parks and the neighborhood.

Commissioner Hai: Visited Westwood Oaks Park, and Jenny Strand Park.

ADJOURNMENT

Commissioner Field made a motion, seconded by Commissioner Gonzalez, to adjourn the meeting until the next regularly held Parks & Recreation Commission meeting at 7:00 PM on Tuesday, October 19, 2021.

Aye: 5 - Commissioner Caldwell, Vice Chair Field , Commissioner Hai, Chair Forte, and Commissioner Gonzalez

Excused: 2 - Commissioner Knaack, and Commissioner Martinez

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Agenda Report

21-1042

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action to Authorize the City Manager to Negotiate and Execute a Digital Services Agreement with Siemens Industry, Inc.

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Since 2010, Silicon Valley Power (SVP) has used the Siemens EnergyIP (EIP) Meter Data Management (MDM) software to manage meter data. The MDM software converts raw meter data for use with the City's billing system and customer bills and is a critical software for over-the-air meter data collection and to create electric bills for the City's customers. This is a complex system requiring integration with the City's Customer Information System (CIS) for 60,000 service delivery points, 250 bill rate codes, and 200 billing routes throughout the City for all residential, commercial, and industrial customers. Previously, SVP has contracted with Omnetric for the same product. Omnetric is a Siemens Company. The name, but not the product, has changed as part of a company reorganization.

The MDM system is complex and required approximately seven years to install and develop to perform at a level fully adequate for production use for over the air billing by SVP and the Municipal Services Division of the Finance Department. Therefore, staff recommends an upgrade versus conducting a competitive Request for Proposal (RFP) process to potentially replace the system in its entirety.

DISCUSSION

SVP recommends executing an agreement with Siemens Industry, Inc. for an upgrade to the existing MDM system for improved serviceability, reduced times required for daily operational tasks, and to remove older systems no longer supported by the Original Equipment Manufacturers (OEMs). In addition, staff recommends five years of annual subscription fees to provide systems support and keep the licenses current plus five additional one-year options to extend the agreement for a total of ten years.

This proposed agreement will be negotiated in collaboration with the City Attorney's Office and is anticipated to include a scope of services for integration, a service level agreement for ongoing support, data privacy terms, and system and product specifications.

ENVIRONMENTAL REVIEW

The actions being considered do not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378 (b)(2) in that the

contracts involve continuing maintenance activities.

FISCAL IMPACT

The anticipated cost for the Digital Services Agreement with Siemens Industry, Inc. is anticipated not to exceed \$500,000 in Fiscal Year 2021 - 2022 for implementation services and subscription (license) services for the first year. Subscription services in future years are based on the number of meters. The per meter fee will increase three percent (3%) per year and based on the current number of meters is anticipated to range from \$135,000 in the first year to \$160,000 in the fifth year. Additional services such as additional data export and other reporting needs may be required and additional meters are likely to be added over the years due to anticipated growth (commercial, industrial, and residential). The total cost for a five-year period is anticipated not to exceed \$1.2 million.

Funds for implementation are budgeted in the Implementation of Advanced Metering Infrastructure (AMI) Capital Project (project #2111) in the Electric Utility Capital Fund. Funds for subscription services are budgeted in the Utility's Operating Budget for Contractual Services (software subscriptions). Funds required for this agreement in future years will be included in proposed budgets for those corresponding years.

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>>.

RECOMMENDATION

Authorize the City Manager to:

1. Negotiate and execute a Digital Services Agreement with Siemens Industry, Inc. for an initial term of five years for professional services to upgrade the EnergyIP (EIP) Meter Data Management (MDM) software system plus subscription (license) and support fees not to exceed \$1,200,000, subject to the appropriation of funds;
2. Execute five additional one-year options to extend the initial term of the agreement for ongoing subscription (license) and support fees, subject to the appropriation of funds; and
3. Add or delete licenses and services consistent with the scope of the agreement and allow future rate adjustments subject to request and justification by Siemens Industry, Inc., approval by the City, and the appropriation of funds.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager



Agenda Report

21-1049

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action on Amendments to Agreements with Smart Energy Systems, Inc. and InfoSend, Inc. for a Customer Service Portal and Bill Print and Mail Services, respectively

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The Municipal Services Division of the Finance Department (“Division”) is responsible for measuring water/electric consumption, generating accurate bills, collecting revenue, and providing customer service for the City’s utility customers. The Division utilizes a utility billing system that integrates with, and are dependent on, several applications to manage and streamline its operation including meter data management, bill print and delivery, payment collection, and customer service.

The Division is currently managing several projects to streamline operations, improve customer service, and replace end-of-life systems. Such projects include upgrading the Utility Billing System, Customer Self-Service Portal and Municipal Services Contact Center System, and replacing the end-of-life meter reading and cashiering systems. Others include providing support to external projects impacting the Division’s operations, such as the transition of banking services to JPMorgan Chase, replacement of the City’s permit system, and sunset of the SVP Green Power Residential Project.

The purpose of this report is to request authorization to amend agreements with Smart Energy Systems, Inc. for an online Customer Self-Service Portal and InfoSend, Inc. for bill print and mail services to extend the term and increase maximum compensation.

DISCUSSION

Smart Energy Systems

On December 11, 2018, the City Council approved an agreement with Smart Energy Systems, Inc. (Agreement) for the purchase and implementation of a new cloud-hosted Customer Self-Service Portal for Electric, Water, Sewer, and Solid Waste Disposal utility services for residents and businesses. The Agreement was the outcome of a competitive Request for Proposal (RFP) pursuant to the City’s purchasing rules. The Agreement expires on December 21, 2021.

The new portal will replace the existing, outdated self-service portal, enhancing the customer self-service experience, streamlining the online payments of utility services, and improving customer communication and education. Implementation of the new portal was dependent on the completion of the Utility Billing System upgrade, which was delayed due to unforeseen changes needed to the

system to address backlogs in billing due to automated meter installations and resource constraints. Multiple projects driven by utility stakeholders requiring immediate assistance from key Finance staff, and COVID-19 Shelter in Place which suspended work on the project due to the emergency order to provide essential only services during the pandemic. The Utility Billing System upgrade went live in late summer 2021 and the issues associated with automated meter installations have been resolved; therefore, work can continue to complete implementation of the system, which is expected later this year/early next year.

The proposed Amendment No. 1 will extend the initial term of the agreement by three years, ending on December 21, 2024 to allow sufficient time to complete implementation of the system. Amendment No.1 will also increase the maximum compensation by \$396,194 for a revised not-to-exceed amount of \$1,653,343. Although behind schedule, system implementation is on budget per the original contract. The additional compensation is required to support the revised number of meter accounts and transactions as demonstrated in the table below:

Cost Elements	Original Amount	Amended Amount
System Implementation (including travel expenses)	\$144,350	\$141,350
Software Subscription (based on the number of meter accounts)	\$510,390	\$761,993
Transactions-Based Fees (inbound/outbound text notifications, Interactive Voice Response, debit/credit card processing fees, electronic check payment processing fees, etc.)	\$602,409	\$750,000
Total	\$1,257,149	\$1,653,343

The total cost for software licenses and number of transactions are forecast by staff and may change over the term of the agreement. Additionally, staff anticipates future changes to the system may be required in order to stay current with evolving payment technologies and customer service requirements. Therefore, staff is also requesting authority to execute future amendments to implement changes to the system that may be required and allow for ongoing use and support of the system.

After the initial term, price adjustments are capped at the lesser amount of 3% or the percent increase in the Consumer Price Index (CPI). Pass-through fees are not subject to the aforementioned cap and must be supported by a formal request justifying the increase.

InfoSend

In 2017, staff conducted a competitive procurement process resulting in the recommendation of award to InfoSend, Inc. which was approved by the City Council. The agreement with InfoSend terms out on June 30, 2022, inclusive of Amendments No. 1 and 2 that extended the agreement by two years from the three-year initial term.

As discussed in the Background section, the support of numerous projects was already putting a significant workload on staff prior to the COVID-19 pandemic. The impacts of COVID-19 further

added to the Division's workload and shifting priorities. COVID-19 related actions included staffing the drive-up window, as well as implementing programs such as the California Arrears Payment Program as mandated by the State of California to provide relief to households experiencing financial hardships due to the economic impacts of the pandemic.

Staff is recommending extending the term of the agreement with InfoSend for two additional years, ending in June 2024, which will allow the Division to focus its resources on higher priority work. Prior to June 2024, staff will conduct a competitive procurement process to assess the market for this service.

The maximum compensation under the current agreement is \$1,700,000, which reflects an average annual spend of \$340,000 to print and mail approximately 60,000 invoices per month. Amendment No. 3 to the Agreement will increase compensation by \$680,000 for a revised not-to-exceed maximum compensation amount of \$2,380,000.

Compensation under the agreement is based on a unit cost for data processing, printing, and mailing. InfoSend has requested a 2.2% increase for the extended term effective July 1, 2022 through June 30, 2024. Staff has determined that this request is reasonable based on the Consumer Price Index annual increase of 3.7%.

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

Agreement with Smart Energy Systems, Inc. for a Customer Self-Service Portal

Funding is provided in the FY 2021/22 Adopted Capital Improvement Budget in the Utility Management Information Systems (UMIS) Enhancements Project budgeted in the General Government Capital Fund. The FY 2021/22 project budget is sufficient to cover the project cost, including the \$396,194 in additional cost.

Agreement with InfoSend, Inc. for Bill Print and Mail Services

The Municipal Services Division in the Finance Department has sufficient funding in the FY 2021/22 & 2022/23 Adopted Biennial Operating Budget to cover the estimated annual cost of \$340,000. Funding for future years is subject to Council appropriations.

COORDINATION

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

PUBLIC CONTACT

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

public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Authorize the City Manager to execute Amendment No. 1 to the Agreement with Smart Energy Systems, Inc. for a cloud-hosted Customer Self-Service Portal to extend the term of the agreement by three years ending on December 31, 2024 and increase maximum compensation by \$396,194 for a revised not to exceed amount of \$1,653,343, subject to the appropriation of funds;
2. Authorize the City Manager to execute future amendments to the agreement with Smart Energy Systems, Inc. to extend the term and adjust compensation in the event staff's estimates of usage are exceeded and to cover any changes to system requirements, subject to the appropriation of funds; and
3. Authorize the City Manager to execute Amendment No. 3 to the Agreement with InfoSend, Inc. for Bill Print and Mail Services to extend the term of the agreement by two years ending on June 30, 2024, and increase maximum compensation by \$680,000 for a revised not to exceed amount of \$2,380,000, subject to the appropriation of funds.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

2. 2018 Agreement with Smart Energy Systems, Inc.
2. Amendment No. 1 to the Agreement with Smart Energy Systems, Inc.
3. 2017 Agreement with InfoSend, Inc.
4. Amendment No. 1 to the Agreement with InfoSend, Inc.
5. Amendment No. 2 to the Agreement with InfoSend, Inc.
6. Amendment No. 3 to the Agreement with InfoSend, Inc.

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
SMART ENERGY SYSTEMS, LLC**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Smart Energy Systems, LLC dba Smart Energy Water ("SEW"), a Delaware limited liability company, with its principal place of business located at 19900 MacArthur Blvd., Suite 370, Irvine, CA 92612, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Subscribed Services

Exhibit B – Schedule of Fees

Exhibit B-1 – Detailed Fee Schedule

Exhibit C – Insurance Requirements

Exhibit D – Software as a Service Subscription Agreement (SaaS SA)

Exhibit E – SEW Security Exhibit

Exhibit F – SEW Standard Support Plan

Exhibit G – SEW Data Retention Policy

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 December 11, 2018 and terminate on December 11, 2021.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A and Exhibit D titled “Software as a Service Subscription Agreement.” Time is of the essence.

4. WARRANTY

Except as otherwise provided in Exhibit F, the terms of which shall take precedence and control, Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor’s representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is One Million, Two Hundred Fifty-Seven Thousand, One Hundred Forty-Nine dollars (\$1,257,149), 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. These not-to-exceed numbers are based upon the assumption for volume as outlined in Exhibit B-1, Detailed Fee Schedule. Any changes in volume over and above assumptions in Exhibit B-1 may result in additional Annual Transaction fees. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance without a valid amendment.

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. Upon termination, City shall pay Contractor all fees due up to the time of 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 specifically related to this Agreement.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

Except as otherwise provided in Exhibit D, the terms of which shall take precedence and control, all material which are expressly deemed to be proprietary works made for City, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain

sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any "Indemnified Claim," meaning any third-party claim, suit, or proceeding arising out of, related to, or alleging infringement of any patent, copyright, trade secret, or other intellectual property right by the Software. Contractor's obligations set forth in this Section do not apply to the extent that an Indemnified Claim arises out of: (a) City's breach of this Agreement; (b) revisions to the Software made without Contractor's written consent; (c) City's failure to incorporate Upgrades that would have avoided the alleged infringement, provided Contractor offered such Upgrades without charges not otherwise required pursuant to this Agreement; (d) Contractor's modification of Software in compliance with Customer's specifications; (e) unauthorized use of the software by third parties; or (f) use of the Software with hardware or software not provided by or approved of by Contractor. Furthermore, 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.
- B. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

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: Finance Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at meglesia@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Smart Energy Systems, LLC dba Smart Energy Water
19900 MacArthur Blvd., Suite 370
Irvine, CA 92612
and by e-mail at Aman.Singha@smartenergywater.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. RETENTION

As set forth in Exhibit B, City will pay Contractor on its invoice(s) an amount equal to 90 percent (90%) of the amount otherwise due to Contractor, and City

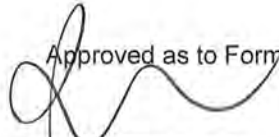
shall withhold the remaining 10 percent (10%) as retention. When Contractor has completed the transition to Product Support Desk within Milestone 6 (Stabilization and Closure) or within three (3) weeks after Production Deployment, whichever occurs first, City shall give Contractor written Notice of Final Acceptance; within thirty (30) days after issuance of said Notice of Final Acceptance, City shall release to Contractor the amounts held in retention. In the event of a good faith dispute between City and Contractor as to satisfactory completion of the above requirements and the SEW Deliverables thereunder, City shall continue to hold the retained funds in a segregated account until such time as the dispute is resolved, whether by means of formalized settlement or adjudication. Funds held in retention may be used to offset monies otherwise due to City by Contractor.

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. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: 
for BRIAN DOYLE
City Attorney

Dated: 11/22/18

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SMART ENERGY SYSTEMS, LLC
a limited liability company

Dated: 11/28/18
By (Signature): 
Name: Aman Singha
Title: Director of Operations
Principal Place of Business Address: 19900 MacArthur Blvd., Suite 370
Irvine, CA 92612
Email Address: Aman.Singha@smartenergywater.com
Telephone: (909) 217-3344
Fax: (909) 614-7125
"CONTRACTOR"

EXHIBIT A
SCOPE OF SUBSCRIBED SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

A. Scope of Base Software Implementation

The scope of this project includes the following components:

- **Smart Customer Mobile (SCM) - Customer Web Portal and Mobile Apps** - Customer-facing web portal and mobile apps for Apple iOS and Google Android
- **SCM Customer Service Portal** – Utility-facing Customer Engagement Analytics and Admin Portal for Utility staff

1. SCM - Customer Web Portal and Mobile Apps

The SCM platform web portal and mobile apps include the following customer-facing modules:

1. My Account
2. Usage
3. Billing
4. Notifications
5. Connect Me
6. Compare
7. Efficiency/Conservation
8. Service

The table below describes the specific features in scope to meet requirements:

#	Module	Features
1.	My Account	<p>The “My Account” module allows the utility customer to manage their profile, communication preferences, and contact information in the web portal and the mobile app. The customers can see all their accounts in a single sign-on view and set preferences for each account. Specifically, the customers can:</p> <ul style="list-style-type: none"> • View and manage their account information including contact details • Add multiple customer accounts and view rate plans • Set-up notification preferences by selecting the notification type and delivery channels including SMS text, IVR dialer, email, and mobile push alerts with the ability to add, delete, and update the contact information for each notification type and channel • Configure dashboard view and application theme • Opt in/Opt out of notifications events and configure preferred time and frequency for these notifications • Manage E- Billing/Paperless Billing preferences • Manage language preferences to view information in multiple

#	Module	Features
		languages (If language package license purchased) <ul style="list-style-type: none"> • Add and manage payment accounts for bill payment • Set Marketing Preferences to subscribe for utility communications • Complete a home profile survey
2.	Usage	The Usage module provides the utility customer the visibility to their energy and water usage and cost chart displays for different periods. Specifically, the City customers can: <ul style="list-style-type: none"> • View usage data – 15 minute, hourly, monthly and seasonal for up to last 13 months with weather overlays • Access historical usage and spending for all service accounts associated with the user • View aggregated as well as individual meter consumption associated with their service accounts • View energy and water consumption in different usage units of measure and cost (dollars) • For AMI meters: <ul style="list-style-type: none"> ○ View projected energy and water usage for next period ○ View projected next bill amount • Download usage data in Excel, CSV, and PDF format
3.	Billing	The Billing module allows the utility customer to manage billing and payments functions online. Specifically, the City customers can: <ul style="list-style-type: none"> • View current balance and bill details including all services and accounts covered in the customer's bill consistent with customer's account in the Billing system • Make payments via web and mobile • View their account history including bills posted and payments made on their account for last 13 months. • Download copy of their historical bills in PDF format for 12 months • If AMI data available, enroll in "Budget My Bill" feature to setup target bill amount and receive high bill alerts (once a month, for residential customers on standard rates) • Connect with utility to submit billing or payment related queries (routed to Customer Service via email) • View utility payment locations to make payments in person
4.	Notifications	The Notifications module provides a central view of all notifications exchanged between the customer and the Utility. Specifically, the customers will be able to: <ul style="list-style-type: none"> • View all notifications, alerts received from the utility • Select and respond to a notification • View responses to the notifications sent by the customer to utility The notification/alert types will include: <ul style="list-style-type: none"> • Updates to contact information

#	Module	Features
		<ul style="list-style-type: none"> • Updates to notification preferences – Opt-in and Opt-out • Billing and Payment Alerts and Reminders • “Budget My Bill” Alerts • High Usage Alerts • Ad hoc messages to selected customers (manually triggered by CSRs)
5.	Connect Me	<p>The Connect Me module provides a single click option for the customer to contact Utility customer service via the mobile app, SMS text message, phone, and email. Specifically, the customers will be able to:</p> <ul style="list-style-type: none"> • View all utility customer service contact options based on request type on the Mobile app and within the portal • Send a message to the utility customer service desk and receive responses in real time. The Utility CSRs will receive the message via email. • View all the utility’s social media accounts (on Twitter, Facebook, Google+, Instagram, and YouTube) for updates in one view within the portal and the mobile app
6.	Compare	<p>The Compare module displays the customer’s electric and water usage compared with other similar customers. Specifically, the Utility customers will be able to:</p> <ul style="list-style-type: none"> • Self-compare their energy and water use for past 12 months with their historical use pattern • Compare their energy and water use with similar households/businesses
7.	Efficiency/ Conservation	<p>The Efficiency/Conservation module displays the utility energy efficiency and water conservation programs, rebates and savings tips with ability for the customer to view and enroll these programs using any device. Specifically, the utility customers will be able to:</p> <ul style="list-style-type: none"> • View rebates and programs available • View personalized savings and educational tips based on customer profile
8.	Service	<p>The Service module enables Utility customers to submit customer service requests for move in, move out, and service transfer. Specifically, the customers will be able to:</p> <ul style="list-style-type: none"> • Submit self-service requests online and on mobile • Request for turn-on and turn-off utility services • Request for service transfer from existing premises to new premises • Submit a complaint <p>The service request and forms will be routed to customer service agents via email.</p>

2. SCM Utility Customer Service Portal

The Utility facing Customer Service Web Portal capabilities will include the following utility facing modules.

1. Customer Service and Administration
 - a. Dashboard
 - b. Customer Engagement Analytics

- c. Administration
- d. CSR Workbench

#	Module	Features
1.	Dashboard	The Customer Service Portal provides a configurable dashboard with visual display of key platform metrics including customer engagement metrics and transactional summary for key business processes enabled by SCM.
2.	Customer Engagement Analytics	This module provides reports and live dashboards for customer interactions. The Utility personnel will be able to view reports for tracking customer activity, notification status by channel, customer browsing activity metrics, and administrative reports for daily, monthly, or date range activity for billing, usage, notification, and preference management activity. Specifically, the analytics views will include: <ul style="list-style-type: none"> • Customer registration and activity status • Customer service response metrics for various inbound notifications • Customer behavior metrics including login and feature clicks by browser, device, and time
3.	Administration	The module provides the ability to configure the application features, user roles, and user accounts. Specifically, Utility personnel will be able to: <ul style="list-style-type: none"> • Create and manage user roles for the application including granting and revoking access to specific features. • Create and manage utility user accounts including role assignments. • Manage application configurations including <ul style="list-style-type: none"> ○ Enable or disable features in scope of the modules selected. ○ Label, display content, and disclaimers ○ Workflow configurations
4.	CSR – Work Bench	This module provides a 360-degree view of the customer profile for the utility Customer Service Reps (CSR). Specifically, Utility CSRs will be able to lookup a customers and view: <ul style="list-style-type: none"> • All service accounts for the customer • Energy and water Use Analytics • Contact information and last login status / online activity • Notification opt in status and corresponding contact details • All incoming and outbound notifications for that customer • Co-browsing and impersonation options (if license of web chat service is purchased separately)

3. Integrated Notification Services

The SCM platform includes integrated notification services which can be enabled by Utility for the purposes of customer alerts and notifications based on configurable workflow and decision trees.

- SMS Text Messaging – Two-way
- IVR Outbound Dialer

- Email auto notifications
- Mobile Push Notifications

The scope for configuration of notifications/alert campaigns will be limited to the notifications stated in the table above. Additional alerts/campaigns can be configured with additional cost.

B. Add On Option 1 – SCM Outage

The City can elect to configure and deploy the Outage module in the SCM platform to display the service outages on web and mobile apps as well as provide comprehensive two way notification features. Such election shall be made prior to the kick off of the implementation project or separately as a different software release post Go Live. The Outage module functionality includes:

a. SCM Customer Portal and Mobile Apps

#	Module	Features
1.	Outages	<p>The Outages module provides the utility customer a web portal and mobile capability to view current and planned outages as well as communicate with the utility customer service for outage related notifications. Specifically, the customers will be able to:</p> <ul style="list-style-type: none"> • View a map displaying all current and planned outages along with the impacted area, incident description, and current reported status • Enroll in and receive individualized notifications for the outages that impact the customer • Report an outage from the portal or using the mobile app • Send a message to the utility customer service desk and receive responses
2.	Notifications	<p>With Outage module in scope, the Notifications module shall include the following additional notification types:</p> <ul style="list-style-type: none"> • Outage Notifications – New Outage, ETR Update, and Outage resolved • Ad hoc messages to selected customers (manually triggered by CSRs) by incident or specific customer group

b. SCM Utility Facing Customer Service Portal

#	Module	Features
1.	Outages	<p>The module provides the ability to create, view, add and update outage events.</p> <ul style="list-style-type: none"> • Create a new outage incident by outlining effected area by drawing polygons • Create and embed outage message, and make updates • View and track resolved and unresolved outage events • Access outage details, history and affected customer list • Send notifications and updates

C. Add On Option 2 – Smart iQ Analytics

The City can elect to configure and deploy the Smart iQ analytics platform to view energy and water use analytics and streamline the efficiency program rebate process. Such election shall be made prior to the kick off of the implementation project or separately as a different software release post Go Live. The Smart iQ functionality includes:

#	Module	Features
1.	Usage Analytics (Customer & Segments)	This module provides the utility users the ability to view, compare, and run reports for customer segments and individual customers based on energy and water use patterns.
2.	Leakage Analytics	This module provides automatic leakage identification based on the hourly interval meter data to enable the City staff to view the meters/accounts where a water leakage pattern is detected.
3.	High Usage Analytics	This module provides automatic detection of high energy and water usage patterns based on the hourly interval meter data to enable the City staff to view the meters/accounts where a high energy or water use is detected.
4.	Violation Management	This module provides the ability to track weekly watering schedule violations for different customer sets based on configurable criteria.
5.	Program Management	This module allows the utility users to manage the customer programs and rebate application process including the following: <ul style="list-style-type: none"> • Create and track programs by qualification criteria and efficiency measure • Accept rebate applications on web portal and mobile apps and track status • Provide status of application on web portal and mobile apps to the customer • Track spending and savings by program

D. Add On Option 3 – Smart Mobile Workforce (SMW)

The City can elect to configure and deploy the SMW field mobile platform for field workers to track the customer service requests via mobile apps. Such election shall be made prior to the kick off of the implementation project or separately as a different software release post Go Live. By adding SMW platform the following additional functionality shall be delivered:

- a. Updates to SCM Customer Portal and Mobile Apps

#	Module	Features
1.	Service	By adding the SMW platform, the Utility customers shall be able to view: <ul style="list-style-type: none"> • Status of pending service requests • Receive mobile push, email, or SMS Text notifications upon updates to the status of their request. • Receive “Tech Enroute” notification when the technician is en route to

#	Module	Features
		their service location and receive the technician identification as well as ETA.

b. SCM Utility Facing Customer Service Portal

#	Module	Features
1.	Service	The module provides the utility user (supervisor/dispatcher) to create, view, assign, and dispatch the service requests to the field teams. Users will be able to view and assign service requests, and view field crew member status on map

c. SMW Field Service Mobile Apps (Apple iOS)

#	Module	Features
1.	Service	The Service module provides the field worker native mobile app to view their assignment and update the status of the requests. Specifically, the user will be able to: <ul style="list-style-type: none"> • View their work assignment in tabular and map format • Accept work and track travel time • Update service requests with additional notes and attachments and track completion

E. Add On Option 4 – SCM Enterprise Web Portal

The City can elect to configure and deploy the SCM Enterprise web portal to allow the Commercial/Enterprise customers manage multiple facilities and view energy analytics across their services. Such election shall be made prior to the kick off of the implementation project or separately as a different software release post Go Live. The SCM Enterprise functionality includes:

a. SCM Enterprise Customer Portal

#	Module	Features
1.	My Portfolio	Include the features of SCM My Account module. Additionally, the enterprise customer can create groups of their accounts and assign specific group access to their guest users.
2.	Usage	The users can see energy and demand analytics for their accounts. Specifically, the dashboards include: <ul style="list-style-type: none"> • Energy and water usage • Electric monthly peak demand • Electric profile (Active and reactive power) • Power quality/Power factor

#	Module	Features
		<ul style="list-style-type: none"> Power Reports (24 hour profile, peak day, daily peaks)
3.	Billing	View and pay multiple bills for separate accounts in the same view.
4.	Notifications	Same features as SCM residential.
5.	Connect Me	Same features as SCM residential.
6.	Compare	The enterprise customer can select two groups or meters and compare energy or water use for past 13 months.
7.	Efficiency/ Conservation	Same scope as SCM residential.
8.	Service	Same scope as SCM residential.

F. Add On Option 5 – SCM Smart Home

The City can elect to configure and deploy the Smart Home module in the SCM platform to allow the end users to participate in the Smart Thermostat programs and participate in Demand Response events through the web portal and mobile apps. Such election shall be made prior to the kick off of the implementation project or separately as a different software release post Go Live. The Smart Home functionality includes:

a. SCM Customer Portal and Mobile Apps

#	Module	Features
1.	Smart Home Module	The "Smart Home" module will be upgraded to allow the utility customer to add a thermostat to their profile, view thermostat status, and control the thermostat via the mobile app.
2.	Demand Response Features	<p>The Demand Response features will be updated to the SCM portal and mobile apps including:</p> <ul style="list-style-type: none"> View program detail and purchase thermostat in Energy Efficiency programs Receive event alerts from utility prior to and during the peak load event

b. Utility Facing Customer Service Portal

#	Module	Features
1.	CRM – Campaigns	This module will be added to allow the utility users to create a target segment of customers who have enrolled a thermostat and send program and event notifications. The users will also be able to send preset automated notifications for customers who enroll in the program.
2.	Customer Engagement Analytics	This module will be updated to add dashboards for monitoring customer enrolment and activity metrics for Thermostat program.
3.	Thermostat Dashboard	This dashboard will provide access to customer thermostat information and ability to execute peak load events.

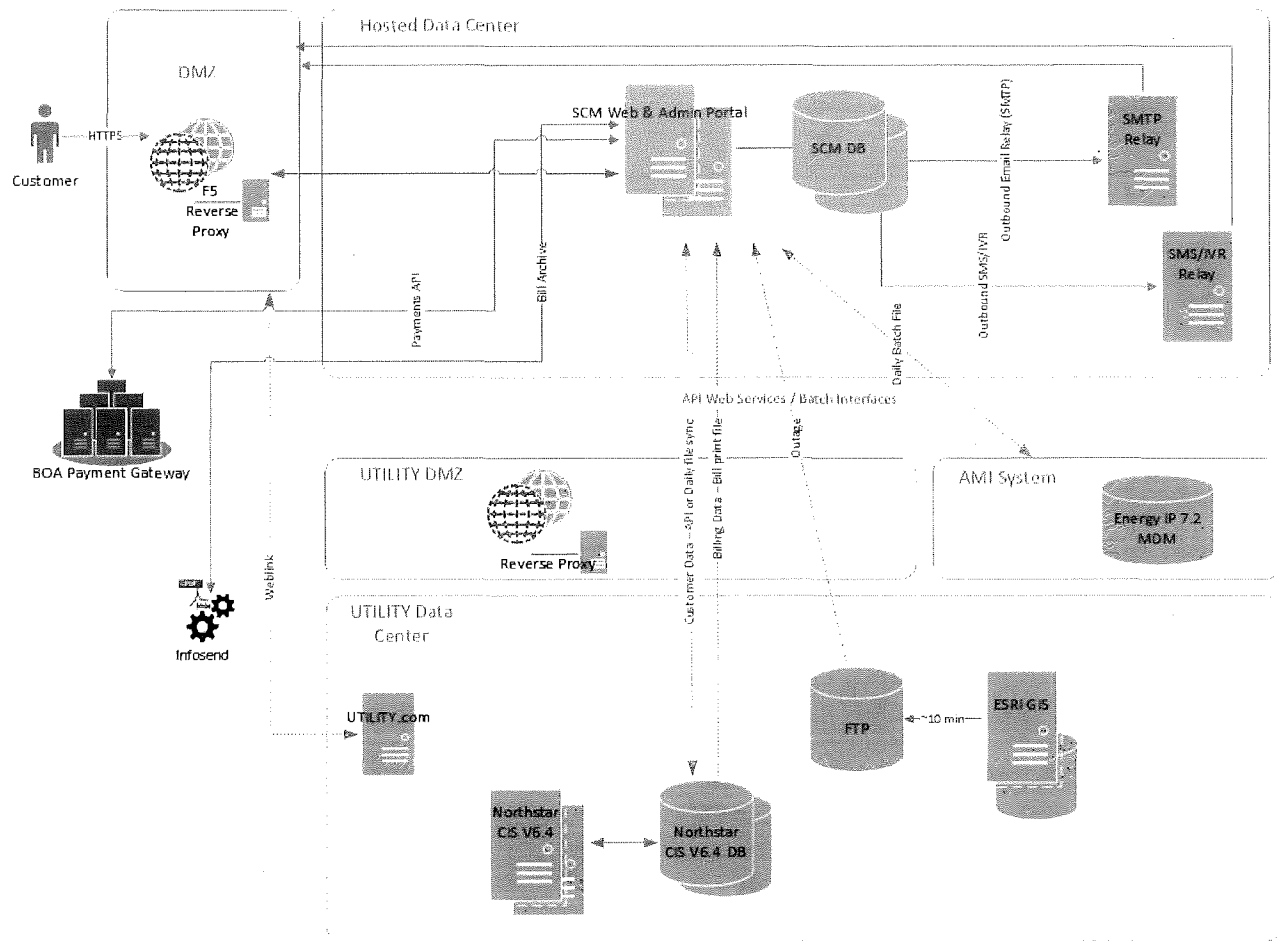
If an item is not listed in section above, such item is excluded from the integration of SEW Support and is subject to additional pricing.

G. System Installation and Data Integration

The scope of the project includes the following key system installation and data integration activities:

1. Design, configure, and setup of SEW software stated in the Section A above.
2. Integration of SEW software with City systems mentioned in the diagram below.
3. Load the existing customer preferences to SCM database for the notifications in scope.
4. Deploy City branded utility customer web portal functionality in scope.
5. Deploy and publish City branded mobile apps for Apple iOS and Google Android app stores.
6. Deploy and publish the SMW field app, if option 3 selected.

Customer agrees to ensure integration access with the City's systems identified in the diagram below prior to the completion of the planning phase. The diagram below shows the integration assumptions based on the preliminary discussions between the City and SEW and will be finalized during the Planning/Design phase of the project. Integration to City's source systems and data is dependent on access to said systems, including any API allowances as applicable.



H. NOT IN SCOPE

Any activities, products or deliverables not included in this SOW are deemed out of scope. Additional work is permitted pursuant to a valid amendment under Paragraph 24 of the Agreement, with the pricing identified, and such changes are approved by both parties prior to commencement of work.

I. PROJECT DURATION AND TIMELINE

The estimated timeline for the implementation of this engagement is **20 calendar weeks** after Client acceptance of SEW deliverables from Milestone 1, followed by four-week stabilization period, as indicated by the timeline table below. The actual project duration will depend upon the final scope, configuration decisions, and availability of data and integrations from Client's source systems. The SEW team will provide an updated project schedule upon completion of the Milestone #2 described in the table below. Within two weeks of receiving written authorization, the SEW team will begin scheduling the work sessions associated with the tasks detailed below. This Scope of Work for each phase of this Project will be broken into six milestones as outlined below. Unless otherwise agreed to upon the parties in writing, each milestone must be completed before any work is conducted on the next milestone.

Milestone No.	Phase	SEW Deliverables	Client Deliverables	Duration	Payment Due
1	Initiation	<ul style="list-style-type: none"> Initial Kick Off Meeting Customary Project Plan 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> 25% of the total implementation cost (\$25,625) Year 1 Subscription Fee: (\$132,830)
2	Planning/ Analyze a. Configure /integrate b. Design (For any new requirements)	<ul style="list-style-type: none"> Configuration and Integration of following Utility Customer Facing modules (My Account, Usage, Billing, Notification, Connect Me, Outage, Compare, Efficiency/Conservation, Service) Configuration and Integration of Utility Facing Modules (Dashboard, Customer Engagement, Analytics, Administration, CSR Workbench, Outage) Integrated notification services including (SMS Text Messaging – Two-way, IVR Outbound Dialer, Email auto notifications, Mobile Push Notifications) Enterprise Web Portal including the following modules: (My Portfolio, Usage, Billing, Notifications, Connect me, Compare, Efficiency / Conservation, 	<ul style="list-style-type: none"> Availability of Project Sponsor, Business & Technical SME for Timely Approvals Internal / 3rd Party Software/API Access Data as requested by SEW Source System API/Integration support Source System Access (if required) Sample data/test data 	<ul style="list-style-type: none"> 12 weeks 	<ul style="list-style-type: none"> 25% of total implementation costs (\$25,625) Due upon agreed signoff of milestone and Document of Understanding by Client.

Milestone No.	Phase	SEW Deliverables	Client Deliverables	Duration	Payment Due
		Service) <ul style="list-style-type: none"> • Document of Understanding (for additional requirements) • Scope finalization • Project Schedule outlined in detail using Microsoft Project. • Integration and configuration of base SCM product • Design (for any new requirements discovered during the creation and review process for DOU) 			
3	a. SEW Product QA Testing b. Client UAT Testing	<ul style="list-style-type: none"> • Quality Assurance Testing of the following: Configuration and Integration of following Utility Customer Facing modules (My Account, Usage, Billing, Notification, Connect Me, Outage, Compare, Efficiency/Conservation, Service) • Configuration and Integration of Utility Facing Modules (Dashboard, Customer Engagement, Analytics, Administration, CSR Workbench, Outage) • Integrated notification services including (SMS Text Messaging – Two- 	<ul style="list-style-type: none"> • Availability of Client resources for UAT • User Acceptance Testing • UAT Test Status and Results 	<ul style="list-style-type: none"> • 3 weeks • 2 weeks 	<ul style="list-style-type: none"> • 18% of total implementation costs (\$18,450) • Due upon agreed upon signoff of milestone by Client.

Milestone No.	Phase	SEW Deliverables	Client Deliverables	Duration	Payment Due
		<p>way, IVR Outbound Dialer, Email auto notifications, Mobile Push Notifications)</p> <ul style="list-style-type: none"> • Enterprise Web Portal including the following modules: (My Portfolio, Usage, Billing, Notifications, Connect me, Compare, Efficiency / Conservation, Service) • User Acceptance Testing Support of the following: Configuration and Integration of following Utility Customer Facing modules (My Account, Usage, Billing, Notification, Connect Me, Outage, Compare, Efficiency/Conservation, Service) • Configuration and Integration of Utility Facing Modules (Dashboard, Customer Engagement, Analytics, Administration, CSR Workbench, Outage) • Integrated notification services including (SMS Text Messaging – Two-way, IVR Outbound Dialer, Email auto notifications, Mobile Push Notifications) • Enterprise Web 			

Milestone No.	Phase	SEW Deliverables	Client Deliverables	Duration	Payment Due
		Portal including the following modules: (My Portfolio, Usage, Billing, Notifications, Connect me, Compare, Efficiency / Conservation, Service)			
4	a. Client Outreach Support b. Training and Marketing (Basic Package)	<ul style="list-style-type: none"> • Client Marketing Campaign Material Templates • One SCM Announcement Video • Two training sessions: one 8-hour Train the Trainer Session (Via remote WebEx), and one on-site session (additional travel fees will apply). Training will apply to the following: Utility Customer Facing modules (My Account, Usage, Billing, Notification, Connect Me, Outage, Compare, Efficiency/Conservation, Service) • Configuration and Integration of Utility Facing Modules (Dashboard, Customer Engagement, Analytics, Administration, CSR Workbench, Outage) • Integrated notification services including (SMS Text Messaging – Two-way, IVR Outbound 	<ul style="list-style-type: none"> • Timely Approval of Campaign Material • CSR team member participation in scheduled training sessions 	<ul style="list-style-type: none"> • 1 week • 1 week 	<ul style="list-style-type: none"> • 17% of total implementation costs (\$17,425) • Due upon agreed upon signoff of milestone by Client.

Milestone No.	Phase	SEW Deliverables	Client Deliverables	Duration	Payment Due
		Dialer, Email auto notifications, Mobile Push Notifications) <ul style="list-style-type: none"> • Enterprise Web Portal including the following modules: (My Portfolio, Usage, Billing, Notifications, Connect me, Compare, Efficiency / Conservation, Service) 			
5	Deployment/ "Go-Live"	<ul style="list-style-type: none"> • Production Deployment of following Utility Customer Facing modules (My Account, Usage, Billing, Notification, Connect Me, Outage, Compare, Efficiency/Conservation, Service) • Configuration and Integration of Utility Facing Modules (Dashboard, Customer Engagement, Analytics, Administration, CSR Workbench, Outage) • Integrated notification services including (SMS Text Messaging – Two-way, IVR Outbound Dialer, Email auto notifications, Mobile Push Notifications) • Enterprise Web Portal including the following modules: (My Portfolio, Usage, Billing, Notifications, Connect me, 	<ul style="list-style-type: none"> • Availability of Project Sponsor, Business & Technical SME and Approval 	<ul style="list-style-type: none"> • 1 week 	<ul style="list-style-type: none"> • 15% of total implementation costs (\$15,375) • Due upon agreed upon signoff of milestone by Client.

Milestone No.	Phase	SEW Deliverables	Client Deliverables	Duration	Payment Due
		Compare, Efficiency / Conservation, Service) • Online Client Help Guide			
6	Stabilization & Closure	• Four-week 24X7 support for production Stabilization • Helpdesk setup and transition to Product Support Desk after 4-week stabilization period	N/A	• 4 weeks	N/A

J. SEW AND CLIENT RESOURCES:

SEW has assigned Kevin Hwang as Project Manager for this engagement. He will be working closely with City team for development, implementation, and training and support services throughout this project for the SCM® solution deployment. Kevin will have overall responsibility for end to end project oversight of the implementation including developing the project plans, coordinating with the project stakeholders, team communication, project risks management, schedule adherence, budget tracking, issues resolution and project delivery. Key roles will not change without review by the client.

Name	Role	Responsibilities
Kevin Hwang	Director - Product Implementation	Responsible for executive oversight of overall delivery of the solution and provides guidance and direction to resolving technical and functional issues to drive project to completion.
Manoj Singh	Chief Product Officer- Product Engineering	Responsible for defining the overall solution, integration standards, application standards and providing direction to the development teams as needed.
John DeBerg	Director- Project Management	Responsible for ensuring the project team successfully delivers the project per schedule, scope, and budget. Coordinates approvals and communications as necessary.
Harsha Bana	Business Analyst	Responsible for documenting existing and new business processes, fit gap requirements,

		and validation of those requirements in the final solution. Acts as a lead for all business process and documentation responsibilities.
Atul Someshwar	Data Architect Lead	Responsible for designing architectures and develops strategies for data acquisitions, archive recovery, and implementation of a database.
Manish Khatri	Quality Assurance Manager	Responsible for overall Quality Assurance and Testing of the solution including integration, end to end, user acceptance, performance, and scalability testing.

The table below provides the estimated effort for Client team resources.

Resource Role	Estimate (Hours)	Name / Email
Client Project Manager	60	
Client UAT Team	40	
Client Outreach/Marketing	30	

K. ESCALATION

SEW will escalate project issues in the following order if they remain unresolved at the previous level:

Level	Unresolved for	E-mail ID
Client Project Manager (TBD)	1 Day	TBD
Director of IT	3 Days	TBD

Client will escalate issues in the following order if they remain unresolved at the previous level:

Level	Unresolved for	E-mail ID
TBD – Business Process Lead	1 Day	TBD@smartenergywater.com
Kevin Hwang – Director of Solutions Delivery, SEW	3 Days	Kevin.Hwang@smartenergywater.com
Brad Adamske – Sr. VP of Sales, SEW	5 Days	Brad.Adamske@smartenergywater.com

L. CHANGE CONTROL: The following process will be followed if a change to this Statement of Work or project plan is required:

- a) A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change, and the effect the change will have on the Project. Additionally, the PCR must also provide a recap of the original estimated resources and costs, revised estimated resources and costs and associated cost savings or expenditures.

- b) The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party.
- c) Both Project Managers will review the proposed change and agree to take steps to implement it, including a signed Change Order, recommend it for further investigation, or reject it.
- d) SEW will specify any changes to the fees as per agreed rate in this Statement of Work for such investigation. A Change Order must be signed by authorized representatives from both parties in order to revise the Statement of Work before any work can commence in regard to such. All additional work will be billed to Client at a minimum rate of \$150 per individual per work hour.

M. RISKS AND ASSUMPTIONS

The following assumptions, which have been accepted by Client, have been made in order for SEW to fulfill its obligations under this Agreement, the failure of which by Client may affect SEW'S Project Duration and Timeline under Section 2:

- a) The project timeline is dependent on the Client acceptance of SEW deliverables in Milestone #2 which is planned for 3 weeks. Any delay beyond this timeline shall impact the final Go Live.
- b) Client will provide timely responses to SEW information needs and timely review of project documents provided.
- c) Key personnel at Client will be made available to SEW as required and reasonable during the project
- d) Client will provide onsite workspace for SEW resources with internet connectivity.
- e) All documents will be jointly reviewed with Client staff.
- f) The SOW is binding if authorized, and any changes to the SOW will be provided in writing from either the SEW or the Client team and approved by both teams.
- g) Client fully acknowledges and understands that any customization to standard features and functionality as described in this Statement of Work will be assessed by SEW and may impact approved budget and/or schedule. Client will have discretion to determine whether to proceed with such customizations.
- h) Integration to Client source systems and data is dependent on access to said systems, including as well as API allowances from the respective companies. If applicable, SEW will work on behalf of Client to obtain such APIs, if any, within reason, however Client is responsible to ensure such access and API allowances are provided. In addition, existing API or SFTP processes for Client source system data, will be made available for use or re-use as part of the project. Ability to view bill PDF is dependent on API availability at the start of this project.
- i) Client agrees to ensure Integration access with any and all Client's third-party partners prior to Milestone #2 Failure to obtain such availability and/or access from Client's partners shall not affect Client's obligations under this Statement of Work.
- j) Standard SLA levels offered by SEW are acceptable. Please refer to SEW's Standard Support Plan provided with the Software as a Subscription Agreement for details. Maintenance and Support provided for the scope of this implementation shall be governed by the zero-cost SEW Standard Support Plan.

- k) Standard SEW implementation and configuration is conducted primarily from SEW offices with any included on-site activities to be determined and documented during Milestone #2. Additional SEW resources beyond those so identified will travel to Client offices on an as-requested basis if and when practicable. Any such requested on-site implementation activities will be billed to Client at a minimum rate of \$150 per individual per work hour, under an amendment to the Agreement if necessary, otherwise subject to the maximum compensation limitation.

EXHIBIT B
SCHEDULE OF FEES

In no event shall the amount billed to City by Contractor for services under this Agreement exceed One Million, Two Hundred Fifty-Seven Thousand, One Hundred Forty-Nine dollars (\$1,257,149), subject to budget appropriations. This amount includes all initial and optional/future software plus additional services such as Payment Processing, Email, SMS and IVR setup, subscription and usage fees as provided in Exhibit B-1, Detailed Fee Schedule. These not-to-exceed numbers are based upon the assumption for volume as outlined in Exhibit B-1, Detailed Fee Schedule. Any changes in volume over and above assumptions in Exhibit B-1 may result in additional Annual Transaction fees, still subject to the maximum not-to-exceed amount.

Maximum Not-To-Exceed Amount for 3 Year Contract Including ALL Modules and Services (Initial + Optional/Future)	
Subscription Fees for 3 Years (\$170,130 Annual)	\$510,390
One Time Implementation Fees + Travel and Expense	\$144,350
Transaction Fees for 3 Years (\$200,803 Annual)	\$602,409
TOTAL	\$1,257,149

Fee Schedule - INITIAL PACKAGE ONLY (Optional Modules Not Included)			
Fee Description	Invoice Timing Description	Invoice Timing Day	Amount
Annual Subscription Fee	Delivery of Customary Project Plan	Day 1	\$132,830
Implementation Fee - 25%	Delivery of Customary Project Plan	Day 1	\$25,625
Travel and Expenses - Month 1 Implementation	As Incurred DURING IMPLEMENTATION	Day 30	\$3,400
Travel and Expenses - Month 2 Implementation	As Incurred DURING IMPLEMENTATION	Day 60	\$3,400
Implementation Fee - 25%	Milestone #2 Completion - 12 Weeks after Contract Signing	Day 84	\$25,625
Travel and Expenses - Month 3 Implementation	As Incurred DURING IMPLEMENTATION	Day 90	\$3,400
Travel and Expenses - Month 4 Implementation	As Incurred DURING IMPLEMENTATION	Day 120	\$3,400
Implementation Fee - 18%	Milestone #3 Completion - 5 Weeks after Milestone 1 Completion	Day 129	\$18,450
Implementation Fee - 17%	Milestone #4 Completion - 2 Weeks after Milestone 2 Completion	Day 143	\$17,425
Implementation Fee - 15%	Milestone #5 Completion - 1 Week after Milestone #4 Completion	Day 150	\$15,375
Travel and Expenses - Month 5 Implementation	As Incurred DURING IMPLEMENTATION	Day 150	\$3,400
TOTAL INITIAL PACKAGE			\$252,330
Transaction Fees - Email, SMS, IVR, Payment Processing	As Incurred POST GO LIVE	End of Each Month	\$16,734

EXHIBIT B-1
DETAILED FEE SCHEDULE

ANNUAL FEES				
Description of Software / Service	Annual Amount	Invoice Timing	Initial Package or Optional Module	Notes
SCM® - Customer Web Portal and Mobile Platform V7.0	\$62,500	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	For 50,000 Meter Accounts, Includes Following Modules: My Account, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
Outage Module with Outage Notifications	\$11,000	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	For 50,000 Meter Accounts, Includes Following Modules: My Account, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
SCM® - Enterprise Web Portal and Platform V2.4	\$17,000	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	For 125 Names Users, Includes Following Modules: My Portfolio, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
SCM® Utility Customer Service Portal (utility-facing admin/customer service portal)	\$0	N/A	Initial Package	For 70 Utility Employee Users - Includes Following Modules: Dashboard, Customer Engagement Analytics, Administration, CSR Workbench
Hosting	\$0	N/A	Initial Package	Hosting for two years worth of data
Maintenance & Support	\$0	N/A	Initial Package	Includes Support and Software Updates
Smart iQ Analytics – Meter Data Analytics Version 1.9	\$20,750	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	For 50,000 Meter Accounts, Includes Following Modules: Customers & Segments, Leakage Analytics, High Usage Analytics, Program Management, Violation Management
SMS Text Notifications	\$3,900	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	Provides for Text Notifications for 50,000 Meter Accounts
IVR Dialer System	\$4,300	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	Provides for IVR Notifications for 50,000 Meter Accounts
Random Shortcode	\$13,200	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	Provides Random Shortcode to Send Out SMS Text Messages (Required by Carriers). Optional Vanity Shortcode Available at \$19,200 Annual
IVR Toll Free Number	\$180	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Initial Package	Provides Toll Free Number for Outbound / Inbound Calls
Smart Mobile Workforce – Service Module VS.1	\$8,500	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Optional Module / Future	For 10 Utility Field Workers, Includes Following Modules: Service
SCM® - Smart Home Module	\$11,000	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Optional Module / Future	For 50,000 Meter Accounts, Allows Utility Customers to Monitor/Maintain Smart Home Devices on Web Portal and Mobile
Web Portal CSR Co browsing / Live Chat (assumes 20 agents)	\$6,000	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Optional Module / Future	\$300 is Annual Amount Per Agent (Equals \$25 Per Month Per Agent)
SCM Language Pack	\$11,800	Due at Contract Signing and Annually Thereafter for Initial 3-Year Term	Optional Module / Future	Provides Additional Language Support on Web Portal and Mobile for One Additional Language (In Addition to English and Spanish) (\$5,900 Each)

Year	Initial	Optional
Sub-Total Year 1	\$132,830	\$37,300
Sub-Total Year 2	\$132,830	\$37,300
Sub-Total Year 3	\$132,830	\$37,300
SUB TOTALS	\$398,490	\$111,900
TOTAL INITIAL PLUS OPTIONAL	\$510,390	

ONE TIME IMPLEMENTATION FEES				
Description of Software / Service	Implementation Fee	Invoice Timing	Initial Package or Optional Module	Notes
SCM® - Customer Web Portal and Mobile Platform V7.0	\$49,500	25% Delivery Customary Project Plan 25% Completion Milestone 2 18% Completion Milestone 3 17% Completion Milestone 4 15% Completion Milestone 5	Initial Package	For 50,000 Meter Accounts, Includes Following Modules: My Account, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
Outage Module with Outage Notifications	\$8,500	25% Delivery Customary Project Plan 25% Completion Milestone 2 18% Completion Milestone 3 17% Completion Milestone 4 15% Completion Milestone 5	Initial Package	For 50,000 Meter Accounts, Includes Following Modules: My Account, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
SCM® - Enterprise Web Portal and Platform V2.4	\$17,500	25% Delivery Customary Project Plan 25% Completion Milestone 2 18% Completion Milestone 3 17% Completion Milestone 4 15% Completion Milestone 5	Initial Package	For 125 Names Users, Includes Following Modules: My Portfolio, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
SCM® Utility Customer Service Portal (utility-facing admin/customer service portal)	\$0	N/A	Initial Package	For 70 Utility Employee Users - Includes Following Modules: Dashboard, Customer Engagement Analytics, Administration, CSR
Hosting	\$0	N/A	Initial Package	Hosting for Two Years Worth of Data
Maintenance & Support	\$0	N/A	Initial Package	Includes Support and Software Updates
Smart iQ Analytics – Meter Data Analytics Version 1.9	\$9,700	25% Delivery Customary Project Plan 25% Completion Milestone 2 18% Completion Milestone 3 17% Completion Milestone 4 15% Completion Milestone 5	Initial Package	For 50,000 Meter Accounts, Includes Following Modules: Customers & Segments, Leakage Analytics, High Usage Analytics, Program Management, Violation Management
SMS Text Notifications	\$9,500	25% Delivery Customary Project Plan 25% Completion Milestone 2 18% Completion Milestone 3 17% Completion Milestone 4 15% Completion Milestone 5	Initial Package	Includes 5 Automated Workflows
IVR Notifications	\$7,800	25% Delivery Customary Project Plan 25% Completion Milestone 2 18% Completion Milestone 3 17% Completion Milestone 4 15% Completion Milestone 5	Initial Package	Includes 5 Automated Workflows
Smart Mobile Workforce – Service Module V5.1	\$8,650	Upon Module Addition	Optional Module / Future	For 10 Utility Field Workers, Includes Following Modules: Service
SCM® - Smart Home Module	\$13,200	Upon Module Addition	Optional Module / Future	For 50,000 Meter Accounts, Allows Utility Customers to Monitor/Maintain Smart Home Devices on Web Portal and Mobile

Milestone	Initial	Optional
Delivery Customary Project Plan	\$25,625.00	\$5,462.50
Milestone 2	\$25,625.00	\$5,462.50
Milestone 3	\$18,450.00	\$3,933.00
Milestone 4	\$17,425.00	\$3,714.50
Milestone 5	\$15,375.00	\$3,277.50
Travel	\$17,000.00	\$3,000.00
SUB TOTALS	\$119,500.00	\$24,850.00
TOTAL INITIAL PLUS OPTIONAL	\$144,350.00	

MONTHLY / ANNUAL TRANSACTION FEES						
Description of Software / Service	Transaction Fee	Estimated Maximum Monthly Fees*	Estimated Maximum Annual Fees*	Invoice Timing	Initial Package or Optional Module	Notes
SMS Text Notifications (IN BOUND) Per Message	\$0.003	\$89	\$1,067	Monthly	Optional Service	*Based on Estimated Max Volume of 37,065 IN BOUND texts per month
SMS Text Notifications (OUT BOUND) Per Message	\$0.008	\$949	\$11,386	Monthly	Optional Service	*Based on Estimated Max Volume of 148,261 OUT BOUND texts per month
IVR Toll Free (IN BOUND) PER MINUTE	\$0.030	\$728	\$8,736	Monthly	Optional Service	* Based on Estimated Max Volume of 6,067 IN BOUND calls per month - Average of 5 minutes per inbound call
IVR Toll Free (OUT BOUND) PER MINUTE	\$0.020	\$388	\$4,659	Monthly	Optional Service	* Based on Estimated Max Volume of 6,067 IN BOUND calls per month - *Average of 1 minute per outbound call
Up to 175,000 Emails Per Month	\$0.000		\$0	Monthly	Optional Service	
Up to 1,000,000 Emails Per Month	\$875.000	\$875	\$10,500	Monthly	Optional Service	*Based on Estimated Max Volume of 570,765 emails per month
Up to 4,000,000 Emails Per Month	\$1,700.00		\$0	Monthly	Optional Service	
Greater Than 4,000,000 Emails Per Month	\$2,400.00		\$0	Monthly	Optional Service	
Debit/Credit Card Processing Fees for Portal, Mobile, Text to Pay, IVR and Agent Assisted	Interchange + 9 Basis Points + \$0.10 per transaction (Visa Mastercard, Discover) Interchange +\$0.05 per Transaction (AmEx)	\$8,586	\$103,026	Monthly	Optional Service	Based on June 2018 Statements. Monthly estimates do not include Interchange fees. Payments made on all the above channels will have the same pricing. All payments will be identified by channel.
Debit/Credit Card Processing Fees for <u>IN-Office Payments</u>	Interchange + 9 Basis Points + \$0.10 per transaction (Visa Mastercard, Discover) Interchange +\$0.05 per Transaction (AmEx)	\$534	\$6,402	Monthly	Optional Service	Based on June 2018 Statements. Monthly estimates do not include Interchange fees. Payments Will Be Made Using the EMV PIN Pad attached to the CSR Computer
Echecks Processing Fees for Portal, Mobile, Text to Pay, IVR and Agent Assisted	\$0.50 Per Transaction up to \$25,000 \$0.50 + 0.15% Per Transaction over \$25,000 Includes One-Tie Payment and Recurring Setup Fee Waived	\$3,575	\$42,900	Monthly	Optional Service	Based on estimates of 6,500 Echecks per month which is typical volume for size of utility similar to City of Santa Clara
24 Hour IVR - English and Spanish	Per Minute Fee Waived Convenience Fee Listed Above	\$1,005	\$12,060	Monthly	Optional Service	Unique Toll Free Number Will be Provided and Configured. Based on June 2018 Statements. Monthly estimates do not include Interchange fees.
Text-and-Pay	Setup Fee Waived Per Minute Fee Waived Convenience Fee Listed Above	\$0	\$0	Monthly	Optional Service	Payments Made Using the Customer Mobile Phone as a Response to a Text From Portal. Payments made using mobile device will be subject to the same fees as web payments.
Agent Assisted Payments and Technology Support for Citizens	9:00 AM to 5:00 PM PST	\$0	\$0	N/A	Optional Service	Provided From Live Call Center in Ohio - Hours 8:00 am - 5:00 pm PST.
Return Check Fee	\$1.00 Per Check	\$1	\$12	Monthly	Optional Service	When ACH is made and then 3 to 5 business days later check is returned for insufficient funds frozen, or does not exist.
Chargeback Fees	\$4.95 Per Chargeback	\$4.50	\$54	Monthly	Optional Service	When payment goes through, then customer disputes the charge.
EMV Terminals	\$299 Per Terminal - First 2 are Free		\$0	Monthly	Optional Service	The Pinpad Accepts All Existing Forms of Electronic Payment, Including Contactless, Magstripe, Chip & PIN, and Mobile/NFC; is Fully EMV and PCI PTS V3 Certified; and Supports the Latest International Security Algorithms

Year	Monthly	Annual
Sub-Total Year 1	\$16,734	\$200,803
Sub-Total Year 2	\$16,734	\$200,803
Sub-Total Year 3	\$16,734	\$200,803
TOTAL	\$16,734	\$602,409

*Totals based on similar per account volume for Email, SMS, IVR

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$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, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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.

F. 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.

G. 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 – Finance Department
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

H. 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

Software as a Service Subscription Agreement (SaaS)

This Software as a Service Subscription Agreement (this "Agreement") is entered into as of _____ (the "Effective Date") by and between Smart Energy Systems, LLC dba Smart Energy Water ("Provider" or "SEW"), and the City of Santa Clara ("Customer").

RECITALS

Provider offers a software application known as Smart Customer Mobile (the "Software" or "SCM[®]SCM[®]") and the parties have agreed that Provider will make the cloud-hosted Software available for and to Customer and Customer's customers. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS. The following capitalized terms shall have the following meanings whenever used in this Agreement.

- 1.1. "Authorized Named User" means an end user of the Customer that has an account registered with Customer and has been given access by Customer to use the Services.
- 1.2. "Customer Data" means a subset of Confidential Information that is comprised of Customer's data obtained, used in, or stored as the result of the use of the Services.
- 1.3. "Documentation" means the Software's standard user manuals and any other accompanying documents related to the Software delivered to Customer during Implementation.
- 1.4. "Implementation" means the process for gathering requirements, configuring, testing, training, and integrating the Software for Customer's use, as set forth in a Statement of Work.
- 1.5. "Initial Term" means 3 (three) years from the date the Software is made available for use, with such a date otherwise defined as "Production Deployment" in an applicable Statement of Work.
- 1.6. "Major Release" means any new version of the Software where the left most version number, or the second to the left most version number, increases by at least one integer increment.
- 1.7. "Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes during the month in which Provider Software, was in the state of "Unavailable." Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any SEW SLA Exclusion (defined herein).
- 1.8. "Maintenance and Support" means Provider's standard maintenance and support plan provided herein as Exhibit F.
- 1.9. "Software" means Provider's SCM[®]SCM[®] software, version 6.9, and shall include only the modules specified in Exhibit A or Change Order thereto.
- 1.10. "Services" means the services provided by Provider to Customer for the integration, implementation and use of the Software, including but not limited to, hosting the Software,

any customization, Maintenance and Support, and Additional Services offered or accessed through the Software and as provided in detail in an applicable Statement of Work.

- 1.11. "Specifications" means Provider's specifications for the Software, as set forth in Exhibit A.
- 1.12. "Data Retention Policy" means Provider's standard data retention policy as set for in Exhibit G.
- 1.13. "Production Deployment" means once the Customer has provided User Acceptance Testing ("UAT") signoff and the Software has been pushed into a production environment.
- 1.14. "Term" means the Initial Term (as defined above) and any applicable renewal term(s).
- 1.15. "Upgrades" is defined in Section 3.1(a) below.

2. SOFTWARE DELIVERY.

- 2.1. Right to Access and Use Software. Provider hereby grants Customer a non-exclusive, non-transferable, non-perpetual, limited right to use and make available the Software to Customer's Authorized Named Users during the Term, subject to Section 2.2 below.
- 2.2. Restrictions on Software Use. This Agreement grants the Customer a limited right to access and use the Software for the number of Authorized Named Users indicated in Exhibit B. The Software is not sold, and Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, Customer receives no rights to the Software other than those specifically granted in Section 2.1 above. Without limiting the generality of the foregoing, Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sub-subscribe the Software; (b) allow third parties to exploit the Software; (c) sub-license the Software, or (d) reverse engineer, decompile, or attempt to derive any of the Software's source code.

3. UPDATES AND SERVICE LEVELS.

- 3.1. Provision of Updates and Maintenance: Provider shall maintain and update the Software as follows during the Term:
 - (a) Provider shall provide standard support and maintenance for the Software in accordance with Exhibit F. Customer Data shall be retained by Provider in accordance with Provider's standard Data Retention Policy pursuant to Exhibit G. Provider will routinely update the Software to address any security updates, bug fixes, or responsiveness matters quarterly or as is required pursuant to Section 3.2 below or otherwise. Provider may update the Software to add any new features or functions, incorporate any improved process changes, and/or implement any performance-enhancing modifications annually, if applicable ("Upgrades"). Pursuant to the payment of the fees set out in Section 4, Customer may elect to upgrade its current version of the Software once per calendar year, so long as Provider has made one or more Major Releases available during said year, and so long as Customer's subscription term is current, fully paid up, and in no way in default. Should Customer exercise this right, upon notice, Provider will first assess the impact any such Upgrade will have on the Customer's specific IT environment, solely considering Customers relevant APIs and any requested customizations. All other potential IT or business process impacts shall not be within the scope of said assessment. Provider will then provide a detailed report to customer identifying any costs, time, and materials necessary to effectuate any such Upgrade in light of those two items, and Customer shall then decide whether to implement the newer Software version. Any terms concerning the one-time charges

or fees associated with such an upgrade shall be set out in a subsequent Statement of Work. Upon completion of any such Software upgrade implementation, "Software" as defined herein shall then incorporate the version of SCM®SCM® to which the Customer has upgraded.

- (b) Should an Upgrade be required, Provider will promptly notify the Customer of any downtime and provide confirmation once functionality is restored pursuant to the terms of Section 3.2 below.
- (c) Each Upgrade will constitute an element of the Software and will be subject to this Agreement's terms regarding Software, including, without limitation, subscription, warranty, and indemnity terms.

3.2. Service Level Availability: Provider will use commercially reasonable efforts to make Software available with a Monthly Uptime Percentage of at least 99.95%, in each case during any monthly billing cycle or calculated as such if billed annually (the "Service Commitment"). The Service Commitment does not apply to any unavailability, suspension or termination of Software, or any other Software performance issues: (i) caused by factors outside of Provider's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Provider; (ii) that result from any actions or inactions of Customer or any third party; (iii) that result from Customer's equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (iv) that result from any maintenance as provided for pursuant to this Agreement; or (vii) arising from Provider's suspension and termination of Customer's right to use Software in accordance with this Agreement (collectively, the "SEW SLA Exclusions").

4. FEES.

4.1. Software Subscription Fees. All software subscription fees and any other applicable fees for the Initial Term of this Agreement, as set out in Exhibit B, shall be due upon the delivery of the Project Plan. If the initial term of this Agreement exceeds one (1) year, then Customer shall be invoiced for the first-year software subscription fees upon signing of this Agreement and annually thereafter upon the anniversary date of Production Deployment for the remaining term until the fees have been paid in full.

- (a) Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full.
- (b) The software subscription fees as provided is only valid for the number of Authorized Named Users as specified in Exhibit B. Should Customer wish to add any additional Authorized Named Users during the Term of this Agreement or acquire additional features and modules, such may be purchased at an additional cost pursuant to the pricing terms provided in Exhibit B and Exhibit B-1. All pricing terms provided in Exhibit B and Exhibit B-1, including but not limited to, pricing for additional Authorized Named User licenses, add on modules, functionalities, and Additional Services, shall expire after one (1) year from the Production Deployment date, as determined in an applicable Statement of Work. Implementation fees for the Software shall also be noted in the Statement of Work.

4.2. Additional Services. The Software is compatible with additional optional services such as SMS text messaging services and IVR dialer services (collectively "Additional Services"). All Additional Services shall be invoiced by Provider to Customer upon the request of such services by Customer at the pricing and rates provided in Exhibit B-1. All invoices shall be subject to and paid according to Section 4.1(a) above.

(a) For SMS text messaging services, the SMS Short Code fee, along with the one-time implementation fee for setting up the service, shall be invoiced upon request of the SMS service by Customer. SMS short code fees shall be invoiced annually, while in-bound and out-bound text message usage fees shall be invoiced monthly for actual amount used.

(b) For IVR services, the toll-free or local phone number fee shall be invoiced annually upon request of the IVR services from Customer and upon activation of same. In-bound and out bound connect fees, call recording, storage, and transcription fees shall be invoiced monthly for actual amount used.

5. Intellectual Property Rights & Feedback.

5.1. Intellectual Property Rights in the Software. Provider retains all right, title, and interest in and to the Documentation and Software, including but not limited to, the Services and any Upgrades, as well as any related methodologies, techniques, processes, and instruction developed by Provider and used in the course of performing the Services (collectively "Provider IP") for Customer under this Agreement and an applicable Statement of Work. Nothing in this Agreement shall be construed to grant Customer any ownership rights, title, or interest in the Provider IP except to the extent of the limited subscription rights specifically set forth in Section 2.1. Customer recognizes that the Software and its components are protected by copyright and other laws. Customer shall not (and shall not allow or cause any third party to) reverse engineer, disassemble, alter, or otherwise translate the Software, Documentation, Services or Upgrades.

5.2. Feedback. Customer hereby grants Provider a perpetual, irrevocable, unrestricted, worldwide license to use any Feedback (as defined below) Customer communicates to Provider during the Term, without compensation or any obligation to report on such use, and without any other restriction. Such rights shall include, without limitation, the right to exploit Feedback in any way and the right to grant sublicenses. Notwithstanding the provisions of Article 6 (*Confidential Information*) below, Feedback will not be considered Customer's Confidential Information. ("Feedback" refers to any suggestion or idea for modifying any of Provider's products or services, including all intellectual property rights therein.)

6. CONFIDENTIAL INFORMATION.

6.1. Confidential Information Defined. "Confidential Information" refers to the following types of material or content one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any information Discloser marks or designates as "Confidential" at the time of disclosure; and (b) any other nonpublic, sensitive information disclosed by Discloser including, but not limited to code, inventions, know-how, business, technical, and financial information, or other information which should reasonably be known by the Recipient to be confidential at the time it is disclosed, due to the nature of the information and the circumstances surrounding such disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after

disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligations.

- 6.2. Nondisclosure. Recipient shall not use Confidential Information for any purpose other than to facilitate this Agreement (the "Purpose"). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Article 6; and (b) shall not disclose Confidential Information to any third party without Discloser's prior written consent. Notwithstanding the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. To that end, Provider acknowledges and agrees that Customer is a California public entity and is therefore subject to the provisions of the California Public Records Act. Customer may determine, in its sole discretion, that certain information, even if marked as confidential, must be disclosed under applicable law. Customer shall not in any way be liable or responsible for the disclosure of Confidential Information in response to a California Public Records Act request. If a request is submitted to Customer seeking information marked confidential then the City shall give Provider notice of the request, to allow the Provider to seek protection from disclosure by a court of competent jurisdiction, at Provider's sole expense. If Provider receives notice of any such legal or governmental demand for Customer's confidential information, then Provider shall provide Customer with prompt notice of the demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 6.3. Injunction. Recipient agrees that breach of this Article 6 would cause Discloser irreparable injury, for which monetary damages would be inadequate, and in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage.
- 6.4. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 6.2 above (*Nondisclosure*) will terminate three (3) years from the expiration of this Agreement. Upon such termination, Recipient shall return all copies (excepting one (1) copy archived for purposes of Recipient's back-up processes) of Confidential Information to Discloser or certify, in writing, the destruction thereof.
- 6.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license or any other right thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.
- 6.6. Indemnification. All confidentiality and non-disclosure requirements contained in this agreement are subject to the Customer's responsibilities under the California Public Records Act. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, Customer may determine, in its sole discretion, that information is not a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," Customer shall provide Provider reasonable notice to allow Provider to seek protection from disclosure by a court of competent jurisdiction, at Provider's sole expense. The Customer shall not in any way be liable to Provider for the disclosure of information if such disclosure, in the

Customer's sole discretion, is required under the California Public Records Act. Provider shall defend, indemnify and hold harmless Customer from and against any all claims, including reasonable attorney's fees, arising from or connected with disclosure of Provider's information in response to a Public Records Act request.

7. DATA PRIVACY & SECURITY.

7.1. Customer Data. Customer Data, which shall also be known and treated by Provider as Confidential Information (collectively "Customer Data"), shall include the following:

(a) Data collected, used, processed, stored, or generated by the Customer as the result of the use of the Software and the Services, including any personal identifiable information ("PII") and any information related to payment processing, such as credit card numbers and ACH account numbers. Customer Data is and shall remain the sole and exclusive property of Customer and all right, title, interest in same is reserved to Customer. For all purposes of this Agreement, Customer shall be responsible for determining the manner in which any type of Customer Data will be collected, stored, and processed and the purpose for processing the information.

7.2. Provider Use of Customer Data. Customer hereby grants Provider a limited right to access, process, collect, store, generate, display, and use Customer Data for the sole purpose of providing the Software and Services to Customer. Provider shall keep and maintain Customer Data in strict confidence and shall not allow any third parties to use, disclose, or access Customer Data without Customer's prior written consent. Notwithstanding the foregoing, Provider may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Provider shall give Customer notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise contest such required disclosure, at customer's expense.

7.3. Data Security. The Parties shall each be responsible for establishing and maintaining its own data privacy and information security policies, including physical, technical, administrative, and organizational safeguards to ensure the security and confidentiality of Customer Data; protect against any anticipated threats or hazards to the security of Customer data, protect against unauthorized disclosure, access to, or use of Customer Data, ensure the proper disposal of Customer Data, and ensure that all employees, agents, and subcontractors, if any, comply with the above.

7.4. Data Breach Notification. The Provider shall inform the Customer of any unauthorized and unlawful acquisition of unencrypted personal data ("Data Breach").

a. Data Breach Response: The Provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing Data Breach with the Customer should be handled on an urgent as-needed basis, as part of Provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

c. Data Breach Reporting Requirements: If Provider has actual knowledge of a confirmed Data Breach that affects the security of any Customer content that is subject to applicable Data Breach notification law, the Provider shall (1) promptly notify the appropriate Customer identified contact within 48 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach.

8. REPRESENTATIONS & WARRANTIES.

8.1. From Provider.

- (a) *Re: Function.* Provider represents and warrants that, during the Term, the Software will perform materially in accordance with its Software Specifications set forth in Exhibit A and pursuant to the service level targets in Section 3.2 above.
- (b) *Re: Intellectual Property Rights in the Software.* Subject to the next sentence, Provider represents and warrants that it owns the Software, and has the power and authority to grant the rights in this Agreement without the further consent of any third party. Provider's representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsections **Error! Reference source not found.**(a) through **Error! Reference source not found.**(e) below. In the event of a breach of the warranty in this Subsection 8.1(b), Provider, at its own expense, will promptly take the following actions: (i) secure for Customer the right to continue using the Software; (ii) replace or modify the Software to make it non-infringing, provided such modification or replacement will not materially degrade any functionality listed in the Specifications; or (iii) refund the prorated SaaS subscription Fee paid for the Software for every month remaining in the Term, following the date after which Customer is required to cease use of the Software. In conjunction with Customer's right to terminate for breach where applicable and the provisions of Section **Error! Reference source not found.** below (*Indemnified Claims*), the preceding sentence states Provider's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Subsection 8.1(b) and for potential or actual infringement by the Software.

8.2. **From Both Parties.** Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required hereunder.

8.3. **Warranty Disclaimers.** Except for the express warranties in Sections 8.1 and 8.2 above, PROVIDER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Provider does not warrant that the Software will perform without error or that it will run without immaterial interruption. Provider provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Software made by anyone other than Provider, unless Provider approves such modification in writing; or (b) use of the Software in combination with any operating system not authorized or specifically forbidden in the Specifications or Documentation or with hardware or software.

9. LIMITATION OF LIABILITY.

9.1. **Liability Cap.** Provider's liability arising out of or related to this Agreement shall in no event exceed the Subscription Fee paid by Customer within the twelve (12) months preceding the claim.

9.2. **Clarifications & Disclaimers.** THE LIABILITIES LIMITED BY THIS ARTICLE 9 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND EVEN IF CUSTOMER'S REMEDIES

FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 9.2, Provider's liability will be limited to the maximum extent permissible by law. For the avoidance of doubt, Provider's liability limits apply to Provider's affiliates, providers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

- 9.3. Exceptions to Limitation of Liability. Section 9.1 (*Liability Cap*) above does not apply to: (a) claims pursuant to Article 6.6 above (*Indemnification*); or (b) claims for attorneys' fees and other litigation costs recoverable by the prevailing party in any action.

10. RENEWALS.

- 10.1. Renewals. This Agreement shall automatically renew at upon the expiration of the Initial Term for one (1) year term intervals, unless terminated by Customer by providing written notice to Provider ninety (90) days prior to the expiration of the renewed term. Any renewal of the Services shall be provided accordingly to Provider's then current standard Maintenance and Support Plan.

11. MISCELLANEOUS.

- 11.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 11.2. Taxes. Fees in Section 4.1 above do not include any applicable taxes. Customer shall be solely responsible in the event any authority imposes a duty, tax, levy, or fee (excluding those based on Provider's net income) directly upon the Customer in relation to this Agreement.
- 11.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, earthquakes, other acts of God or of nature, strikes or labor disputes, embargoes, or other causes beyond the performing party's reasonable control.
- 11.4. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's written consent. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 11.5. Severability. To the extent permitted by law, the parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach hereof will constitute a waiver of any other breach of this Agreement.
- 11.7. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 11.8. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will

constitute a single instrument.

11.9. Amendment. This Agreement may only be amended in writing by authorized representatives of each party.

12. Acceptance and Authorization

Accepted by: City of Santa Clara	Accepted by: Smart Energy Systems, LLC dba Smart Energy Water
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT E
SEW SECURITY EXHIBIT

SEW will provide hosting at a SSAE-16 Tier III or higher facility as defined by the Uptime Institute, Inc. Per the hosting datacenter's disclosure policies, SEW will provide, where allowable, a copy of the datacenter's annual SSAE-16 Type 2 audit report. SEW will provide a backup hosting site with equivalent status for disaster recovery should a major catastrophic outage occur.

The hosting facility will be constructed and configured to ensure reasonable and adequate protection of the equipment in the event of a natural event considered possible for the physical location, including but not limited to earthquake, flood, hurricane, tornado, etc.

Data Location:

The service provider shall provide its services to the Customer and its end users solely from data centers in the U.S. Storage of Customer data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store Customer data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access Customer data remotely only as required to provide technical support. The service provider may provide technical user support on a 24/7 basis using a Follow-the-Sun model, unless otherwise prohibited in the SLC listed in this Exhibit F.

The hosting facility must have power sufficient to support the equipment platform as configured; this includes provisions for back-up power supplies. The facility will include:

- Dual power availability to each rack unit from independent Power Distribution Units (PDUs) removes PDU loss as a single point of failure
- N+1 redundancy of uninterruptible power supplies
- Redundant fuel-based generator power supplies, in the event of a power failure from commercial power

The hosting facility will have reasonable and adequate heating and cooling to insure continuous operation of equipment within acceptable operational limits. The hosting facility shall include but not be limited to the following features:

- N+1 redundancy of cooling towers, water pumps and chillers
- Multiple air handling units providing an additional level of redundancy
- Cooling units maintain consistent environment temperature and relative humidity levels
- Rack cabinet fans to circulate warm air generated by the servers

The hosting facility will have physical security to control unauthorized access to the

equipment, including but not limited to:

- 24/7 on-site security guard
- Indoor and outdoor security monitoring
- Badge/picture ID access screening
- Biometric access screening
- Escort requirements for access to raised floor areas
- Logged entries for all users entering or leaving the premises

The hosting facility will have data line capacity to ensure responsive access to the proposed data system by SEW employees, jurisdictions and customers.

SEW shall provide the equipment, hardware and network infrastructure necessary to operate and sustain all contracted software on behalf of customer and to provide the necessary development, test, production, and training environments.

The hosting facility will provide secure encrypted transmission of personal data to include, but not limited to, personal name and address, SSN, credit card, banking, and payment data, passwords, and any other data subject to Federal or California State data privacy protection laws, and provide protection that meets or exceeds any such statutory requirements. Secure Socket Layer (SSL) encryption will be utilized to meet this requirement.

SEW will be responsible for the data communication infrastructure that connects the data servers to the communication network (switches, etc.)

SEW will maintain any service agreements for the equipment and operating systems, and maintain the equipment in optimal working order.

SEW shall provide a PCI compliant infrastructure for deployment within the data center. SEW's applications have been developed to comply with all 12 requirements of PCI Data Security Standard, including:

- The use of a firewall within the proposed infrastructure to protect cardholder data
- The use of strong passwords and password policies to ensure password protection and delineates and enforces role-based security to ensure that only authorized users and administrators can access sensitive data
- The use of secured sessions to prevent any unauthorized access to sensitive cardholder data
- The use of encryption per PCI and PABP standards whenever cardholder data is transmitted across open, public networks
- Adherence to all applicable industry standards for the development of secure systems and the SEW applications that operate within these systems
- The assignment of unique User IDs and Passwords for each user granted access to the system
- The provision of full audit trail tracking to track and monitor all access to network

resources and cardholder data

SEW will provide operational services to support the infrastructure and operating environment.

SEW shall provide the equipment, hardware and network infrastructure necessary to operate and sustain all contracted software and to provide the necessary, production, support and staging environments.

SEW shall ensure there are no covert channels to access the system and must take precautions to protect the system and data from Trojan invasion.

SEW contracts for warranty services. In the event that warranty services are required, SEW shall provide staff support sufficient to complete all necessary service and maintenance to the hardware and software platform for the duration of a Vendor-site support agreement.

SEW shall perform daily backups of the data. The images that constitute the functional system will have snapshots taken weekly and stored to the fully redundant storage system. SEW's backup strategies and fully redundant Data Recovery (DR) site ensure that a complete system rebuild of data will not be necessary. SEW will use commercially reasonable efforts to replicate all relevant agency data "in near real-time" to a geographically separate location where we have the ability to stand up the SEW application stack and restore service.

Within thirty (30) calendar days following the end of its final Subscribed Services term ("End of Term"), SEW shall provide a complete copy of Customer's data and associated documents, as updated or modified by Customer's use of the Subscribed Services, in a database dump file format. SEW will comply in a timely manner with such request, provided that Customer pays any and all unpaid amounts due to SEW.

The SEW system implementation shall provide functional equivalents of the following environments; hardware and software requirements must include provisions to support these environments:

- Support – An environment available to customers to develop and test new configurations or changes to existing configurations prior to implementation in production.
- Staging – An environment available to customers to test new SEW Automation application releases against their production configuration. New application code will be deployed to the Staging environment within one week of becoming Generally Available (GA) from Engineering. New application code will be deployed to the Support and Production environments one month after being deployed to Staging for Major releases and two weeks for Minor releases (Service Packs).
- Production – The environment used by customers, jurisdiction staff, central

administrative staff, and analysts/programmers to submit, track and manage live transactions and associated data.

The Customer shall have the ability to import or export data in piecemeal at its discretion without interference from the service provider. SEW will provide the customer with a full database export on a quarterly basis at the request of Customer. The customer has the option to request a more frequent export if desired, but will not exceed one per calendar week.

SEW will respond to requests for production or support/staging environment report posting within 72 hours of the request. Reports will be reviewed for system performance and data integrity before posting. If issues are found, they will be documented and communicated back to the customer for correction. In the event that a report request is urgent, SEW will expedite this process to an extent that is reasonable for the request.

To provide the Hosting Services, SEW shall provide, host, manage and maintain the System as follows:

A. Management, Support and Maintenance of Hardware

1. SEW will provide, manage and maintain operating systems on all System environment hardware. This will involve application of any necessary patches or updates and upgrades as necessary. SEW will provide system redundancy.
2. SEW will provide, manage and maintain, for the System, the physical or virtual resources. This will involve any physical fix as needed, updates or refreshes as necessary.

B. Capacity Planning and Monitoring

SEW will be responsible for monitoring capacity and performing capacity planning to ensure the System environment has sufficient capacity to meet the service level agreements agreed upon in this Agreement.

C. Asset Management

Asset Management services provide inventory and tracking of equipment and the management of vendor-provided maintenance agreements.

SEW will perform the following tasks:

1. Manage third party vendor contracts for equipment used in support of this Agreement (rental agreements, leases, service agreements, warranties, amendments, maintenance contracts, and insurance policies)

2. Provide hardware and software at the appropriate hardware and software levels to comply with vendor maintenance contracts.
3. Provide an asset tracking tool to maintain a database of asset information such as make, model, operating system, number of CPUs, amount of memory, and amount of storage.

D. Facilities Services

SEW will provide a PCI-DSS compliant facility.

E. Monitoring Server and OS

1. Monitoring Server and OS service detects and responds to up/down availability faults generated by monitored servers.
2. SEW will perform the following:
 - Provide the operational support processes required for up/down monitoring
 - Document and track all detected problems using the site problem management process
 - Escalate all detected problems to the appropriate support personnel

F. Operations Management

1. Operations Management are those activities requiring physical hands-on support. SEW shall provide skilled staff to support all operational support services at an SEW data center facility.
2. SEW will perform the following:
 - Perform systems operation functions such as power on/off and start/stop/reset device intervention
 - Monitor vendors on the SEW premise performing work maintenance or problem resolution work
 - Maintain responsibility for procuring any expendable supplies (CDs, tapes, cleaning supplies, and so forth)

G. Operating System Management

1. SEW shall provide proper functionality of hosting software on servers. Support is provided for operating systems and related software products. Included are all ongoing processes to maintain supplier-supported operating platforms including preventive software maintenance services.
2. SEW will perform the following:

- Install and maintain system-level software, such as operating system and other system-level products software requiring user access
- Monitor system software status and take necessary action to resolve any issues
- Perform operation system software tuning as required to maintain daily operations for SEW-provided services
- Install preventive maintenance patches deemed critical by the vendor to support system software products to prevent known problems from impacting the operating environment within 30 days of release.
- Install patches per vendor instructions for security exposures deemed critical by the vendor within 30 days of release.
- Participate in the identification of connectivity and associated network problems
- Plan and implement necessary changes for the System
- Document and track all configuration management changes using the site change management process
- Provide problem escalation and interact as necessary with third-party suppliers

H. System/File Backup and Restore

1. System/File Backup and Restore Services provide the operational and management processes to backup and restore operating system.
2. SEW will perform the following:
 - Design and implement the backup Plan
 - Perform backups
 - Provide for data restores as needed if Agency causes the need for a data restoration, Agency will be responsible for the cost of the data restore at the hourly service at the rate of \$125 per hour. Standard blended rate is \$150, per hour for all other professional service related activities.
 - Monitor backup processes and verification of successful completion
 - Adjust backup and restore plans as new components are added to the System

I. Server Storage Management

1. Server Storage Management provides for the support of server direct-attached storage environment.
2. SEW will perform to following:
 - Integrate the storage hardware and software to provide the appropriate level of capacity, scalability, and performance of the server storage hardware and software
 - Manage hardware and software maintenance requirements based on

- the manufacturer's recommended schedule
- Implement security practices, such as logical unit masking, preventing unauthorized storage access from an unauthorized server
- Maintain proper storage configuration(s) (mapping logical volumes, creating file systems, balancing I/O capacity)

J. Server Management Services

SEW will provide server management services.

K. Hardware Management

SEW will provide Hardware Management. Hardware management provides the services necessary to enable compute equipment to be physically installed, maintained, and kept operational.

L. Controlled Server Access

SEW will provide Controlled Server Access. Controlled server access provides the tools and processes to manage access to assets. This includes the management of user logon IDs and their access rights to system-level resources, as well as maintaining server-level security parameters and security product options.

M. Virus Protection

SEW will provide Virus Protection services. Server level anti-virus service provides anti-virus software on each server to provide protection and detection of viruses, worms, and other malicious code. The anti-virus software can be updated with current virus signatures and detection engines automatically or by file distribution software. This service also provides the means to scan the server at the system level to detect malicious code.

N. Security Event Logging

SEW will provide Security Event Logging. Security Event Logging is a detective control that enables the recording of security events on system hosts based on preset parameters. The administrative tool's logging function is enabled and the security events are retained in a record for future review.

O. Vulnerability Scan and Report

SEW will provide Vulnerability management. Vulnerability management includes preventive and detective services to identify vulnerabilities as they emerge; to prevent those vulnerabilities from affecting the in-scope systems; to detect when an in-scope system has been affected; and to cure those affected systems.

Vulnerability management includes both Vulnerability Alert management and Vulnerability Scanning processes.

Vulnerability Alert management is the preventive process that collects known vulnerabilities and prioritizes vulnerabilities based on associated risk. Vulnerability Scanning is the detective process of identifying potential vulnerabilities on servers for exposures to such vulnerabilities.

P. Managed Cluster

SEW will provide Managed Cluster Management. Managed Cluster Management provides processes to deliver server/storage configurations clustered together in the same physical site. This is delivered through the use of hardware configuration and software to meet availability requirements.

Q. Host Based Intrusion Detection

SEW will provide Host Based Intrusion Detection. Host Based Intrusion Detection is the real-time identification, detection, and notification of suspected unauthorized intrusions on individual servers.

R. Secondary Mirrored Site Management

SEW will provide mirrored secondary site allows for replication of the primary site in the event of a natural disaster rendering the primary data center inoperable. SEW will provide skilled staff to support all operational support services. These services include support processes necessary to provide a secondary mirrored site.

S. Data Recovery

SEW will provide multiple ways to recover data:

Suspected error conditions will be investigated and corrected by SEW personnel at SEW'S offices to the extent possible. Onsite corrections shall be at the exclusive judgement of SEW at no additional cost to the User. User may, however, request that SEW conduct such investigations and travel to the location of the User at the User's request; User will pay SEW for reasonable travel and subsistence expenses. If SEW, in its reasonable judgment, determines that the suspected error condition was attributable to a cause other than an error in SEW'S Subscribed Service or an enhancement by SEW, the User will pay for SEW'S efforts on a time and materials basis.

SEW may provide the User with unsolicited error corrections or changes to the Subscribed Service, without additional charge, which SEW

determines are necessary for proper operation of its Subscribed Service, and User shall incorporate these corrections or changes into the Subscribed Service within 180 days of release by SEW. SEW will provide all documentation changes necessary as a result of changes to the software.

SEW will provide User all enhancements released by SEW as standard enhancements, and which are generally made available to other users purchasing comparable Subscribed Service during the term of this Agreement.

EXHIBIT F
SEW Standard Support Plan

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1. Standard Production Support Plan

This standard plan covers the engagement model, roles and responsibilities, and service level expectations for the production support of Smart Energy Water (SEW) products for the utility ("Client").

2. Support Plan Overview

- Production support begins at the end of the **30-day stabilization period** following solution deployment by SEW, and will continue for a period of 12 months, until the next annual renewal period.
 - SEW provides support to Client's designated business or information technology points of contact, who are in turn responsible for supporting the utility end customers.
 - Incident reporting is available 24 hours a day, 7 days a week, and 365 days a year for severity escalations beyond Severity 0. To report an incident, visit help.smartenergywater.com, email support@smartenergywater.com, or call 1-877-400-7077.
 - Client support is provided **during SEW business hours, which are 6:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday** (excluding holidays), for Severity 1 - 4 incidents.
 - Upon receipt of a support request, SEW will assess Client's designated Incident Priority Level according to the definitions stated in Section 4 and will confirm with Client's designated point of contact.
 - SEW will respond to the request according to its Incident Priority Level in the Service Level Agreement (SLA) defined in Section 4. An initial response will indicate whether the issue has been replicated and confirmed, and a response of next step(s) will be provided to Client's designated point of contact. An incident resolution will indicate that the issue has been addressed and resolved, pending confirmation from Client's designated point of contact. If for any reason Client is not satisfied with the resolution, Client may request the issue to be re-opened.
 - An assigned SEW client success manager will function as Client's single point of contact for all SEW support services under the plan.
 - After the initial Incident Priority Level assignment and confirmation, the issue will be addressed internally by SEW according to the process stated herein. An incident response will be entered into the SEW support portal and will be available to Client following incident resolution.
-

3. Incident and Problem Management, and Service Levels

Levels 1 and 2 Support. Client shall be responsible for Levels 1 and 2 Support requirements.

Level 1 Support (Level 1) is defined as first-line support, including first level of utility contact such as a utility customer service representative or utility field office representative. Level 1 requests may include basic application navigation, functionality explanation, user and password management, and preliminary troubleshooting and issue analysis.

Level 2 Support (Level 2) is defined as second-line support for items which are escalated from Level 1. Level 2 support may be provided by Client staff, such as an application subject matter expert, system administrator, or technical support teams. Level 2 is responsible for assisting

Level 1 with technical issues, including preliminary technical troubleshooting, locked IP address resets, and other elevated administrative functions.

The following are Client responsibilities for Level 1 and Level 2:

- (a) provide training to Level 1 and Level 2 service desk personnel before new application or functionality related to SEW products is installed into production; and
- (b) follow proper escalation procedures from Level 1 to Level 2 and Level 2 to Level 3. Level 1 shall at no time contact Level 3 directly.

SEW shall be responsible for:

- (a) maintaining processes and/or authorized user documentation for SEW products to be able to resolve most Level 1 and Level 2 issues without requiring a transfer to specialized application support.
- (b) Level 3 support, when engaged through the proper channels (only by Level 2 personnel). See section below.

Level 3 Support. SEW will support Level 3 Support requirements. Specifically, SEW will:

- (a) provide Level 3 Support for SEW products including, advanced technical and system administration responsibilities which may require application log, database access, or other code-related troubleshooting;
- (b) provide clearly defined points of contact, available as per the Software-as-a-Service (SaaS) or End User License (EULA) Agreement to receive and appropriately respond to notice of incidents from Level 2 personnel;
- (c) provide the Service Desks with specialized applications support and/or "on call" personnel who are responsible for Level 3 support and can be contacted via channels stated in Section 10 herein;
- (d) advise Level 2 personnel and other authorized users of the estimated time required to resolve the incident after being notified and the incident being diagnosed for root cause, with such resolution time being consistent with Client's SLA for service restoration;
- (e) provide status updates to Level 2 personnel and other authorized users during incident resolution; and,
- (f) provide support, advice, and assistance to Level 2 personnel in a manner consistent with Client's practices for the applications prior to the Commencement Date and non-programming activities in direct support of authorized users.

4. Incident Prioritization and Response SLAs

The level of priority and response time will be determined based off the following incident classifications:

Incident Priority Level	Description	Initial Response Time
Severity 4 (Critical)	Catastrophic failure – all work has halted or a work stoppage is imminent. The application system is unavailable or unusable.	1 business hour
Severity 3 (High)	Application inoperable or data corrupted – an application in the system is not working or has limited capability and the problem significantly impacts Client. Or, data is corrupted and work must be stopped to avoid further corruption or loss of data.	4 business hours
Severity 2	Feature not working as documented – application issue that can	1 business

Incident Priority Level	Description	Initial Response Time
(Standard)	impact the user that does not stop the user from performing daily business for which there is a reasonable workaround.	day
Severity 1 (Low)	Informational question or cosmetic issue – problem or question with day-to-day operational issues, cosmetic problem with user interface, error in documentation.	3 business days
Severity 0 (Trivial)	Password resets, how to download, feature explanation, etc.	N/A

Incident Priority Definition

*Should an incident qualify for more than one priority level, (e.g. a cosmetic issue that could have regulatory implications), the incident shall be classified into the strictest applicable category.

5. Incident Reporting

To report an incident, visit help.smartenergywater.com, email support@smartenergywater.com, or call 1-877-400-7077. Before reporting an incident to SEW/ Level 3 Support for any severity, the Client's Level 2 personnel must collect as much of the following information possible:

- Product and specific module (e.g. SCM > Billing Info)
- Reproducibility (is this issue reoccurring?)
- Severity (high, low, normal)
- Due date/time (see chart above)
- Platform and/or device type (e.g. iPad Air)
- OS and OS version (can be found in device settings)
- Description
- Steps to reproduce (what steps through the application did the user take to encounter this issue?)
- Screenshots (please collect screenshots of the error, if available)

6. SEW System Maintenance

The primary point of contact for the ongoing maintenance and support of the application is your client success manager. System maintenance is an undesired but necessary function of any IT system. SEW may, at its discretion, schedule a system maintenance window, during which time normal production services may not be available. Planned system maintenance windows are mutually agreed upon with Client at the start of a project implementation. Whenever possible, SEW will attempt to schedule planned system maintenance windows to coincide with Client's own IT system maintenance windows and between the hours of **6:00 a.m. to 5:00 p.m. Pacific Time**.

There may be some instances where updates may be required immediately or within a very short timeframe to maintain the security or functionality of SEW applications and services. In such cases, SEW will notify Client's designated point of contact of an unplanned system maintenance requirement and will work with Client to roll out the necessary changes during the earliest, mutually favorable time. SEW will promptly notify Client's designated point of contact of

any downtime and provide confirmation once full functionality is restored.

Utility end customers attempting to reach the portal URL or log into the mobile application during a planned or unplanned system maintenance window will receive a message substantially similar to:

“Our site is currently unavailable while we perform maintenance and system upgrades. We apologize for any inconvenience caused and appreciate your patience. Please try again at a later time.”

7. SEW Enhancement Pack

After integration, an enhancement pack consists of modifications and/or other noteworthy improvements to existing product modules. Examples of enhancement packs include: adding a new feature or function to the existing solution, implementing business policy and/or process changes, and improving operational performance.

8. SEW Device and OS Support

SEW WILL NOT be required to support its applications in the following circumstances:

- On operating systems that are no longer supported and/or regularly updated by their authors
- On hardware that is no longer supported by its manufacture

Maintenance for unsupported operating systems and/or hardware may be available to Client at an additional charge.

9. Third Party Vendor Support and Troubleshooting Services

If SEW or Client identifies or reports an incident that reasonably necessitates third party-vendor intervention, SEW is eligible to invoice Client if additional troubleshooting support is requested and approved.

Example: Third party vendor’s hardware is not properly configured to run SEW applications and ensuring operability requires technical support recourses from the third party. SEW may interface directly with third party at Client’s direction if Client does not wish to manage the issue themselves.

10. SEW Support Contact Information

Severity	SEW Representative	Email
1	SEW Client Product Support Call Center	support@smartenergywater.com
2	Nu Pho	nu.pho@smartenergywater.com
3	Kevin Hwang	kevin.hwang@smartenergywater.com
4	Aman Singha	aman.singha@smartenergywater.com

Contact Information

11. Service Credits

DEFINITIONS

“Monthly Uptime Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which the Service was Unavailable. Measurement of the Monthly Uptime Percentage excludes downtime resulting directly or indirectly from any SLA Exclusion.

“Service Level Credit” is a dollar credit, calculated as set forth below, that SEW may credit back to an eligible Customer account. Service Level Credits are calculated as a percentage of the total charges paid by Customer (excluding one-time payments such as upfront payments) for the Service affected for the monthly billing cycle in which the Service was Unavailable.

“Unavailable” means, as applicable: (i) Customer is repeatedly unable to log into the Service and the issue is not resolved within the resolution times provided by SEW; (ii) Customer experiences repeated connection request failures; (iii) Customer experiences complete lack of connectivity of external, public instances or sites lasting for more than five (5) minutes such that the Service is totally non-responsive and has no functionality, and SEW fails to restore the connectivity; (iv) Customer is unable to connect and sync mobile applications within the Service to SEW servers; and/or (v) Customer is unable to download or sync data from mobile applications within the Service to SEW servers. The foregoing events must be verifiable or replicable by SEW or its designee, and shall only count as an “unavailability” event if SEW fails to cure the incident within the Incident Prioritization and Response Time SLA provided above. Availability of SEW APIs, as separate from Service access, is expressly excluded from this SLA.

SERVICE COMMITMENT

SEW will use commercially reasonable efforts to make the Service available with a Monthly Uptime Percentage of at least 99.95%, in each calendar month of the Subscription Period (the “Commitment”). In the event the Service does not meet this Commitment, Customer will be eligible to receive a Service Level Credit as described below.

SCHEDULED & EMERGENCY MAINTENANCE

SEW will maintain certain scheduled maintenance windows during which regular, planned maintenance of the Service may be performed. SEW will use commercially reasonable efforts to provide Customer with no less than twenty-four (24) hours’ notice prior to Services unavailability due to planned maintenance. SEW’s standard maintenance window will generally fall between the hours of 9:00 PM [21:00] Thursday and 1:00 AM [1:00] Friday local time.

SEW will meet measurable standards for expected and reasonable system availability (up-time) as established under the Service Commitment above. The system must generally be available seven days a week, twenty-four hours per day. Scheduled down time is acceptable. Unplanned down time between 6:00 am and 8:00 pm Pacific time must be to resolve production emergencies only, limited to no more than One Hundred and Twenty (120) minutes and occur no more than one time per month. In no event will any proposed standard be less than a commercially reasonable standard.

SEW will endeavor to provide as much notice as is practicable under the circumstances for patches, updates, fixes and other emergency maintenance activities which may be applied on an urgent basis.

SEW will provide three (3) business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature.

SERVICE CREDITS

System availability is measured by the following formula:

$$x = (n - y) * 100 / n$$

Notes: (1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar month minus scheduled downtime; and "y" is the total number of downtime hours in the given calendar month. (2) Specifically excluded from "n" and "y" in this calculation are the exception times on scheduled upgrade and maintenance windows.

Tier	Service Availability	Percentage of Monthly Fees Credited
1	> 99.95% - < 99.5%	2%
2	99.5% - < 99.0%	5%
3	99.0% - < 95.0%	10%
4	95.0% - < 90.0%	15%

SEW will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from SEW. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by SEW to provide the Service is the receipt of a Service Level Credit (if eligible) in accordance with the terms of this SLA.

To receive a Service Level Credit, Customer must submit a claim to SEW. To be eligible, the credit request claim must be received by the SEW within thirty (30) days after which the incident occurred and must include:

1. the words "SLA Credit Request" in the subject line;
2. the dates and times of each Unavailability incident that Customer is claiming; and
3. Customer logs that document the errors and corroborate Customer's claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by SEW and is less than the Service Level Commitment, then SEW will issue the Service Level Credit to Customer within thirty (30) days following the month in which Customer's request is confirmed by SEW. Customer's failure to provide the request and other information as required above within the allocated timeframe will disqualify Customer from receiving a Service Level Credit.

SLA EXCLUSIONS

The Service Level Commitment does not apply to any unavailability, suspension or termination of the Service or any Service performance issues: (i) caused by factors outside of SEW's

reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (ii) that result from customizations (if outside of SEW's best practice recommendation(s), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User or any actions or inactions of Customer and any third parties ; (iii) that result from Customer's or any End User's or third party's equipment, software or other technology or integrations (other than third party equipment within SEW's direct control); (iv) that result from any maintenance as provided for pursuant to the above terms; or (vii) arising from our suspension or termination of Customer's right to use the Service in accordance with the Agreement (collectively, the "SLA Exclusions"). If availability is impacted by factors other than those used in the Monthly Uptime Percentage calculation, SEW may issue a Service Level Credit with consideration to pertinent factors as assessed by SEW in its sole discretion.

EXHIBIT G
SEW Data Retention Policy

Data Type		Duration
Usage	Monthly read	24 months
	Daily read	12 months
	Hourly read	6 months
	15 minute read	3 months
Billing data/Summary		24 months
User behavior		12 months
Notifications	Text Message, IVR, Email logs	6 months
Audit logs		6 months
Bill PDF Storage	* Add-on feature	12 months
Outage		12 months

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
SMART ENERGY SYSTEMS, INC.**

PREAMBLE

This agreement (“Amendment No. 1”) is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City), and Smart Energy Systems, Inc., a Delaware corporation (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. The Parties previously entered into an agreement entitled “Agreement for Services between the City of Santa Clara, California and Smart Energy Systems, LLC, dated December 22, 2018 (Agreement); and
- B. The Parties entered into the Agreement for the purpose of having Contractor provide a cloud-hosted Customer Self-Service Portal, and the Parties now wish to amend the Agreement to (a) assign the agreement to Smart Energy Systems, Inc., (b) extend the term of the Agreement through December 31, 2024 for a revised not-to-exceed amount of \$1,653,343, and (c) add one-year options to extend the agreement as may be required, subject to the appropriation of funds.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

- 1. All references to “Smart Energy Systems, LLC dba Smart Energy Water” in this Agreement shall be replaced with “Smart Energy Systems, Inc.” All rights and obligations of the City and of the Contractor under this Agreement are unaffected by this assignment.
- 2. Section 2 of the Agreement, entitled “Term of Agreement”, is amended to read as follows:
 - A. **Term.** 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 commence on December 11, 2018 and terminate on December 31, 2024 (Initial Term), inclusive, subject to the provisions of Section 7 (Termination).

- B. **Options to Extend.** After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for additional one-year terms (“Option Periods”) based on the same terms and conditions, subject to compensation adjustments as set forth in First Revised Exhibit B and appropriation of funds.
3. Section 6 of the Agreement, entitled “Compensation and Payment”, is amended to read as follows:

In consideration for Contractor’s complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with First Revised Exhibit B, entitled “SCHEDULE OF FEES.” The maximum compensation of this Agreement is set forth in First Revised Exhibit B, which is subject to budget appropriations and includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor’s expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance without a valid amendment.

4. Section I (Project Duration and Timeline) of Exhibit A, entitled “Scope of Subscribed Services”, is hereby amended by deleting the column “Payment Due” in the table.
5. Exhibit B of the Agreement, entitled “Schedule of Fees”, is hereby amended to read as shown in First Revised Exhibit B, attached and incorporated into this Amendment No. 1.
6. Exhibit B-1 of the Agreement, entitled “Detailed Fee Schedule”, is hereby amended to read as shown in First Revised Exhibit B-1, attached and incorporated into this Amendment No. 1.
7. Exhibit D of the Agreement, entitled “Software as a Service Subscription Agreement”, is amended as follows:
- a. Section 1.5 is amended to read as follows: “Initial Term” shall have the same meaning as set forth in Section 2 of the Agreement.
 - b. Section 1.9 is amended to read as follows: “Software” means Provider’s SCM software and shall include only the modules specified in Exhibit A or Change Order thereto.
 - c. Section 10 (Renewals) is hereby deleted in its entirety.
8. 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.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SMART ENERGY SYSTEMS, INC.
a Delaware corporation

Dated: October 07, 2021

By (Signature): 

Name: Harman Sandhu

Title: President

Principal Place of Business Address: 15495 Sand Canyon Ave., Suite 100
Irvine, CA 92618

Email Address: harman.sandhu@sew.ai

Telephone: (909) 217-3344

Fax: (909) 614-7125

"CONTRACTOR"

**FIRST REVISED EXHIBIT B
SCHEDULE OF FEES**

1. TOTAL MAXIMUM COMPENSATION

The maximum amount payable for all products and services provided under this Agreement shall not exceed **One Million Six Hundred Fifty-Three Thousand Three Hundred Forty-Three Dollars (\$1,653,343)** during the Initial Term, subject to the appropriation of funds. Any additional products or services requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. SYSTEM INSTALLATION AND DATA INTEGRATION SERVICES

Contractor shall provide system installation and data integration services as outlined in Sections G – M of Exhibit A (Scope of Subscribed Services) for a fixed fee of \$124,350. Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms as detailed in Table B1, following acceptance of designated milestones. All payments are based upon City’s acceptance of Contractor’s performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the milestone for which payment is due.

Table B1: System Installation and Data Integration Fee Breakdown/Payment Schedule

System Installation and Data Integration Services	Amount
Fee Breakdown	
SCM® - Customer Web Portal and Mobile Platform V7.0	\$49,500
Outage Module with Outage Notifications	\$8,500
SCM® - Enterprise Web Portal and Platform V2.4	\$17,500
SCM® Utility Customer Service Portal (utility-facing admin/customer service portal)	\$0
Hosting	\$0
Maintenance & Support	\$0
Smart iQ Analytics – Meter Data Analytics Version 1.9	\$9,700
SMS Text Notifications	\$9,500
IVR Notifications	\$7,800
Smart Mobile Workforce – Service Module V5.1 (optional)	\$8,650
SCM® - Smart Home Module (optional)	\$13,200
Total	\$124,350
Payment Schedule	
Milestone No. 1 (25%)	\$31,087.50
Milestone No. 2 (25%)	\$31,087.50
Milestone No. 3 (15%)	\$18,652.50
Milestone No. 4 (15%)	\$18,652.50
Milestone No. 5 (10%)	\$12,435.00
Milestone No. 6 (10%)	\$12,435.00
Total Payments	\$124,350.00
The additional amount of \$17,000 for travel expenses will be billed as expenses are incurred.	

3. ANNUAL SOFTWARE SUBSCRIPTION SERVICES

- 3.1. The amounts in Table B2 are based upon fees as outlined in First Revised Exhibit B-1, Detailed Fee Schedule. Any changes in volume over and above the amounts listed under the Notes column may result in additional fees and require revisions to the Total Maximum Compensation.

Table B2: Annual Software Subscription Fee	
Description	Amount
Year 1 Software Subscription	\$132,830
Year 1 Credit (Applied in Year 2)	-\$57,117
Year 2 Software Subscription (End of UAT +12 months)	\$228,760
Year 3 Software Subscription (Anniversary of end of UAT date)	\$228,760
Year 4 Software Subscription (second Anniversary of end of UAT date)	\$228,760
Total	\$761,993

- 3.2. City shall be invoiced for the first-year software subscription fees upon signing of the Agreement and annually thereafter upon the anniversary date of Production Deployment.
- 3.3. City and Contractor shall assess the number of meter accounts prior to each annual invoice. Contractor shall base the upcoming invoice on the number of meter accounts assessed. If the number of meter accounts exceeds 20% of the previous year, Contractor may prorate any amounts due. Contractor must provide a detailed reconciliation report to the City for any prorations.
- 3.4. City shall prepay a year in advance for the Software Subscription Services provided under this Agreement. In the event of early termination of the Agreement, Contractor shall refund the City on a pro-rated basis any fees paid in advance that have not been expended as of the date of termination.

4. TRANSACTION-BASED FEES

- 4.1. Any changes in volume over and above the assumptions may result in additional fees and require revisions to the Total Maximum Compensation.

Table B3: Transaction-Based Fees	
Description	Amount
Year 1	/////
Year 2 (End of UAT +12 months)	\$250,000
Year 3 (Anniversary of end of UAT date)	\$250,000
Year 4 (second Anniversary of end of UAT date)	\$250,000
Total	\$750,000

- 4.2. Contractor will invoice the City on a monthly basis in arrears or annually, as set forth in First Revised Exhibit B-1.

5. RENEWAL PERIOD COMPENSATION

- 5.1.** Pursuant to Section 2.B of the Agreement, the City reserves the right to extend the term of this Agreement after the Initial Term for additional one-year terms (“Option Periods”).
- 5.2.** After the Initial Term, increases in the rates shall be capped at the lesser amount of 3% or the Consumer Price Index, unless otherwise approved by the City. The unit prices listed in First Revised Exhibit B-1 serve as the baseline for the recurring fees to be charged during any Option Periods.

6. ADDITIONAL SERVICES AND SOFTWARE PRODUCTS

- 6.1.** The City may, from time to time, request in writing that Contractor perform a service or provide additional software products to ensure the system continues to meet the City’s requirements. Upon Contractor’s receipt of City’s request, Contractor shall promptly provide City with a written quote. Upon City’s written approval of the quote, Contractor shall perform such services or provide the additional software product.
- 6.2.** Notwithstanding the foregoing, Contractor shall not perform any additional services and/or provide additional products requested by the City that would exceed the Total Maximum Compensation.

**FIRST REVISED EXHIBIT B-1
DETAILED FEE SCHEDULE**

This Exhibit provides the fee rates that Contractor may charge the City for services and products with regard to the use of the software. The City may modify this Exhibit to add/delete services and products as may be required. Such changes shall require no modification of the Agreement if the Total Maximum Compensation is not exceeded.

The unit prices set forth in the tables below shall be fixed for the Initial Term of the Agreement.

In the event the rates charge by Contractor's third-party provider for any pass-through fees exceed the increase in the CPI after the Initial Term, Contractor may pass through such increase to the City. All price increases that exceed the increase in the CPI must be supported by documentation from the third-party provider or a formal cost justification letter from Contractor.

Table B1-A – Annual Software Subscription Fee		
Description of Software / Service	Price	Notes
SCM® - Customer Web Portal and Mobile Platform V10.0	\$115,716	For 86,000 Meter Accounts, Includes Following Modules: My Account, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
Outage Module with Outage Notifications	\$20,404	For 86,000 Meter Accounts, Includes Following Modules: My Account, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
SCM® - Enterprise Web Portal and Platform V2.4	\$31,533	For 125 Names Users, Includes Following Modules: My Portfolio, Usage, Billing, Notifications, Connect Me, Compare, Efficiency, Service
SCM® Utility Customer Service Portal (utility-facing admin/customer service portal)	\$0	For 70 Utility Employee Users - Includes Following Modules: Dashboard, Customer Engagement Analytics, Administration, CSR Workbench
Hosting	\$0	Hosting for two years' worth of data
Maintenance & Support	\$0	Includes Support and Software Updates
Smart iQ Analytics – Meter Data Analytics Version 1.9	\$38,488	For 86,000 Meter Accounts, Includes Following Modules: Customers & Segments, Leakage Analytics, High Usage Analytics, Program Management, Violation Management

Table B1-A – Annual Software Subscription Fee		
Description of Software / Service	Price	Notes
SMS Text Notifications	\$420	Annual fee for Text Notification
IVR Dialer System	\$5,900	Annual Fee for IVR Notifications
Random Short Code	\$16,000	Provides Random Short Code to Send Out SMS Text Messages (Required by Carriers). Optional Vanity Short Code Available at \$22,800 Annual
IVR Toll Free Number	\$299	Annual Fee to provides Toll Free Number for Outbound / Inbound Calls
Options:		
Smart Mobile Workforce – Service Module V5.1	\$10,000	For 10 Utility Field Workers, Includes Following Modules: Service
SCM® - Smart Home Module	\$12,000	For 86,000Meter Accounts, Allows Utility Customers to Monitor/Maintain Smart Home Devices on Web Portal and Mobile
Web Portal CSR Co browsing / Live Chat (assumes 20 agents)	\$10,000	\$500 is Annual Amount Per Agent (Equals \$25 Per Month Per Agent)
SCM Language Pack	\$19,000	Provides Additional Language Support on Web Portal and Mobile for One Additional Language (In Addition to English)
We Smart Basic Chatbot	\$39,000	AI, natural language processing, machine learning-based responses. Pre-programmable responses.
We Smart Advanced Chatbot	\$59,000	WeSmart Basic + Customer Account specific automated interactions with SCM Billing, Usage, Outage, and Service modules.
Meter Tiers		Blended Fee Per Meter
0-100,000		\$2.66
100,001-150,000 (10% discount from prior bucket)		\$2.39
150,001-200,000 (10% discount from prior bucket)		\$2.15

Table B1-B Monthly/Usage/Transaction-Based Fee Schedule		
Service	Type	Unit Fee
SMS Text Notifications (Inbound)	per message	\$0.003
SMS Text Notifications (Outbound)	per message	\$0.008
IVR Toll Free (Inbound)	per minute	\$0.030
IVR Toll Free (Outbound)	per minute	\$0.020
Up to 1,000,000 Emails Per Month	base fee	\$875.000
Debit/Credit Card Processing Fees for Portal, Mobile, Text to Pay, IVR and Agent Assisted	per transaction	Interchange + 9 Basis Points + \$0.10 per transaction (Visa Mastercard, Discover) Interchange +\$0.05 per Transaction (AmEx)
Debit/Credit Card Processing Fees for <u>In-Office Payments</u>	per transaction	Interchange + 9 Basis Points + \$0.10 per transaction (Visa Mastercard, Discover) Interchange +\$0.05 per Transaction (AmEx)
Echecks Processing Fees for Portal, Mobile, Text to Pay, IVR and Agent Assisted	per transaction	\$0.50 Per Transaction up to \$25,000 \$0.50 + 0.15% Per Transaction over \$25,000 Includes One-Time Payment and Recurring
24 Hour IVR - English and Spanish	////	Setup Fee Waived Per Minute Fee Waived Convenience Fee Listed Above
Return Check Fee	per check	\$1.00
Chargeback Fees	per chargeback	\$4.95
Text-and-Pay	////	Setup Fee Waived Per Minute Fee Waived Convenience Fee Listed Above
Agent Assisted Payments and Technology Support for Citizens (9:00 AM to 5:00 PM PST)	Per Agent Per Month	\$95

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between InfoSend, Inc., a California corporation, with its principal place of business located at 4240 East La Palma Avenue, Anaheim, California 92807 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform 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.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

5. 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 June 30, 2020, subject to two optional one-year renewals.

6. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

7. WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

8. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by 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. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. BUSINESS TAX LICENSE REQUIRED.

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

10. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed 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 and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

11. 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 at the rate per

hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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.

14. 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.

15. 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, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

16. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

17. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

18. 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.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall 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.

21. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

22. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

27. 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.

28. 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.

29. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Finance Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 241-1543

And to Contractor addressed as follows:

Name: InfoSend, Inc.
Address: 4240 East La Palma Avenue
Anaheim, California 92807
or by facsimile at (714) 993-1306

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. LAW GOVERNING CONTRACT 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.

32. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

34. AFFORDABLE CARE ACT OBLIGATIONS

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.

35. RESERVED.

36. CONFLICT OF INTERESTS.

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 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.

37. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

(Signatures follow on page 10)

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
Interim City Attorney

RAJEEV BATRA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771


ATTEST:

ROD DIRIDON, JR.
City Clerk

“CITY”

INFOSEND, INC.
a corporation

Dated: 6/7/17

By: 
(Signature of Person executing the Agreement on behalf of Contractor)

Name: Russ Rezai

Title: President

Local Address: 4240 East La Palma Avenue
Anaheim, California 92807

Email Address: russ.r@infosend.com

Telephone: (800) 955-9331

Fax: (714) 993-1306

“CONTRACTOR”

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "Statement of Work Prepared for The City of Santa Clara" dated April 26, 2017, which is attached to this Exhibit A.



Statement of Work

Prepared for The City of Santa Clara

04/26/2017

Confidential and Proprietary – for Client or Partner use Only

Time and Materials:

<i>Client name</i>	City of Santa Clara
<i>InfoSend Project Manager</i>	
<i>Project name</i>	City of Santa Clara Bills Implementation
<i>Client Project Manager</i>	Katrina Bates
<i>Frequency and Expected Volume</i>	60,000 bills/month, printed daily
<i>Begin date (materials delivered)</i>	
<i>End date (UAT complete)</i>	

Schedule of Rates:

The cost of this project will be administered per the charges specified in the table below. Charges are based on the information provided at the time this SOW was drafted. Changes made to project requirements after this SOW is approved may result in additional charges being incurred.

<i>Description</i>	<i>Delivery Schedule</i>	<i>Cost (Estimated)</i>

Payment Terms:

Client will be invoiced for the billable charges in this SOW upon completion of the requirements contained herein.

Statement of Work:

Assumptions:

1. General:

- a. InfoSend will provide Data processing, Print and Mail services for the City of Santa Clara.
- b. During the initial implementation, InfoSend will design a single data processing application to handle the regular, delinquent, closing and shutoff notices/bills for the City. This program now also runs the Monthly Net Metering bills.
- c. InfoSend developed a separate application which is used to process the Annual Net Metering Bills.
- d. InfoSend is currently working with the City on developing the following applications:
 - i. Under the billing statements application: Closed Account Letter, 48 Hour Notices, Credit Card 60 Day Expiry Notice, Credit Card Expiry Notice
 - ii. Under a new application for Business Tax Licenses: Certificates, Renewal forms (First, Delinquent, and Final), Balance Due Letter, Missing Information Letter

2. Mock-ups:

- a. The City will be maintaining their current bill design, but may opt at a later date to change/revise the bill layout.
- b. If the City chooses to redesign, InfoSend will work to create a new document which communicates all relevant information to their customers while also taking advantage of the latest advances in full color transactional printing technology. This may include adding color to the graphs and trend lines, increasing use of graphics and visual cues for data presentation, and/or using color to highlight key information on the documents.
- c. InfoSend will develop a data processing application to process City bills.

3. Test Files to be used for Data Processing:

- a. InfoSend is currently providing Data Processing, Printing, and Mailing Services for 2 applications for the City.
 - i. Statements: this application covers all regular billing statements, regular Net Metering bills, past due bills, shut-off notices, etc...
 - ii. NEP Bills: this application covers the Annual Net Metering Bills

4. Materials and printing requirements

- a. All documents will be duplex printed using full color inkjet technology on white 8.5"x11" 24# paper.
- b. A horizontal perforation creating a 2" remittance stub is applied dynamically at the bottom of the sheet.
- c. The City is using custom #10 outgoing envelopes.
 - i. InfoSend has established a process to coordinate a production and use of new custom outgoing envelope each month.
- d. The City is using a custom #9 remit envelope.

5. Handling Instructions

- a. Bills will be folded using standard C-fold and inserted into outgoing envelope ensuring that customer addresses are visible through envelope window.
- b. Bills with bad addresses will be separated from the batch of bills and mailed to the City for review.
- c. Householding – InfoSend will group bills with the same recipient name and address in one envelope
- d. Selective #9 Inserting – InfoSend will suppress the remittance envelope for bills that have a zero balance, credit balance or are flagged for Automatic Payment in the data
- e. Selective inserting: InfoSend has implemented the capability for the City to target inserts selectively to different groups of customers.
 - i. Current options include excluding inserts from commercial, industrial, or closing accounts. Should the City have additional requirements in this area, InfoSend can implement selective criteria to meet the City's needs.
- f. InfoSend understands that the City may have a maximum of 5 inserts included with any billing. Should more than 5 inserts be required, InfoSend will work with the City to develop a solution to handle additional inserts.

6. Workflow:

- a. The City will send data files for processing, printing and mailing each weekday.
- b. Data files are transmitted via SFTP.
- c. InfoSend and the City will decide upon a naming convention for data files prior to the go-live date, will be used by InfoSend's automated file transfer program to recognize and route said files to the correct processing application, at which time a 'File Transfer Acknowledgment' email will be sent to specified team members within the City.
- d. The City has elected not to approve sample files for the Statements program. Files will be released for printing and mailing upon completion of data processing.
- e. Upon completion of the data processing, InfoSend will provide back to the City copies of all documents which were processed using our Final Doc Transfer product.
 - i. The PDF documents are provided to the City in a Zip file. PDFs in the zip file will be named with a convention which is approved by the City.
 - ii. InfoSend will also send an index file which will be used to help identify the records in the Zip file.
- f. After processing the job will be printed and staged for the production process.
- g. After printing, the job will move through the Quality Control and Mailing Operations departments, and finally released to the USPS for mailing
- h. For next day mailing, data must be sent to InfoSend by 6pm. When possible, InfoSend will mail all batches the next business day, even those received after 6PM.
- i. Upon completion, a Process Confirmation Report containing details of the mailed batch will be emailed to specified users.

7. Specifications for Data Processing:

- a. Bills will be printed with two custom 15-months bar graphs, proceeding oldest to newest starting from the left border moving to the right.
 - i. In cases where only one service (i.e. water or power) is reflected on the bill, InfoSend will only print a single consumption graph.
- b. Conditional programming will be done to copy the display of information as provided in the document Inv_Example_V04.pdf. Customer information for different customer types/groups will be displayed according to the rules contained in BP_Req_v02r01.xls.
- c. All charges to be printed on the bills will be pulled directly from the data file and will not require calculations.

8. Additional Services:

- a. InfoSend has provided information to the client on the following optional services which can be implemented, pending confirmation/approval from the City of Santa Clara. The final list of additional services
 - i. Print Image Archiving
 - ii. USPS Move Update Service
 - iii. Exception Processing
 - iv. Message Manager

9. Client Management Services:

- a. The services listed below are included as part of your data processing, print and mail support:
 - i. 800 Toll Free Telephone support: (800) 955-9330
 - ii. Scheduled assistance for project implementations & other special projects (there may be billable professional services hours depending on scope of work).
 - iii. Technical Troubleshooting & Issue Resolution
 - iv. Free electronic access 24 x 7 with the following online benefits:
 - 1. Log, track, & close support requests
 - 2. View and update support requests
 - 3. Access published documentation
 - 4. Access available downloads
 - 5. Download reports
 - 6. View Job Tracking statistics
 - 7. Download sample files in PDF format
- b. Help Desk Hours:
 - i. Standard hours of support are from 8:00 a.m. PST to 5:00 p.m. PST, Monday to Friday, excluding designated statutory holidays. Support hours may vary by specific product line. Weekend assistance is available and must be scheduled in advance and in most cases is billable.

c. Call Process

- i. All issues or questions reported to support can be tracked via an online support ticket. Account Managers can provide support via telephone, email, or via the online support ticket tool that is located by logging into www.infosend.com.
 1. Each call is handled with personal support. Client will receive support from its dedicated Account Manager. If that person is not available call will be handled by another cross trained Account Manager or Senior Account Manager. This representative will be your liaison through the support process, giving you a single point of contact for issue resolution.
 2. Each support request logged using the online support tool gets a unique ID and can be viewed by either party. Both Client and Consultant can filter by open and closed support requests.
 3. Our staff will coordinate with our programming, production, and data processing departments to ensure that quality issues are resolved quickly and completely the first time. All necessary modifications are thoroughly tested before being applied to your applications to make sure that the final product meets your quality expectations.
 4. Once an issue has been resolved, you will be notified of the solution, and allowed to review a new set of samples to approve any changes. Extra attention is paid to the new job throughout our production, quality control, and mailing process. When all parties confirm that the job is meeting quality expectations through every step in the process, we will approve and release the job for completion.

ci. Escalation Process

- i. In the event that the Account Manager has been unable to provide a permanent or a mutually acceptable temporary resolution within timeframes that the Client feels are reasonable the issue can be escalated to the Client Service Director. An internal escalation process filters high-priority issues to the COO. Contact details for the Client Services Director are provided below:
 1. Client Services Director: Josue Martinez, 714-993-2690, xt. 289, josue.m@infosend.com
 2. COO: Matt Schmidt, 714-993-2690, xt 238, matt.s@infosend.com

Change Management Process:

During the initial implementation phase, changes will be communicated to your InfoSend Account Manager by email, phone, InfoSend's online 'Contact Support' tool, or some combination of these. Your Account Manager will manage any changes to the application with internal InfoSend departments, and will also track changes in a Microsoft Excel spreadsheet to be made available to City employees upon request. Any change which substantively changes the scope of this project will be reviewed and agreed upon by the Client and InfoSend management. Changes to the scope of the project after approval of this SOW may incur additional professional services fees.

Future changes made to the design of the data processing application, the outputs from this application (included but not limited to the bills themselves or any ancillary reports created by InfoSend), or the requirements contained herein, are deemed to be outside the scope of this document. Such changes may be communicated to the City's designated InfoSend Account Manager or another qualified member of InfoSend's Client Services team. If deemed necessary, InfoSend will create a quote for analysis, design, and programming time to complete the request at the agreed-upon hourly rate for such services as specified in the master agreement.

Professional Services Agreement:

Terms and conditions will abide by the standing contract between InfoSend and the Client.

Acceptance and Approval:

6 | Page Statement of Work

This SOW is based on the information as given to InfoSend as of the date of approval. The number of professional services hours and completion deadlines required to complete the project may change if any of the following occur after approval of the SOW:

1. The project requirements change.
2. The file format changes (if applicable)
3. InfoSend requires information about or to complete the project which the Client is unable to provide.

Approval of this SOW confirms that the information contained is accurate and authorizes InfoSend to begin and complete the implementation project in accordance with this SOW. Changes to the project which require changes to this SOW may result in additional professional services charges being incurred.

Client (Full Name)

Title

Signature

Date

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

EXHIBIT B

FEE SCHEDULE

Consultant shall provide a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as :

The estimated annual cost for services is three hundred forty thousand dollars (\$340,000).

In no event shall the amount billed to City by Contractor for services under this Agreement exceed one million seven hundred thousand dollars (\$1,700,000) for the three-year contract term and two optional one-year renewal periods, subject to budget appropriations.



is appreciative for the opportunity to present this

Pricing Recap for:



May 26, 2017

Proposal Provided By:

Glen Everroad
Government Solutions
glen.e@infosend.com
Toll Free: 800.955.9330
Mobile: 949.874.4786


Jerry Finnegan
District Sales Manager
jerry.f@infosend.com
Toll Free: 800.955.9330
Mobile: 714.600.3069



InfoSend is a proud member and supporter of:



Pricing: BillPrint and Mail Service

InfoSend's Fees – Print and Mail Service: Estimated volume = 60,000 Bills Per Month (The individual prices shown in the table below apply only to the turnkey BillPrint and Mail service, some items can go up in price if sold separately)		
Services		
Bill and Notice Data Processing and printing – (60,000 per month)	\$0.0191 per piece	Per page. Includes address validation and presorting. Black simplex printing onto a pre-printed form.
Correspondence and Statement Processing and printing (3000 per month)	\$0.0018 per piece	Per page. Includes address validation and presorting. Black simplex printing onto a pre-printed form. Discount: This fee is reduced by \$0.010 per page if you use the Express PDF Implementation.
Mail Prep (63,000 per month)	\$0.0271 per piece	Per page. Bill is folded and inserted (along with the return envelope if there is one) and delivered to the post office within 1 business day.
Insert Processing and Printing (300,000 per month)	\$0.015 per piece	This pricing was specific to your sample "Mission City Scenes Insert" we were referred to as your reference. This is a larger insert and accounts for a significant portion of the insert page volume indicated.
Machine Inserting of Inserts into bill packages	\$0.005 Per Piece	Same cost applies for inserting InfoSend-printed inserts and City-provided inserts.
Mail Delivery to USPS (63,000 per month)	\$0.00	No mail delivery fees
Postage (63,000 mailings per month)	Pass-Through	Lowest possible postage will be applied based on your billing file and CASS and pre-sort results. At the present time \$0.35 is the lowest possible rate – It is the First Class 5-Digit pre-sorted rate offered by the USPS. Higher postage rates apply for mail pieces that weigh more than 2 oz, are addressed to a foreign address (you have the option of suppressing these), or contain an undeliverable address.
Materials Pricing		
Paper Stock for Bills and Notices (60,000 per month)	\$0.013	Per page. Custom Form up to 3 color printing on 24# paper with a perforation. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.
Paper Stock for Correspondence (3,000 per month)	\$0.013	24# pound paper. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.
Envelopes		Envelopes use sustainably logged paper, which is the equivalent or superior to recycled paper as there are no chemicals used in the recycling process. If you wish to use recycled content envelopes add \$0.004 to the price of each envelope.
Per RFP Spec Custom #10 Outgoing Envelope (60,000 per month)	\$0.019	Cost to recreate the current outgoing envelope: Price is for 6-month orders at a time of custom single window envelope with 1 color ink being printed on the front, back and inside of the envelope. Price can go down or up as requirements change or order quantities change.

Per RFP Spec Custom #9 Return Envelope (60,000 per month)	\$0.013	Cost to recreate the current return envelope: Price is for 12-month orders at a time of custom envelope with 1 color ink being printed on the front of the envelope. Price can go up or down as requirements change or order quantities change.
Alternative- Standard #10 Outgoing Envelope	\$0.013	Per InfoSend standard double window outgoing envelope with security tint and plastic film protecting the windows (with this option the mailing address and return address are printed on the bill).
Alternative- Standard #9 Return Envelope	\$0.012	Per InfoSend standard single window one color printing on the front, back and inside of the 22lb paper stock return envelope with security tint and plastic film protecting the windows, (with this option the mailing address is printed on the remittance stub). These envelopes use sustainably logged paper.
Other Services		
Help Desk Support (cost per month)	\$0.00	There are no help desk costs.
Professional Services (hourly rate)	\$150.00	A Statement of Work will be provided for every change request after Go Live.

Optional Services		
Electronic Address Updates – NCOALink or ACS	\$0.003	Per mail piece cost to process mailing addresses using the National Change of Address (NCOA) database. Bills are mailed to the new address.
Document Imaging (63,000 per month)	\$0.005	This is the cost to image the documents for online storage. Images are transferred to InfoSend's Print Image Archiving web application (storage costs on line below). They are also stored on up to 1 CD (FinalDoc CD product) per month and shipped to the City for long-term archiving (no extra cost for the CD). Additionally they can be transferred to the City's network at no additional cost (FinalDoc Transfer service).
Optional Duplex fee	\$0.005	Upgrade to full color printed on both sides, base price of bill includes 4 colors front (full color) and 1 color back. This upgrade will make full color-duplex print.
Document Storage (63,000 per month)	\$0.0025	This is the cost to store the images online for 24 months from the mail date. Images can be stored online for 48 months for \$0.01 per image, and for 60 months for \$0.0125 per image.
Document Access (63,000 images per month)	\$0.00	No cost for document access
Mail Merge (price per piece)		Cost is a total of \$0.13 per piece to perform a mail merge and print and mail 1 page documents that are formatted to use InfoSend's standard double window outgoing envelope and standard single window return envelope. Price assumes mailing will have at least 20,000 addresses. No setup fee. Subtract \$0.013 from materials cost if no return envelope is required.
BangTail Envelopes	\$0.077 per piece	Price for 1-month orders of BangTail envelopes. Price goes down if larger orders are placed.

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<p>"House Holding" - grouping multiple statements with the same mailing address together in the same outgoing envelope.</p>	<p>See Description</p>	<p>No cost to provide this service if the pages fit in the regular outgoing envelope. If there are too many pages grouped together to fit in the regular outgoing envelope then they are inserted by hand into a flat envelope and a \$0.25 labor surcharge applies and the cost of the flat envelope is \$0.16. Using house holding saves the City money because it reduces postage costs.</p>
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Postage Deposit

InfoSend purchases the postage needed to mail Client documents on the day of mailing. The postage charges are later invoiced to Client based on the Client's payment terms. InfoSend requires Client to submit a postage deposit prior to the first mailing to facilitate the payment terms. This amount will remain in deposit for the duration of the Agreement. Upon Agreement expiration or termination Client must pay in full any outstanding invoices from InfoSend for payables created under this Agreement; the postage deposit will be refunded within fifteen (15) days of the date that the last open invoice is paid.

The postage deposit is subject to an annual review and may be adjusted to account for changes to Client average mailing volume or changes to USPS postage rates. There will be no more than one adjustment requested per year, if at all.

The postage deposit amount is calculated by multiplying the estimated number mail pieces per month by the current 5-Digit pre-sorted first class postage rate. The postage deposit amount due for your account is:

P.O. amount on account: \$22,680.00
Terms: Net 30

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$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, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

INFOSEND, INC.

a corporation

By: 

Signature of Authorized Person or Representative

Name: Russ Rezai

Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On 6/7/17 before me, Lori N. Hing, Notary Public
(insert name and title of the officer)

personally appeared Russ Reza,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

EXHIBIT F

MILESTONE SCHEDULE

(Not Applicable)

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and InfoSend, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for the Performance of Services by and between the City of Santa Clara, California and InfoSend, Inc.", dated June 7, 2017 (Agreement); and
- B. The Parties entered into the Agreement for the purpose of having Contractor provide bill print and mail services, and the Parties now wish to amend the Agreement to extend the term of the agreement through June 30, 2021, pursuant to the renewal terms of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

- 1. Section 5 of the Agreement, entitled "Term of Agreement", is amended to read as follows:

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 June 30, 2021, subject to one optional one-year renewal.

- 2. Exhibit B of the Agreement, entitled "Fee Schedule", is hereby amended to read as shown in First Revised Exhibit B, attached and incorporated into this Amendment No. 1.
- 3. 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.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated:

6/3/2020

For

BRIAN DOYLE
City Attorney

or

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

INFOSEND, INC.
a California corporation

Dated:

5/26/20

By (Signature):

Name: Russ Rezai

Title: President

Principal Place of Business Address: 4240 East La Palma Ave.
Anaheim, CA 92807

Email Address: russ.r@infosend.com

Telephone: (800) 955-9330

Fax: (714) 993-1306

"CONTRACTOR"

**FIRST REVISED EXHIBIT B
FEE SCHEDULE**

1. Maximum Compensation

The maximum compensation City will pay the Contractor for services and materials under this Agreement shall not exceed **One Million Seven Hundred Thousand Dollars (\$1,700,000)** during the term of the Agreement, including the renewal periods, subject to annual budget appropriations. Any additional services or materials requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. Fees

The pricing set forth in this First Revised Exhibit B is effective from July 1, 2020.

InfoSend's Fees – Print and Mail Service: Estimated volume = 60,000 Bills Per Month (The individual prices shown in the table below apply only to the turnkey BillPrint and Mail service, some items can go up in price if sold separately)		
Services		
Bill and Notice Data Processing and printing - (60,000 per month)	\$0.0196 per piece	Per page. Includes address validation and presorting. Black simplex printing onto a pre-printed form.
Mail Prep (63,000 per month)	\$0.0279 per piece	Per page. Bill is folded and inserted (along with the return envelope if there is one) and delivered to the post office within 1 business day.
Insert Processing and Printing (300,000 per month)	\$0.0155 per piece	This pricing was specific to your sample "Mission City Scenes Insert" we were referred to as your reference. This is a larger insert and accounts for a significant portion of the insert page volume indicated.
Machine Inserting of Inserts into bill packages	\$0.0052 Per Piece	Same cost applies for inserting InfoSend-printed inserts and City- provided inserts.
Mail Delivery to USPS (63,000 per month)	\$0.00	No mail delivery fees
Postage (63,000 mailings per month)	Pass-Through	Lowest possible postage will be applied based on your billing file and CASS and pre-sort results. At the present time \$0.35 is the lowest possible rate – it is the First Class 5-Digit pre-sorted rate offered by the USPS. Higher postage rates apply for mail pieces that: weigh more than 2 oz, are addressed to a foreign address (you have the option of suppressing these), or contain an undeliverable address.
Materials Pricing		
Paper Stock for Bills and Notices (60,000 per month)	\$0.0134	Per page. Custom Form up to 3 color printing on 24# paper with a perforation. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.
Paper Stock for Correspondence (3,000 per month)	\$0.0134	24# pound paper. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.

Envelopes		Envelopes use sustainably logged paper, which is the equivalent or superior to recycled paper as there are no chemicals used in the recycling process. If you wish to use recycled content envelopes add \$0.004 to the price of each envelope.
Per RFP Spec Custom #10 Outgoing Envelope (60,000 per month)	Per Order	Cost to recreate the current outgoing envelope: Price is for 6-month orders at a time of custom single window envelope with 1 color ink being printed on the front, back and inside of the envelope. Price can go down or up as requirements change or order quantities change.
Per RFP Spec Custom #9 Return Envelope (60,000 per month)	\$0.022	Cost to recreate the current return envelope: Price is for 12-month orders at a time of custom envelope with 1 color ink being printed on the front of the envelope. Price can go up or down as requirements change or order quantities change.
Alternative- Standard #10 Outgoing Envelope	\$0.0155	Per InfoSend standard double window outgoing envelope with security tint and plastic film protecting the windows (with this option the mailing address and return address are printed on the bill).
Alternative- Standard #9 Return Envelope	\$0.0137	Per InfoSend standard single window one color printing on the front, back and inside of the 22lb paper stock return envelope with security tint and plastic film protecting the windows, (with this option the mailing address is printed on the remittance stub). These envelopes use sustainably logged paper.
Other Services		
Help Desk Support (cost per month)	\$0.00	There are no help desk costs.
Professional Services (hourly rate)	\$150.00	A Statement of Work will be provided for every change request after Go Live.
Optional Services		
Electronic Address Updates – NCOALink or ACS	\$0.003	Per mail piece cost to process mailing addresses using the National Change of Address (NCOA) database. Bills are mailed to the new address.
Document Imaging (63,000 per month)	\$0.005	This is the cost to image the documents for online storage. Images are transferred to InfoSend's Print Image Archiving web application (storage costs on line below). They are also stored on up to 1 CD (FinalDoc CD product) per month and shipped to the City for long- term archiving (no extra cost for the CD). Additionally they can be transferred to the City's network at no additional cost (FinalDoc Transfer service).

Optional Duplex fee	\$0.005	Upgrade to full color printed on both sides, base price of bill includes 4 colors front (full color) and 1 color back. This upgrade will make full color-duplex print.
Document Storage (63,000 per month)	\$0.0025	This is the cost to store the images online for 24 months from the mail date. Images can be stored online for 48 months for \$0.01 per image, and for 60 months for \$0.0125 per image.
Document Access (63,000 images per month)	\$0.00	No cost for document access
Mail Merge (price per piece)		Cost is a total of \$0.13 per piece to perform a mail merge and print and mail 1 page documents that are formatted to use InfoSend's standard double window outgoing envelope and standard single window return envelope. Price assumes mailing will have at least 20,000 addresses. No setup fee. Subtract \$0.013 from materials cost if no return envelope is required.
BangTail Envelopes	\$0.077 per piece	Price for 1-month orders of BangTail envelopes. Price goes down if larger orders are placed.
"House Holding" - grouping multiple statements with the same mailing address together in the same outgoing envelope.	See Description	No cost to provide this service if the pages fit in the regular outgoing envelope. If there are too many pages grouped together to fit in the regular outgoing envelope then they are inserted by hand into a flat envelope and a \$0.25 labor surcharge applies and the cost of the flat envelope is \$0.16. Using house holding saves the City money because it reduces postage costs.

Postage Deposit

InfoSend purchases the postage needed to mail Client documents on the day of mailing. The postage charges are later invoiced to Client based on the Client's payment terms. InfoSend requires Client to submit a postage deposit prior to the first mailing to facilitate the payment terms. This amount will remain in deposit for the duration of the Agreement. Upon Agreement expiration or termination, Client must pay in full any outstanding invoices from InfoSend for payables created under this Agreement; the postage deposit will be refunded within fifteen (15) days of the date that the last open invoice is paid.

The postage deposit is subject to an annual review and may be adjusted to account for changes to Client average mailing volume or changes to the USPS postage rates. There will be no more than one adjustment requested per year, it at all.

The postage deposit amount is calculated by multiplying the estimated number mail pieces per month by the current 5-Digit presorted first class postage rate. The postage deposit amount due for your account is:

P.O. amount on account: \$22,680.00
Terms: Net 30

**AMENDMENT NO. 2
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

PREAMBLE

This agreement ("Amendment No. 2") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and InfoSend, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for the Performance of Services by and between the City of Santa Clara, California and InfoSend, Inc.", dated June 7, 2017 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated June 3, 2020, and is again amended by this Amendment No. 2. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide bill print and mail services, and the Parties now wish to amend the Agreement as Amended to extend the term of the agreement through June 30, 2022, pursuant to the renewal terms of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 5 of the Agreement as Amended, entitled "Term of Agreement" is amended to read as follows:

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 June 30, 2022.

2. Exhibit B of the Agreement, entitled "First Revised Fee Schedule", is hereby amended to read as shown in Second Revised Exhibit B, attached and incorporated into this Amendment No. 2.

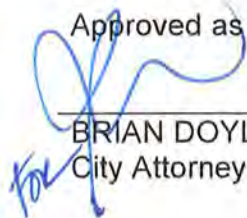
3. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 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:



BRIAN DOYLE
City Attorney

5/24/2021

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

INFOSEND, INC.
a California corporation

Dated: 5/12/2021
By (Signature): 
Name: Russ Reza
Title: President
Principal Place of Business Address: 4240 East La Palma Ave.
Anaheim, CA 92807
Email Address: russ.r@infosend.com
Telephone: (800) 955-9330
Fax: (714) 993-1306
"CONTRACTOR"

**SECOND REVISED EXHIBIT B
FEE SCHEDULE**

1. Maximum Compensation

The maximum compensation City will pay the Contractor for services and materials under this Agreement shall not exceed **One Million Seven Hundred Thousand Dollars (\$1,700,000)** during the term of the Agreement, including the renewal periods, subject to annual budget appropriations. Any additional services or materials requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. Fees

The pricing set forth in this Second Revised Exhibit B is effective from July 1, 2021 through June 30, 2022.

InfoSend's Fees – Print and Mail Service: Estimated volume = 60,000 Bills Per Month (The individual prices shown in the table below apply only to the turnkey BillPrint and Mail service, some items can go up in price if sold separately)		
Services		
Bill and Notice Data Processing and printing - (60,000 per month)	\$0.0199 per piece	Per page. Includes address validation and presorting. Black simplex printing onto a pre-printed form.
Mail Prep (63,000 per month)	\$0.0284 per piece	Per page. Bill is folded and inserted (along with the return envelope if there is one) and delivered to the post office within 1 business day.
Insert Processing and Printing (300,000 per month)	\$0.0158 per piece	This pricing was specific to your sample "Mission City Scenes Insert" we were referred to as your reference. This is a larger insert and accounts for a significant portion of the insert page volume indicated.
Machine Inserting of Inserts into bill packages	\$0.0053 Per Piece	Same cost applies for inserting InfoSend-printed inserts and City- provided inserts.
Mail Delivery to USPS (63,000 per month)	\$0.00	No mail delivery fees
Postage (63,000 mailings per month)	Pass-Through	Lowest possible postage will be applied based on your billing file and CASS and pre-sort results. At the present time \$0.35 is the lowest possible rate – it is the First Class 5-Digit pre-sorted rate offered by the USPS. Higher postage rates apply for mail pieces that: weigh more than 2 oz, are addressed to a foreign address (you have the option of suppressing these), or contain an undeliverable address.
Materials Pricing		
Paper Stock for Bills and Notices (60,000 per month)	\$0.0136	Per page. Custom Form up to 3 color printing on 24# paper with a perforation. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.

Paper Stock for Correspondence (3,000 per month)	\$0.0136	24# pound paper. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.
Envelopes		Envelopes use sustainably logged paper, which is the equivalent or superior to recycled paper as there are no chemicals used in the recycling process. If you wish to use recycled content envelopes add \$0.004 to the price of each envelope.
Per RFP Spec Custom #10 Outgoing Envelope (60,000 per month)	Per Order	Cost to recreate the current outgoing envelope: Price is for 6-month orders at a time of custom single window envelope with 1 color ink being printed on the front, back and inside of the envelope. Price can go down or up as requirements change or order quantities change.
Per RFP Spec Custom #9 Return Envelope (60,000 per month)	\$0.0224	Cost to recreate the current return envelope: Price is for 12-month orders at a time of custom envelope with 1 color ink being printed on the front of the envelope. Price can go up or down as requirements change or order quantities change.
Alternative- Standard #10 Outgoing Envelope	\$0.0158	Per InfoSend standard double window outgoing envelope with security tint and plastic film protecting the windows (with this option the mailing address and return address are printed on the bill).
Alternative- Standard #9 Return Envelope	\$0.0139	Per InfoSend standard single window one color printing on the front, back and inside of the 22lb paper stock return envelope with security tint and plastic film protecting the windows, (with this option the mailing address is printed on the remittance stub). These envelopes use sustainably logged paper.
Other Services		
Help Desk Support (cost per month)	\$0.00	There are no help desk costs.
Professional Services (hourly rate)	\$152.55	A Statement of Work will be provided for every change request after Go Live.
Optional Services		
Electronic Address Updates – NCOALink or ACS	\$0.0031	Per mail piece cost to process mailing addresses using the National Change of Address (NCOA) database. Bills are mailed to the new address.

Document Imaging (63,000 per month)	\$0.0051	This is the cost to image the documents for online storage. Images are transferred to InfoSend's Print Image Archiving web application (storage costs on line below). They are also stored on up to 1 CD (FinalDoc CD product) per month and shipped to the City for long- term archiving (no extra cost for the CD). Additionally they can be transferred to the City's network at no additional cost (FinalDoc Transfer service).
Optional Duplex fee	\$0.0051	Upgrade to full color printed on both sides, base price of bill includes 4 colors front (full color) and 1 color back. This upgrade will make full color-duplex print.
Document Storage (63,000 per month)	\$0.0025	This is the cost to store the images online for 24 months from the mail date. Images can be stored online for 48 months for \$0.01 per image, and for 60 months for \$0.0125 per image.
Document Access (63,000 images per month)	\$0.00	No cost for document access
Mail Merge (price per piece)		Cost is a total of \$0.13 per piece to perform a mail merge and print and mail 1 page documents that are formatted to use InfoSend's standard double window outgoing envelope and standard single window return envelope. Price assumes mailing will have at least 20,000 addresses. No setup fee. Subtract \$0.013 from materials cost if no return envelope is required.
BangTail Envelopes	\$0.0783 per piece	Price for 1-month orders of BangTail envelopes. Price goes down if larger orders are placed.
"House Holding" - grouping multiple statements with the same mailing address together in the same outgoing envelope.	See Description	No cost to provide this service if the pages fit in the regular outgoing envelope. If there are too many pages grouped together to fit in the regular outgoing envelope then they are inserted by hand into a flat envelope and a \$0.25 labor surcharge applies and the cost of the flat envelope is \$0.16. Using house holding saves the City money because it reduces postage costs.

Postage Deposit

InfoSend purchases the postage needed to mail Client documents on the day of mailing. The postage charges are later invoiced to Client based on the Client's payment terms. InfoSend requires Client to submit a postage deposit prior to the first mailing to facilitate the payment terms. This amount will remain in deposit for the duration of the Agreement. Upon Agreement expiration or termination, Client must pay in full any outstanding invoices from InfoSend for payables created under this Agreement; the postage deposit will be refunded within fifteen (15) days of the date that the last open invoice is paid.

The postage deposit is subject to an annual review and may be adjusted to account for changes to Client average mailing volume or changes to the USPS postage rates. There will be no more than one adjustment requested per year, if at all.

The postage deposit amount is calculated by multiplying the estimated number mail pieces per month by the current 5-Digit presorted first class postage rate. The postage deposit amount due for your account is:

P.O. amount on account: \$22,680.00

Terms: Net 30

**AMENDMENT NO. 3
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INFOSEND, INC.**

PREAMBLE

This agreement ("Amendment No. 3") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and InfoSend, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for the Performance of Services by and between the City of Santa Clara, California and InfoSend, Inc.", dated June 7, 2017 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated June 3, 2020, Amendment No. 2, dated May 21, 2021, and is again amended by this Amendment No. 3. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide bill print and mail services, and the Parties now wish to amend the Agreement as Amended to extend the term of the agreement through June 30, 2024 and increase compensation by Six Hundred Eighty Thousand Dollars (\$680,000) for a revised not-to-exceed maximum compensation amount of Two Million Three Hundred Eighty Thousand Dollars (\$2,380,000).

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 5 of the Agreement as Amended, entitled "Term of Agreement" is amended to read as follows:

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 June 30, 2024.

2. Exhibit B of the Agreement as Amended, entitled "Second Revised Fee Schedule", is hereby amended to read as shown in Third Revised Exhibit B, attached and incorporated into this Amendment No. 3.
3. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 3, the provisions of this Amendment No. 3 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 3 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: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

INFOSEND, INC.
a California corporation

Dated: 10/11/2021
By (Signature): 
Name: Russ Rezai
Title: President
Principal Place of Business Address: 4240 East La Palma Ave.
Anaheim, CA 92807
Email Address: russ.r@infosend.com
Telephone: (800) 955-9330
Fax: (714) 993-1306

"CONTRACTOR"

**THIRD REVISED EXHIBIT B
FEE SCHEDULE**

1. Maximum Compensation

The maximum compensation City will pay the Contractor for services and materials under this Agreement shall not exceed **Two Million Three Hundred Eighty Thousand Dollars (\$2,380,000)** during the term of the Agreement, subject to annual budget appropriations. Any additional services or materials requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. Fees

The pricing set forth in this Third Revised Exhibit B is effective from July 1, 2022 through June 30, 2024.

InfoSend's Fees – Print and Mail Service: Estimated volume = 60,000 Bills Per Month (The individual prices shown in the table below apply only to the turnkey BillPrint and Mail service, some items can go up in price if sold separately)		
Services		
Bill and Notice Data Processing and printing - (60,000 per month)	\$0.0203 per piece	Per page. Includes address validation and presorting. Black simplex printing onto a pre-printed form.
Mail Prep (63,000 per month)	\$0.0290 per piece	Per page. Bill is folded and inserted (along with the return envelope if there is one) and delivered to the post office within 1 business day.
Insert Processing and Printing (300,000 per month)	\$0.0161 per piece	This pricing was specific to your sample "Mission City Scenes Insert" we were referred to as your reference. This is a larger insert and accounts for a significant portion of the insert page volume indicated.
Machine Inserting of Inserts into bill packages	\$0.0054 Per Piece	Same cost applies for inserting InfoSend-printed inserts and City- provided inserts.
Mail Delivery to USPS (63,000 per month)	\$0.00	No mail delivery fees
Postage (63,000 mailings per month)	Pass-Through	Lowest possible postage will be applied based on your billing file and CASS and pre-sort results. At the present time \$0.35 is the lowest possible rate – it is the First Class 5-Digit pre-sorted rate offered by the USPS. Higher postage rates apply for mail pieces that: weigh more than 2 oz, are addressed to a foreign address (you have the option of suppressing these), or contain an undeliverable address.
Materials Pricing		
Paper Stock for Bills and Notices (60,000 per month)	\$\$0.0138	Per page. Custom Form up to 3 color printing on 24# paper with a perforation. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.
Paper Stock for Correspondence (3,000 per month)	\$0.0139	24# pound paper. The bill stock uses normal paper, you can use recycled stock for an additional \$0.004 per sheet.

Envelopes		Envelopes use sustainably logged paper, which is the equivalent or superior to recycled paper as there are no chemicals used in the recycling process. If you wish to use recycled content envelopes add \$0.004 to the price of each envelope.
Per RFP Spec Custom #10 Outgoing Envelope (60,000 per month)	Per Order	Cost to recreate the current outgoing envelope: Price is for 6-month orders at a time of custom single window envelope with 1 color ink being printed on the front, back and inside of the envelope. Price can go down or up as requirements change or order quantities change.
Per RFP Spec Custom #9 Return Envelope (60,000 per month)	\$0.0229	Cost to recreate the current return envelope: Price is for 12-month orders at a time of custom envelope with 1 color ink being printed on the front of the envelope. Price can go up or down as requirements change or order quantities change.
Alternative- Standard #10 Outgoing Envelope	\$0.0161	Per InfoSend standard double window outgoing envelope with security tint and plastic film protecting the windows (with this option the mailing address and return address are printed on the bill).
Alternative- Standard #9 Return Envelope	\$0.0142	Per InfoSend standard single window one color printing on the front, back and inside of the 22lb paper stock return envelope with security tint and plastic film protecting the windows, (with this option the mailing address is printed on the remittance stub). These envelopes use sustainably logged paper.
Other Services		
Help Desk Support (cost per month)	\$0.00	There are no help desk costs.
Professional Services (hourly rate)	\$155.91	A Statement of Work will be provided for every change request after Go Live.
Optional Services		
Electronic Address Updates – NCOALink or ACS	\$0.0032	Per mail piece cost to process mailing addresses using the National Change of Address (NCOA) database. Bills are mailed to the new address.
Document Imaging (63,000 per month)	\$0.0052	This is the cost to image the documents for online storage. Images are transferred to InfoSend's Print Image Archiving web application (storage costs on line below). They are also stored on up to 1 CD (FinalDoc CD product) per month and shipped to the City for long- term archiving (no extra cost for the CD). Additionally they can be transferred to the City's network at no additional cost (FinalDoc Transfer service).

Optional Duplex fee	\$0.0052	Upgrade to full color printed on both sides, base price of bill includes 4 colors front (full color) and 1 color back. This upgrade will make full color-duplex print.
Document Storage (63,000 per month)	\$0.0026	This is the cost to store the images online for 24 months from the mail date. Images can be stored online for 48 months for \$0.01 per image, and for 60 months for \$0.0125 per image.
Document Access (63,000 images per month)	\$0.00	No cost for document access
Mail Merge (price per piece)		Cost is a total of \$0.13 per piece to perform a mail merge and print and mail 1 page documents that are formatted to use InfoSend's standard double window outgoing envelope and standard single window return envelope. Price assumes mailing will have at least 20,000 addresses. No setup fee. Subtract \$0.013 from materials cost if no return envelope is required.
BangTail Envelopes	\$0.0800 per piece	Price for 1-month orders of BangTail envelopes. Price goes down if larger orders are placed.
"House Holding" - grouping multiple statements with the same mailing address together in the same outgoing envelope.	See Description	No cost to provide this service if the pages fit in the regular outgoing envelope. If there are too many pages grouped together to fit in the regular outgoing envelope then they are inserted by hand into a flat envelope and a \$0.25 labor surcharge applies and the cost of the flat envelope is \$0.16. Using house holding saves the City money because it reduces postage costs.

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InfoSend purchases the postage needed to mail Client documents on the day of mailing. The postage charges are later invoiced to Client based on the Client's payment terms. InfoSend requires Client to submit a postage deposit prior to the first mailing to facilitate the payment terms. This amount will remain in deposit for the duration of the Agreement. Upon Agreement expiration or termination, Client must pay in full any outstanding invoices from InfoSend for payables created under this Agreement; the postage deposit will be refunded within fifteen (15) days of the date that the last open invoice is paid.

The postage deposit is subject to an annual review and may be adjusted to account for changes to Client average mailing volume or changes to the USPS postage rates. There will be no more than one adjustment requested per year, it at all.

The postage deposit amount is calculated by multiplying the estimated number mail pieces per month by the current 5-Digit presorted first class postage rate. The postage deposit amount due for your account is:

P.O. amount on account: \$22,680.00
Terms: Net 30



Agenda Report

21-1413

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action on an Agreement for Services with Hill Brothers Chemical Company for As-Needed Ammonia Delivery and Related Services

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

Silicon Valley Power (SVP), the City's Electric Utility Department, operates three gas fired power generation facilities within the City limits. The Donald Von Raesfeld Power Plant (DVR), SVP's main power generation facility, is a 2x1 combined cycle power plant rated at 147 Megawatts of electrical power. SVP requires aqueous ammonia in DVR's Selective Catalyst Reduction (SCR) units to maintain compliance with DVR's air permit. The air permit is issued by the Environmental Protection Agency (EPA) and compliance with the permit is enforced by the Bay Area Air Quality Management District (BAAQMD). SVP also requires ammonia to maintain pH levels in DVR's water stream processes. SVP requires a qualified contractor to provide as-needed ammonia delivery and related services.

DISCUSSION

Pursuant to City Code Section 2.105.330, a formal qualifications-based Request for Proposals/Statement of Qualifications (SOQ) process was conducted for this procurement, with the award recommendation based on "best value."

In June 2021, the City issued the SOQ for as-needed ammonia delivery and related services, using the City's e-procurement system. A total of 22 companies viewed the SOQ, and the City received proposals from two companies:

- Airgas Specialty Products, Inc. (Lawrenceville, GA)
- Hill Brothers Chemical Company (Brea, CA)

The written proposals were evaluated and scored against the criteria and weights published in the SOQ by a three-member evaluation team consisting of staff from SVP. The proposals were evaluated on the following:

- Qualifications and experience of the firm;
- Expertise in providing ammonia storage tank inspections and services; and
- Approach to delivering the required ammonia safely.

Staff recommends award of contract to Hill Brothers Chemical Company (Hill Brothers) as the most

advantageous and best value proposal based upon the final evaluation ranking. The proposal from Hill Brothers met or exceeded all of the SOQ specifications.

Under the proposed agreement, Hill Brothers will provide the following services:

- Ammonia delivery services to the DVR plant;
- Ammonia storage system inspection and evacuation services;
- As-needed training on ammonia off-loading, storing and handling; and
- As-needed ammonia storage and processing services training.

The proposed agreement with Hill Brothers includes provision of all labor, materials, equipment, and technical expertise needed to provide the required ammonia-related services.

The term of the proposed agreement will be a five-year initial term with five additional one-year options to extend at the discretion of the City. Total costs are not expected to exceed \$1,500,000 during the initial five-year term. Hill Brothers' compensation rates shall be fixed for the first twelve months of the agreement. After the first twelve months, any requests for compensation increases must be justified by the company and are subject to approval by the City and the annual appropriations of funds.

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)(2) in that the proposed actions are agreements for the purchase of products and services that are continuing maintenance and administrative activities.

FISCAL IMPACT

The total cost of the agreement for services with Hill Brothers is not anticipated to exceed \$1,500,000 over the five-year initial term.

Sufficient funds are available in the Adopted Biennial Operating Budget for FY 2021/22 and FY 2022/23 in the Electric Utility Operating Fund (Generation and Pumping Expense Account 091-1377-87960).

Funds required for this agreement in future years will be included in proposed budgets for those corresponding years.

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>>.

RECOMMENDATION

1. Authorize the City Manager to execute an Agreement for Services with Hill Brothers Chemical Company for as-needed ammonia delivery and related services, for a term starting on or about November 1, 2021 and ending on or about October 31, 2026, for a total maximum amount not-to-exceed \$1,500,000 during the initial five-year term, subject to the annual appropriation of funds;
2. Authorize the City Manager to make minor changes to the attached Agreement for Services subject to approval of the City Attorney as to form;
3. Authorize the City Manager to execute up to five one-year options to extend the term of the Agreement for Services after the initial term, ending on or about October 31, 2031, assuming all options are exercised, and subject to the annual appropriation of funds; and
4. Authorize the City Manager to take actions to add or delete services consistent with the scope of the Agreement for Services and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Proposed Agreement for Services

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
HILL BROTHERS CHEMICAL COMPANY**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Hill Brothers Chemical Company, a California Corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D - Notice of Exercise of Option to Extend Agreement Form

Exhibit E – Labor Compliance Addendum

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on November 1, 2021 and expire on October 31, 2026.
- B. After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms through October 31, 2031 ("Option Periods"). City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR- STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The Maximum Compensation of this Agreement during the Initial Term is One Million Five Hundred Thousand Dollars (\$1,500,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the Maximum Compensation shall be at Contractor's expense. City does not guarantee any minimum compensation under this Agreement. Contractor shall not be entitled to any payment above the Maximum Compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD-PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

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
svpcontracts@santaclaraca.gov, jcoleman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Hill Brothers Chemical Company
3000 E. Birch Street, #108
Brea, CA 92821
Phone: (714)-579-3333
ATTN: Frank Alari
Email: falari@hillbrothers.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

HILL BROTHERS CHEMICAL COMPANY
A California Corporation

Dated: _____

By (Signature): _____

Name: _____

Title: _____

Principal Place of
Business Address: _____

Email Address: _____

Telephone: _____

Fax: _____

“CONTRACTOR”

EXHIBIT A SCOPE OF SERVICES

1 GENERAL

- 1.1 Contractor shall provide all labor, materials, tools, permits, and equipment necessary to provide as-needed ammonia delivery and related services.
- 1.2 Contractor shall perform the required services in accordance with generally accepted industry best practices, and all applicable federal, state, or local regulations.
- 1.3 Contractor shall be responsible for disposing of all hazardous material generated during the performance of services described in this Exhibit A.
- 1.4 Contractor shall also provide as-needed ammonia storage system inspection and evacuation services.
- 1.5 Contractor shall include any project management services required.
- 1.6 Contractor shall be responsible for obtaining any City permits required to perform the required services

2 AMMONIA DELIVERY SERVICES

- 2.1 Contractor shall deliver 19.5% Aqueous Ammonia to the Donald Von Raesfeld Power Plant (DVR), located at 850 Duane Avenue, Santa Clara, CA 95054.
 - 2.1.1 There is one (1) tank, with a 10,000-gallon capacity.
 - 2.1.2 The tank can be filled to 9,000 gallons, or 90% capacity, per safety regulations.
 - 2.1.3 The City expects to purchase 250,000 gallons of 19.5% Aqueous Ammonia annually.
- 2.2 City shall order ammonia, as needed, at the rates listed in Exhibit B.
- 2.3 Contractor shall deliver aqueous ammonia within 2 days after receipt of order.
- 2.4 Contractor shall ensure all delivery vehicles including vehicle/delivery safety mechanisms are functioning properly, prior to delivery to SVP.
 - 2.3.1. SVP shall not allow vehicles that are leaking or otherwise not fully functional onsite.
 - 2.3.2. Contractor shall not charge additional for SVP's refusal to accept delivery on the basis of delivery vehicle condition.
- 2.5 Contractor shall park delivery vehicle on chemical off-load pad.
- 2.6 Contractor shall discuss safety devices and emergency shutoff instructions with SVP's generation technicians prior to starting delivery.
- 2.7 Contractor shall ensure tank has sufficient space to take delivery of ammonia.

- 2.8** Contractor shall clean up all leaks or spills regardless of fluid type (i.e. oil, ammonia etc.) that occur during the delivery process.
- 2.9** Contractor shall not use subcontractors to deliver ammonia unless approved in writing by the City.

3 ADDITIONAL SERVICES

- 3.1.** Contractor shall provide the following additional services, as needed.
 - 3.1.1.** Ammonia Storage System Inspection and Evacuation Services
 - 3.1.1.1.** Contractor shall perform quarterly ammonia storage system inspection services.
 - 3.1.1.2.** Contractor shall perform ammonia storage tank evacuation services (to be done every ten years).
 - 3.1.1.3.** Contractor shall be responsible for coordinating the off-loading procedure with SVP generation technicians.
 - 3.1.1.4.** Contractor shall wait for site sponsor (SVP Generation technicians) to witness connection process prior to starting work.
 - 3.1.1.5.** Contractor shall ensure all secondary containment measures are taken to prevent spills.
 - 3.1.2.** Temporary ammonia supply (storage tank or tanker) that bypasses DVR ammonia storage system.
 - 3.1.3.** Training on the proper off-loading, storing and handling of ammonia and cooperative emergency drills.
 - 3.1.4.** Ammonia storage and processing (storing SVP's ammonia and processing it for return to SVP's ammonia storage tank).
 - 3.1.5.** Other miscellaneous work pertaining to the delivery of ammonia, inspection of ammonia storage systems or evacuation of ammonia storage systems.

4 SERVICES REQUESTS AND AUTHORIZATION OF WORK

- 4.1** When additional services are required, Contractor shall submit a quote to the City for the services requested.
- 4.2** The quote shall include the following details.
 - 4.2.1** The specific service(s) to be performed;
 - 4.2.2** Project schedule, if applicable;
 - 4.2.3** Estimated cost for the requested services, including the following. Items not specified are assumed to be included in the hourly rate.
 - 4.2.3.1** Labor costs (prevailing wage and non-prevailing wage);

- 4.2.3.2 Tools and materials;
 - 4.2.3.3 Equipment;
 - 4.2.3.4 Any additional costs; and
 - 4.2.3.5 Total not to exceed price.
- 4.3** The City shall review the quote and, if there are no issues or concerns, approve the quote and provide written authorization for Contractor to begin work.
- 4.3.1.** Written authorization may only be provided by a Division Manager, Senior Division Manager, Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer (e-mail is acceptable).
- 4.4** City shall not be required to pay a deposit or any other form of pre-payment prior to the Contractor beginning work.
- 4.5** At no time shall Contractor begin work before City has provided written authorization, with the exception of emergency services, as described below.
- 4.6** Emergency Services
- 4.6.1** An emergency service shall be defined as an unforeseen event, circumstance, or combination thereof that City reasonably determines to require immediate action, presents an ongoing danger to public health and safety, and/or imperils City facilities.
 - 4.6.2** Emergency services must be approved in writing (e-mail acceptable).
 - 4.6.2.1.** Written authorization may only be given by a Division Manager, Senior Division Manager, Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer (e-mail is acceptable).
 - 4.6.2.2.** Emergency services may be approved verbally (in the field) where appropriate. When verbal authorization is given, Contractor shall follow up with City for written confirmation within three (3) days.
 - 4.6.3** When emergency services are required, Contractor shall send a quote to City for the required services as soon as possible, but no later than within three (3) business days of starting work. The quote shall be detailed in accordance with this Section 4, and shall also include any completed work.

5 REPORTING AND DOCUMENTATION

- 5.1** Contractor shall provide status updates on services performed during the term of the agreement, as needed (inspection reports shall be provided quarterly).

- 5.2 Required reports may include cost and schedule updates for services Contractor is providing to the City.

6 SCHEDULE OF PERFORMANCE

- 6.1 Except where otherwise directed by the City, Contractor shall perform the required services between 7:00 AM - 7:00 PM, Monday through Friday (regular business hours).
- 6.2 If SVP requires services outside of regular business hours, Contractor shall provide to SVP a quote for the required services (listing labor costs and parts/equipment costs separately). Contractor shall not begin work until SVP has given written approval.

7 SAFETY

- 7.1 Contractor shall comply with all site-specific safety requirements and procedures including but not limited to Lockout/Tagout (LOTO), Confined Space, Fall Protection, Chemical Safety, Hazardous Waste and Personnel Protective Equipment (PPE).
- 7.2 Contractor shall comply with SVP's ammonia offloading procedures.
- 7.3 Contractor, its employees, and any subcontractors shall always act in a safe manner while on SVP property.
- 7.4 The Contractor shall be responsible for creating a safe work environment for all personnel and City employees as well as for traffic control at the job site.
- 7.5 Contractor's safety provisions shall be in accordance with all applicable federal, state, county, and local laws, ordinances and codes.
- 7.6 Contractor shall be responsible for remaining up to date on all applicable federal, state, county, and local laws, ordinances and codes in the event they are amended. Where any amended applicable laws or ordinances are in conflict with the City's requirements, the more stringent requirement(s) shall be followed. The Contractor's failure to be thoroughly familiarized with the safety provisions shall not relieve the Contractor from compliance with the obligations and penalties resulting therefrom.
- 7.7 Contractor shall provide and maintain an Injury and Illness Prevention Program (IIPP) pursuant to Title 8, Section 3203 of the California Administrative Code. The program shall include, but not be limited to, a safety training program instructing Contractor's employees in general safe work practices and shall include specific instructions with regard to hazards unique to the employee's job assignment. A copy of the Contractor's IIPP shall be submitted to the City prior to the execution of an agreement, and be made available on site upon request.
- 7.8 Contractor shall schedule periodic safety inspections to identify and correct unsafe conditions and work practices. SVP reserves the right to accompany Contractor during these inspections.

- 7.9** Contractor's employees (including any subcontractors) shall not use or possess alcohol, narcotics, firearms, or drugs of any nature other than medical (for which the Contractor's employee has a current doctor's prescription) on City property and while performing services for the City. Employees using prescribed medication will not engage in any work if the medication can potentially impair the employee's ability to perform the work safely.
- 7.10** Contractor's employees (including any subcontractors) shall utilize appropriate Personal Protective Equipment (PPE) and Fire Resistant (FR) clothing, as required. Contractor shall provide the required PPE and FR clothing at its own expense.
- 7.11** Contractor shall immediately remove any personnel who is acting in an unsafe or dangerous manner.
- 7.12** Contractor shall notify the City immediately in event of an injury or property damage that occurs during the performance of the services described in this Exhibit A. Contractor shall investigate the reported injury or damage upon request from SVP, and provide SVP with regular updates until the investigation is resolved. SVP reserves the right to perform its own investigation. Should SVP choose to conduct its own investigation, Contractor shall assist the City as required.
- 7.13** Contractor and its employees shall watch an SVP safety video prior to the commencement of work.
- 7.14** Contractor shall provide safety training records for its employees upon request.

8 TOOLS AND EQUIPMENT

- 8.1** Contractor is responsible for identifying all tools (including any specialty tooling) and equipment necessary to perform work. SVP will not loan tools or equipment to the Contractor.
- 8.2** All equipment shall be operated and well-maintained in a satisfactory condition at all times and in compliance with state and federal regulations including, but not limited to, the Occupational Safety and Health Administration (OSHA).
- 8.3** SVP may suspend work where they observe that proper tools and equipment are not being used.
- 8.4** All tooling purchased for the scope of work described below shall be considered SVP's if billed to the contract.

9 PROFESSIONAL BEHAVIOR

- 9.1** Contractor shall be responsible for the conduct, demeanor and appearance of its employees while on or about the job site or while acting in the course and scope of employment.

- 9.2** Contractor's employees shall be neat and clean, and shall act in a courteous and professional manner. No employee shall use improper language or act in a loud, offensive, or otherwise improper manner.
- 9.3** Contractor's employees shall be trained as to the requirements of their positions and the importance of performing their jobs according to the SVP's instructions.
- 9.4** Contractor's employees shall be all times polite and courteous in their dealings with SVP staff and members of the public, treating them with patience and respect.
- 9.5** Contractor's employees shall speak clearly and in a professional manner while interacting with members of the public, offering the assistance needed by each person.
- 9.6** Contractor shall submit any complaints received against it to the City immediately.

10 WORKMANSHIP

- 10.1** The Contractor shall perform the required services in an environmentally responsible manner.
- 10.2** Contractor shall assume full responsibility for the protection and safekeeping of material and tools stored at the site, and shall lock all Contractor vehicles when parked and unattended, to prevent unauthorized use. Contractor shall not leave vehicles or equipment unattended with the motor running or the ignition key in place.
- 10.3** Contractor shall take all necessary precautions to protect SVP, City and private property from damage during the performance of the required services. Contractor shall be responsible for the repair of any property damaged during the performance of services. Damage to City property that cannot be repaired shall be replaced at the Contractor's sole expense, prior to issuance of payment to the Contractor by SVP. Any expenses incurred by SVP to repair property damage will be deducted from the Contractor's compensation.
- 10.4** Contractor will make all reasonable efforts to minimize obstructions and inconvenience to private property owners such as, but not limited to, noise associated with testing.
- 10.5** Contractor shall keep their work site(s) free from all surplus material, waste material, dirt and rubbish caused by Contractor's performance of services.
- 10.6** Contractor shall leave the work site in a neat and orderly condition. All clean-up work will be done to the satisfaction of the City, and at the sole expense of Contractor.
- 10.7** Upon the end of the workday, or suspension of work, Contractor shall remove all equipment and obstructions from any property typically open for use by

public traffic. Any incomplete work shall be secured in a manner that does not present a hazard to the City or public.

- 10.8** SVP shall have the right to inspect any work performed by the Contractor and any subcontractors. Should the City determine upon inspection any unsatisfactory or defective work, the Contractor shall immediately correct the work at no additional cost to SVP.
- 10.9** SVP shall not perform any work for Contractor, except in an emergency situation or as determined necessary by the City such as, but not limited to adequately protect the SVP's electrical or other facilities or to restore work area to a safe condition. SVP will be reimbursed for any work done for the Contractor (deduction from the Contract or invoice to Contractor at the sole discretion of SVP). This will include all costs (direct straight time or overtime wages, all overhead, administration, engineering, vehicle, and equipment costs).

EXHIBIT B
SCHEDULE OF FEES AND PAYMENT PROVISIONS

1. MAXIMUM COMPENSATION

The maximum amount of compensation to be paid to Contractor during the Initial Term of this Agreement shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

2. RATES

- 2.1. City shall pay Contractor in accordance with the rates listed below.
- 2.2. 19.5% Aqueous Ammonia: \$0.83 per gallon.
 - 2.2.1. Pricing is for a full truck load. A full truck load is 6,000 gallons.
 - 2.2.2. Pricing includes:
 - 2.2.2.1. Ammonia delivery;
 - 2.2.2.2. Ammonia storage tank inspection service (external); and
 - 2.2.2.3. Training services.
- 2.3. Temporary ammonia supply and storage (trailer rental): \$950.00 per day.
- 2.4. Ammonia storage tank evacuation services.
 - 2.4.1. Contractor shall provide ammonia tank evacuation services at the following rates.
 - 2.4.1.1. Mondays-Fridays: \$450 per hour.
 - 2.4.1.2. Saturdays and Sundays: \$500 per hour.
 - 2.4.1.3. Holidays: \$550 per hour.

3. REIMBURSABLE EXPENSES

- 3.1. Contractor may submit invoices for reimbursement of expenses set forth below, subject to the following conditions.
- 3.2. Expenses shall be reimbursable only to the extent that the Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required services and that such expenses aren't included in fixed or hourly rates.
- 3.3. The following expenses shall be reimbursable by City.
 - 3.3.1. Travel-related expenses (mileage, lodging, meals, etc.);
 - 3.3.1.1. Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related Per Diem shall not exceed the rates outlined by United States General Services Administration (GSA).

<https://www.gsa.gov/travel-resources>

- 3.3.1.2.** City shall not reimburse local travel (within Santa Clara County).
- 3.3.2.** The rental of any specialized equipment to the extent City has preapproved, in writing, the cost of such rental.
- 3.3.3.** The cost of mailing, shipping and/or delivery of any documents or materials on behalf of City.
- 3.3.4.** Any other expenses expressly identified as being reimbursable.
- 3.4.** Except as specified above, City will reimburse these expenses at actual cost only.
- 3.5.** An estimate of reimbursable expenses shall be included in each quote.

4. INVOICING

- 4.1.** Contractor shall submit an invoice to City upon the completion of services, pursuant to this Agreement.
- 4.2.** Each invoice shall include the tasks performed and the costs for each task.
- 4.3.** If City disputes an expense in an invoice, City may deduct the disputed expense from the payment of that invoice, provided that City submits to Contractor a written explanation of why the expense is being disputed.

5. PAYMENT TO CONTRACTOR

- 5.1.** City shall review the invoice submitted by Contractor and shall notify Contractor of any discrepancies or deficiencies in said invoice.
- 5.2.** If there are no discrepancies or deficiencies in the submitted invoice and Contractor has submitted all required Certified Payroll, City shall process the invoice for payment.

6. RENEWAL PERIOD COMPENSATION

- 6.1.** Pursuant to Section 2 of this Agreement, City reserves the right to extend the term of this Agreement for five (5) additional one-year terms ("Option Periods").
- 6.2.** Contractor may request adjustments to the compensation rates on the one-year anniversary date of the Agreement during the term of the Agreement, including option periods.
 - 6.2.1.** Contractor shall notify City ninety (90) days in advance of any proposed rate increase.
 - 6.2.2.** The Contractor must demonstrate to the satisfaction of the City that a price increase is warranted.
 - 6.2.3.** City approval or denial of the requested rate adjustment will be provided in writing (e-mail acceptable).

6.2.4. Rate adjustments may be requested no more than once per calendar year.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

- \$2,000,000 each occurrence
- \$2,000,000 General aggregate
- \$2,000,000 Products/Completed Operations aggregate
- \$2,000,000 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, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to

limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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 P.O. Box 100085 – S2 Duluth, GA 30096	or	1 Ebix Way John's Creek, GA 30097
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Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**EXHIBIT D
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

(Date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2B of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

OPTION NO.	# of #
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NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
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Pursuant to Exhibit B Section 6.2 of the Agreement the rates of compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

Dated: _____

Approved as to Form: _____

City Attorney's Office

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

EXHIBIT F

LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

A. PREVAILING WAGE REQUIREMENTS

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards,

copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll records and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those who fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an

alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

C. ENFORCEMENT

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.
4. City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.



Agenda Report

21-1274

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with First Shield Security and Patrol, Inc. for Citywide Security Guard Services

COUNCIL PILLAR

Deliver and Enhance High-Quality Efficient Services and Infrastructure

BACKGROUND

The City contracts with private security firms to provide security services at various City sites. These security services are required to safeguard persons and property, deter criminal activity, assist visitors and employees, and provide supplemental security services for citywide special events. Currently, the Department of Public Works (DPW) and the Parks & Recreation Department (Parks) contract for security services at the following sites:

- Santa Clara Convention Center Maintenance District #183 and Tasman Garage for DPW
- Construction site and SVP infrastructure located at the old Santa Clara Golf & Tennis Club location for Parks

The current agreements will be expiring, and it is necessary to have new agreements in place.

DISCUSSION

Pursuant to City Code Section 2.105.330, a formal Request for Proposal (RFP) was conducted for this procurement, with the award recommendation based on "best value". The factors considered in the award were experience, technical capability, and cost.

In May 2021, the City released an RFP for Citywide Security Guard Services. The RFP was published on Periscope S2G (formerly BidSync), the City's e-procurement system. A total of 74 companies viewed the RFP, and 13 proposals were received from the following firms:

1. A.G. Coast, Inc. dba California Panther Security
2. American Guard Services, Inc.
3. Anthem Protective Services
4. Avlon Security
5. Creative Security Company
6. First Shield Security and Patrol, Inc.
7. Good Guard Security, Inc.
8. Marina Security Services, Inc.
9. Security Systems Management, Inc.
10. Universal Protection Service, LP dba Allied Universal Security Services

11. Universal Semiconductor, Inc. dba Universal Security Company
12. World Private Security Services, Inc.
13. Yosh Enterprises dba Orion Security

Evaluation Process: The proposals were independently evaluated by a three-member evaluation team with representation from the Parks & Recreation Department, Department of Public Works, and an outside evaluator from the Convention Center Maintenance District #183 Property Management. The proposals were evaluated and ranked against the criteria published in the RFP; experience, technical capability (ability to meet the service requirements) and cost. First Shield Security and Patrol, Inc. (First Shield) and Good Guard Security, Inc. scored the highest and were invited to oral presentations to introduce their key personnel and demonstrate how they would meet the City's requirements.

First Shield demonstrated a GPS tracking system, online reports, experience, and other essential support capabilities to provide the required services. In addition, there were reference checks from Bellarmine College Preparatory and Cherrywood Apartments; all reference checks were positive. Staff recommends award of contract to First Shield as the best value proposal based upon the final evaluation ranking.

Summary of Agreements: Security requirements are different for each City department; therefore, department specific agreements are recommended. The agreements will be managed by their respective departments to ensure that their specific performance requirements for each agreement are being met. The legal terms and conditions are the same for both agreements.

The agreements include a provision that allows security services to be added or removed throughout the term based on changing City requirements and subject to the same rates and standards of performance.

Rates are fixed for the initial three-year term of the agreements. Invoices shall be submitted monthly for all services performed, in arrears. The hourly rates are fully loaded and inclusive of all overhead, labor, materials, and profit. After the initial term, price adjustments may be considered if the contractor demonstrates to the satisfaction of the City that a price increase is warranted.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of 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

Agreement for the Department of Public Works: Maximum compensation of the agreement is \$656,543 for the initial three years. These costs are covered by the maintenance district budget and the General Fund.

Agreement for the Parks & Recreation Department: Maximum compensation of the agreement is \$801,000 for the initial three years, or \$267,000 annually. The Annual amount reflects \$40,000 for special events; \$6,000 for contingency/other; \$220,000 for the Santa Clara Golf & Tennis Club (SVP funded); and \$1,000 for other parks and programs.

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>>.

RECOMMENDATION

1. Authorize the City Manager to execute an agreement with First Shield Security and Patrol Inc. to provide security guard services at sites managed by the Department of Public Works for a not-to-exceed amount of \$656,543 during the initial three-year term and subject to the appropriation of funds;
2. Authorize the City Manager to execute an agreement with First Shield Security and Patrol Inc. to provide security guard services at sites managed by the Parks & Recreation Department, for a not-to-exceed amount \$801,000 during the initial three-year term and subject to the appropriation of funds;
3. Authorize the City Manager to amend or execute additional agreement(s) with First Shield Security and Patrol Inc. for additional sites that may be required, subject to the same terms and conditions and appropriation of funds; and
4. Authorize the City Manager to execute up to five one-year options to extend the term of the Agreements after the initial three-year term, for a total of eight years ending on or about October 31, 2029 assuming all option years are exercised and subject to the appropriation of funds.

Reviewed by: Craig Mobeck, Director of Public Works

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Agreement with First Shield Security and Patrol Inc. for the Department of Public Works
2. Agreement with First Shield Security and Patrol Inc. for the Parks & Recreation Department

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
FIRST SHIELD SECURITY AND PATROL INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and First Shield Security and Patrol Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Notice of Exercise Option to Extend Agreement

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on November 1, 2021 and terminate on October 31, 2024 (“Initial Term”).
- B. After the Initial Term, the City reserves the right, at its own sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms (“Option Periods”) based on the same terms and conditions, subject to annual appropriation of funds. City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise Option to Extend Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor’s representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Six Hundred Fifty-Six Thousand Five Hundred Forty-Three Dollars (\$656,543) subject to budget appropriations and includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at kwinland@santaclaraca.gov

And to Contractor addressed as follows:

First Shield Security and Patrol Inc.
Attention: Omar Noory
1984 The Alameda, Suite 3
San Jose, CA 95126
and by e-mail at omar@firstshieldsecurity.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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: _____

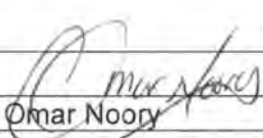
Dated: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

FIRST SHIELD SECURITY AND PATROL INC.
a California corporation

Dated: _____ 9-13-2021
By (Signature):  _____
Name: Omar Noory _____
Title: President/CEO _____
Principal Place of Business Address: 1984 The Alameda, Suite 3
San Jose, CA 95126 _____
Email Address: omar@firstshieldsecurity.com _____
Telephone: (408) 460-2570 _____
Fax: (877) 429-7990 _____
"CONTRACTOR"

**EXHIBIT A
SCOPE OF SERVICES**

1. INTRODUCTION

- 1.1. Contractor shall provide security services to protect persons and properties at City sites managed by the Public Works Department. Contractor shall provide all labor, patrol vehicle, equipment, management, supervision, training, licenses, permits, insurance, pre-employment screenings, and reports necessary to accomplish the services.
- 1.2. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City’s RFP 20-21-57 (including subsequent updates), Contractor’s proposal response dated June 8, 2021 and Contractor’s oral demonstration materials dated August 18, 2021 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. SITES

2.1. Regular Sites

Contractor shall provide security services at the following sites in accordance with the schedule and requirements set forth herein.

Site	Appendix
Convention Center	See Appendix A1 for additional site-specific requirements
Tasman Parking Garage	See Appendix A2 for additional site-specific requirements

2.2. Future Sites

- 2.2.1. Contractor may also be required to provide as-needed long-term and short-term security services for additional sites during the term of the Agreement. Compensation for future sites shall be in accordance with the rates set forth Exhibit B.
- 2.2.2. Contractor agrees that the services to be performed, including the locations where and the hours during which the services are to be performed, and the number of Security Guards to be furnished by the Contractor, shall be subject to the approval of the City. The scope and/or times of security guard services will vary according to the need at each site and will be memorialized in a Post Order, as defined in Section 9.

- 2.3. The City reserves the right during the term of the Agreement to add or delete any sites.

3. LICENSES AND PERMITS

Contractor and Contractor agents and employees shall possess all licenses, registrations, and permits required by the California Department of Consumer Affairs, Bureau of Collection and

Investigative Services. Such license and permits are to be presented to the City on demand, and include the following:

- 3.1.** Private Patrol Operator's License: Contractor shall furnish its current and valid private patrol operator's number. Contractor shall notify the City immediately if its license expires without immediate renewal or is suspended or cancelled. Expiration without immediate renewal, suspension or cancellation of the Contractor's private patrol license automatically terminates the agreement, and the City will not pay for services rendered after effective date of the expiration, suspension, or cancellation. The City may reinstate the agreement, if the City determines, at its sole discretion that the expiration without immediate renewal, suspension, or cancellation was caused by administrative error or by an excusable error in completing applications by the Contractor, and the license has been reinstated or renewed.
- 3.2.** Guard Registration Card: Contractor's Security Guards shall be registered and shall have a current and valid guard registration card in their possession while on duty. The guard registration cards must be current, and must be presented to the City upon demand. If a Contractor's Security Guard is unable to present his/her guard registration card upon demand, he/she will be relieved from duty and Contractor shall provide a Security Guard who has appropriate cards in his/her possession, at no additional cost to the City. The agreement is subject to immediate termination if the Contractor is unable to provide Security Guards who conform to these requirements. Contractor shall also maintain all other business and professional licenses that may be required by the state, federal, and local codes.

4. STANDARDS OF CONDUCT

Contractor shall ensure that while on duty at City facilities, Security Guards shall not:

- 4.1.** Carry on their person any firearms, batons, handcuffs, knives, saps, brass knuckles, stun-gun, Taser, oleoresin capsicum (pepper) spray, or any tear gas agent. "On their person" shall include, but not be limited to, the employee's vehicle or locker on the City site.
- 4.2.** Listen to radios, police scanners, or any other audio medium that is not directly job-related.
- 4.3.** Watch television and/or play video games.
- 4.4.** Read any materials which are not job-related.
- 4.5.** Sleep while on duty.
- 4.6.** Display a discourteous, abrupt, abrasive, or belligerent attitude.
- 4.7.** Use City telephones or any other City-owned electronic equipment for anything other than City business.
- 4.8.** Use any employee workstation other than those designated for the Security Guard's use.
- 4.9.** Leave their area of responsibility without notification and/or until arrival of a relief guard.
- 4.10.** Entertain personal visitors.
- 4.11.** Be under the influence of illegal drugs or alcohol.

- 4.12. Be under the influence of any prescribed or over-the-counter medications which inhibit job performance in accordance with the specifications set forth herein.
- 4.13. Present or identify themselves as employees of the City of Santa Clara.

5. SECURITY GUARDS

Security Guards assigned to the City shall:

- 5.1. Identify and report security and safety violations.
- 5.2. Speak, read, write, and understand the English language fluently.
- 5.3. Do extensive walking during their shift, including taking the stairs, and walking the roof, parking lots and underground parking areas.
- 5.4. Vary their rounds and sequence so as not to appear routine.
- 5.5. Be thoroughly familiar with applicable Post Orders and general/specific duties and perform all tasks in accordance with the duties outlined in the Post Orders.
- 5.6. Provide high quality customer service to the public and City at all times.
- 5.7. Be skilled at diffusing confrontational situations.
- 5.8. Administer first aid or provide assistance to the public and City staff as required.
- 5.9. Complete incident, claim, or other related reports for any incident occurring on City property.
- 5.10. Assist on-site personnel in emergency situations.

6. EQUIPMENT, UNIFORMS, AND BADGING REQUIREMENTS

- 6.1. Contractor shall ensure that all Contractor personnel are in full uniform (with all required/approved equipment) and ready to begin work promptly at the start of the work shift and remain on the job in full uniform at their post. The uniforms shall be supplied by Contractor and approved by the City (subject to daily and/or random City staff inspection).
- 6.2. Contractor shall provide all equipment including but not limited to patrol vehicles, flashlights, and cell phones for all City assignments. Contractor shall also provide handheld radios for communication with the assigned Security Guards. This equipment is to be supplied to guards and supervisors by the Contractor at no additional charge to the City.
- 6.3. Contractor may be assigned custody of keys, operating equipment, and other materials deemed necessary by City for the operation and supervision of the premises' security program. All such keys, operating equipment, and materials shall remain City's property and shall be surrendered to City immediately upon discharge or transfer of personnel from the premises or termination of the agreement. Contractor shall be responsible for the cost of all equipment repairs or replacement due to abuse or negligence.

7. SUPERVISION AND MANAGEMENT CONTROLS

- 7.1.** Contractor shall be solely responsible for its employees while they are on duty, including but not limited to, maintaining discipline, ensuring standards of conduct are adhered to, and enforcing security policies, procedures, and orders.
- 7.2.** Contractor shall be solely responsible for selecting, hiring, employing, paying, supervising, training and discharging all personnel necessary to provide the required security guard services
- 7.3.** Contractor shall ensure that Security Guards assigned to the City are trained and familiar with the City's policies, procedures, and site-specific requirements.
- 7.4.** The City reserves the right, at its sole discretion, to refuse the services of any particular Contractor employee. In such case, Contractor shall immediately remove said employee and provide a replacement. Any employee so removed shall be the subject of an administrative investigation/inquiry by Contractor into the circumstances of the complaint. Contractor shall determine appropriate disciplinary actions in accordance with its own policy, a copy of which may be requested by the City at any time. At no time will the subject employee be eligible to work under the agreement until the Contractor's investigative findings are reviewed by the City.
- 7.5.** Contractor shall perform regular quality assurance to ensure compliance with the City's requirements stated in this scope and rectify any observed problems. Quality assurance at a minimum shall include a weekly unannounced inspection. Documentation of inspections shall be discussed at least monthly with City.

8. MEETINGS

- 8.1.** Contractor shall assign a Project Manager/Account Manager to be responsible for the coordination and completion of all administration and reporting required under the agreement. The Project Manager/Account Manager shall ensure that all calls or requests received from the City are responded to immediately.
- 8.2.** Contractor's Project Manager/Account Manager shall attend on-site monthly Maintenance District meetings, at no additional cost.
- 8.3.** The City and Contract shall meet annually or on an as-needed basis to discuss all relevant issues pertaining to the services.

9. POST ORDERS

- 9.1.** Post Orders are documents that prescribe the procedures, duties, and responsibilities each Security Guard assigned to a security post must follow to ensure all duties are performed uniformly. The duties for each assigned posts will be detailed in the Post Orders that include the performance requirements of the specific post.
- 9.2.** Contractor shall provide Post Orders to the City upon initial assignment of its employees and whenever such Post Orders are updated or amended. Post Orders shall be used by Contractor as the required procedures to address specific security procedures and concerns at particular sites. The City may modify, amend, or revise the Post Orders to change shift duties, start and stop times, and post location provided the change is within the contract scope and has no impact on the contract

price. Post Orders will also be amended to reflect changes in laws, regulations, or procedures. Such changes shall require no modification of the agreement.

10. ACTIVITY LOGBOOKS/REPORTS

- 10.1.** Contractor shall maintain Activity Logbooks at all facilities to capture all activities at post areas. Contractor shall ensure that, immediately upon reporting to a facility for duty, each employee record their name and the date and time of arrival for duty in the Activity Logbook maintained at the post. At the end of the duty, each employee shall record the time and departure in the same logbook. Contractor shall also ensure that employees record in the Activity Log Book any incidents, occurrences, messages, reports, etc. This Activity Logbook may be maintained electronically.
- 10.2.** Activity Logbooks are the property of the City and are subject to administrative audits. All Contractor employees and activities shall be noted in the Activity Logbook for reference and contract reconciliation.
- 10.3.** During shift changes, the outgoing Security Guard will review incident reports, occurrences, or messages with the incoming Security Guard. Daily report will be delivered to the City contact with a copy maintained in the Activity Logbook. The City may choose to have reports submitted electronically.
- 10.4.** The Activity Logbook shall also contain pictures and reportable incidents (vandalism, graffiti, damage, broken or hazardous equipment) or changes in condition from the previous shift to the current shift or occurrences during a shift. These are to be communicated in the Activity Logbook and a report sent electronically to the City contact for the particular Post site. Active incidents of vandalism, theft, damage, graffiti, or hazards are to be communicated to the Santa Clara Police Department in addition to site supervisor.

11. TRAINING

Contractor is responsible to provide training and orientation to all employees providing services to the City under the agreement. Such training shall follow the Contractor's standard policies and procedures in effect during the term of the agreement, shall be consistent with the levels generally provided within the security services industry, shall be in compliance with all applicable local, state, and federal laws, and shall conform to all other standards or requirements presented within this scope. The City reserves the right to request documentation of such training or require additional training as needed for security personnel at any time.

**APPENDIX A1 TO EXHIBIT A
SANTA CLARA CONVENTION CENTER COMPLEX**

1. DESCRIPTION OF SERVICES

Contractor shall provide on-site security guard services to protect persons and property at the Santa Clara Convention Center Complex (see Figure A1-1). These services include patrolling the premises on foot and by security vehicle, monitoring security systems, and carrying out such other basic security tasks per required post orders.

2. SCHEDULE

Contractor shall provide staffing to cover all posts and duty hours as provided below. Contractor agrees that the schedules set forth below may be changed at any time, without any penalty to the City, provided the City gives at least two (2) business days' notice of change.

Shift	Number of Security Guards	Days Assigned
Swing Shift (4 PM to Midnight)	1	7 days a week/365 days a year
Grave Shift (Midnight to 8 AM)	1	7 days a week/365 days a year
Day Shift (8 AM to 4 PM)	1	Saturdays and Sundays only

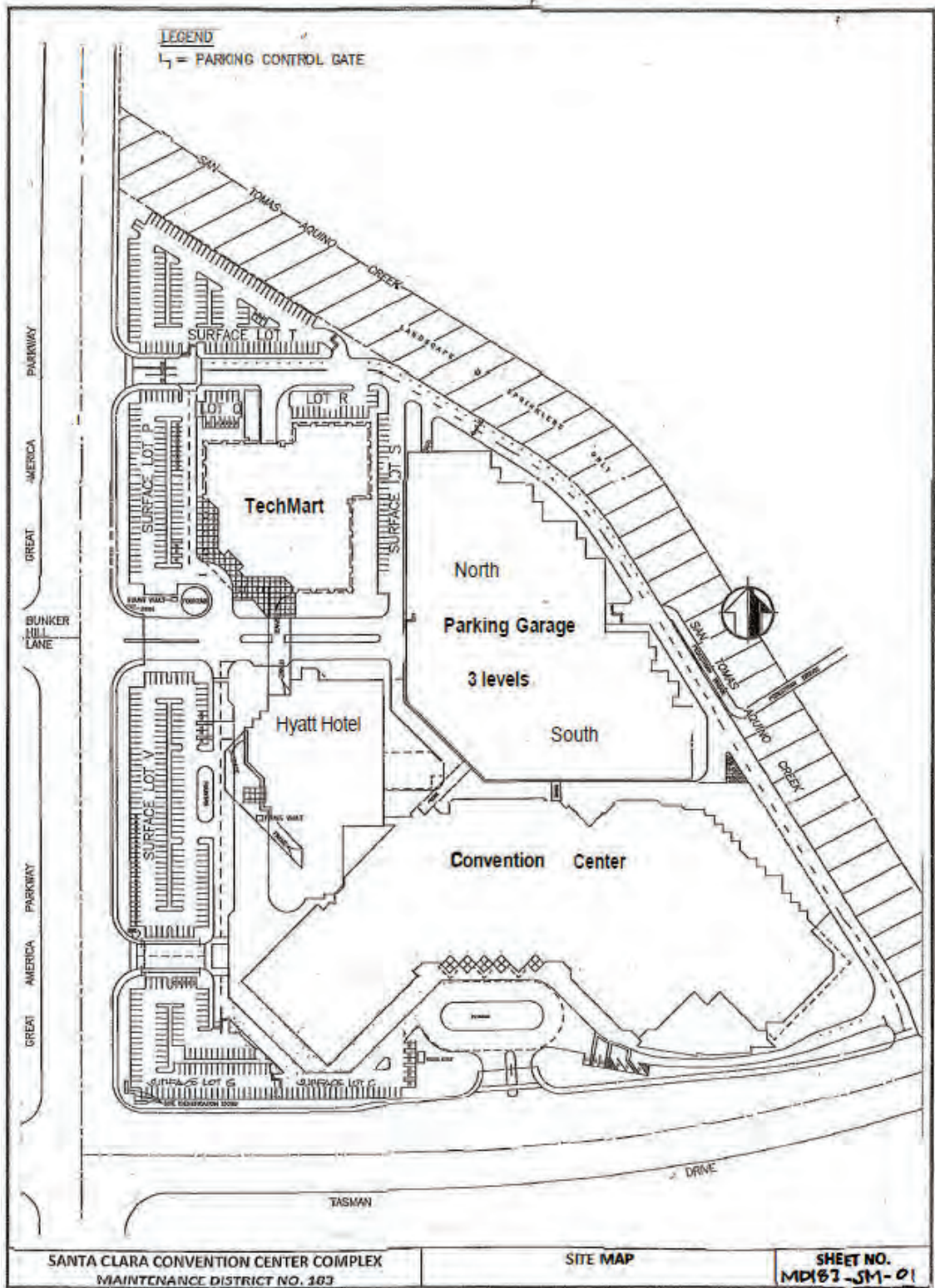
3. SITE-SPECIFIC DUTIES

In addition to the requirements set forth in Exhibit A, the Security Guard shall:

- 3.1. Provide on-site patrol services (on foot and by security vehicle) on a continuous basis while on-duty, with the exception of break times.
- 3.2. Inspect perimeter lighting and report non-operational findings daily to City contact.
- 3.3. Maintain parking garage log sheets of vehicles which may be abandoned or damaged during Grave Shift hours (0000-0800), and turn logs over to City contact.
- 3.4. Monitor perimeter riser pressure, maintain log sheet, and transmit to City monthly.
- 3.5. Immediately report all safety issues to the City contact.
- 3.6. Monitor alarms and any recording devices as directed.
- 3.7. Investigate unusual occurrences in and about the premises.
- 3.8. Log in at each of the various monitoring stations on-site at required schedule and intervals. Any exceptions to schedule shall be documented and explained in the Activity Logbook.
- 3.9. Monitor or direct traffic in and out of the parking garages during emergencies or special events.
- 3.10. Escort patrons or staff to their car upon request.
- 3.11. Dial 911 in emergency or criminal situations. Security Guards shall not engage with individuals committing crimes or suspected of committing crimes. Active incidents of vandalism, theft, damage, graffiti are to be communicated to the Santa Clara Police Department at 911, in addition to site supervisor for response.

- 3.12.** Report to City all potentially hazardous conditions and items in need of repair, including fire extinguishers, inoperative lights, locks, security hardware, broken or slippery floor surfaces, blocked emergency routes or exits, etc.
- 3.13.** Contact the Santa Clara Police Department non-emergency line (408-615-5580) to report any parking violations and will coordinate towing activities through the appropriate City agencies as directed by the designated City contact.
- 3.14.** Cooperate with the Santa Clara Police Department during scheduled or unscheduled visits.

Figure A1-1: Santa Clara Convention Center Complex Site Map



**APPENDIX A2 TO EXHIBIT A
TASMAN GARAGE**

1. DESCRIPTION OF SERVICES

Contractor shall provide drive-through security patrol services for the Santa Clara Parking Garage located at 2525 Tasman Avenue, Santa Clara, CA (Tasman Garage).

2. SCHEDULE

Contractor shall provide staffing to cover all posts and duty hours as provided below. Contractor agrees that the schedules set forth below may be changed at any time, without any penalty to the City, provided the City gives at least two (2) business days' notice of change.

Duty	Days Assigned
Lockdown Security Gates (each night at 10 PM)	7 days a week/365 days a year
Open Security Gates (each morning at 6 AM)	7 days a week/365 days a year

3. SITE-SPECIFIC DUTIES

In addition to the requirements set forth in Exhibit A, the Security Guard shall:

- 3.1.** Conduct a walkthrough/drive-through of the garage, including all five floors, for unattended or suspicious items prior to closing and locking down the security gates each night. With two hours prior notice, the City may request Contractor to conduct this task at a time later than 10 PM.
- 3.2.** Conduct a walkthrough/drive-through of the garage, including all five floors, for unattended or suspicious items prior to opening the security gates for public access of the garage each morning.
- 3.3.** Dial 911 in emergency or criminal situations. Security Guards shall not engage with individuals committing crimes or suspected of committing crimes. Active incidents of vandalism, theft, damage, graffiti are to be communicated to the Santa Clara Police Department at 911, in addition to site supervisor for response.
- 3.4.** Report to City all potentially hazardous conditions and items in need of repair, including inoperative lights, locks, security hardware, broken or slippery floor surfaces, blocked emergency routes or exits, etc.
- 3.5.** Contact the Santa Clara Police Department non-emergency line (408-615-5580) to report any parking violations and coordinate towing activities through the appropriate City agencies as directed by the designated City contact.
- 3.6.** Cooperate with the Santa Clara Police Department during scheduled or unscheduled visits.

4. ADDITIONAL DUTIES

Duties listed below will be additional charge in accordance with Contractor's standard rates.

- 4.1.** Monitor or direct traffic in and out of the parking garages during emergencies, or special events.
- 4.2.** Escort patrons or staff to their car upon request.

- 4.3. Additional security services as may be required.
- 4.4. Potential call back after hours to open/close the garage due to lock out.

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The maximum compensation payable for all materials and services provided under this Agreement shall not exceed **Six Hundred Fifty-Six Thousand Five Hundred Forty-Three Dollars (\$656,543)** during the Initial Term of the Agreement (“Maximum Compensation”), as summarized in Table B1 below. Any additional services or materials requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

Table B1: Maximum Compensation Summary	
Description	Amount
Santa Clara Convention Center Complex	\$519,168.00
Tasman Garage	\$27,375.00
Future Sites/Additional Security Guard Services	\$110,000.00
Maximum Compensation (3-Year Initial Term)	\$656,543.00

2. BILLING RATES

2.1. Santa Clara Convention Center Complex

Table B2: Santa Clara Convention Center Complex Billing Rate					
Hours	Estimated Hours Per Year	Unit Billing Hourly Rate	Initial Year 1	Initial Year 2	Initial Year 3
Swing Shift	2,920	\$26.00	\$75,920.00	\$75,920.00	\$75,920.00
Grave Shift	2,920	\$26.00	\$75,920.00	\$75,920.00	\$75,920.00
Day Shift	816	\$26.00	\$21,216.00	\$21,216.00	\$21,216.00
Annual Total			\$173,056.00	\$173,056.00	\$173,056.00
Total (3-Year Initial Term)			\$519,168.00		

2.2. Tasman Garage

Table B3: Tasman Garage Billing Rate					
Hours	# of Visits Per Year	Unit Billing Rate Per Visit	Initial Year 1	Initial Year 2	Initial Year 3
Lockdown Security Gates (each night at 10 PM)	365	\$12.50	\$4,562.50	\$4,562.50	\$4,562.50
Open Security Gates (each morning at 6 AM)	365	\$12.50	\$4,562.50	\$4,562.50	\$4,562.50
Annual Total			\$9,125.00	\$9,125.00	\$9,125.00
Total (3-Year Initial Term)			\$27,375.00		

2.3. Future Sites/Additional Security Guard Services

Hours	Initial Year 1 Unit Billing Hourly Rate	Initial Year 2 Unit Billing Hourly Rate	Initial Year 3 Unit Billing Hourly Rate
Overtime/Holiday Rate	\$39.00	\$39.00	\$39.00
Special or as-needed coverage (short-term)	\$39.00	\$39.00	\$39.00
Additional sites (long-term)	\$26.00	\$26.00	\$26.00

- 2.4. All rates shown above are flat rates, which include all wages, benefits, allowances, and differentials, and are billable for actual time worked, as required by the City. Only work performed by an on-site Security Guard or personnel is billable. No other work is billable, including any work performed by Contractor’s area supervisor or relationship manager.
- 2.5. Overtime rate can be used, as expressly authorized, if hours worked by an on-site Security Guard exceeds eight (8) hours in a given day or forty (40) hours in a given week. OVERTIME AND HOLIDAY WORK MUST BE EXPRESSLY AUTHORIZED BY THE CITY AND APPROVED IN WRITING IN ADVANCE BY THE CITY.
- 2.6. The City will not be charged for overtime if Contractor's relief guard is late for any reason and the current guard's shift is extended past eight (8) hours or a 40-hour week. Contractor shall absorb such overtime costs.
- 2.7. Contractor shall not be reimbursed for any supplies, equipment, or sundries utilized in performance of the work, unless specifically set forth in the resulting agreement.
- 2.8. The City may require additional security guard(s) at the regular locations and/or add future sites during the term of the Agreement. The City shall provide notice to Contractor at least 48 hours for any additional security guard services required.
- 2.9. Pursuant to Section 2.B of the Agreement after the initial three-year term, the City reserves the right to exercise five (5) additional one-year period extensions for a total of eight (8) years. Prices shall remain fixed for the three-year initial term. In the event the City elects to exercise options after the initial term, price adjustments may be considered by the City. Contractor shall identify a relevant market indicator (e.g., the Bureau of Labor Statistics Consumer Price Index, etc.) or provide information justifying reasons for any increase.

3. INVOICING

Contractor shall submit to CITY a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The City will pay Contractor within thirty (30) days of City’s receipt of an approved invoice.

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$2,000,000 Each occurrence
 - \$2,000,000 General aggregate
 - \$2,000,000 Products/Completed Operations aggregate
 - \$2,000,000 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, 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. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided

due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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.

F. 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.

G. 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 e-mailed to ctsantaclara@ebix.com:

Or by mail to:

EBIX Inc.
City of Santa Clara – Public Works Department
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

H. 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
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

Pursuant to Section ___ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

OPTION NO.	# of #
-------------------	--------

NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section ___ of the Agreement the rates of compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

Dated: _____

Approved as to Form: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
FIRST SHIELD SECURITY AND PATROL INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and First Shield Security and Patrol Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Notice of Exercise Option to Extend Agreement

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on November 1, 2021 and terminate on October 31, 2024 (“Initial Term”).
- B. After the Initial Term, the City reserves the right, at its own sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms (“Option Periods”) based on the same terms and conditions, subject annual appropriation of funds. City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise Option to Extend Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor’s representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The Maximum Compensation of this Agreement is set forth in Section 1 of Exhibit B and is subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

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: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at jteixeira@santaclaraca.gov

And to Contractor addressed as follows:

First Shield Security and Patrol Inc.
Attention: Omar Noory
1984 The Alameda, Suite 3
San Jose, CA 95126
and by e-mail at omar@firstshieldsecurity.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to “The Code of the City of Santa Clara, California” (“SCCC”). In particular, Contractor’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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: _____

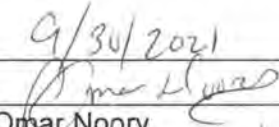
Dated: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

FIRST SHIELD SECURITY AND PATROL INC
a California corporation

Dated: 9/30/2021
By (Signature): 
Name: Omar Noory
Title: President/CEO
Principal Place of Business Address: 1984 The Alameda, Suite 3
San Jose, CA 95126
Email Address: omar@firstshieldsecurity.com
Telephone: (408) 460-2570
Fax: (877) 429-7990

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

1. INTRODUCTION

- 1.1.** Contractor shall provide as-needed long-term and short-term security services to protect persons and properties at City sites managed by the Parks & Recreation Department (Department). Contractor shall provide all labor, patrol vehicle, equipment, management, supervision, training, licenses, permits, insurance, pre-employment screenings, and reports necessary to accomplish the services.
- 1.2.** To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's RFP 20-21-57 (including subsequent updates), Contractor's proposal response dated June 8, 2021 and Contractor's oral demonstration materials dated August 18, 2021 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. SITES

- 2.1.** With at least two (2) business days of notice, Contractor shall provide security services as directed by the Department. Compensation shall be in accordance with the rates set forth Exhibit B.
- 2.2.** Contractor agrees that the services to be performed, including the locations where and the hours during which the services are to be performed, and the number of Security Guards to be furnished by the Contractor, shall be subject to the approval of the Department. The scope and/or times of security guard services will vary according to the need at each site and will be memorialized in a Post Order, as defined in Section 9.
- 2.3.** The City reserves the right during the term of the Agreement to add or delete any sites.

3. LICENSES AND PERMITS

Contractor and Contractor agents and employees shall possess all licenses, registrations, and permits required by the California Department of Consumer Affairs, Bureau of Collection and Investigative Services. Such license and permits are to be presented to the City on demand, and include the following:

- 3.1.** Private Patrol Operator's License: Contractor shall furnish its current and valid private patrol operator's number. Contractor shall notify the City immediately if its license expires without immediate renewal or is suspended or cancelled. Expiration without immediate renewal, suspension or cancellation of the Contractor's private patrol license automatically terminates the agreement, and the City will not pay for services rendered after effective date of the expiration, suspension, or cancellation. The City may reinstate the agreement, if the City determines, at its sole discretion that the expiration without immediate renewal, suspension, or cancellation was caused by administrative error or by an excusable error in completing applications by the Contractor, and the license has been reinstated or renewed.

- 3.2. Guard Registration Card: Contractor's Security Guards shall be registered and shall have a current and valid guard registration card in their possession while on duty. The guard registration cards must be current, and must be presented to the City upon demand. If a Contractor's Security Guard is unable to present his/her guard registration card upon demand, he/she will be relieved from duty and Contractor shall provide a Security Guard who has appropriate cards in his/her possession, at no additional cost to the City. The agreement is subject to immediate termination if the Contractor is unable to provide Security Guards who conform to these requirements. Contractor shall also maintain all other business and professional licenses that may be required by the state, federal, and local codes.

4. STANDARDS OF CONDUCT

Contractor shall ensure that while on duty at City facilities, Security Guards shall not:

- 4.1. Carry on their person any firearms, batons, handcuffs, knives, saps, brass knuckles, stun-gun, Taser, oleoresin capsicum (pepper) spray, or any tear gas agent. "On their person" shall include, but not be limited to, the employee's vehicle or locker on the City site.
- 4.2. Listen to radios, police scanners, or any other audio medium that is not directly job-related.
- 4.3. Watch television and/or play video games.
- 4.4. Read any materials which are not job-related.
- 4.5. Sleep while on duty.
- 4.6. Display a discourteous, abrupt, abrasive, or belligerent attitude.
- 4.7. Use City telephones or any other City-owned electronic equipment for anything other than City business.
- 4.8. Use any employee workstation other than those designated for the Security Guard's use.
- 4.9. Leave their area of responsibility without notification and/or until arrival of a relief guard.
- 4.10. Entertain personal visitors.
- 4.11. Be under the influence of illegal drugs or alcohol.
- 4.12. Be under the influence of any prescribed or over-the-counter medications which inhibit job performance in accordance with the specifications set forth herein.
- 4.13. Present or identify themselves as employees of the City of Santa Clara.

5. SECURITY GUARDS

Security Guards assigned to the City shall:

- 5.1. Identify and report security and safety violations.
- 5.2. Speak, read, write, and understand the English language fluently.
- 5.3. Do extensive walking during their shift, including taking the stairs, and walking the roof, parking lots and underground parking areas.
- 5.4. Vary their rounds and sequence so as not to appear routine.

- 5.5. Be thoroughly familiar with applicable Post Orders and general/specific duties and perform all tasks in accordance with the duties outlined in the Post Orders.
- 5.6. Provide high quality customer service to the public and City at all times.
- 5.7. Be skilled at diffusing confrontational situations.
- 5.8. Administer first aid or provide assistance to the public and City staff as required.
- 5.9. Complete incident, claim, or other related reports for any incident occurring on City property.
- 5.10. Assist on-site personnel in emergency situations.

6. EQUIPMENT, UNIFORMS, AND BADGING REQUIREMENTS

- 6.1. Contractor shall ensure that all Contractor personnel are in full uniform (with all required/approved equipment) and ready to begin work promptly at the start of the work shift and remain on the job in full uniform at their post. The uniforms shall be supplied by Contractor and approved by the City (subject to daily and/or random City staff inspection).
- 6.2. Contractor shall provide all equipment including but not limited to patrol vehicles, flashlights, and cell phones for all City assignments. Contractor shall also provide handheld radios for communication with the assigned Security Guards. This equipment is to be supplied to guards and supervisors by the Contractor at no additional charge to the City.
- 6.3. Contractor may be assigned custody of keys, operating equipment, and other materials deemed necessary by City for the operation and supervision of the premises' security program. All such keys, operating equipment, and materials shall remain City's property and shall be surrendered to City immediately upon discharge or transfer of personnel from the premises or termination of the agreement. Contractor shall be responsible for the cost of all equipment repairs or replacement due to abuse or negligence.

7. SUPERVISION AND MANAGEMENT CONTROLS

- 7.1. Contractor shall be solely responsible for its employees while they are on duty, including but not limited to, maintaining discipline, ensuring standards of conduct are adhered to, and enforcing security policies, procedures, and orders.
- 7.2. Contractor shall be solely responsible for selecting, hiring, employing, paying, supervising, training and discharging all personnel necessary to provide the required security guard services
- 7.3. Contractor shall ensure that Security Guards assigned to the City are trained and familiar with the City's policies, procedures, and site-specific requirements.
- 7.4. The City reserves the right, at its sole discretion, to refuse the services of any particular Contractor employee. In such case, Contractor shall immediately remove said employee and provide a replacement. Any employee so removed shall be the subject of an administrative investigation/inquiry by Contractor into the circumstances of the complaint. Contractor shall determine appropriate disciplinary actions in accordance with its own policy, a copy of which may be requested by the City at any time. At no time will the subject employee be eligible to work under the agreement until the Contractor's investigative findings are reviewed by the City.

- 7.5. Contractor shall perform regular quality assurance to ensure compliance with the City's requirements stated in this scope and rectify any observed problems. Quality assurance at a minimum shall include a weekly unannounced inspection. Documentation of inspections shall be discussed at least monthly with City.

8. MEETINGS

- 8.1. Contractor shall assign a Project Manager/Account Manager to be responsible for the coordination and completion of all administration and reporting required under the agreement. The Project Manager/Account Manager shall ensure that all calls or requests received from the City are responded to immediately.
- 8.2. Contractor's Project Manager/Account Manager shall attend on-site monthly Maintenance District meetings, at no additional cost.
- 8.3. The City and Contract shall meet annually or on an as-needed basis to discuss all relevant issues pertaining to the services.

9. POST ORDERS

- 9.1. Post Orders are documents that prescribe the procedures, duties, and responsibilities each Security Guard assigned to a security post must follow to ensure all duties are performed uniformly. The duties for each assigned posts will be detailed in the Post Orders that include the performance requirements of the specific post.
- 9.2. Contractor shall provide Post Orders to the City upon initial assignment of its employees and whenever such Post Orders are updated or amended. Post Orders shall be used by Contractor as the required procedures to address specific security procedures and concerns at particular sites. The City may modify, amend, or revise the Post Orders to change shift duties, start and stop times, and post location provided the change is within the contract scope and has no impact on the contract price. Post Orders will also be amended to reflect changes in laws, regulations, or procedures. Such changes shall require no modification of the agreement.

10. ACTIVITY LOGBOOKS/REPORTS

- 10.1. Contractor shall maintain Activity Logbooks at all facilities to capture all activities at post areas. Contractor shall ensure that, immediately upon reporting to a facility for duty, each employee record their name and the date and time or arrival for duty in the Activity Logbook maintained at the post. At the end of the duty, each employee shall record the time and departure in the same logbook. Contractor shall also ensure that employees record in the Activity Log Book any incidents, occurrences, messages, reports, etc. This Activity Logbook may be maintained electronically.
- 10.2. Activity Logbooks are the property of the City and are subject to administrative audits. All Contractor employees and activities shall be noted in the Activity Logbook for reference and contract reconciliation.
- 10.3. During shift changes, the outgoing Security Guard will review incident reports, occurrences, or messages with the incoming Security Guard. Daily report will be delivered to the City contact with a copy maintained in the Activity Logbook. The City may choose to have reports submitted electronically.
- 10.4. The Activity Logbook shall also contain pictures and reportable incidents (vandalism, graffiti, damage, broken or hazardous equipment) or changes in condition from the

previous shift to the current shift or occurrences during a shift. These are to be communicated in the Activity Logbook and a report sent electronically to the City contact for the particular Post site. Active incidents of vandalism, theft, damage, graffiti, or hazards are to be communicated to the Santa Clara Police Department in addition to site supervisor.

11. TRAINING

Contractor is responsible to provide training and orientation to all employees providing services to the City under the agreement. Such training shall follow the Contractor's standard policies and procedures in effect during the term of the agreement, shall be consistent with the levels generally provided within the security services industry, shall be in compliance with all applicable local, state, and federal laws, and shall conform to all other standards or requirements presented within this scope. The City reserves the right to request documentation of such training or require additional training as needed for security personnel at any time.

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The maximum compensation payable for all materials and services provided under this Agreement shall not exceed **Eight Hundred One Thousand Dollars (\$801,000)** during the Initial Term of the Agreement (“Maximum Compensation”), subject to the appropriation of funds. Any additional services or materials requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. BILLING RATES

2.1. Contractor’s compensation for security services shall be as follows:

Hours	Initial Year 1 Unit Billing Hourly Rate	Initial Year 2 Unit Billing Hourly Rate	Initial Year 3 Unit Billing Hourly Rate
Overtime/Holiday Rate	\$39.00	\$39.00	\$39.00
Special or as-needed coverage (short-term)	\$39.00	\$39.00	\$39.00
Regular/long-term sites (30 days or longer)	\$26.00	\$26.00	\$26.00

2.2. All rates shown above are flat rates, which include all wages, benefits, allowances, and differentials, and are billable for actual time worked, as required by the City. Only work performed by an on-site Security Guard or personnel is billable. No other work is billable, including any work performed by Contractor’s area supervisor or relationship manager.

2.3. Overtime rate can be used, as expressly authorized, if hours worked by an on-site Security Guard exceeds eight (8) hours in a given day or forty (40) hours in a given week. OVERTIME AND HOLIDAY WORK MUST BE EXPRESSLY AUTHORIZED BY THE CITY AND APPROVED IN WRITING IN ADVANCE BY THE CITY.

2.4. The City will not be charged for overtime if Contractor's relief guard is late for any reason and the current guard's shift is extended past eight (8) hours or a 40-hour week. Contractor shall absorb such overtime costs.

2.5. Contractor shall not be reimbursed for any supplies, equipment, or sundries utilized in performance of the work, unless specifically set forth in the resulting agreement.

2.6. The City may require additional security guard(s) at the regular locations and/or add future sites during the term of the Agreement. The City shall provide notice to Contractor at least 48 hours for any additional security guard services required.

2.7. Pursuant to Section 2.B of the Agreement after the initial three-year term, the City reserves the right to exercise five (5) additional one-year period extensions for a total of eight (8) years. Prices shall remain fixed for the three-year initial term. In the event the City elects to exercise options after the initial term, price adjustments may be considered by the City. Contractor shall identify a relevant market indicator (e.g., the

Bureau of Labor Statistics Consumer Price Index, etc.) or provide information justifying reasons for any increase.

3. INVOICING

Contractor shall submit to City a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$2,000,000 Each occurrence
 - \$2,000,000 General aggregate
 - \$2,000,000 Products/Completed Operations aggregate
 - \$2,000,000 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, 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. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided

due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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.

F. 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.

G. 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 e-mailed to ctsantaclara@ebix.com:

Or by mail to:

EBIX Inc.
City of Santa Clara – Parks & Recreation Department
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

H. 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
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

Pursuant to Section ___ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

OPTION NO.	# of #
-------------------	--------

NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section ___ of the Agreement the rates of compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

Dated: _____

Approved as to Form: _____

Office of the City Attorney
City of Santa Clara

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771



Agenda Report

21-1181

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action on Historic Resource Inventory Property Designation and Historic Preservation Agreement (Mills Act Contract) for 794 Park Court

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

Property Owner Megan L. Carter is requesting that her residential property at 794 Park Court be added to the City's Historic Resource Inventory (HRI) and that the City approve a Mills Act Contract for the property. The State of California enacted legislation that allows owners of historically designated properties to enter into a "Mills Act" contract with the legislative bodies of local agency jurisdictions, pursuant to Government Code Section 50280. Mills Act Contract properties then qualify for property tax reduction incentives contained in the California Revenue and Taxation Code. The purpose of a Mills Act Contract is to offer owners of historically significant properties an economic incentive to maintain and preserve the historic physical integrity of their properties, which thereby also increases the aesthetic and economic health of the surrounding neighborhood and the City. A 10-Year Restoration and Maintenance Plan is required to document specific maintenance and preservation activities proposed to be undertaken by the property owners for the duration of the Contract property in exchange for those tax savings.

The subject property is not currently listed on the City's HRI. A condition for application of a Mills Act Contract is approval for listing of the property on the HRI. The property owner submitted a State Department of Parks and Recreation (DPR) form evaluating the significance of the structure, which is required to qualify the property for listing.

The proposed Mills Act Contract was considered by the Historical and Landmarks Commission (HLC) at its meeting on June 3, 2021, in conjunction with an application for a Significant Property Alteration (SPA) Permit submitted for approval by the Community Development Director, for the remodel and 324 square foot addition to the home. The application for the proposed 324 square foot bedroom and bathroom addition to an existing two bedroom and one-bathroom home also required a Variance to interior side and rear yard building setbacks, which was reviewed and approved by the City's Planning Commission on August 25, 2021. No comments were received from the public during the public comment periods or at the hearings conducted by both HLC and the Planning Commission. The HLC reviewed the Historical Survey and proposed 10-Year Restoration and Maintenance Plan. The HLC recommended that the property be added to the City's HRI, and recommended Council approval of the requested Mills Act Contract. The HLC also approved issuance of a historic bronze plaque inscribed with "1925" appearing as the year of construction, upon the City Council's approval

of the Mills Act Contract.

DISCUSSION

The proposed property has been determined to have historical significance that would be protected through a Mills Act Contract as indicated through a State Department of Parks and Recreation (DPR) form. The evaluation of the historical and architectural qualities of the property support the conclusion that the property is eligible for listing on the HRI.

The Statement of Justification and proposed Mills Act Contract with exhibits (Attachment 1), including the DPR form and the Proposed 10-year Restoration and Maintenance Plan, demonstrate sufficient intent by the property owners to invest in the property consistent with the purpose for Mills Act Contracts. The City conducts periodic review of Mills Act Contract properties to verify that property owners are performing the maintenance and preservation activities described in the 10-year Restoration and Maintenance Plan.

The City Council established a process for evaluating Mills Act Contract requests on September 4, 1993 (Resolution No. 5843), that set a limit of five contracts per year. In 2004, the City Council increased the number of allowable contracts to ten per year. If approved, the subject proposal would be the City's third Mills Act Contract in 2021.

The staff reports from both the June 3, 2021 HLC meeting and the August 25, 2021 Planning Commission meeting are also attached for reference (Attachments 2 and 3, respectively).

ENVIRONMENTAL REVIEW

The action being considered, placement of property into the Mills Act program, is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15331 (Class 31 - Historical Resource Restoration / Rehabilitation), which exempts projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards.

FISCAL IMPACT

The amount of the property tax reduction depends upon the property, location, size, and comparable properties in the area. Currently, the assessed value of the property is approximately \$526,180 and the annual property tax is approximately \$6,300 (Source: Santa Clara County Assessor's Office). The City receives approximately 10% of the base property tax. The Mills Act tax reduction is based on an income capitalization method (ICM) calculation based on the average monthly rent, average maintenance costs, and an amortization schedule to arrive at a reduced appraisal value resulting in lower property taxes. The anticipated reduction in taxes would be 20% to 70% based on the County's evaluation of the property's age, condition, and local market value factors in accordance with the formula set by state law. Based on the latest information available, the estimated annual fiscal impact to the City for this individual Mills Act Contract would be a decrease of property tax revenue in the range of \$126 to \$441. The actual future fiscal impact may be greater due to the reassessment of property value by the County upon a transfer of ownership.

As the current Council policy allows up to 10 Mills Act Contracts to be approved each year, the cumulative economic impact for multiple Mills Act Contracts does not significantly reduce the overall property tax income for the City.

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>>.

RECOMMENDATION

1. Add the subject property to the City's Historic Resource Inventory (HRI); and
2. Authorize the City Manager to execute a Historic Preservation Agreement (Mills Act Contract) including a 10-Year Restoration and Maintenance Plan for the property at 794 Park Court with property owner Megan L. Carter.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Historic Preservation Agreement including 10-Year Restoration and Maintenance Plan (Mills Act Contract)
2. Historical and Landmarks Commission Staff Report of June 3, 2021
3. Planning Commission Staff Report of August 25, 2021

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Agreement, (herein, "Agreement"), is made and entered into this 26th day of October, 2021, ("Effective Date"), by and between Megan L. Carter, owner of certain real property located at 794 Park Court, Santa Clara, CA 95050 ("OWNER") and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050("CITY"). CITY and OWNER may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

A. **Recitals.**

(1) California Government Code Section 50280, et seq. authorizes the CITY to enter into a contract with the OWNER of qualified Historical Property to provide for the use, maintenance, and restoration of such Historical Property so as to retain its characteristics as property of historical significance.

(2) OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, shown on the 2020 Santa Clara County Property Tax Rolls as Assessors' Parcel Number 269-52-054, and generally located at the street address 794 Park Court, in the City of Santa Clara ("Historic Property"). A legal description of the Historic Property is attached hereto as "Legal Description," marked as "Exhibit "A," and incorporated herein by reference.

(3) The Historic Property is on the City of Santa Clara Architecturally or Historically Significant Properties list. OWNER submitted a Mills Act Proposal to City on January 8, 2021. The Proposal included a Primary Record from the State of California's Department of Parks and Recreation. A true and correct copy of the Proposal is attached to this Agreement as "Exhibit B".

(4) CITY and OWNER, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to Section 439.2 of the California Revenue and Taxation Code.

B. **Agreement.**

NOW, THEREFORE, CITY and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

(1) **Effective Date and Term of Agreement.** The term of this Agreement shall commence on the effective date of this Agreement and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such term will automatically be extended as provided in paragraph 2, below.

(2) **Renewal.**

(a) Each year on the anniversary of the effective date of this Agreement, ("renewal date"), one (1) year shall automatically be added to the term of this Agreement unless notice of nonrenewal is mailed as provided herein.

(b) If either the OWNER or CITY desires in any year not to renew the Agreement, OWNER or CITY shall serve written notice of nonrenewal of the Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual renewal date, or served by CITY to OWNER at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the balance of the remaining term of the Agreement as provided herein.

(c) OWNER may make a written protest of a nonrenewal notice issued by CITY. CITY may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to OWNER of nonrenewal. If either CITY or OWNER serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, from either original execution date or the last renewal date of the Agreement, whichever is applicable.

(3) **Standards for Historical Property.** During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements, and restrictions:

(a) OWNER shall preserve and maintain the characteristics of historical significance of the Historic Property. "The Secretary of the Interior's Standards for Rehabilitation," marked as "Exhibit C" to this agreement, and incorporated herein by this reference, contains a list of those minimum standards and conditions for maintenance, use, and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

(b) OWNER shall, when necessary or as determined by the Director of Community Development, restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation and the California Historical Building Code and in accordance with the attached schedule of potential home improvements, drafted by the OWNERS and approved by the City Council, attached hereto as "The Description of the Preservation and Restoration Efforts," marked as "Exhibit D" to this agreement, and incorporated herein by this reference.

(c) OWNER shall allow, and CITY requires, that after five (5) years, and every five (5) years thereafter, an inspection of the property's interior and exterior shall be conducted by a party appointed by CITY, to determine OWNER'S continued compliance with the terms of this

Agreement. OWNER acknowledges that the required inspections of the interior and exterior of the property were conducted prior to the effective date of this Agreement.

(4) Provision for Information.

(a) OWNER hereby agrees to furnish CITY with any and all information requested by the CITY to determine compliance with the terms and provisions of this Agreement.

(b) It shall be the duty of the OWNER to keep and preserve, for the term of the Agreement, all records as may be necessary to determine the eligibility of the property involved, and the OWNERS compliance with the terms and provisions of this Agreement, including, but not limited to blueprints, permits, historical and/or architectural review approvals, and schedules of potential home improvements drafted by the OWNER and approved by the City Council.

(5) Cancellation.

(a) CITY, following a duly noticed public hearing as set forth in California Government Code Section 50280, et seq., shall cancel this Agreement or bring an action in court to enforce this Agreement if it determines any one of the following:

(i) the OWNER breached any of the terms or conditions of this Agreement; or

(ii) the OWNER allowed the property to deteriorate to the point that it no longer meets standards for a qualified historic property.

(b) CITY may also cancel this Agreement if it determines that:

(i) the OWNER allowed the property to deteriorate to the point that it no longer meets building standards of the City Code and the codes it incorporates by reference, including, but not limited to, the Uniform Housing Code, the California Historical Building Code, the California Fire Code, and the Uniform Code for the Abatement of Dangerous Buildings or;

(ii) the OWNER has not complied with any other local, State, or federal laws and regulations.

(iii) the OWNER has failed to restore or rehabilitate the property in the manner specified in subparagraph 3(b) of this Agreement.

(c) In the event of cancellation, OWNER shall pay those cancellation fees set forth in California Government Code Section 50280, et seq. As an alternative to cancellation, OWNER may bring an action in court to enforce the Agreement.

(6) No Waiver of Breach.

(a) No waiver by CITY of any breach under this Agreement shall be deemed to be a waiver of any other subsequent breach. CITY does not waive any claim of breach by OWNER if CITY does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for under the terms of this Agreement or in the City's laws and regulations are available to the City.

(7) **Mediation.**

(a) Any controversies between OWNER and CITY regarding the construction or application of this Agreement, and claim arising out of this contract or its breach, shall be submitted to mediation upon the written request of one party after the service of that request on the other party.

(b) If a dispute arises under this contract, either party may demand mediation by filing a written demand with the other party.

(c) The parties may agree on one mediator. If they cannot agree on one mediator, there shall be three: one named in writing by each of the parties within five days after demand for mediation is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the mediator(s) or to furnish the mediator(s) with any papers or information demanded, the mediator(s) may proceed ex parte.

(d) A hearing on the matter to be arbitrated shall take place before the mediator(s) in the city of Santa Clara, County of Santa Clara, State of California, at the time and place selected by the mediator(s). The mediator(s) shall select the time and place promptly and shall give party written notice of the time and place at least fifteen (15) days before the date selected. At the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the mediator(s). The mediator(s) shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties.

(e) The submission of a dispute to the mediator(s) and the rendering of a decision by the mediator(s) shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provisions of the California Mediation Act.

(f) Each party shall bear their own cost(s) of mediation.

(8) **Binding Effect of Agreement.**

(a) The OWNER hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations, and restrictions as set forth in this Agreement. CITY and OWNER hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the OWNER'S successors and assigns in title or interest to the Historic Property. Each and every contract, deed, or other instrument hereinafter executed, covering, encumbering, or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument.

(b) CITY and OWNER hereby declare their understanding and intent that the burden of the covenants, reservations, and restrictions set forth herein touch and concern the land in that OWNER'S legal interest in the Historic Property.

(c) CITY and OWNER hereby further declare their understanding and intent that the benefit of such covenants, reservations, and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the CITY, public (which includes, but is not limited to the benefit to the public street generally located at 794 Park Court), and OWNER.

(9) **Notice.**

(a) Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

CITY: City of Santa Clara
Attn: City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

OWNERS: Megan L. Carter
794 Park Court
Santa Clara, CA 95050

(b) Prior to entering a contract for sale of the Historic Property, OWNER shall give thirty (30) days notice to the CITY and it shall be provided at the address of the respective parties as specified above or at any other address as may be later specified by the parties hereto.

(10) **No Partnership or Joint Enterprise Created.** None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors, or assigns; nor shall such terms, provisions, or conditions cause them to be considered joint ventures or members of any joint enterprise.

(11) **Hold Harmless and Indemnification.** To the extent permitted by law, OWNER agrees to protect, defend, hold harmless and indemnify CITY, its City Council, commissions, officers, agents, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising there from for which OWNER shall become legally liable arising from OWNER'S acts, errors, or omissions with respect to or in any way connected with this Agreement.

(12) **Attorneys' Fees.** In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations, or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to costs and other relief ordered by the court.

(13) **Restrictive Covenants Binding.** All of the agreements, rights, covenants, reservations, and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner pursuant to this Agreement.

(14) **Mills Act Historic Property Contract Application Requirements.** An application for a Mills Act Historic Property Contract shall be made through the Planning Division and shall include the following:

- a. a Historic Resources Inventory form;
- b. the description of the preservation or restoration efforts to be undertaken as referenced in paragraph 3 (b) as Exhibit "D";
- c. a statement of justification for the Mills Act Historic Property designation and reassessment; and,
- d. the Mills Act Historic Property Contract filing fee pursuant to paragraph 17.

(15) **Mills Act Historic Property Contract Approval.** Based upon the Historical and Landmarks Commission's ("Commission") review of the Mills Act Historic Property Contract criteria and recommendation to Council, and based upon the recommendation and approval by Council, a Mills Act Historic Property Contract may be entered into with OWNER. The decision of the City Council shall be final and conclusive in the matter.

(16) **Recordation and Notice.** No later than twenty (20) days after the parties execute and enter into this Agreement, the CITY shall cause this Agreement to be recorded in the office of the County Recorder of the County of Santa Clara.

(17) **Fees.** The Planning Department may collect such Mills Act Historic Property Contract application fee of \$7,564.00 (seven thousand, five hundred, and sixty-four dollars), or other fees for the administration of this contract as are authorized from time to time by the City Council. Such fees do not exceed the reasonable cost of providing the service for which these fees are charged. OWNER shall pay the County Recorder's Office recordation fees for recordation of this Mills Act Historic Property Contract.

(18) **Ordinary Maintenance.** Nothing in this contract shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on any Historic Property covered by this contract that does not involve a change in design, material, or external appearance thereof, nor does this contract prevent the construction, reconstruction, alteration, restoration, demolition, or removal of any such external architectural feature when the Director of Community Development determines that such action is required for the public safety due to an unsafe or dangerous condition which cannot be rectified through the use of the California Historical Building Code and when such architectural feature can be replaced according to the Secretary of Interior's Standards.

(19) **California Historical Building Code.** The California Historical Building Code ("CHBC") provides alternative building regulations for the rehabilitation, preservation, restoration, or relocation of structures designated as Historic Properties. The CITY's building permit procedure shall be utilized for any Historic Property which is subject to the provisions of this Agreement, except as otherwise provided in this Agreement or the CHBC. Nothing in this Agreement shall be deemed to prevent any fire, building, health, or safety official from enforcing laws, ordinances, rules, regulations, and standards to protect the health, safety, welfare, and property of the OWNER or occupants of the Historic Property or the public.

(20) **Conservation Easements.**

(a) Conservation easements on the facades of the Historical Property may be acquired by the CITY, or on the CITY's behalf, by a nonprofit group designated by the CITY through purchase, donation, or condemnation pursuant to California Civil Code Section 815.

(b) The OWNER, occupant, or other person in actual charge of the Historical Property shall keep in good repair all of the exterior portions of the Historic Property, and all interior portions thereof whose maintenance is necessary to prevent deterioration and decay of any exterior architectural feature.

(c) It shall be the duty of the Director of Community Development to enforce this section.

(21) **Severability.** If any section, sentence, clause, or phrase of this Agreement is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, or by subsequent preemptive legislation, such decision shall not affect the validity and enforceability of the remaining provisions or portions of this Agreement. CITY and OWNER hereby declare that they would have adopted this Agreement, and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

(22) **Integrated Agreement - Totality of Agreement.** This Agreement embodies the agreement between CITY and OWNER and its terms and conditions. No other understanding, agreements, or conversations, or otherwise, with any officer, agent, or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

(23) **Captions.** The captions of the various sections, paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

(24) **Statutes and Law Governing Contract.** This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

(25) **Amendments.** This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, CITY and OWNERS have executed this Agreement on the day and year first written above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

Brian Doyle
City Attorney

Deanna J. Santana
City Manager

ATTEST:

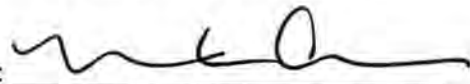
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

Hosam Haggag
City Clerk

“CITY”

**Megan L. Carter,
Owner of 794 Park Court**

By: _____


Megan L. Carter
794 Park Court
Santa Clara, CA 95050

“OWNER”

Exhibits:

- A – Property Description
- B – Primary Record
- C – Standards for Rehabilitation
- D – 10-Year Preservation Plan

Exhibit A

Legal Description

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA: Lot 23, AS SHOWN ON THAT CERTAIN MAP ENTITLED MAP OF PARK COURT WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 16, 1925 IN BOOK S OF MAPS AT PAGE(S) 38-39.

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary # _____
HRI # _____
Trinomial _____
NRHP Status Code _____

Other Listings _____
Review Code _____ Reviewer _____ Date _____

Page 1 *Resource Name or #: (Assigned by recorder) 794 Park Court, Santa Clara

P1. Other Identifier: _____
P2. Location: Not for Publication Unrestricted *a: County Santa Clara

and (P2c, P2e, and P2b or P2d. Attach Location Map as necessary.)

*b. USGS 7.5' Quad _____ Date _____ T _____; R _____; _____ 1/4 of _____ 1/4 of Sec _____; _____ B.M.

c. Address 794 Park Court City Santa Clara Zip 95050

d. UTM: (Give more than one for large and/or linear resources) Zone _____; _____ mE/ _____ mN

*e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate)

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

The Park Court subdivision

The Park Court subdivision consists of about 76 houses bounded by Park Avenue to the east, Alviso Street to the west, Cypress Alley to the north, and an unnamed alley to the south. Inside of these boundaries is a roughly circular street named Park Court, after the subdivision. All but about eleven of the houses front on Park Court, either in the inner perimeter or on the outer perimeter of that street. The other houses front on Alviso Street and Park Avenue. The subdivision is suburban in character, with most lots from 45 to 50 feet in width.

(See Continuation Sheet, next page.)

P5a. Photo or Drawing (Photo required for buildings, structures, and objects.)



*P3b Resource Attributes: (List attributes and codes) _____

*P4. Resources Present:
 Building Structure Object
 Site District Element of District

P5b. Description of Photo:
(View, date)

view looking west, May 2020

*P6. Date Constructed/Age and Source:
 Historic
 Prehistoric Both
1925

*P7. Owner and Address:

Megan Carter
794 Park Court
Santa Clara, CA 95050

*P8. Recorded by: (Name, affiliation, and address)

William Kostura
P. O. Box 60211
Palo Alto, CA 94306

*P9. Date Recorded: July 2020

*P10. Survey Type: (Describe) intensive

P11. Report Citation*: (Cite survey report and other sources, or enter "none".) none

*Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other (List)

Page 2
Recorded by William Kostura

Resource Identifier: 794 Park Court, Santa Clara
*Date July 2020 Continuation Update

Description (continued)

It appears that the subdivision was almost completely developed during 1924 and 1925, and that all or almost all of the houses were one-story in height and clad in horizontal wood siding. Styles were mostly restrained examples of Craftsman, Tudor, and Classic Revival styles. Some houses lack strong style elements, so that it does not seem possible to assign a style name to them other than "bungalow." Most houses, especially those that are Tudor or Craftsman feeling, have asymmetric compositions, though some are symmetrical. Not every house is different; several compositions are repeated in the subdivision.

On average these were modest vernacular houses that were probably intended for working class and lower middle class workers. Nevertheless, many of the houses do have distinctive forms, mainly in their rooflines and porches. Many have porches that project from the main body of the house and have gabled or hipped roofs supported by columns. Some of these columns have just enough articulation in their capitals to give the houses a "Classical Revival" style. Craftsman style houses, by contrast, may have tapering columns with or without capitals.

Today, all but about 26 of the houses still fit that description. Two houses have generously recessed or set-back second story additions but are otherwise little changed; several have coatings of stucco, wooden shingles, or aluminum siding; one is of uncertain integrity, and about nineteen are either more drastically altered or are replacement houses. On average, houses facing Park Court have much higher integrity than those facing Alviso Street and Park Avenue. Only two houses on the latter streets appear to be original.

Considering only the houses facing Park Court (and omitting those on Park Avenue and Alviso Street), about 49 houses, or 75 percent, retain most of their integrity, while 15 or 16 houses have lost half or more of their integrity. Houses that have had recessed second story additions, but are otherwise little changed, are included among those that retain integrity. Houses that have altered surfaces of stucco, shingles, etc., but are otherwise little changed, are included among those that have lost integrity.

These numbers are close but approximate, based on a single viewing in person plus additional viewing on Google Maps, without close attention to window sash and doors, and without having done individual research such as looking at building permits. On the whole, it seems clear that the Park Court subdivision largely retains its mid-1920s feeling.

The subject house, 794 Park Court

This is a one-story wood-framed house that is set back from the street to allow for a front yard that is lushly planted. The foundation, front steps, and porch floor are made of concrete, the roof is T-gabled, and the house is clad in double-ogee (or teardrop) horizontal wood siding on all sides.

(See Continuation Sheet, next page.)

Page 3
Recorded by William Kostura

Resource Identifier: 794 Park Court, Santa Clara
*Date July 2020 Continuation Update

Description (continued)

The house is roughly rectangular in shape, with a staggered massing in front. The left side of the house projects forward from the rest of the house by about two feet, and within this projection a shallow, rectangular bay window projects about a foot farther forward. Thus, from left to right, there is a series of setbacks in the front. At far right, the entrance porch is set back yet another step.

Both the roof over the main body of the house and that of the forward projection at left are front-gabled, creating a double-gable effect. The eaves extend a foot or two beyond the wall plane and are fronted by plain bargeboard. The eaves of the more forward gable are supported by two knee braces. A shed roof covers the bay window. At right, a hipped roof shelters the entrance. It is supported by a square column with simple moldings at the top that suggest a Classical capital.

The long right side of the house has a centrally-placed entrance and irregularly arranged fenestration to its right and left. A very broad side gable dominates this side of the house. The left side, by contrast, does not have a side-gabled roof. Here, an entrance is flanked by sidelights, and four other windows can be found to the right and left.

In the rear, the composition is symmetrical, with a small central window, four larger windows to right and left, and a louvered vent at top, just beneath the eave. This vent matches a louvered vent in the front gable.

On all four sides the windows have wooden sash, and almost all are double-hung, the exception being a large fixed window in the front bay. All appear to be original. Each window is surrounded by flat board casings and has a wooden sill. The double-hung windows have a variety of sash types, including six-over-one, four-over-one, and one-over-one. The windows are as follows:

In the projecting bay in the front of the house: a tripartite window, with a fixed window flanked by 4/1 double-hung sash. A 6/1 window can also be found to the right of the front door.

On the right side: two 6/1 sash, one 1/1 sash, and a paired window with 4/1 sash.

On the left side: the sidelights have 6/1 sash, two windows toward front are also 6/1, and two to the rear are 1/1.

In the rear: four 1/1 sash windows.

There have been two alterations to the exterior of the house. One is a plain, replacement wooden front door. The other has been the removal of a brick chimney from the left side of the house. It was not visible from the street and was damaged in the Loma Prieta Earthquake of 1989.

The property includes a newer, 2-car detached garage (c.1950's, that replaced the original single-car garage) accessed from Alviso Street whereas the original garage was accessed from the Park Court oval.

BUILDING, STRUCTURE, AND OBJECT RECORD

Page 4

*NRHP Status Code _____

*Resource Name or # (Assigned by recorder) 794 Park Court, Santa Clara

B1. Historic Name: _____

B2. Common Name: _____

B3. Original Use: residence B4. Present Use: residence

*B5. Architectural Style: Craftsman

*B6. Construction History: (Construction date, alterations, and date of alterations)
Built in 1925. Chimney removed in 1989. Replacement of front door at unknown date.

*B7. Moved? No Yes Unknown Date: _____ Original Location: _____

*B8. Related Features:
none

B9a. Architect: none/unknown b. Builder: Walter Altevoogt

*B10. Significance: Theme vernacular Craftsman style architecture Area local (Santa Clara County)
Period of Significance 1925 Property Type residence Applicable Criteria 3

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

History

The Park Court Subdivision

The history of this site goes back to Mission Santa Clara, the eighth of the Spanish-era missions in California, founded in 1777. After the mission was secularized by Mexico in 1833, roughly half of the mission's vast lands were given to Native Americans and the rest was sold to private parties. By the late 1860s, 140 acres of the former mission land was owned by John G. Bray (1814-1871). Bray had been a merchant in his native New Jersey and then briefly in San Francisco, and from 1852 on was involved in business and real estate in San Jose and Santa Clara. In 1886, fifteen years after his death, his estate divided his land into twelve large parcels. The subject property is in lot 9 of that subdivision. Lot 9 was owned, first, by members of the Bray family, then by one R. D. Shimer, and finally by Walter and Katherine Altevoogt.

(See Continuation Sheet, next page.)

B11. Additional Resource Attributes: (List attributes and codes) _____

*B12. References:

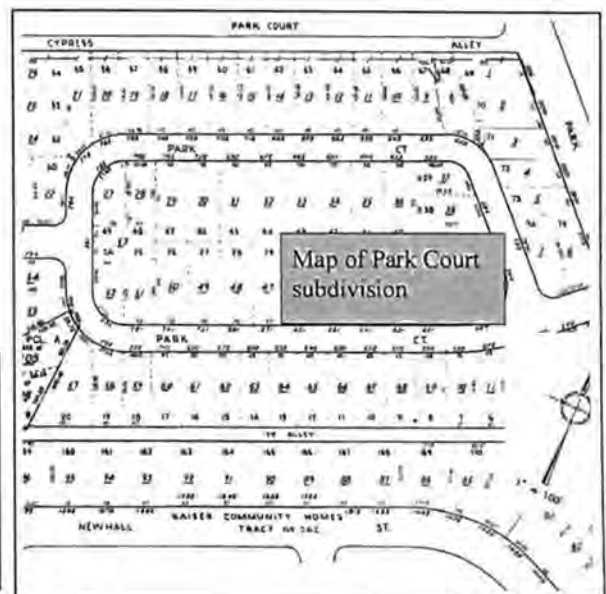
See continuation sheet.

B13. Remarks:

*B14. Evaluator: William Kostura

Date of Evaluation: July 2020

(This space reserved for official comments.)



Page 5

Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

History (continued)

Walter Altevogt (b. 1886) was a native of Rotterdam, Holland, came to the United States in 1910, and worked in Martinez, Contra Costa County, as a carpenter during at least 1918-1920. In June 1924, in San Jose, he married Katherine Dinsmore, and during 1924-1927 they lived in San Jose while he worked as a carpenter and building contractor. Archives and Architecture (2015) reports that the Altevogts purchased a considerable amount of land in San Jose and Santa Clara and created several subdivisions in close proximity to each other at this time. They included Park Court, where the subject property is located; part of Burrell Park, near Park Avenue and Hedding Street; part of the Chapman and Davis Tract; and the Alameda Villa Tract.

Park Court consisted of 75 or 76 lots and was almost completely developed during 1924 and 1925. It is doubtful that Altevogt built on every lot, but judging from the appearance of the houses and records in *Building and Engineering News*, the great majority must have been built by him. As mentioned above, the houses were one-story in height, were clad in horizontal wood siding, and had a variety of styles and rooflines, with several repeating house types. They were mostly restrained examples of styles common to the time, although some houses were more animated in their compositions.

During August-October 1925 Altevogt completed 21 houses in Park Court without any legal troubles, as documented in *Building and Engineering News*. He then began to face major legal troubles. The same publication documented liens against 41 of Altevogt's Park Court properties during November 1925 through January 1926. The liens were filed by the Tilden Lumber and Mill Company (which Altevogt presumably purchased lumber from) and the University Electric Company (a contractor he must have hired). For another 15 houses, there is no record of either a completion or a lien.

Archives and Architecture (2015) reports that Walter Altevogt "was indicted on several counts of fraud, corruption and extortion in the late 1920s," and that he and his wife Katherine divorced then. Walter Altevogt left San Jose then, for Hayward, and subsequently lived in Santa Cruz (in 1932-1935) and Grass Valley (1940). He was drafted into the army in 1942, and later moved to Scurry County, in far west Texas, where he died in 1953.

Undoubtedly as a result of the Altevogts' insolvency, all but three lots in Park Court were sold at the end of 1925 to John Roy Phelps, a real estate and insurance salesman in San Jose. He must have then sold the completed houses one-by-one to individual home-owners. (Archives and Architecture, 2015.)

Despite Park Court's troubled origin, three houses in the subdivision were chosen to illustrate Santa Clara's new suburban lifestyle in a booklet called *Plan of Santa Clara: The Heart of Santa Clara Valley* (Santa Clara Chamber of Commerce, November 1925). The three houses include the subject house and two others to its left.

(See Continuation Sheet, next page.)

Page 6

Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

History (continued)

Historic houses in Santa Clara

The City of Santa Clara's website has a page on "Historic Properties." This page is almost entirely devoted to residential buildings and includes almost thirty houses that pre-date the 1920s. The oldest is the Women's Club Adobe, said to have been built in 1784-1792 and the last of thirty "apartments" built for neophyte Indians residing at the mission. The next oldest is the Berryessa adobe, which dates to the late 1840s. Two more date to the 1850s, three to the 1860s, one to ca. 1870, sixteen to the 1880s-1890s, and four to the 1900s-1910s. Two of the listed houses (at 725 Madison Street and 1543 Franklin Street) are in the Craftsman style, the style of the subject house.

Besides these, many other early houses can be found in the Old Quad neighborhood of Santa Clara. The Old Quad covers the original quadrangle shown in the 1866 survey by J.J. Bowen that encompasses the area bordered by Scott Boulevard to the west, Newhall Street to the south and east, and the railroad tracks to the north and east.

Another ca. 1920s subdivision in Santa Clara

Archives and Architecture (2015) writes: "The Park Court Subdivision is known to the City of Santa Clara to be the only intact subdivision from the 1920s and 1930s remaining today in Santa Clara, featuring homes styled as bungalows, including Craftsman, Colonial Revival, and Cape Cod, creating a unique neighborhood of like size, scale and lot sizes."

Another subdivision in Santa Clara (its name is not known to this writer) does appear to date to the 1920s or 1930s. It is bounded by The Alameda to the south and Sherwood Avenue to the north, and contains the internal streets Morris Court and O'Brien Court. It consists of about forty very small one-story stucco-clad houses and duplexes with simplified Mission Revival or Mediterranean Revival parapets. Parapets aside, the houses are plain and are much less expressive, architecturally, than are the Park Court houses.

The subject house, 794 Park Court

Because the County Clerk-Recorder's office is closed at this time due to the Covid-19 coronavirus, no chain of title for this property could be researched. However, a nearly complete list of the residents of this house for the period 1928-1974 has been researched using city directories and United States censuses. One of the residents is known to have been an owner, and one was a renter; but for the purpose of a historical evaluation the most important consideration is that their occupations are known.

One more preliminary note should be mentioned, namely, that the numbering system for this subdivision changed in the late 1950s. Through 1956 this house was numbered 44 Park Court. From 1961 on it was 794 Park Court.

(See Continuation Sheet, next page.)

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Resource Identifier: 794 Park Court

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Continuation Update

History (continued)

Because of Walter Altevogt's legal troubles, and the mass sale of Park Court properties to John Roy Phelps, it appears that some houses in Park Court, including this one, remained vacant for two or three years after they were completed. 1928 is the first year for which residents are known.

Residents include:

1928-1932. Marcus Mathew Soll (1881-1965), a farm machinery salesman, and his wife, Mary Elizabeth Soll (1883-1972). Both were natives of Iowa, and they owned the house.

1932. Francis Scott, an insurance agent, and Harriet Scott, a teacher.

1934. Emmett E. Nichols (1903-1996), a salesman; and Fern J. Nichols (1908-1983).

1935-1942. Stephen P. Dowell (1863-1940), and Elizabeth Dowell (b. ca. 1867). Both were natives of Missouri, and in 1940 both were in their 70s and neither had an occupation. Their children, who lived here some of these years, included James Albert Dowell, a life insurance salesman; Helen Dowell, a waiter at the Santa Clara Inn; and Izeth Dowell, a clerk. The Dowells were renters here.

1942. Wesley I. Lanham (b. ca. 1911), proprietor of retail fuel oils; and his wife Alice (b. ca. 1910).

1944. Lowell Thomas, a mechanic, and his wife Dorothy.

1945-1950. Clinton J. Nolan, a driver, and his wife Marguerite.

1952-1974. Elsie Bryson (1897-1983), a native of Massachusetts. In the 1950s she was a bookbinder for A. F. Brosius and Company, bookbinders in San Jose, and from 1961 on she was retired.

Haines directories do not list this address during the 1970s-1998. The next known residents are Frank Frederick (in 1999), Christopher Frederick (2002), and the current owner (beginning in 2003).

Alterations

As mentioned above, there have been two alterations to the exterior of this house. A brick chimney on the south side of the roofline was removed after it was damaged in the Loma Prieta earthquake of 1989, and the front door is a replacement.

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Integrity

This property retains integrity in all seven areas, listed below:

Because this house has never been moved, it retains integrity of location.

Because the only alterations have been the replacement of a door and the removal of a chimney, this house retains integrity of design, materials, workmanship, feeling, and association.

Because most of the old houses in the Park Court subdivision still stand with good to high integrity, this property retains integrity of setting.

Evaluation under California Register criteria

Evaluation under Criterion 1 of the California Register: Resources that are associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.

This is one of the older houses in Santa Clara; the overwhelming majority in the city are much newer. Still, many houses are older, and most of the historic houses listed on the city's website are much older. About fifty other largely unaltered houses in the Park Court subdivision are the same age as this house. Thus, while the subject house does evoke an early period in Santa Clara's history, it does not do so in a way that many other houses do as well or better.

No other event or pattern of history associated with this house comes to mind, and thus the subject property does not appear to be eligible for the California Register under this criterion.

Evaluation under Criterion 2 of the California Register: Resources that are associated with the lives of persons important to local, California, or national history.

None of the residents of this house was historically important by California Register standards. The most interesting may be Elsie Byron, who worked as a bookbinder while living here in the 1950s.

Thus, the subject property does not appear to be eligible for the California Register under this criterion.

Evaluation under Criterion 3 of the California Register: Resources that embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of a master, or possess high artistic values.

This is a fine though restrained example of a 1920s bungalow, and it is one of the best houses in the Park Court subdivision. Its most characteristic features are a cross-gabled roof with a corresponding, smaller

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Evaluation under California Register criteria (continued)

gable over a projection in the front; knee-braces that support broad eaves and that relate the building to the Craftsman style; and a square column with capital moldings in the porch. A rectangular bay window in the front adds interest to the composition. The house has unusually high integrity, including all of its original window sash. Many of these sash are divided by muntins into multiple lights (e.g. 4/4, 6/6).

Because of its characteristic features and exceptionally high integrity, this house is a distinctive example of the domestic architecture of 1920s Santa Clara. Accordingly, the property appears to be individually eligible for the California Register at the local level under this criterion. The Period of Significance is 1925, the year the house was built.

Investigation of a potential historic district in the vicinity

Park Court appears to qualify for the California Register as a historic district under both Criterion 1 and Criterion 3. Under Criterion 1 this is a remarkably intact residential subdivision of over seventy houses that was built at an early date by one developer. It was clearly aimed at working class and middle-class residents and provided them with housing in a comfortable, suburban setting, close to both downtown Santa Clara and downtown San Jose. This subdivision is a rare and excellent example of comfortable housing in a pleasing setting planned for workers of modest income.

Under Criterion 3, Park Court is likewise a rare and excellent example of a 1920s subdivision composed of bungalows built to near-uniform scale but with varied compositions and styles. The wooden cladding of the houses, and the decorative style features, which are also of wood, provide surface texture and create a rustic feeling throughout the subdivision. As a large collection of wooden bungalows this subdivision is almost certainly unmatched in the city of Santa Clara, and this may be true for a much larger surrounding area as well.

The integrity of the subdivision is high. If one includes only the houses facing Park Court itself (i.e., excluding buildings along Park Avenue and Alviso Street), the integrity seems to be very high. About fifty of the houses facing Park Court, or 77% of the whole, are mostly intact and should be considered to be contributors to the district. This may be a conservative estimate; some houses that have been altered with stucco but are otherwise mostly intact are considered here as non-contributors, but with more consideration might be considered as contributing to the district.

Under both Criterion 1 and Criterion 2 the subject property, 794 Park Court, is a contributor to this potential historic district. Under both criteria the Period of Significance is 1925, the year Park Court was developed.

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Evaluation under City of Santa Clara criteria

The Criteria for Local Significance were adopted on April 20, 2004, by the City of Santa Clara City Council and are listed under Section 8.9.2 of the City of Santa Clara General Plan, Criteria for Local Significance. Under this section of the General Plan, any building, site, or property in the City that is 50 years old or older and meets certain criteria of architectural, cultural, historical, geographical or archeological significance is potentially eligible. The criteria are listed below.

Criterion for Historical or Cultural Significance

To be historically or culturally significant, a property must meet at least one of the following criteria:

1. The site, building or property has character, interest, integrity and reflects the heritage and cultural development of the city, region, state, or nation.

This house is an excellent example of a suburban house that was intended for blue collar or lower middle class residents when it was built in the 1920s.

5. A building's direct association with broad patterns of local area history, including development and settlement patterns, early or important transportation routes or social, political, or economic trends and activities. Included is the recognition of urban street pattern and infrastructure.

This house is part of the Park Court subdivision, one that was intended for working class and lower middle class residents. Regarding the number of houses in the subdivision, the street layout's court plan, and level of integrity, Park Court is probably the best subdivision of the 1920s in Santa Clara. The subject house contributes to this subdivision and thus seems to have significance under this criterion. It may be, however, that this aspect of the house's history is better considered under parts 1 and 2 of "Criterion for Geographic Significance," below.

Criterion for Architectural Significance

To be architecturally significant, a property must meet at least one of the following criteria:

1. The property characterizes an architectural style associated with a particular era and/or ethnic group.

This house was built in the Craftsman style, a style that was common in Santa Clara and San Mateo counties during the 1910s and 1920s. Although this is a restrained example as far as ornament is concerned, the house is particularly expressive in its roofline and use of setbacks. In addition, the integrity of the house is unusually high. In sum, this a fine example of a Craftsman style house that was intended for working class and lower middle class workers.

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Evaluation under City of Santa Clara criteria (continued)

4. The property has a strong or unique relationship to other areas potentially eligible for preservation because of architectural significance.

This house is part of the Park Court subdivision, which was built in the mid-1920s by developer Walter Altevogt. It is suburban in character and was likely intended for blue collar and lower middle class residents. While most of the houses along Park Avenue and Alviso Street would not be contributors to a potential historic district, it appears that about 77% of the houses facing Park Court would be contributors. Because of its design features and high integrity, the subject house would be one of them.

7. A building's notable or special attributes of an aesthetic or functional nature. These may include massing, proportion, materials, details, fenestration, ornamentation, artwork or functional layout.

The complex roofline, setbacks, wooden materials, windows that are divided by muntins into multiple lights, a porch column with moldings, and knee-braces make this house a notable example of the Craftsman style.

Criterion for Geographic Significance

To be geographically significant, a property must meet at least one of the following criteria:

1. A neighborhood, group or unique area directly associated with broad patterns of local area history.

This house strongly contributes to the Park Court subdivision, a largely intact collection of wooden bungalows. Park Court is probably by far the best example of a suburban subdivision that was planned and built in Santa Clara during the 1920s-1930s, and may be one of the best in the immediate region.

2. A building's continuity and compatibility with adjacent buildings and/or visual contribution to a group of similar buildings.

All or nearly all of Park Court's early houses were one story in height, had wooden cladding materials, and were designed in a variety of compatible styles such as Craftsman, Tudor Revival, and Classical Revival. The subdivision, or at least the collection of houses facing the Park Court street, remains largely intact. The subject house relates very closely with the other largely unaltered houses and contributes strongly to the aesthetic of the subdivision.

Criterion for Archaeological Significance

This property is not being evaluated under this criterion.

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References

Building and Engineering News, issues of August 22, September 5, October 31, November 7, and November 28, 1925; and January 2 and January 9, 1926. "Completion Notices" and "Liens Filed", for the Park Court properties of Walter Altevogt. These included at least 21 completion notices and 40 liens filed. The subject property appears to have been lot 23 of Park Court and was recorded on November 28th under "Liens Filed."

Building and Engineering News, issues of July 12, August 2, September 13 and 20, and November 15, 1924; and April 25 and August 1, 1925. "Completion Notices" for Walter Altevogt's projects in Burrell Park (San Jose) and the Chapman and Davis Tract.

San Jose city directories 1924-1927 for Walter Altevogt

Santa Clara city directories 1928-1974 for Marcus and Mary Soll, Frances and Harriett Scott, Emmett and Fern Nichols, Stephen and Elizabeth Dowell, Wesley and Alice Lanham, Lowell Thomas, Clinton Nolan, and Elsie Bryson.

1920 U. S. Census, Martinez, for Walter Altevogt

1930 U. S. Census, Hayward, for Walter Altevogt

1930 U. S. Census, 44 Park Court (today's #794), for Marcus and Mary Soll

1940 U. S. Census, 44 Park Court (today's #794), for Stephen and Elizabeth Powell

1940 U. S. Census, 64 Park Court, for Wesley Lanham

1940 U. S. Census, Santa Clara (address illegible), for Elsie Bryson

Find-A-Grave website listings for Marcus Mathew Soll, Mary Elizabeth Soll, and Stephen Price Dowell

1950 Sanborn insurance map, page 121

Archives and Architecture, LLC. Historical Evaluation of 651 Park Court, Santa Clara (2015). This report was useful for background information on Walter Altevogt and the Park Court subdivision.

City of Santa Clara. "Historic Properties" website. <https://www.santaclaraca.gov/our-city/about-santa-clara/maps/santa-clara-s-historic-properties-story-map/historic-properties> (accessed June 2020).

Santa Clara Chamber of Commerce. *Plan of Santa Clara: The Heart of Santa Clara Valley* (November 1925).

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Photographs of 794 Park Court



Top row: Two views of the front of the house.
Middle left: Eaves at front, with knee brace.
Middle right: Slightly-projecting bay window, with tripartite sash.
Bottom: Double-ogee (teardrop) siding.

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Top two photos: Front entrance, concrete porch and step, and porch post with moldings.

Bottom photo: Ceiling of the recessed entrance.

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Top photo: The north side of the house.

Middle left: North side entrance and window.

Middle right: The rear of the house.

Bottom: Garage (c.1950's) facing Alviso Street.

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Other houses in the Park Court subdivision, all facing the street Park Court

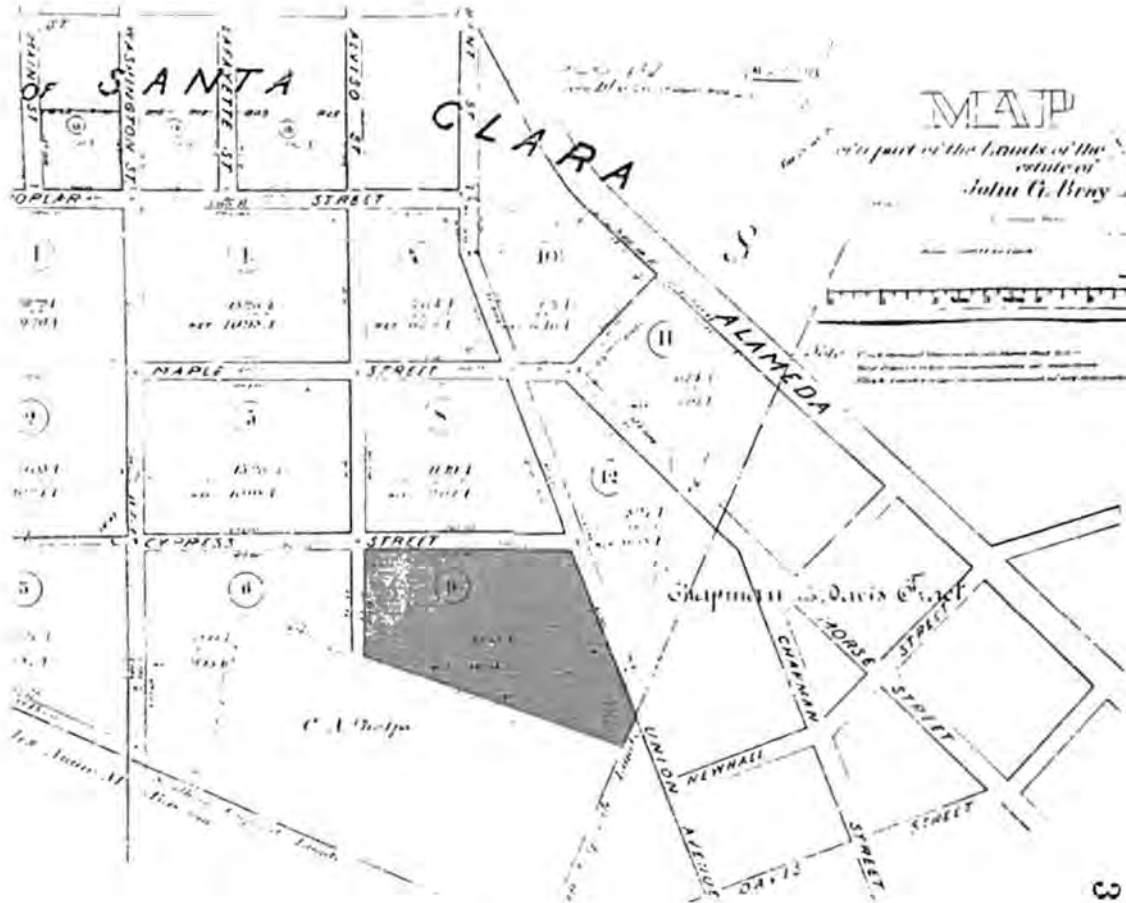


These are some of the houses in Park Court that appear to retain good to high integrity. Several of the house plans were repeated, so that some of the ones shown here have two or three twins or near twins in the subdivision. One house, shown in the fourth row at far left, is a twin of 794 Park Court.

The black and white photo at bottom left is from the booklet "Plan of Santa Clara," published in 1925. It shows a row of three Park Court houses, including the subject house (at right).

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Map of the land of the estate of John G. Bray. Copied from a report by Archives and Architecture, LLC (2015).

John G. Bray came to San Jose in 1852 and he purchased this large tract of land in the 1850s or 1860s. He or his heirs had it divided into twelve parcels; parcel 9, colored red, corresponds to the later Park Court subdivision.

Secretary of Interior's Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

10-Year Restoration Maintenance Plan

January 5, 2021

Megan Carter
794 Park Court
Santa Clara, CA 95050

Dear Planning Staff and Historic & Landmark Commissioners,

The following is my proposed 10-year plan for the restorations and maintenance of my historic home at 794 Park Court. All items to meet the Secretary of Interiors standards for Treatment of Historic Properties;

Years 1-3 (2022-2024)

Foundation: Replace failing concrete hollow brick foundation with new concrete pier and grade beam foundations. The final finish floor height will be set to the highest point of the existing finish floor. Note that the existing finish floor is higher in the middle of the house because the perimeter of the house has settled over the years due to poor rainwater management around the structure. A third bedroom and second bathroom will be added concurrently with the foundation replacement to adapt the home to meet the homeowners needs (adaptive reuse of a historic structure).

Entry Porch Slab & Steps: Replace existing cracked concrete porch slab and steps with new concrete porch slab and steps. The entry porch roof and tapered wood columns to remain unchanged.

Repair wood siding where required due to settling of existing foundations. Siding that will be removed as part of the proposed bedroom addition will be used where needed.

Years 4-5 (2025-2026):

Window Restoration: Restore / Repair existing historic wood window sashes. Where windows sashes are inoperable from being painted shut or where pulley ropes have been they will be restored to working order by cutting the paint and installing new pulley ropes where required. Any minor dry rot areas on the window sashes shall be repaired with epoxy filler and repainted to match. Where elements of the existing window sashes have excessive rot (stiles or rails) they shall be replaced with salvaged or custom milled wood to match. Glazing putty, where cracked, shall be replaced and the window sash shall be painted to match existing.

Years 6-7 (2027-2028):

Painting of the structure: New paint for all exterior wood siding, eaves, gutters / downspouts, all windows, doors and their associated trim.

Year 8 (2029): Electrical: Update all electrical systems including replacing knob and tube wiring.

Year 9 (2030): HVAC: Update all existing heating and ventilation systems.

Year 10 (2031):

Roofing: Replace existing asphalt composition shingle roofing with new triple layer (tri-lam) asphalt composition shingle roofing with a more similar profile and shadow line of wood shingles (what was originally on the home). Repair any dry rot at roof rafters at the eaves and install new ogee style gutter with 2" diameter round downspouts to be more historically sensitive than the current fascia gutters with rectangular downspouts.

I am excited about restoring and rehabilitating my wonderful historic home so that it can be preserved and enjoyed for many years to come.

Sincerely,

Megan Carter



Agenda Report

21-744

Agenda Date: 6/3/2021

REPORT TO HISTORICAL AND LANDMARKS COMMISSION

SUBJECT

Public Hearing: Consideration of City Historic Resource Inventory Property Designation, Approval of a Historic Preservation Agreement (Mills Act Contract), and Architectural Review and SPA Permit to allow an addition and attachment of an existing detached twocar garage at 794 Park Court

BACKGROUND

The applicant has filed applications for listing on the Historic Resources Inventory (HRI), a Mills Act Preservation Agreement, Design Review, and a Significant Property Alteration (SPA) Permit application on January 8, 2021 as required under the Historic Preservation Ordinance (HPO), Chapter 18.106 of the Zoning Code. The project includes a request to allow foundation replacement and a 341 square foot bedroom, bathroom and closet addition to the rear and south sides of the existing house, creating an attachment and interior access door between the house to the existing detached two-car garage in the rear yard fronting Alviso Street.

The project also includes an application for variances to allow the addition at a substandard interior side yard setback, and addition to a detached two car garage resulting in a substandard rear and interior side yard setbacks. The Variance application (PLN2021-14940) will be considered separately by the City's Planning Commission.

The subject property is located on Park Court, which is a rectangular 1925 subdivision containing several homes on the City's Historic Resources Inventory of Bungalow, Cape Cod and Colonial Revival architectural styles, and a narrow elliptical street located in the Center. Attached to this report to provide additional background is a copy of the History of the Park Court Subdivision prepared by City Historian, Lorie Garcia.

DISCUSSION

The subject property contains a two-bedroom and one-bathroom, one-story house of vernacular Craftsman style architecture built in 1925. Property owner Megan Carter is requesting the property be added to the City's Historic Resource Inventory and approval of a Historic Preservation Agreement (Mills Act Contract) for the property including the adoption of a 10-Year Rehabilitation and Maintenance Plan associated with this historical preservation agreement. A requirement of the Mills Act is that the building must be a qualified structure, listed on either a local, State or National Register.

The existing house is not currently listed on the City's Historic Resource Inventory, though it has been found eligible for both Local and State listing in the attached Historical Resources Survey Report and State Department of Parks and Recreation Form (DPR), which was prepared for the City's consideration by Architectural Historian William Kostura. The property is also located within 200 feet of three other listed resources at 761 Park Court, 782 Park Court and the immediately adjoining

property to the south at 792 Park Court.

The property owner also proposes to replace the failing concrete brick foundation beneath the house with a new concrete pier and grade beam foundation system, and a 341 square foot bedroom and bathroom addition to the rear and south sides of the house. For the proposed work, the applicant has commissioned an additional Secretary of the Interior's evaluation, prepared by Arnie Lerner of Lerner Associates Architects, dated April 11, 2021.

The owner's proposed 10-Year Rehabilitation and Maintenance Plan, dated January 5, 2021, is attached to this report. Some of the notable work that would be performed under this 10 Year Plan include replacement of the house foundation as noted above, repair and restoration of the existing historic wood windows, update of the house electrical wiring including replacement of existing knob and tube wiring, replacement of the existing asphalt composition shingle roofing, and repainting of the entire house exterior.

The proposed development plans are attached at the end of this report. The proposed foundation replacement would not change the finished floor or overall existing building height. The proposed 341 square foot bathroom and bedroom expansion located on south side wall of the house would be setback back 4-feet, 6-inches from the south property line. The proposed new bedroom addition to the west side of the house would be setback 20-feet, 8-inches from the west rear property line. The proposed additional floor area would join the house with an existing detached two-car garage in the rear yard creating a single structure on the lot. The existing two-car garage is accessed from Alviso Street on the west, and this building is legal-nonconforming in that it is located only 9-inches from the south side property line and two-feet from the rear property line. In establishing the connection between the house and garage, the proposed design includes a shed roof off the rear wall of the house over the proposed addition that is set below the rear gable and primary roof ridge of the house, and which then ties into the lower garage roof. The addition would be clad in new asphalt composition shingles to match existing, and seven-inch horizontal cement composite siding to differentiate the addition from the narrower historic horizontal wood teardrop siding on the original house. The project proposes to reuse and relocate four historic double-hung wood windows from the original house walls onto the addition.

The project plans include a preservation treatment plan to guide the property owner and contractors in the proper techniques for construction of the addition according to the Secretary of the Interior's Standards for Rehabilitation.

The applicant has submitted an analysis of the proposed project applying the Secretary of the Interior's Standards (SIS) for Rehabilitation, prepared by Architect Arnie Lerner of Lerner Associates Architects, dated April 11, 2021, attached. This SIS Review states, "*A one story addition in the open space between the garage and the house was considered appropriate as it was set back and behind the original house in open space between the garage and the house. The addition's roof is lower than that of the original house and there is a setback "notch" at the meeting of the addition and the house. It creates a certain rhythm of the ridges of the 3 roofs step down from the front to the back. In terms of detailing, the flat wood trim around the reused original double hung wood windows will be of a slightly different size so as to distinguish the old from the new. The siding of the addition will acknowledge the horizontal wood siding of the original house but will be made of a modern cement board material.*" The report concludes that the proposed project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation Standards.

A letter of review of the proposed development plans, the historic resources survey report (DPR) and Secretary of the Interior's Standards analysis for the project by Honorary City Historian Lorie Garcia, dated April 30, 2021 is attached. In the letter Ms. Garcia raised some corrections to the Historic Resources Survey Report (DPR), which were subsequently made in the May 3, 2021 revision included with this report. Ms. Garcia also noted concurrence with the finding by Arnie Lerner in the April 11th SIS Review, that the proposed project for 794 Park Court meets the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation Standards. An additional letter of review of the proposed variances submitted by Lorie Garcia, dated April 29, 2021, is also attached to this report for information and additional context.

A letter of design review of the proposed development plans and SIS Review by Craig Mineweaser, AIA, Volunteer Architectural Advisor to the Commission, dated May 4, 2021 is attached. In the letter Mr. Mineweaser also noted his concurrence with conclusion in the April 11th SIS Review prepared by Arnie Lerner, that the project as proposed meets the Secretary of the Interior's Standards. Mr. Mineweaser also raised question for clarification on the proposed siding exposure as the plans referenced both 4-inch and 7-inch siding. The applicant has subsequently clarified with staff for mention in this report that the proposed siding is 7-inch James Hardie V-rustic siding on all sides of the addition (instead of 4-inch), intended to blend with the existing 1x8 V-Rustic siding of the garage.

Conclusions

Based upon the historic property resource survey (DPR) and the evaluator's conclusions contained therein, and Section 18.106.040 of the City's Historic Preservation Ordinance pertaining to designation, the property appears to meet all of the specified eligibility criteria for inclusion on the City's Historic Resource Inventory, in that:

- 1) The existing house constructed in 1925, at 96 years of age, exceeds the established 50-year age threshold;
- 2) The existing house retains a very high degree of historic integrity; and,
- 3) The property proposed for inclusion on the City's Historic Resources Inventory, is eligible for listing based upon the architectural significance of the house as a notable example of Craftsman style architecture in the City of Santa Clara.

Staff finds that the work proposed under the 10-Year Restoration and Maintenance Plan adheres to the Secretary of the Interior's Standards for Rehabilitation, and will need to be submitted for Secretary of the Interior's Standards Review and incorporated into the Preservation Treatment plan as necessary. Given the age, historic integrity, and the proposed 10-Restoration and Maintenance Plan, staff supports a Mills Act Preservation Agreement for the property. A copy of the draft contract is also attached to this report.

ENVIRONMENTAL REVIEW

The proposed project is exempt per CEQA section 15301(e)(1) - Existing Facilities, in that the proposed 341 square foot addition would not result in an increase of more than 50 percent of the floor area of the 1,166 square foot house before the addition. The project is also exempt per CEQA Section 15331, Historical Resource Restoration/ Rehabilitation, in that the project as proposed will be constructed in accordance with the Secretary of the Interior's Standards for Rehabilitation.

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>>

The notice of public meeting for this item was posted at three locations within 300 feet of the project site and was mailed to property owners within 300 feet of the project site. No public comments have been received at the time of preparation of this report. An on-site notification sign was also posted at the subject site.

One letter of in support of the project including the setback variances was received from homeowners and residents Ann and Darren Dunham of 792 Park Court, the immediately adjoining property to the south of the project site, dated April 21, 2021, and is attached to this report.

RECOMMENDATION

Staff recommends the Historical and Landmarks Commission find that the house will retain sufficient integrity as a significant example of Craftsman architecture through the construction of the proposed addition, subject to the procedures outlined in the Preservation Treatment Plan attached to the Development Plans, and recommend approval of the following:

- 1) That, based upon the historic survey (DPR) and the evaluations of the proposed remodel and additions to the property, the Commission forward a recommendation to the City Council for approval of the designation and addition of this property to the City's Historic Resource Inventory;
- 2) That, based upon the analysis and findings of the historical evaluation, the Commission forward a recommendation to the City Council for approval of the Mills Act Contract application, including the adoption of a 10-Year Rehabilitation and Maintenance Plan associated with this historical preservation agreement; and,
- 3) That, based upon the analysis and findings of the historical evaluation, the Commission forward a recommendation of approval for issuance of a Significant Property Alteration (SPA) Permit to the Director of Community Development for the proposed addition, subject to the procedures outlined in the Preservation Treatment Plan attached to the Development Plans.

Reviewed by: Rebecca Bustos, Senior Planner

Approved by: Gloria Sciara, Development Review Officer

ATTACHMENTS

1. History of the Park Court Subdivision
2. Legal Property Description
3. Historic Survey (DPR 523A)
4. Secretary of the Interior's Standards for Rehabilitation
5. 10-Year Restoration and Preservation Plan
6. Draft Historic Preservation Agreement
7. Secretary of the Interior Analysis of Project by Lerner
8. Letter from Lorie Garcia - HRSR and SIS Review
9. Letter from Lorie Garcia - Variances
10. Letter from Craig Mineweaser - Design Review

11. Letter from Ann and Darren Dunham
12. Development Plans

THE PARK COURT SUBDIVISION

1925

(A portion of Sub-Lot 50)

Park Court is a portion of a larger tract of land that was designated in the 1866 Survey as Sub-Lot 50. This Sub-Lot was a 134.87 acre tract owned by John Grandin Bray, a merchant and major landowner in the new Town.

By 1873 when The Plat of Santa Clara was drawn, it showed that Sub-Lot 50 and the surrounding area had undergone several changes from the survey of nine years earlier. By then, the Davis-Chapman subdivision had been created and Grant Street (The Alameda) , which previously ended at Bellomy Street, had been extended. This extension, named Union Avenue, bordered the northeastern edge of Sub-Lot 50. Bascom Avenue, a continuation of Washington Street, cut through the southwestern part of Sub-Lot 50. J. G. Bray had subdivided part of his property (Brays' Addition) and two new streets (later called Poplar and Maple), bordered this new subdivision, running from the southwestern edge of Sub-Lot 50 to Union Avenue.

By 1893 the remainder of Sub-Lot 50 had been subdivided into 9 lots. and John's son, Grandin Bray, owned lots, 5, 8 and 9. Along with the subdivision of Sub-Lot 50, Alviso Street had been extended south of Maple, Poplar Street now connected with Jackson Street and Cypress Street had been constructed running from Bascom to Union Avenue to the south of the new lots, 5 and 8 and north of lots 6 and 9.

At the request of Messrs. Barnett and Phelps in January 1925, H. B. Fisher surveyed the land which comprised lot 9 and laid out the Park Court subdivision. This map was recorded on February 16th of the same year. Rectangular in shape with a narrow elliptical street located in the center, access into the subdivision was at both Park Avenue (renamed from Union Avenue) and Alviso Street. Originally, on the survey, the southeastern half of the center street was named Park Court and the northwestern half, Altevogt Way. Within a few years, this had changed and the entire center street was called Park Court.

Santa Clara had experienced a period of agricultural and industrial growth after WWI and the Park Court Subdivision, developed between 1925 and 1930, was created to meet the needs of the burgeoning working class related to this growth. The homes constructed for this group of people were modest but contemporary for their time. Most of the first residents were laborers or employed in the nearby businesses.

Today, Park Court is significant as one of the only intact 1920-30s subdivisions in the City of Santa Clara. Most of homes in the Park Court Subdivision reflect the popular styles of domestic architecture during the first decades of the Twentieth Century, including Bungalow, Cape Cod and Colonial Revival. Although many of the Park Court homes are still in relatively original condition, few have individual distinction but as a whole provide a significant and distinguishable district in the City of Santa Clara. The visual continuity and individual integrity of the neighborhood captures a time frame important to the City, of its working class residents and the early twentieth century domestic architecture of the town.

Lorie Garcia
Honorary City Historian
City of Santa Clara
January, 2009

RECEIVED

MAR 03 2011

City of Santa Clara
Planning Division

HAND OUT AT
HLC MTG

Exhibit A

Legal Description

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA: Lot 23, AS SHOWN ON THAT CERTAIN MAP ENTITLED MAP OF PARK COURT WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 16, 1925 IN BOOK S OF MAPS AT PAGE(S) 38-39.

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary # _____
HRI # _____
Trinomial _____
NRHP Status Code _____

Other Listings _____
Review Code _____ Reviewer _____ Date _____

Page 1

*Resource Name or #: (Assigned by recorder) 794 Park Court, Santa Clara

P1. Other Identifier: _____

P2. Location: Not for Publication Unrestricted *a: County Santa Clara
and (P2c, P2e, and P2b or P2d. Attach Location Map as necessary.)

*b. USGS 7.5' Quad _____ Date _____ T _____; R _____; _____ 1/4 of _____ 1/4 of Sec _____; _____ B.M.

c. Address 794 Park Court City Santa Clara Zip 95050

d. UTM: (Give more than one for large and/or linear resources) Zone _____; _____ mE/ _____ mN

*e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate)

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

The Park Court subdivision

The Park Court subdivision consists of about 76 houses bounded by Park Avenue to the east, Alviso Street to the west, Cypress Alley to the north, and an unnamed alley to the south. Inside of these boundaries is a roughly circular street named Park Court, after the subdivision. All but about eleven of the houses front on Park Court, either in the inner perimeter or on the outer perimeter of that street. The other houses front on Alviso Street and Park Avenue. The subdivision is suburban in character, with most lots from 45 to 50 feet in width.

(See Continuation Sheet, next page.)

P5a. Photo or Drawing (Photo required for buildings, structures, and objects.)



*P3b Resource Attributes: (List attributes and codes) _____

*P4. Resources Present:
 Building Structure Object
 Site District Element of District

P5b. Description of Photo:
(View, date)

view looking west, May 2020

*P6. Date Constructed/Age and Source:
 Historic
 Prehistoric Both
1925

*P7. Owner and Address:

Megan Carter

794 Park Court

Santa Clara, CA 95050

*P8. Recorded by: (Name, affiliation, and address)

William Kostura

P. O. Box 60211

Palo Alto, CA 94306

*P9. Date Recorded: _____

July 2020

*P10. Survey Type: (Describe) intensive

P11. Report Citation*: (Cite survey report and other sources, or enter "none".) none

*Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other (List)

Page 2

Recorded by William Kostura

Resource Identifier: 794 Park Court, Santa Clara

*Date July 2020

Continuation Update

Description (continued)

It appears that the subdivision was almost completely developed during 1924 and 1925, and that all or almost all of the houses were one-story in height and clad in horizontal wood siding. Styles were mostly restrained examples of Craftsman, Tudor, and Classic Revival styles. Some houses lack strong style elements, so that it does not seem possible to assign a style name to them other than “bungalow.” Most houses, especially those that are Tudor or Craftsman feeling, have asymmetric compositions, though some are symmetrical. Not every house is different; several compositions are repeated in the subdivision.

On average these were modest vernacular houses that were probably intended for working class and lower middle class workers. Nevertheless, many of the houses do have distinctive forms, mainly in their rooflines and porches. Many have porches that project from the main body of the house and have gabled or hipped roofs supported by columns. Some of these columns have just enough articulation in their capitals to give the houses a “Classical Revival” style. Craftsman style houses, by contrast, may have tapering columns with or without capitals.

Today, all but about 26 of the houses still fit that description. Two houses have generously recessed or set-back second story additions but are otherwise little changed; several have coatings of stucco, wooden shingles, or aluminum siding; one is of uncertain integrity, and about nineteen are either more drastically altered or are replacement houses. On average, houses facing Park Court have much higher integrity than those facing Alviso Street and Park Avenue. Only two houses on the latter streets appear to be original.

Considering only the houses facing Park Court (and omitting those on Park Avenue and Alviso Street), about 49 houses, or 75 percent, retain most of their integrity, while 15 or 16 houses have lost half or more of their integrity. Houses that have had recessed second story additions, but are otherwise little changed, are included among those that retain integrity. Houses that have altered surfaces of stucco, shingles, etc., but are otherwise little changed, are included among those that have lost integrity.

These numbers are close but approximate, based on a single viewing in person plus additional viewing on Google Maps, without close attention to window sash and doors, and without having done individual research such as looking at building permits. On the whole, it seems clear that the Park Court subdivision largely retains its mid-1920s feeling.

The subject house, 794 Park Court

This is a one-story wood-framed house that is set back from the street to allow for a front yard that is lushly planted. The foundation, front steps, and porch floor are made of concrete, the roof is T-gabled, and the house is clad in double-ogee (or teardrop) horizontal wood siding on all sides.

(See Continuation Sheet, next page.)

Page 3
Recorded by William Kostura

Resource Identifier: 794 Park Court, Santa Clara
*Date July 2020 Continuation Update

Description (continued)

The house is roughly rectangular in shape, with a staggered massing in front. The left side of the house projects forward from the rest of the house by about two feet, and within this projection a shallow, rectangular bay window projects about a foot farther forward. Thus, from left to right, there is a series of setbacks in the front. At far right, the entrance porch is set back yet another step.

Both the roof over the main body of the house and that of the forward projection at left are front-gabled, creating a double-gable effect. The eaves extend a foot or two beyond the wall plane and are fronted by plain bargeboard. The eaves of the more forward gable are supported by two knee braces. A shed roof covers the bay window. At right, a hipped roof shelters the entrance. It is supported by a square column with simple moldings at the top that suggest a Classical capital.

The long right side of the house has a centrally-placed entrance and irregularly arranged fenestration to its right and left. A very broad side gable dominates this side of the house. The left side, by contrast, does not have a side-gabled roof. Here, an entrance is flanked by sidelights, and four other windows can be found to the right and left.

In the rear, the composition is symmetrical, with a small central window, four larger windows to right and left, and a louvered vent at top, just beneath the eave. This vent matches a louvered vent in the front gable.

On all four sides the windows have wooden sash, and almost all are double-hung, the exception being a large fixed window in the front bay. All appear to be original. Each window is surrounded by flat board casings and has a wooden sill. The double-hung windows have a variety of sash types, including six-over-one, four-over-one, and one-over-one. The windows are as follows:

In the projecting bay in the front of the house: a tripartite window, with a fixed window flanked by 4/1 double-hung sash. A 6/1 window can also be found to the right of the front door.

On the right side: two 6/1 sash, one 1/1 sash, and a paired window with 4/1 sash.

On the left side: the sidelights have 6/1 sash, two windows toward front are also 6/1, and two to the rear are 1/1.

In the rear: four 1/1 sash windows.

There have been two alterations to the exterior of the house. One is a plain, replacement wooden front door. The other has been the removal of a brick chimney from the left side of the house. It was not visible from the street and was damaged in the Loma Prieta Earthquake of 1989.

The property includes a newer, 2-car detached garage (c.1950's, that replaced the original single-car garage) accessed from Alviso Street whereas the original garage was accessed from the Park Court oval.

BUILDING, STRUCTURE, AND OBJECT RECORD

Page 4

*NRHP Status Code _____

*Resource Name or # (Assigned by recorder) 794 Park Court, Santa Clara

B1. Historic Name: _____

B2. Common Name: _____

B3. Original Use: residence B4. Present Use: residence

*B5. Architectural Style: Craftsman

*B6. Construction History: (Construction date, alterations, and date of alterations)
Built in 1925. Chimney removed in 1989. Replacement of front door at unknown date.

*B7. Moved? No Yes Unknown Date: _____ Original Location: _____

*B8. Related Features:
none

B9a. Architect: none/unknown b. Builder: Walter Altevogt

*B10. Significance: Theme vernacular Craftsman style architecture Area local (Santa Clara County)
Period of Significance 1925 Property Type residence Applicable Criteria 3

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

History

The Park Court Subdivision

The history of this site goes back to Mission Santa Clara, the eighth of the Spanish-era missions in California, founded in 1777. After the mission was secularized by Mexico in 1833, roughly half of the mission's vast lands were given to Native Americans and the rest was sold to private parties. By the late 1860s, 140 acres of the former mission land was owned by John G. Bray (1814-1871). Bray had been a merchant in his native New Jersey and then briefly in San Francisco, and from 1852 on was involved in business and real estate in San Jose and Santa Clara. In 1886, fifteen years after his death, his estate divided his land into twelve large parcels. The subject property is in lot 9 of that subdivision. Lot 9 was owned, first, by members of the Bray family, then by one R. D. Shimer, and finally by Walter and Katherine Altevogt.

(See Continuation Sheet, next page.)

B11. Additional Resource Attributes: (List attributes and codes) _____

*B12. References:

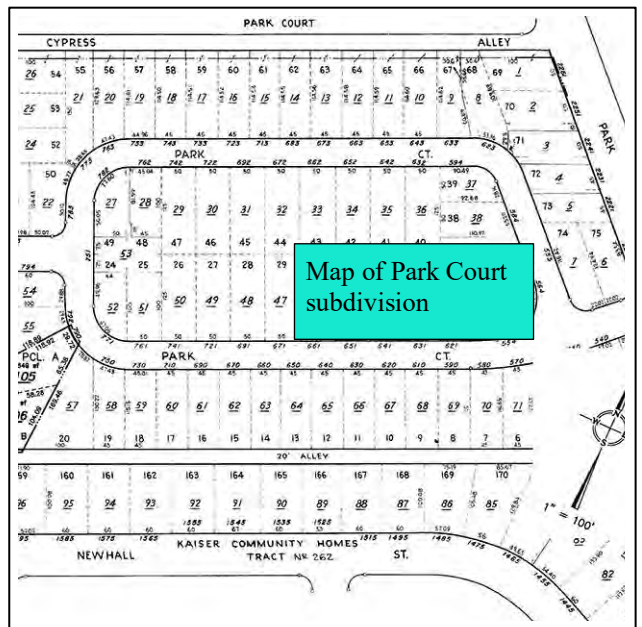
See continuation sheet.

B13. Remarks:

*B14. Evaluator: William Kostura

Date of Evaluation: July 2020

(This space reserved for official comments.)



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Resource Identifier: 794 Park Court

Recorded by William Kostura

*Date July 2020

Continuation Update

History (continued)

Walter Altevogt (b. 1886) was a native of Rotterdam, Holland, came to the United States in 1910, and worked in Martinez, Contra Costa County, as a carpenter during at least 1918-1920. In June 1924, in San Jose, he married Katherine Dinsmore, and during 1924-1927 they lived in San Jose while he worked as a carpenter and building contractor. Archives and Architecture (2015) reports that the Altevogts purchased a considerable amount of land in San Jose and Santa Clara and created several subdivisions in close proximity to each other at this time. They included Park Court, where the subject property is located; part of Burrell Park, near Park Avenue and Hedding Street; part of the Chapman and Davis Tract; and the Alameda Villa Tract.

Park Court consisted of 75 or 76 lots and was almost completely developed during 1924 and 1925. It is doubtful that Altevogt built on every lot, but judging from the appearance of the houses and records in *Building and Engineering News*, the great majority must have been built by him. As mentioned above, the houses were one-story in height, were clad in horizontal wood siding, and had a variety of styles and rooflines, with several repeating house types. They were mostly restrained examples of styles common to the time, although some houses were more animated in their compositions.

During August-October 1925 Altevogt completed 21 houses in Park Court without any legal troubles, as documented in *Building and Engineering News*. He then began to face major legal troubles. The same publication documented liens against 41 of Altevogt's Park Court properties during November 1925 through January 1926. The liens were filed by the Tilden Lumber and Mill Company (which Altevogt presumably purchased lumber from) and the University Electric Company (a contractor he must have hired). For another 15 houses, there is no record of either a completion or a lien.

Archives and Architecture (2015) reports that Walter Altevogt "was indicted on several counts of fraud, corruption and extortion in the late 1920s," and that he and his wife Katherine divorced then. Walter Altevogt left San Jose then, for Hayward, and subsequently lived in Santa Cruz (in 1932-1935) and Grass Valley (1940). He was drafted into the army in 1942, and later moved to Scurry County, in far west Texas, where he died in 1953.

Undoubtedly as a result of the Altevogts' insolvency, all but three lots in Park Court were sold at the end of 1925 to John Roy Phelps, a real estate and insurance salesman in San Jose. He must have then sold the completed houses one-by-one to individual home-owners. (Archives and Architecture, 2015.)

Despite Park Court's troubled origin, three houses in the subdivision were chosen to illustrate Santa Clara's new suburban lifestyle in a booklet called *Plan of Santa Clara: The Heart of Santa Clara Valley* (Santa Clara Chamber of Commerce, November 1925). The three houses include the subject house and two others to its left.

(See Continuation Sheet, next page.)

Page 6

Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

History (continued)

Historic houses in Santa Clara

The City of Santa Clara's website has a page on "Historic Properties." This page is almost entirely devoted to residential buildings and includes almost thirty houses that pre-date the 1920s. The oldest is the Women's Club Adobe, said to have been built in 1784-1792 and the last of thirty "apartments" built for neophyte Indians residing at the mission. The next oldest is the Berryessa adobe, which dates to the late 1840s. Two more date to the 1850s, three to the 1860s, one to ca. 1870, sixteen to the 1880s-1890s, and four to the 1900s-1910s. Two of the listed houses (at 725 Madison Street and 1543 Franklin Street) are in the Craftsman style, the style of the subject house.

Besides these, many other early houses can be found in the Old Quad neighborhood of Santa Clara. The Old Quad covers the original quadrangle shown in the 1866 survey by J.J. Bowen that encompasses the area bordered by Scott Boulevard to the west, Newhall Street to the south and east, and the railroad tracks to the north and east.

Another ca. 1920s subdivision in Santa Clara

Archives and Architecture (2015) writes: "The Park Court Subdivision is known to the City of Santa Clara to be the only intact subdivision from the 1920s and 1930s remaining today in Santa Clara, featuring homes styled as bungalows, including Craftsman, Colonial Revival, and Cape Cod, creating a unique neighborhood of like size, scale and lot sizes."

Another subdivision in Santa Clara (its name is not known to this writer) does appear to date to the 1920s or 1930s. It is bounded by The Alameda to the south and Sherwood Avenue to the north, and contains the internal streets Morris Court and O'Brien Court. It consists of about forty very small one-story stucco-clad houses and duplexes with simplified Mission Revival or Mediterranean Revival parapets. Parapets aside, the houses are plain and are much less expressive, architecturally, than are the Park Court houses.

The subject house, 794 Park Court

Because the County Clerk-Recorder's office is closed at this time due to the Covid-19 coronavirus, no chain of title for this property could be researched. However, a nearly complete list of the residents of this house for the period 1928-1974 has been researched using city directories and United States censuses. One of the residents is known to have been an owner, and one was a renter; but for the purpose of a historical evaluation the most important consideration is that their occupations are known.

One more preliminary note should be mentioned, namely, that the numbering system for this subdivision changed in the late 1950s. Through 1956 this house was numbered 44 Park Court. From 1961 on it was 794 Park Court.

(See Continuation Sheet, next page.)

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
CONTINUATION SHEET

Primary #
HRI/Trinomial

Page 7

Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

History (continued)

Because of Walter Altevogt's legal troubles, and the mass sale of Park Court properties to John Roy Phelps, it appears that some houses in Park Court, including this one, remained vacant for two or three years after they were completed. 1928 is the first year for which residents are known.

Residents include:

1928-1932. Marcus Mathew Soll (1881-1965), a farm machinery salesman, and his wife, Mary Elizabeth Soll (1883-1972). Both were natives of Iowa, and they owned the house.

1932. Francis Scott, an insurance agent, and Harriet Scott, a teacher.

1934. Emmett E. Nichols (1903-1996), a salesman; and Fern J. Nichols (1908-1983).

1935-1942. Stephen P. Dowell (1863-1940), and Elizabeth Dowell (b. ca. 1867). Both were natives of Missouri, and in 1940 both were in their 70s and neither had an occupation. Their children, who lived here some of these years, included James Albert Dowell, a life insurance salesman; Helen Dowell, a waiter at the Santa Clara Inn; and Izeth Dowell, a clerk. The Dowells were renters here.

1942. Wesley I. Lanham (b. ca. 1911), proprietor of retail fuel oils; and his wife Alice (b. ca. 1910).

1944. Lowell Thomas, a mechanic, and his wife Dorothy.

1945-1950. Clinton J. Nolan, a driver, and his wife Marguerite.

1952-1974. Elsie Bryson (1897-1983), a native of Massachusetts. In the 1950s she was a bookbinder for A. F. Brosius and Company, bookbinders in San Jose, and from 1961 on she was retired.

Haines directories do not list this address during the 1970s-1998. The next known residents are Frank Frederick (in 1999), Christopher Frederick (2002), and the current owner (beginning in 2003).

Alterations

As mentioned above, there have been two alterations to the exterior of this house. A brick chimney on the south side of the roofline was removed after it was damaged in the Loma Prieta earthquake of 1989, and the front door is a replacement.

(See Continuation Sheet, next page.)

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Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

Integrity

This property retains integrity in all seven areas, listed below:

Because this house has never been moved, it retains integrity of location.

Because the only alterations have been the replacement of a door and the removal of a chimney, this house retains integrity of design, materials, workmanship, feeling, and association.

Because most of the old houses in the Park Court subdivision still stand with good to high integrity, this property retains integrity of setting.

Evaluation under California Register criteria

Evaluation under Criterion 1 of the California Register: Resources that are associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.

This is one of the older houses in Santa Clara; the overwhelming majority in the city are much newer. Still, many houses are older, and most of the historic houses listed on the city's website are much older. About fifty other largely unaltered houses in the Park Court subdivision are the same age as this house. Thus, while the subject house does evoke an early period in Santa Clara's history, it does not do so in a way that many other houses do as well or better.

No other event or pattern of history associated with this house comes to mind, and thus the subject property does not appear to be eligible for the California Register under this criterion.

Evaluation under Criterion 2 of the California Register: Resources that are associated with the lives of persons important to local, California, or national history.

None of the residents of this house was historically important by California Register standards. The most interesting may be Elsie Byron, who worked as a bookbinder while living here in the 1950s.

Thus, the subject property does not appear to be eligible for the California Register under this criterion.

Evaluation under Criterion 3 of the California Register: Resources that embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of a master, or possess high artistic values.

This is a fine though restrained example of a 1920s bungalow, and it is one of the best houses in the Park Court subdivision. Its most characteristic features are a cross-gabled roof with a corresponding, smaller

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
CONTINUATION SHEET

Primary #
HRI/Trinomial

Page 9

Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

Evaluation under California Register criteria (continued)

gable over a projection in the front; knee-braces that support broad eaves and that relate the building to the Craftsman style; and a square column with capital moldings in the porch. A rectangular bay window in the front adds interest to the composition. The house has unusually high integrity, including all of its original window sash. Many of these sash are divided by muntins into multiple lights (e.g. 4/4, 6/6).

Because of its characteristic features and exceptionally high integrity, this house is a distinctive example of the domestic architecture of 1920s Santa Clara. Accordingly, the property appears to be individually eligible for the California Register at the local level under this criterion. The Period of Significance is 1925, the year the house was built.

Investigation of a potential historic district in the vicinity

Park Court appears to qualify for the California Register as a historic district under both Criterion 1 and Criterion 3. Under Criterion 1 this is a remarkably intact residential subdivision of over seventy houses that was built at an early date by one developer. It was clearly aimed at working class and middle-class residents and provided them with housing in a comfortable, suburban setting, close to both downtown Santa Clara and downtown San Jose. This subdivision is a rare and excellent example of comfortable housing in a pleasing setting planned for workers of modest income.

Under Criterion 3, Park Court is likewise a rare and excellent example of a 1920s subdivision composed of bungalows built to near-uniform scale but with varied compositions and styles. The wooden cladding of the houses, and the decorative style features, which are also of wood, provide surface texture and create a rustic feeling throughout the subdivision. As a large collection of wooden bungalows this subdivision is almost certainly unmatched in the city of Santa Clara, and this may be true for a much larger surrounding area as well.

The integrity of the subdivision is high. If one includes only the houses facing Park Court itself (i.e., excluding buildings along Park Avenue and Alviso Street), the integrity seems to be very high. About fifty of the houses facing Park Court, or 77% of the whole, are mostly intact and should be considered to be contributors to the district. This may be a conservative estimate; some houses that have been altered with stucco but are otherwise mostly intact are considered here as non-contributors, but with more consideration might be considered as contributing to the district.

Under both Criterion 1 and Criterion 2 the subject property, 794 Park Court, is a contributor to this potential historic district. Under both criteria the Period of Significance is 1925, the year Park Court was developed.

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Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

Evaluation under City of Santa Clara criteria

The Criteria for Local Significance were adopted on April 20, 2004, by the City of Santa Clara City Council and are listed under Section 8.9.2 of the City of Santa Clara General Plan, Criteria for Local Significance. Under this section of the General Plan, any building, site, or property in the City that is 50 years old or older and meets certain criteria of architectural, cultural, historical, geographical or archeological significance is potentially eligible. The criteria are listed below.

Criterion for Historical or Cultural Significance

To be historically or culturally significant, a property must meet at least one of the following criteria:

1. The site, building or property has character, interest, integrity and reflects the heritage and cultural development of the city, region, state, or nation.

This house is an excellent example of a suburban house that was intended for blue collar or lower middle class residents when it was built in the 1920s.

5. A building's direct association with broad patterns of local area history, including development and settlement patterns, early or important transportation routes or social, political, or economic trends and activities. Included is the recognition of urban street pattern and infrastructure.

This house is part of the Park Court subdivision, one that was intended for working class and lower middle class residents. Regarding the number of houses in the subdivision, the street layout's court plan, and level of integrity, Park Court is probably the best subdivision of the 1920s in Santa Clara. The subject house contributes to this subdivision and thus seems to have significance under this criterion. It may be, however, that this aspect of the house's history is better considered under parts 1 and 2 of "Criterion for Geographic Significance," below.

Criterion for Architectural Significance

To be architecturally significant, a property must meet at least one of the following criteria:

1. The property characterizes an architectural style associated with a particular era and/or ethnic group.

This house was built in the Craftsman style, a style that was common in Santa Clara and San Mateo counties during the 1910s and 1920s. Although this is a restrained example as far as ornament is concerned, the house is particularly expressive in its roofline and use of setbacks. In addition, the integrity of the house is unusually high. In sum, this a fine example of a Craftsman style house that was intended for working class and lower middle class workers.

Page 11

Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

Evaluation under City of Santa Clara criteria (continued)

4. The property has a strong or unique relationship to other areas potentially eligible for preservation because of architectural significance.

This house is part of the Park Court subdivision, which was built in the mid-1920s by developer Walter Altevogt. It is suburban in character and was likely intended for blue collar and lower middle class residents. While most of the houses along Park Avenue and Alviso Street would not be contributors to a potential historic district, it appears that about 77% of the houses facing Park Court would be contributors. Because of its design features and high integrity, the subject house would be one of them.

7. A building's notable or special attributes of an aesthetic or functional nature. These may include massing, proportion, materials, details, fenestration, ornamentation, artwork or functional layout.

The complex roofline, setbacks, wooden materials, windows that are divided by muntins into multiple lights, a porch column with moldings, and knee-braces make this house a notable example of the Craftsman style.

Criterion for Geographic Significance

To be geographically significant, a property must meet at least one of the following criteria:

1. A neighborhood, group or unique area directly associated with broad patterns of local area history.

This house strongly contributes to the Park Court subdivision, a largely intact collection of wooden bungalows. Park Court is probably by far the best example of a suburban subdivision that was planned and built in Santa Clara during the 1920s-1930s, and may be one of the best in the immediate region.

2. A building's continuity and compatibility with adjacent buildings and/or visual contribution to a group of similar buildings.

All or nearly all of Park Court's early houses were one story in height, had wooden cladding materials, and were designed in a variety of compatible styles such as Craftsman, Tudor Revival, and Classical Revival. The subdivision, or at least the collection of houses facing the Park Court street, remains largely intact. The subject house relates very closely with the other largely unaltered houses and contributes strongly to the aesthetic of the subdivision.

Criterion for Archaeological Significance

This property is not being evaluated under this criterion.

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Recorded by William Kostura

Resource Identifier: 794 Park Court

*Date July 2020 Continuation Update

References

Building and Engineering News, issues of August 22, September 5, October 31, November 7, and November 28, 1925; and January 2 and January 9, 1926. “Completion Notices” and “Liens Filed”, for the Park Court properties of Walter Altevogt. These included at least 21 completion notices and 40 liens filed. The subject property appears to have been lot 23 of Park Court and was recorded on November 28th under “Liens Filed.”

Building and Engineering News, issues of July 12, August 2, September 13 and 20, and November 15, 1924; and April 25 and August 1, 1925. “Completion Notices” for Walter Altevogt’s projects in Burrell Park (San Jose) and the Chapman and Davis Tract.

San Jose city directories 1924-1927 for Walter Altevogt

Santa Clara city directories 1928-1974 for Marcus and Mary Soll, Frances and Harriett Scott, Emmett and Fern Nichols, Stephen and Elizabeth Dowell, Wesley and Alice Lanham, Lowell Thomas, Clinton Nolan, and Elsie Bryson.

1920 U. S. Census, Martinez, for Walter Altevogt

1930 U. S. Census, Hayward, for Walter Altevogt

1930 U. S. Census, 44 Park Court (today’s #794), for Marcus and Mary Soll

1940 U. S. Census, 44 Park Court (today’s #794), for Stephen and Elizabeth Powell

1940 U. S. Census, 64 Park Court, for Wesley Lanham

1940 U. S. Census, Santa Clara (address illegible), for Elsie Bryson

Find-A-Grave website listings for Marcus Mathew Soll, Mary Elizabeth Soll, and Stephen Price Dowell

1950 Sanborn insurance map, page 121

Archives and Architecture, LLC. Historical Evaluation of 651 Park Court, Santa Clara (2015). This report was useful for background information on Walter Altevogt and the Park Court subdivision.

City of Santa Clara. “Historic Properties” website. <https://www.santaclaraca.gov/our-city/about-santa-clara/maps/santa-clara-s-historic-properties-story-map/historic-properties> (accessed June 2020).

Santa Clara Chamber of Commerce. *Plan of Santa Clara: The Heart of Santa Clara Valley* (November 1925).

Page 13
Recorded by William Kostura

Resource Identifier: 794 Park Court
*Date July 2020 Continuation Update

Photographs of 794 Park Court



Top row: Two views of the front of the house.
Middle left: Eaves at front, with knee brace.
Middle right: Slightly-projecting bay window, with tripartite sash.
Bottom: Double-ogee (teardrop) siding.

Page 14
Recorded by William Kostura

Resource Identifier: 794 Park Court
*Date July 2020 Continuation Update



Top two photos: Front entrance, concrete porch and step, and porch post with moldings.
Bottom photo: Ceiling of the recessed entrance.

Page 15
Recorded by William Kostura

Resource Identifier: 794 Park Court
*Date July 2020 Continuation Update



Top photo: The north side of the house.

Middle left: North side entrance and window.

Middle right: The rear of the house.

Bottom: Garage (c.1950's) facing Alviso Street.

Other houses in the Park Court subdivision, all facing the street Park Court



These are some of the houses in Park Court that appear to retain good to high integrity. Several of the house plans were repeated, so that some of the ones shown here have two or three twins or near twins in the subdivision. One house, shown in the fourth row at far left, is a twin of 794 Park Court.

The black and white photo at bottom left is from the booklet "Plan of Santa Clara," published in 1925. It shows a row of three Park Court houses, including the subject house (at right).



Map of the land of the estate of John G. Bray. Copied from a report by Archives and Architecture, LLC (2015).

John G. Bray came to San Jose in 1852 and he purchased this large tract of land in the 1850s or 1860s. He or his heirs had it divided into twelve parcels; parcel 9, colored red, corresponds to the later Park Court subdivision.

Secretary of Interior's Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

10-Year Restoration Maintenance Plan

January 5, 2021

Megan Carter
794 Park Court
Santa Clara, CA 95050

Dear Planning Staff and Historic & Landmark Commissioners,

The following is my proposed 10-year plan for the restorations and maintenance of my historic home at 794 Park Court. All items to meet the Secretary of Interiors standards for Treatment of Historic Properties:

Years 1-3 (2022-2024)

Foundation: Replace failing concrete hollow brick foundation with new concrete pier and grade beam foundations. The final finish floor height will be set to the highest point of the existing finish floor. Note that the existing finish floor is higher in the middle of the house because the perimeter of the house has settled over the years due to poor rainwater management around the structure. A third bedroom and second bathroom will be added concurrently with the foundation replacement to adapt the home to meet the homeowners needs (adaptive reuse of a historic structure).

Entry Porch Slab & Steps: Replace existing cracked concrete porch slab and steps with new concrete porch slab and steps. The entry porch roof and tapered wood columns to remain unchanged.

Repair wood siding where required due to settling of existing foundations. Siding that will be removed as part of the proposed bedroom addition will be used where needed.

Years 4-5 (2025-2026):

Window Restoration: Restore / Repair existing historic wood window sashes. Where windows sashes are inoperable from being painted shut or where pulley ropes have been they will be restored to working order by cutting the paint and installing new pulley ropes where required. Any minor dry rot areas on the window sashes shall be repaired with epoxy filler and repainted to match. Where elements of the existing window sashes have excessive rot (stiles or rails) they shall be replaced with salvaged or custom milled wood to match. Glazing putty, where cracked, shall be replaced and the window sash shall be painted to match existing.

Years 6-7 (2027-2028):

Painting of the structure: New paint for all exterior wood siding, eaves, gutters / downspouts, all windows, doors and their associated trim.

Year 8 (2029): Electrical: Update all electrical systems including replacing knob and tube wiring.

Year 9 (2030): HVAC: Update all existing heating and ventilation systems.

Year 10 (2031):

Roofing: Replace existing asphalt composition shingle roofing with new triple layer (tri-lam) asphalt composition shingle roofing with a more similar profile and shadow line of wood shingles (what was originally on the home). Repair any dry rot at roof rafters at the eaves and install new ogee style gutter with 2" diameter round downspouts to be more historically sensitive than the current fascia gutters with rectangular downspouts.

I am excited about restoring and rehabilitating my wonderful historic home so that it can be preserved and enjoyed for many years to come.

Sincerely,

Megan Carter

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Agreement, (herein, "Agreement"), is made and entered into this [REDACTED] day of [REDACTED], 2021, ("Effective Date"), by and between Megan L. Carter, owner of certain real property located at 794 Park Court, Santa Clara, CA 95050 ("OWNER") and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("CITY"). CITY and OWNER may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

A. **Recitals.**

(1) California Government Code Section 50280, et seq. authorizes the CITY to enter into a contract with the OWNER of qualified Historical Property to provide for the use, maintenance, and restoration of such Historical Property so as to retain its characteristics as property of historical significance.

(2) OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, shown on the 2020 Santa Clara County Property Tax Rolls as Assessors' Parcel Number 269-52-054, and generally located at the street address 794 Park Court, in the City of Santa Clara ("Historic Property"). A legal description of the Historic Property is attached hereto as "Legal Description," marked as "Exhibit A," and incorporated herein by reference.

(3) The Historic Property is on the City of Santa Clara Architecturally or Historically Significant Properties list. OWNER submitted a Mills Act Proposal to City on January 8, 2021. The Proposal included a Primary Record from the State of California's Department of Parks and Recreation. A true and correct copy of the Proposal is attached to this Agreement as "Exhibit B".

(4) CITY and OWNER, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to Section 439.2 of the California Revenue and Taxation Code.

B. **Agreement.**

NOW, THEREFORE, CITY and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

(1) **Effective Date and Term of Agreement.** The term of this Agreement shall commence on the effective date of this Agreement and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such term will automatically be extended as provided in paragraph 2, below.

(2) **Renewal.**

(a) Each year on the anniversary of the effective date of this Agreement, ("renewal date"), one (1) year shall automatically be added to the term of this Agreement unless notice of nonrenewal is mailed as provided herein.

(b) If either the OWNER or CITY desires in any year not to renew the Agreement, OWNER or CITY shall serve written notice of nonrenewal of the Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual renewal date, or served by CITY to OWNER at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the balance of the remaining term of the Agreement as provided herein.

(c) OWNER may make a written protest of a nonrenewal notice issued by CITY. CITY may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to OWNER of nonrenewal. If either CITY or OWNER serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, from either original execution date or the last renewal date of the Agreement, whichever is applicable.

(3) **Standards for Historical Property.** During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements, and restrictions:

(a) OWNER shall preserve and maintain the characteristics of historical significance of the Historic Property. "The Secretary of the Interior's Standards for Rehabilitation," marked as "Exhibit C" to this agreement, and incorporated herein by this reference, contains a list of those minimum standards and conditions for maintenance, use, and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

(b) OWNER shall, when necessary or as determined by the Director of Community Development, restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation and the California Historical Building Code and in accordance with the attached schedule of potential home improvements, drafted by the OWNERS and approved by the City Council, attached hereto as "The Description of the Preservation and Restoration Efforts," marked as "Exhibit D" to this agreement, and incorporated herein by this reference.

(c) OWNER shall allow, and CITY requires, that after five (5) years, and every five (5) years thereafter, an inspection of the property's interior and exterior shall be conducted by a party appointed by CITY, to determine OWNER'S continued compliance with the terms of this

Agreement. OWNER acknowledges that the required inspections of the interior and exterior of the property were conducted prior to the effective date of this Agreement.

(4) Provision for Information.

(a) OWNER hereby agrees to furnish CITY with any and all information requested by the CITY to determine compliance with the terms and provisions of this Agreement.

(b) It shall be the duty of the OWNER to keep and preserve, for the term of the Agreement, all records as may be necessary to determine the eligibility of the property involved, and the OWNERS compliance with the terms and provisions of this Agreement, including, but not limited to blueprints, permits, historical and/or architectural review approvals, and schedules of potential home improvements drafted by the OWNER and approved by the City Council.

(5) Cancellation.

(a) CITY, following a duly noticed public hearing as set forth in California Government Code Section 50280, et seq., shall cancel this Agreement or bring an action in court to enforce this Agreement if it determines any one of the following:

(i) the OWNER breached any of the terms or conditions of this Agreement; or

(ii) the OWNER allowed the property to deteriorate to the point that it no longer meets standards for a qualified historic property.

(b) CITY may also cancel this Agreement if it determines that:

(i) the OWNER allowed the property to deteriorate to the point that it no longer meets building standards of the City Code and the codes it incorporates by reference, including, but not limited to, the Uniform Housing Code, the California Historical Building Code, the California Fire Code, and the Uniform Code for the Abatement of Dangerous Buildings or;

(ii) the OWNER has not complied with any other local, State, or federal laws and regulations.

(iii) the OWNER has failed to restore or rehabilitate the property in the manner specified in subparagraph 3(b) of this Agreement.

(c) In the event of cancellation, OWNER shall pay those cancellation fees set forth in California Government Code Section 50280, et seq. As an alternative to cancellation, OWNER may bring an action in court to enforce the Agreement.

(6) No Waiver of Breach.

(a) No waiver by CITY of any breach under this Agreement shall be deemed to be a waiver of any other subsequent breach. CITY does not waive any claim of breach by OWNER if CITY does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for under the terms of this Agreement or in the City's laws and regulations are available to the City.

(7) Mediation.

(a) Any controversies between OWNER and CITY regarding the construction or application of this Agreement, and claim arising out of this contract or its breach, shall be submitted to mediation upon the written request of one party after the service of that request on the other party.

(b) If a dispute arises under this contract, either party may demand mediation by filing a written demand with the other party.

(c) The parties may agree on one mediator. If they cannot agree on one mediator, there shall be three: one named in writing by each of the parties within five days after demand for mediation is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the mediator(s) or to furnish the mediator(s) with any papers or information demanded, the mediator(s) may proceed ex parte.

(d) A hearing on the matter to be arbitrated shall take place before the mediator(s) in the city of Santa Clara, County of Santa Clara, State of California, at the time and place selected by the mediator(s). The mediator(s) shall select the time and place promptly and shall give party written notice of the time and place at least fifteen (15) days before the date selected. At the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the mediator(s). The mediator(s) shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties.

(e) The submission of a dispute to the mediator(s) and the rendering of a decision by the mediator(s) shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provisions of the California Mediation Act.

(f) Each party shall bear their own cost(s) of mediation.

(8) Binding Effect of Agreement.

(a) The OWNER hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations, and restrictions as set forth in this Agreement. CITY and OWNER hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the OWNER'S successors and assigns in title or interest to the Historic Property. Each and every contract, deed, or other instrument hereinafter executed, covering, encumbering, or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument.

(b) CITY and OWNER hereby declare their understanding and intent that the burden of the covenants, reservations, and restrictions set forth herein touch and concern the land in that OWNER'S legal interest in the Historic Property.

(c) CITY and OWNER hereby further declare their understanding and intent that the benefit of such covenants, reservations, and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the CITY, public (which includes, but is not limited to the benefit to the public street generally located at 794 Park Court), and OWNER.

(9) **Notice.**

(a) Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

CITY: City of Santa Clara
Attn: City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

OWNERS: Megan L. Carter
794 Park Court
Santa Clara, CA 95050

(b) Prior to entering a contract for sale of the Historic Property, OWNER shall give thirty (30) days notice to the CITY and it shall be provided at the address of the respective parties as specified above or at any other address as may be later specified by the parties hereto.

(10) **No Partnership or Joint Enterprise Created.** None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors, or assigns; nor shall such terms, provisions, or conditions cause them to be considered joint ventures or members of any joint enterprise.

(11) **Hold Harmless and Indemnification.** To the extent permitted by law, OWNER agrees to protect, defend, hold harmless and indemnify CITY, its City Council, commissions, officers, agents, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising there from for which OWNER shall become legally liable arising from OWNER'S acts, errors, or omissions with respect to or in any way connected with this Agreement.

(12) **Attorneys' Fees.** In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations, or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to costs and other relief ordered by the court.

(13) **Restrictive Covenants Binding.** All of the agreements, rights, covenants, reservations, and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner pursuant to this Agreement.

(14) **Mills Act Historic Property Contract Application Requirements.** An application for a Mills Act Historic Property Contract shall be made through the Planning Division and shall include the following:

- a. a Historic Resources Inventory form;
- b. the description of the preservation or restoration efforts to be undertaken as referenced in paragraph 3 (b) as Exhibit "D";
- c. a statement of justification for the Mills Act Historic Property designation and reassessment; and,
- d. the Mills Act Historic Property Contract filing fee pursuant to paragraph 17.

(15) **Mills Act Historic Property Contract Approval.** Based upon the Historical and Landmarks Commission's ("Commission") review of the Mills Act Historic Property Contract criteria and recommendation to Council, and based upon the recommendation and approval by Council, a Mills Act Historic Property Contract may be entered into with OWNER. The decision of the City Council shall be final and conclusive in the matter.

(16) **Recordation and Notice.** No later than twenty (20) days after the parties execute and enter into this Agreement, the CITY shall cause this Agreement to be recorded in the office of the County Recorder of the County of Santa Clara.

(17) **Fees.** The Planning Department may collect such Mills Act Historic Property Contract application fee of \$7,564.00 (seven thousand, five hundred, and sixty-four dollars), or other fees for the administration of this contract as are authorized from time to time by the City Council. Such fees do not exceed the reasonable cost of providing the service for which these fees are charged. OWNER shall pay the County Recorder's Office recordation fees for recordation of this Mills Act Historic Property Contract.

(18) **Ordinary Maintenance.** Nothing in this contract shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on any Historic Property covered by this contract that does not involve a change in design, material, or external appearance thereof, nor does this contract prevent the construction, reconstruction, alteration, restoration, demolition, or removal of any such external architectural feature when the Director of Community Development determines that such action is required for the public safety due to an unsafe or dangerous condition which cannot be rectified through the use of the California Historical Building Code and when such architectural feature can be replaced according to the Secretary of Interior's Standards.

(19) **California Historical Building Code.** The California Historical Building Code ("CHBC") provides alternative building regulations for the rehabilitation, preservation, restoration, or relocation of structures designated as Historic Properties. The CITY's building permit procedure shall be utilized for any Historic Property which is subject to the provisions of this Agreement, except as otherwise provided in this Agreement or the CHBC. Nothing in this Agreement shall be deemed to prevent any fire, building, health, or safety official from enforcing laws, ordinances, rules, regulations, and standards to protect the health, safety, welfare, and property of the OWNER or occupants of the Historic Property or the public.

(20) Conservation Easements.

(a) Conservation easements on the facades of the Historical Property may be acquired by the CITY, or on the CITY's behalf, by a nonprofit group designated by the CITY through purchase, donation, or condemnation pursuant to California Civil Code Section 815.

(b) The OWNER, occupant, or other person in actual charge of the Historical Property shall keep in good repair all of the exterior portions of the Historic Property, and all interior portions thereof whose maintenance is necessary to prevent deterioration and decay of any exterior architectural feature.

(c) It shall be the duty of the Director of Community Development to enforce this section.

(21) Severability. If any section, sentence, clause, or phrase of this Agreement is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, or by subsequent preemptive legislation, such decision shall not affect the validity and enforceability of the remaining provisions or portions of this Agreement. CITY and OWNER hereby declare that they would have adopted this Agreement, and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

(22) Integrated Agreement - Totality of Agreement. This Agreement embodies the agreement between CITY and OWNER and its terms and conditions. No other understanding, agreements, or conversations, or otherwise, with any officer, agent, or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

(23) Captions. The captions of the various sections, paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

(24) Statutes and Law Governing Contract. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

(25) Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, CITY and OWNERS have executed this Agreement on the day and year first written above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

City Attorney

Deanna J. Santana
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

“CITY”

**Megan L. Carter,
Owner of 794 Park Court**

By: _____
Megan L. Carter
794 Park Court
Santa Clara, CA 95050

“OWNER”

Exhibits:

- A – Property Description
- B – Primary Record
- C – Standards for Rehabilitation
- D – Restoration Schedule

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LERNER + ASSOCIATES
ARCHITECTS

April 11, 2021

City of Santa Clara Planning Staff &
Historical and Landmarks Commission
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Rebecca Bustos, Senior Planner

Re: Preservation Design Review
Carter Residence
794 Park Court
Santa Clara, CA 95050



Dear Ms. Bustos,

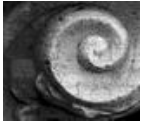
At the request of Ms. Megan Carter, the home owner of 794 Park Court, I performed a preservation design review based on the Secretary of the Interior's Standards for Rehabilitation (SIS) of the proposed alterations and addition as presented in the plans prepared by Architect, Robert Mayer (seven sheets: A1.0, A2.0, A3.0, A4.0, A5.0, A5.1, HP1 dated 4/9/21), that included a site visit on March 13, 2021, and a review of a CA Department of Parks and Recreation Primary Record (DPR) by Architectural Historian William Kostura dated July, 2020. In summary, I found that the preservation design of the proposed alterations and addition complies with the Secretary's Standards.

As to whether I am qualified to render such an opinion on preservation design, I more than qualify for the minimum professional qualifications in historic architecture as set by the National Park Service as I have a professional degree in architecture (from Kansas University), a State license to practice architecture in California, plus at least one year of full-time professional experience on historic preservation projects. For that, I served as staff architect for San Francisco's Architectural Heritage from 1983-88, and since then have been in private practice, winning design awards from the California Preservation Foundation, the California Governor's Office, and the Art Deco Society of California.

As noted in the Historic Resource Evaluation by Mr. William Kostura (July 2020):

"It appears that the subdivision was completely or almost completely developed during 1925, and that all or almost all of the houses were one-story in height and clad in horizontal wood siding. Styles were mostly restrained examples of Craftsman, Tudor, and Classic Revival styles. Some houses lack strong style elements, so that it does not seem possible to assign a style name to them other than "bungalow."

On average these were modest vernacular houses that were probably intended for working class and lower middle class workers. Nevertheless, many of the houses do have distinctive forms, mainly in their rooflines and porches. Many have porches that project from the main body of the house and have gabled or hipped roofs supported by columns.



Some of these columns have just enough articulation in their capitals to give the houses a "Classical Revival" style. Craftsman style houses, by contrast, may have tapering columns with or without capitals.

Alterations

There have been two alterations to the exterior of the house. One is a plain, replacement wooden front door. The other has been the removal of a brick chimney from the left side of the house. It was not visible from the street and was damaged in the Loma Prieta Earthquake of 1989.

Integrity

Mr. Kostura concluded:

This property retains integrity in all seven areas, listed below:

- *Because this house has never been moved, it retains integrity of location.*
- *Because the only alterations have been the replacement of a door and the removal of a chimney, this house retains integrity of:*
 - *design,*
 - *materials,*
 - *workmanship,*
 - *feeling, and*
 - *association.*
- *Because most of the old houses in the Park Court subdivision still stand with good to high integrity, this property retains integrity of setting.*

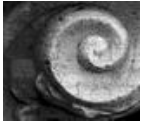
Evaluation under California Register criteria

Evaluation under Criterion 3 of the California Register: Resources that embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of a master, or possess high artistic values.

This is a fine though restrained example of a 1920s bungalow, and it is one of the best houses in the Park Court subdivision. Its most characteristic features are a cross-gabled roof with a corresponding, smaller gable over a projection in the front; knee-braces that support broad eaves and that relate the building to the Craftsman style; and a square column with capital moldings in the porch. A rectangular bay window in the front adds interest to the composition. The house has unusually high integrity, including all of its original window sash. Many of these sash are divided by muntins into multiple lights.

Because of its characteristic features and exceptionally high integrity, this house is a distinctive example of the domestic architecture of 1920s Santa Clara. Accordingly, the property appears to be individually eligible for the California Register at the local level under this criterion. The Period of Significance is 1925, the year the house was built."

Under Criterion 3, *Park Court is likewise a rare and excellent example of a 1920s subdivision composed of bungalows built to near-uniform scale but with varied compositions and styles. The wooden cladding of the houses, and the decorative style*



features, which are also of wood, provide surface texture and create a rustic feeling throughout the subdivision. As a large collection of wooden bungalows this subdivision is almost certainly unmatched in the city of Santa Clara, and this may be true for a much larger surrounding area as well.

Secretary of the Interior's Standards for Rehabilitation

Because the house is considered eligible for the California Register, the appropriateness of the design and construction were analyzed based on the Secretary's Standards for Rehabilitation. The Standards for Rehabilitation are regulatory for the Historic Preservation Tax Incentives program and are the Standards most often used by local historic district commissions nationwide. Below is my review:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

Response: Compliant. The house will continue to be used as a residence.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

Response: Compliant. The addition is situated in the open space between the house and the garage. Four of the original double hung windows towards the back of the house will be reused in the addition.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

Response: Compliant. The house will have an addition which will distinguish itself from the original design of the house by use of materials, the size and slope of the addition's roof, and cement board siding that while it will approximate the size and orientation of the existing wood siding, it will be of a modern material, cement board, that upon close observation, can be recognized as a new material.

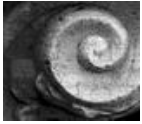
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

Response: Not Applicable. There are no new changes that have acquired historic significance in their own right.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

Response: Compliant. Examples of features of craftsmanship that characterize the property will remain. Where windows are removed, they shall be reused in new window locations. Where window sash or rails are deteriorated (dry rot), they will be repaired with a 2-part epoxy or replaced with new in kind window sash when more than 50% of the window parts are deteriorated.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old



in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

Response: Compliant. Deteriorated historic features will be repaired rather than replaced. The project proposed to replace the existing foundations that are failing (settling, listing) and causing major stress to the wood siding, wood windows and trim. Replacing the foundation will help rehabilitate these contributing elements and preserve them for many years to come.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

Response: Compliant. No physical treatments, such as sandblasting, that cause damage to historic materials will be used.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

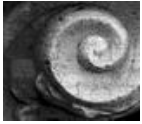
Response: Not Applicable. We are not aware of any archeological resources.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Response: In reviewing alternative designs, a 2nd story addition was considered and rejected as it was felt it would overpower the original house form. A one story addition in the open space between the garage and the house was considered appropriate as it was set back and behind the original house in open space between the garage and the house. The addition's roof is lower than that of the original house and there is a setback "notch" at the meeting of the addition and the house. It creates a certain rhythm of the ridges of the 3 roofs step down from the front to the back. In terms of detailing, the flat wood trim around the reused original double hung wood windows will be of a slightly different size so as to distinguish the old from the new. The siding of the addition will acknowledge the horizontal wood siding of the original house but will be made of a modern cement board material.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Response: Compliant. The addition is located in an open space between the historic house and garage. The addition, which is an infill in this space, could be removed in the future and the essential form, integrity and relationship of the historic house and garage easily restored since they will remain where they have always been. The proposed design will reuse 4 original windows that could be salvaged, if the addition is removed, and installed in their original places in the house.



In summary, it's my professional opinion that the proposed project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation Standards. The project could be found to be mitigated to a less-than-significant impact under the California Environmental Quality Act (CEQA) and in conformance with the intent of the proposed Mills Act contract.

Thank you in advance for your consideration of my opinions of the proposed project.

Sincerely,

Arnie Lerner, FAIA, CASp

cc. Megan Carter, Property Owner
Robert Mayer, Architect
William Kostura, Architectural Historian

attachments: Architect Robert Mayer's Drawings,
Architectural Historian William Kostura's Historic Resource Evaluation

April 30, 2021

To: Jeff Schwilk, AICP
Associate Planner, Community Development Department
City of Santa Clara

From: Lorie Garcia
City Historian, City of Santa Clara
Historical Advisor to the Historical and Landmarks Commission

RE: 794 Park Court, Santa Clara, California

- 1. Secretary of the Interior Standards Review (Arnie Lerner, April 11, 2021)**
- 2. Historic Resources Survey Report (William Kostura, July 2020)**

Dear Jeff,

I would like to submit the following comments on both the above referenced 2021 SIS Review and the 2020 HRSR.

1. With regards to the SIS Review, I completely concur with the finding made by Arnie Lerner that the proposed project for 794 Park Court “meets the Secretary of the Interior’s Standards for the Treatment of Historic Properties – Rehabilitation Standards.”
2. With regards to the HRSR, there is one important omission on the Historic Resources Survey Report made by William Kostura. On Page 1 (**Primary**)_section “**P7. Owner and Address**” he omits the name and address of the owner and this section is required to be filled in on the DPR.

I also feel that there are a few other corrections, which should be made.

On pages 2 and 5, Mr. Kostura refers to Park Court being developed during 1925. He writes on Page 2, “It appears that the subdivision was completely or almost completely developed during 1925” and on Page 5, “Park Court and was developed during 1925.” This is incorrect. It was almost completely developed during 1924 and 1925

I made a count of the construction dates for the historic Park Court houses, which face Alviso Street, Park Court and Park Avenue, and found 1 constructed in late 1923, 41 homes built in 1924 and 21 in 1925 with the remainder somewhat later.

And finally, on Page 5, Mr. Kostura gives the boundaries of the Old Quad neighborhood as being roughly bounded on the north by Lewis Street. This is incorrect as it completely ignores the area north of the El Camino between Lewis Street and the railroad tracks. Basically, the Old Quad covers the original quadrangle surveyed by J. J. Bowen and thus encompasses the area between Scott (from its juncture at the RR tracks) then south to Newhall and then is bordered by Newhall back to the RR tracks, which form the northernmost boundary.

Sincerely,

Lorie Garcia
City Historian, City of Santa Clara
Historical Advisor to the City of Santa Clara Historic and Landmarks Commission

April 29, 2021

To: Jeff Schwilk, AICP
Associate Planner, Community Development Department
City of Santa Clara

From: Lorie Garcia
City Historian, City of Santa Clara
Historical Advisor to the Historical and Landmarks Commission

RE: 794 Park Court, Santa Clara, California
APN: 269-52-054
Request for Variances for Rear and Side Yard setbacks

Dear Jeff,

I would like to submit the following comments in support of the Variance request:

The majority of the homes constructed as small bungalows, reflected the small working-class building styles of the era. This historic pattern with its up-and-down rhythm of the rooflines and the in-and-out rhythm of small detached garages set behind the main dwelling created a unified appearance with enough variety for individual identification, which is considered the essence of good neighborhood design and today is a character defining feature of historic neighborhoods.

Mainly constructed in 1924 (41 houses) and 1925 (21 houses), with the majority of the remainder erected up to the latter half of the 1930s, Park Court was developed in compliance with the new City regulations governing the construction of dwellings and garages in a Residential district. Since then, the Park Court neighborhood has only been minimally altered, and the majority of the original houses occupy their original footprints and the garages occupy their original locations.

The residence, located at 794 Park Court was built in 1925 and the placement of both the house and the garage on the lot met the regulations stated in the City's new zoning ordinance (Ordinance No. 384) for the City of Santa Clara, "Creating a Comprehensive Zoning Plan and Establishing Four Districts in the Town of Santa Clara," adopted on July 6, 1925. The subject property was located in "Residence District A" and under Section 4.b "Side Yards" and "Private Garages and Other Outbuildings," met the following set-back requirements: no residence (excluding eaves, window sills and other ornamental features) could "be placed closer than four (4) feet to either side yard lot-line" and no private garage could "be placed closer than three (3) feet" to "a rear or side property line."

Part of Ordinance No.444, enacted August 1, 1932, which established the use of the 1930 Uniform Building Code and Fire Zones within the City, was amended by Ordinance No. 457, enacted on November 20, 1933, which "provided that private garages detached from the residence or dwelling may be built up to the property line."

The new proposed addition between the existing house and garage is compatible with the historic pattern of development, as the 1925 Zoning Ordinance, in effect at the time the home was built, allowed 4' between structure and side lot-line and the proposed addition would be set at a 4' 6" setback. In 1950s, the garage was modified from a one to two car garage, giving it a 9-inch setback from the side property line. However, it retained the original setback from the street. It is interesting to note that after the modification of the garage, its setbacks from the side and rear property lines would have still complied with the 1933 Ordinance regarding garages. In both cases neither of the historic setbacks for construction meet the current Zoning Ordinance.

Adopted in 1969, the current Zoning Ordinance was written to regulate new construction occurring at that time and did not address the standards of development, i.e., height, building placement or setbacks, lot size or proportions, found in historic properties or neighborhoods.

According to the July 2020, Historic Resources Survey Report by William Kostura, Park Court is considered "probably by far the best example of a suburban subdivision that was built in Santa Clara in the 1920s-1930s, and may be one of the best in the immediate region." He also states that "Park Court appears to qualify for the California Register [of Historic Resources] as a historic district under Criterion 1 and Criterion 3.

No significant changes to the residence or garage or their placement on the property have occurred since its construction in 1925 and the current project proposed for 794 Park Court meets the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties. 794 Park Court's architectural style, form, size, massing and character-defining features are, and will remain, all compatible with the neighboring and nearby historic homes in the historic Park Court neighborhood. Thus, in order to not adversely impact the historic significance of the subject property and the character defining feature of the neighborhood's unique historic development-design, both a rear and side-yard variance for the proposed project for 794 Park Court are necessary.

During my 11 years and 11 months on the Santa Clara Planning Commission, we dealt numerous times with the problem of the City's historic neighborhoods and properties being completely unable to comply with the "modern" zoning ordinance due to the periods and manner in which they were constructed. We consistently made the findings for granting the needed variance requests due to these "unusual conditions applying to the land or the building" that were necessary for their preservation.

Thank you for allowing me the opportunity to provide this information. If you have any questions, please don't hesitate to contact me.

Sincerely,

Lorie Garcia
City Historian, City of Santa Clara

Park Court is a very important and unusual example of the history of development in town. There are not many developments laid out like this one. And there's not a collection of mostly intact cottages still so visible anywhere else in town that are arranged to create an instant neighborhood. The cultural story is as important as the architectural and land planning stories. If we ever able to get Historic Districts in this town to project a group of houses, not just one at a time, the Park Court neighborhood would likely be one of our first.

For years we have been reviewing individual projects within Park Court against the Secretary's Standards and what few rules we do have. Frankly, we have had mixed results, and the pressure to buy these small houses and turn them into bigger ones all over town is becoming intense because of the presence of jobs and money flowing in.

I say all this to remind us how important it is that we treat every alteration application in areas such as Park Court with great care. And is especially pleasing when an owner sends us one that is as sensitively done as this one.

I can say that I agree with the independent consultant's review that it meets the Secretary's Standards, but the Commission should talk about why they find that it does. This would be especially helpful for new Commissioners and the applicant. For learning purposes, lets contrast it to last month's submittal from another historically important neighborhood that has no protection either.

You remember in my review last month I cited a lot of criteria from Preservation Brief #14; that the addition should always be visually subordinate to the main house; that it should be set well back on the side or placed at the back only; that it needed the same rhythm to the openings even if the window was a different style, and more. It becomes increasing hard to meet these guidelines when the existing house is so tiny to begin with. But the design of this addition does exactly what PB#14 talks about. Instead of trying to double the square footage of the house, this proposal is very modest in size.

I further cited the Brief saying that the addition should be at the back or on the side at the back, this addition meets this requirement too. Yes its larger front wall is quite close to the side of the house facing the street, but it is only perhaps 1/3 as wide as the front of the house – clearly subordinate. And the elevation next to the front façade is very narrow and set back from the façade about 30ft behind a fence. Definitely subordinate.

I talked about PB#14's suggestion for a 'hyphen' shape as an interconnecting link between the main addition and the main house. This whole addition is so small compared to the two masses it links together that it doesn't just have a hyphen, it IS the hyphen. So points for this part of the design too.

This design is also clearly respectful of the architectural character of the house. It is not just a copy of the original, details have 'differentiation' yet the mass, placement, size, bulk, etc. are clearly 'compatible' with the original. Also reusing the historic windows is brilliant! In my "energy savings for historic buildings" seminar, I show how, if restored properly, a wood, double-hung window can equal or better the performance of affordable vinyl or fiberglass "energy efficient" windows – and as a bonus, it will last decades longer.

SIDING BACKGROUND: The use of cement-board siding is problematic everywhere as most often it replaces or covers the historic siding, erasing an important character-defining feature. In some parts of the country, in the 1980s and 90s, it became the scourge of historic remodels equal to that of vinyl, and aluminum siding. Several decades ago, the Parks Service issued Preservation Brief No. 8 (Yes, #8 out of 50) "*Aluminum and Vinyl Siding on Historic Buildings.*" We had our own scare with it here in Santa Clara,

as applicants wanted to replace historic wood siding in poor condition with ‘wonderful new cement board.’ Look in the Commission’s files. You’ll find the argument raging about 20 years ago, and both Gloria Sciara and I wrote about its detrimental effects.

One problem is that the building will behave differently – temperatures and moisture content, moisture migration, etc. – all are upset. A visual problem, whether it’s replacing siding or added to new sections, can be the shadow line. Cement board is heavy, so it’s usually thinner. The resulting shadow line on horizontal clapboard type siding is noticeably thinner. So one of the clues we read unconsciously to tell a building’s age is off.

Now, all of the above was to tell you, the Commission, how and why it shouldn’t be used without a good reason. But it does have its place (A section my own Ranch style house is clad with it.) Here at 794 it is being used to differentiate the addition from the older part of the house. It is only being proposed for the new construction not to replace existing siding. Now we should not be commanding that the siding on every addition the Commission reviews be a certain specific type, but kudos to the Architect for using it here to clearly differentiate the addition, yet keep it compatible with the historic feature. So, I agree with the consultant, this meets Criteria #9 of the Rehabilitation Standards.

QUESTION 1: WHICH EXPOSURE ON THE SIDING, 7” or 4”? The Right Elevation, Sheet A5.0, lists the new V-Rustic style siding as 7” exposure, to blend with the existing 1x8 V-Rustic wood siding of the garage. But then on the Rear Elevation, the siding is marked as 4” exposure? Usually, more than two styles of siding on such a small house can get visually chaotic. So my question is: Shouldn’t this note also say 7”?

QUESTION 2: CHANGE THE STYLE OF THE GARAGE DOOR? Of course, we would like the garage door to be changed to a more period type. It seems we always do. But an argument could be made to keep the existing 1990s design as if fits in with those on the rest of Alviso Street. I suggest however, that it might be could to make a statement about the part of Santa Clara’s heritage that is hidden back there in Park Court. Many citizens do not know it exists. This one looks so modern that it seems jarring against the wonderful little house. But change the style to what? And this used to be an expensive undertaking. But many different styles are available in metal roll-up doors now and one just picks from the catalog.

The “Period-of-Significance” (DPR Page 4, Item B10) is used to help us pick an appropriate style. The POS is usually a range of years when this style house would have fit most clearly or had the most influence on the local culture. But the DPR also says that Park Court was supposedly built in only one year, 1925. Still, we should look at what kind of doors would have been available then. During the 20s garages were starting to pop up all over town. Fords were now affordable. Horses were disappearing. The car was the modern age. But the building to store the car was still a design from an earlier age, a shed where either just a horse was kept, or if one had more money, a carriage. What existed were only hinged groups of relatively narrow panels that folded accordion style against the right and left jamb, or doors that rolled on tracks above to stack beyond the side of the opening. Either way, most often a cross-buck design of thin boards arranged in an X-pattern on the front of each panel was used as a brace. The fancier doors often had a glass panel in the top portion always. And no matter what style garage, these doors could be found all over town. And you’re in luck, because now, the overhead (roll-up) door industry reproduces these patterns in typical metal roll-ups. The cost difference is less only a few hundred, and the function is the same, just press the remote and up it goes.

Also, it is much appreciated that the trim sizes of the various windows are specifically listed right on the drawings. This way we can understand what is being proposed. Up until a couple years ago, formally requested that this information be on the drawings. It’s very helpful to see it here. And if a Commissioner has a question, it can be a very specific one discussing sizes etc. A minor point that the applicant might

want to consider: As “1x’s” are now ¾” thick. The older trim was a full 1” thick or sometimes more. If the siding butts to this, a modern (thinner) board may not be enough to stand proud of the siding. This not only looks substantially different (remember what I was saying about shadow lines) but it may be hard to get it sealed against the weather. Of course each situation is different, but often we put blocks, or a thin piece of plywood behind the new trim so that the siding butts properly and can be sealed properly.

CONCLUSION:

The proposal, as presented on the drawings we reviewed meets the Secretary’s Standards for Rehabilitation. The size, bulk and mass of the addition is less than that of the little house. Mainly it can only be seen at the corners at the back and the addition is clearly subordinate to the main house. Further it has been clearly differentiated while still looking compatible with the main house. In future, it should be used as an example of how to meet the Standards for an addition.

Volunteer Architectural Advisor to the HLC

Craig Mineweaser

Craig Mineweaser, AIA | Principal Preservation Architect

Mineweaser & Associates

architecture | preservation | building conservation services

building forensic investigations | historical building evaluations

Historic Structure Reports | Secretary of the Interior’s Standards Reviews

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Planning Department
City of Santa Clara

April 25, 2021

Re: Letter in Support of 794 Park Ct. Variance Request

Dear Planning Commissioners and Planning Staff:

We are the residents and homeowners of 792 Park Ct. Our home is located directly south of 794 Park Ct., the property that is the subject of the variance request. Our house is the only house that borders the subject property so we are interested in any proposed developments to the property that may impact us.

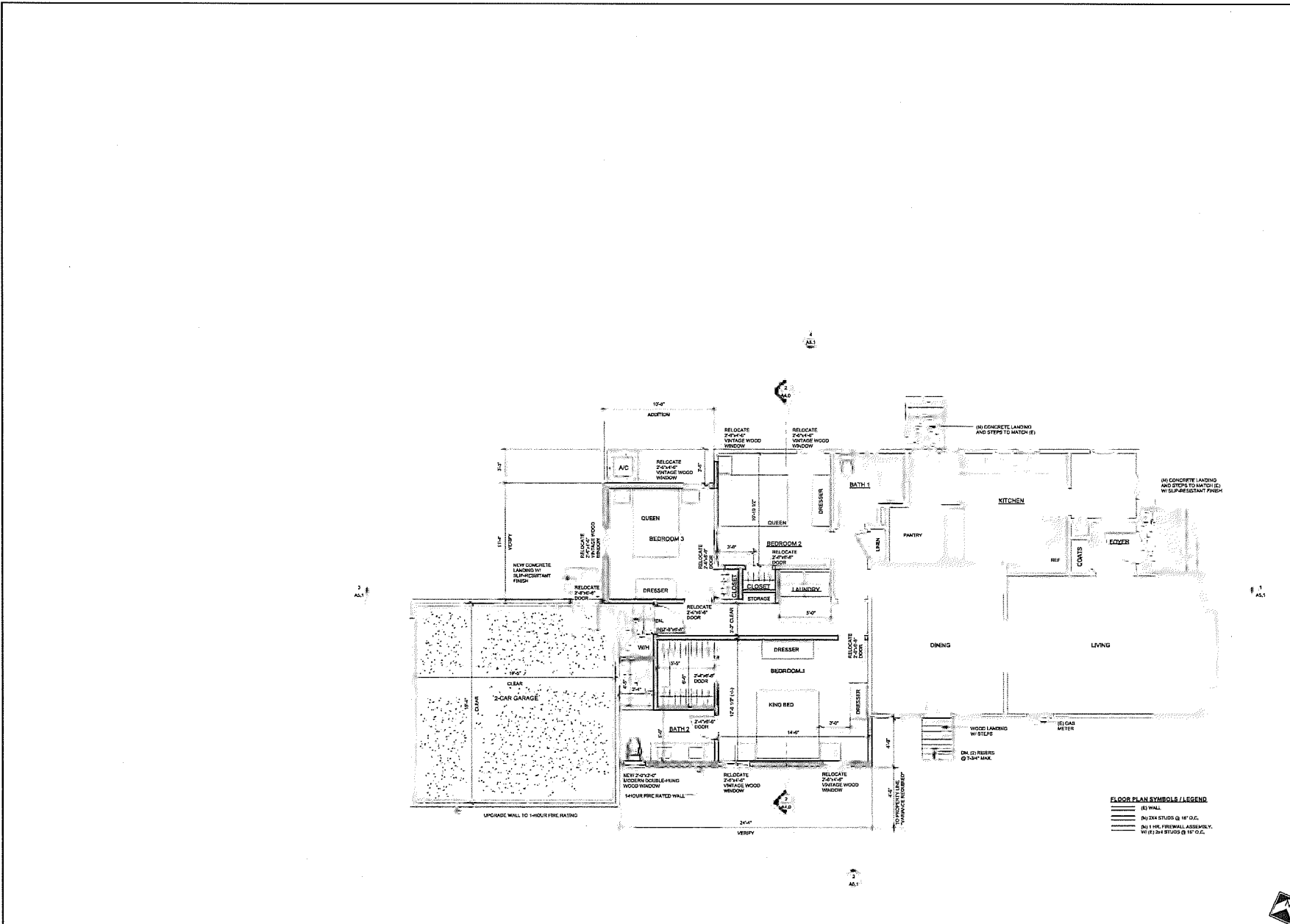
We are writing to express our support for the project, and for the side yard and rear yard variances requested. We have reviewed the drawings prepared by architect Rob Mayer (dated April 09, 2021) that show the variances to reduce the side yard building setback from the required 5 feet to 4'-6" at the addition, and 9" at the existing garage, as well as a 2'-0" rear yard setback at the existing garage where 20 feet is required. We feel these variance requests are reasonable given the that the existing garage remains in its current location and will have no greater impact than it currently does; and that the variance at the addition, if granted, will only reduce the side yard setback by 6 inches.

We wholeheartedly approve of the homeowner's proposed plans for 794 Park Ct. We have reviewed these plans in detail, and believe that the proposed project will be a significant improvement to the property while also helping to preserve the historical character of our unique street.

Regards,

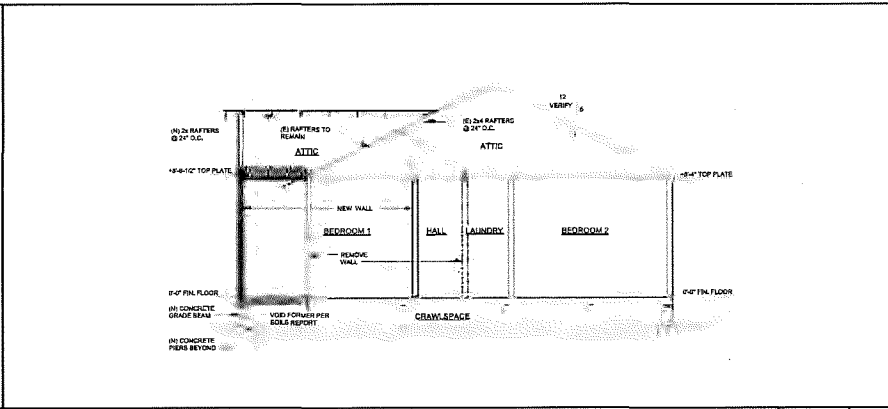
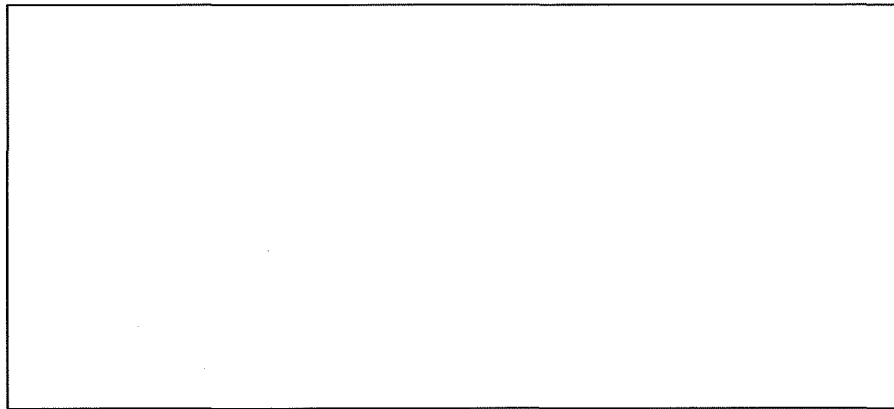
The image shows two handwritten signatures in black ink. The signature on the left is 'Ann Dunham' and the signature on the right is 'Darren Dunham'. Both signatures are fluid and cursive.

Ann and Darren Dunham
Homeowners and Residents of 792 Park Ct.



- FLOOR PLAN SYMBOLS / LEGEND**
- (S) WALL
 - (D) 2X4 STUDS @ 16" O.C.
 - (D) 1 HR. FIREWALL ASSEMBLY
 - (W) 2x4 STUDS @ 16" O.C.

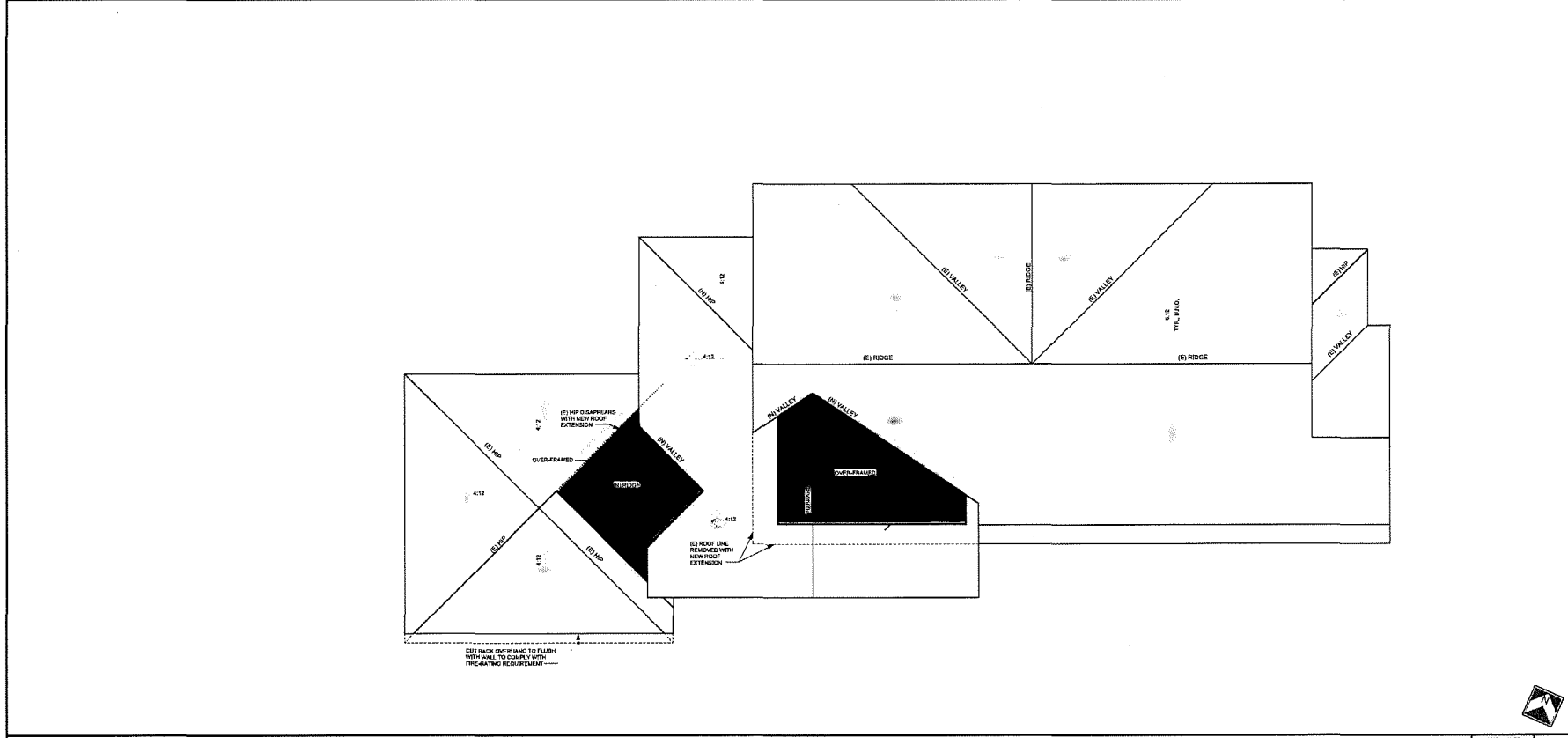
ARCHITECT	ROBERT MAYER	
CONSULTANT		
ADDITION & RENOVEL TO THE RESIDENCE AT: 794 PARK COURT SANTA CLARA, CA 95050 APR. 2003/04		
REVISION	DATE	DESCRIPTION
ISSUE: PLANNING PROJECT #: 2020-04 DRAWN BY: RM CHECKED BY: RM ISSUE DATE: 04/01/21 SHEET TITLE FLOOR PLAN		
DRAWING NO. A3.0		



Architect
ROBERT MAYER
 1500 Wilshire Blvd., Suite 2000, Los Angeles, CA 90017
 phone 310.276.2000
 fax 310.276.2001
 www.robertmayer.com

CONSULTANT

SECTION 1/8" = 1'-0" 2



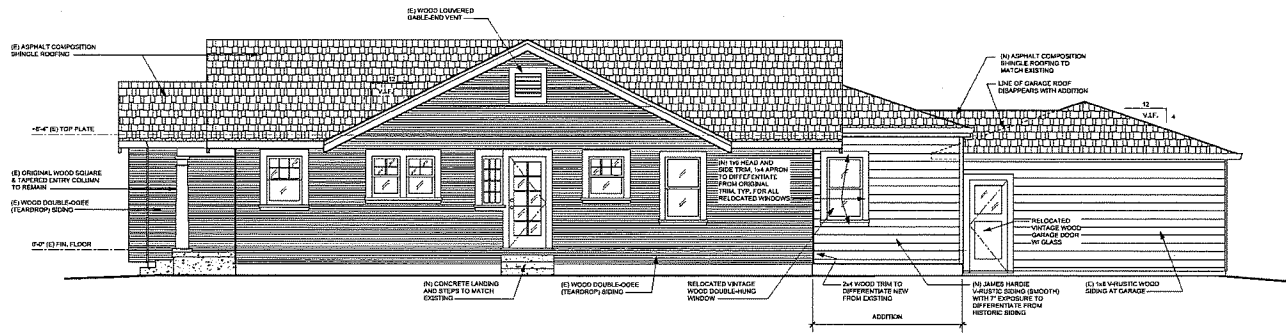
ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
 SANTA CLARA, CA 95050
 APN: 268-02054

REVISION	DATE	DESCRIPTION

ISSUE: PLANNING
 PROJECT #: 2020-04
 DRAWN BY: RM
 CHECKED BY: RM
 ISSUE DATE: 04/09/21
 SHEET TITLE: ROOF PLAN

DRAWING NO. **A4.0**

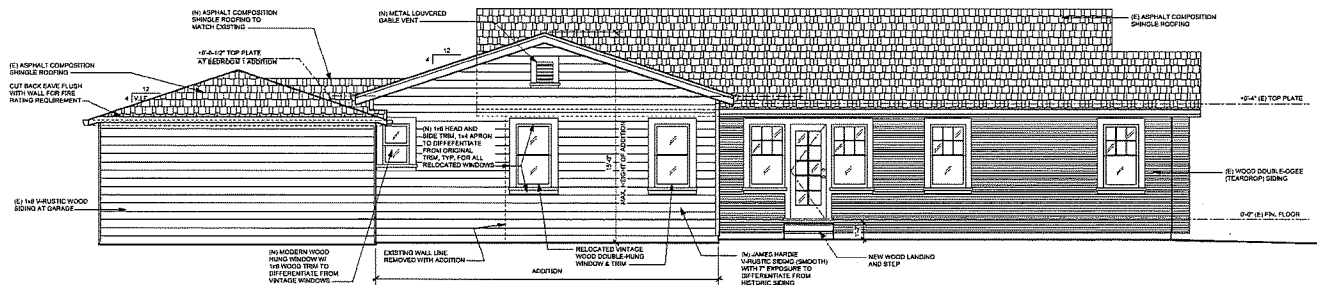
ROOF PLAN 1/8" = 1'-0" 1



RIGHT ELEVATION

1/4" = 1'-0"

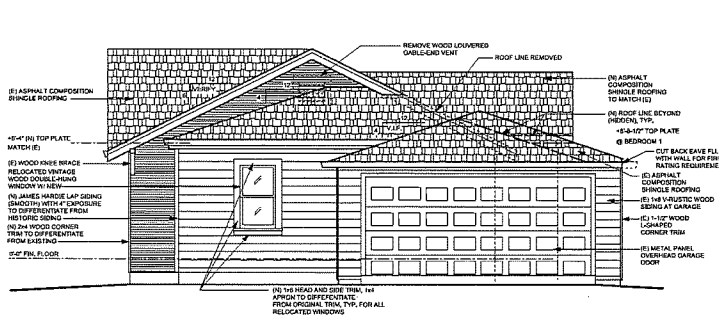
3



LEFT ELEVATION

1/4" = 1'-0"

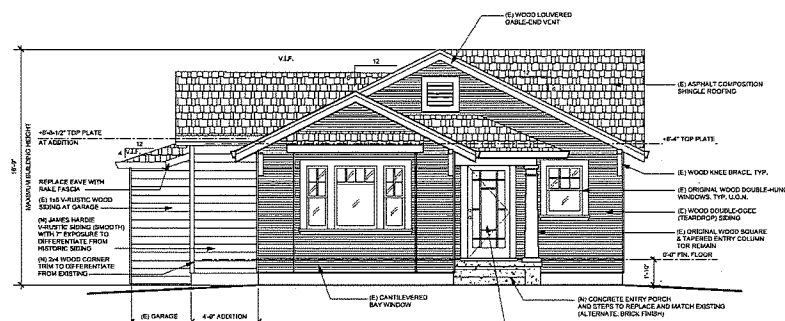
2



REAR ELEVATION

1/4" = 1'-0"

4



FRONT ELEVATION

1/4" = 1'-0"

1

Architect
ROBERT MAYER
 180 South Duane Street
 Santa Clara, CA 95050
 Phone: (408) 283-3333
 rmm@rmmarchitect.com

CONSULTANT

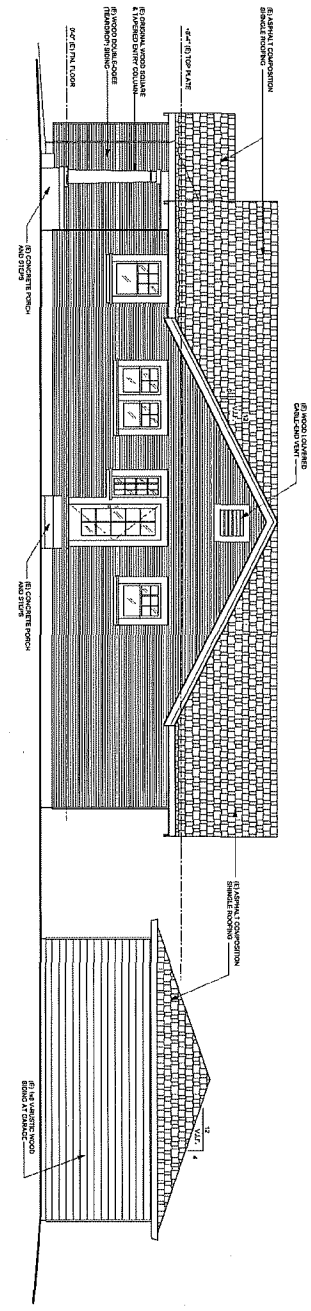
ADDITION & REMODEL TO THE RESIDENCE AT:
784 PARK COURT
 SANTA CLARA, CA 95050
 APN: 38552-004

ISSUE: PLANNING
 PROJECT #: 2020-04
 DRAWN BY: RM
 CHECKED BY: RM
 ISSUE DATE: 04/08/21
 SHEET TITLE: ELEVATIONS

DRAWING NO. **A5.0**

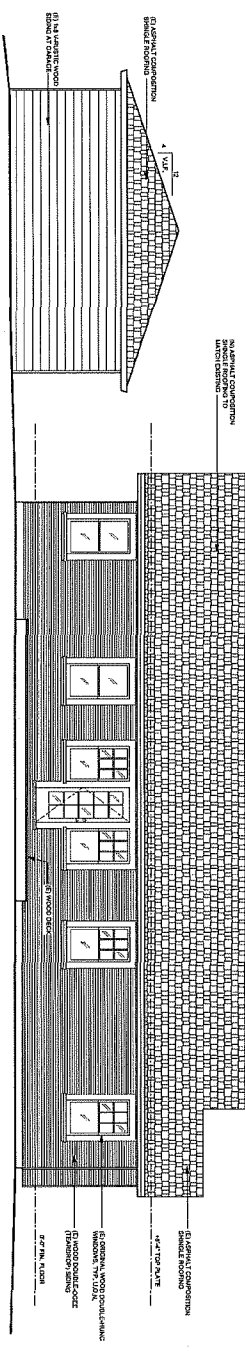
of 7

2020-04 CARTER_PHASE1_pln(rmv)1.dwg 4/12/2021



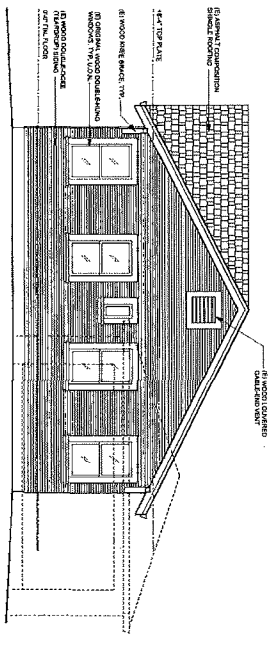
EXISTING RIGHT ELEVATION

1/4" = 1'-0"
3



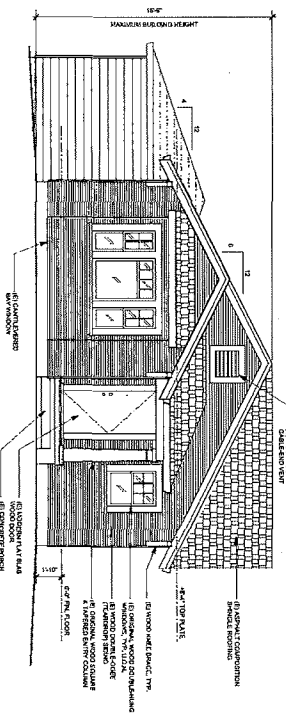
EXISTING LEFT ELEVATION

1/4" = 1'-0"
2



EXISTING REAR ELEVATION

1/4" = 1'-0"
4



EXISTING FRONT ELEVATION

1/4" = 1'-0"
1

REVISION	DATE	DESCRIPTION

DRAWING NO. AS-1
 SHEET TITLE EXISTING ELEVATIONS
 PROJECT NO. 202004
 PROJECT NAME 794 PARK COURT, SANTA CLARA, CA 95050

ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
 SANTA CLARA, CA 95050
 APN: 206-62-054



Architect
ROBERT MAYER
 1490 Santa Clara Street
 Santa Clara, CA 95050
 PHONE: 408.564.5047
 FAX: 408.564.5048
 WWW: www.robertmayer.com



Agenda Report

21-911

Agenda Date: 8/25/2021

REPORT TO PLANNING COMMISSION

SUBJECT

Action on Variances to minimum interior side yard and rear yard building setbacks at 794 Park Court

REPORT IN BRIEF

Project: Variances to the required minimum 5-foot interior side yard building setback to allow the current 9-inch side yard building setback for the existing garage and a 4-foot, 6-inch setback for the proposed 341 square foot living addition in the rear yard; and a Variance to the minimum 20-foot rear yard setback to allow the current 2-foot rear yard garage setback which is otherwise required to allow connection of the existing house and existing detached garage with the proposed addition

The project also includes an application for addition of the property to the City's Historic Resource Inventory (HRI) and request for approval of Historic Preservation Agreement (Mills Act Contract), but these requests are not part of the Planning Commission's review or action.

Applicant: Robert Mayer, Architect

Property Owner: Megan Carter

General Plan: Very Low Density Residential

Zoning: Single Family Residential (R1-6L)

Site Area: 4,872 square foot lot

Existing Site Conditions: The subject property located at 794 Park Court (APN: 269-52-054) is developed with a one-story single-family home and a detached two-car garage.

Surrounding Land Uses

North: Park Court and single-family residences

South: Single-family residences

East: Park Court and single-family residences

West: Alviso street and single-family residences

Issue(s): Consistency with the City's Zoning Ordinance.

Staff Recommendation: Approve the Variances to allow substandard interior side and rear yard building setbacks at 794 Park Court in conjunction with the proposed 341 square foot addition connecting the existing house and detached garage.

BACKGROUND

On January 7, 2021, Architect Robert Mayer on behalf of the property owner, Megan Carter, filed an application for listing of the subject property on the City's Historic Resources Inventory (HRI), a Historic Preservation Agreement (Mills Act Contract), Architectural Review and a Significant Property Alteration (SPA) Permit. On April 12, 2021 the Applicant filed an amended application with revised project plans and a request for Variances to allow substandard side and rear yard building setbacks

in conjunction with a request to allow foundation replacement and a 341 square foot bedroom, bathroom and closet addition to the rear and south sides of the existing house, creating an attachment and interior access door between the house to the existing detached two-car garage in the rear yard fronting Alviso Street.

The Variance is necessary to allow construction of a third bedroom and second bathroom addition to the existing one-story house as a living area addition that would connect the existing house and detached garage in the rear yard of the existing, substandard 4,872 square foot lot. The proposed Variance application was reviewed and determined to be complete by the City's Project Clearance Committee on May 25, 2021.

The project was reviewed by the City's Historical and Landmarks Commission on June 3, 2021, where the Historical and Landmarks Commission acted to recommend approval of the requested Variances to the Planning Commission, as well as approval for addition of the property to the City's HRI and approval of the Historic Preservation Agreement (Mills Act Contract), which will be considered separately by the City Council following the Planning Commission's review and action on the Variance application.

DISCUSSION

The proposal is subject to the minimum side yard and rear yard requirements of City Zoning Ordinance Sections 18.12.090 and 18.12.100, respectively, unless a Variance is granted by the Planning Commission. Pursuant to Section 18.108.010 of the SCCC, where practical difficulties, unnecessary hardships and effects inconsistent with the general purpose of the Zoning Code may result from strict application of certain provisions, Variances may be granted.

Consistency with the General Plan

The subject property has a General Plan designation of Very Low Density Residential. This designation is intended for residential densities up to 10 units per acre and is typically represented in detached single-family neighborhoods. Development in this classification maintains a feeling of suburban living with setbacks between structures, parking, large landscaped yards and tree lined streets. The proposal would retain and expand upon the existing one-story house with an addition that in-fills some of the existing rear and interior side yards of the property, at reduced setbacks from property lines, in a manner consistent with the existing architectural scale and character of the house and other homes in the neighborhood.

Zoning Conformance

The subject property is zoned Single Family Residential (R1-6L) and the existing lot is legal nonconforming in that it has a substandard area of 4,872 square feet where a minimum of 6,000 square feet is required, and a substandard lot width of 50 feet where a minimum of 60 feet is required. The nonconforming lot has a unique configuration for single family residential lots in the City, in that it is a corner lot having three frontages on public streets - two on Park Court and one frontage on Alviso Street to the rear.

The subject property contains a two-bedroom and one-bathroom, 1,166 square foot, one-story house built in 1925. According to the letter attached to this report received from City Historian Lorie Garcia, dated August 18, 2021, during the 1950's the garage was modified from a one- to two-car garage and located a 9-inch setback from the side property line, while maintaining the original two-foot setback from the rear property line on Alviso Street. The project includes a request for two variances. One

variance is to the current required minimum 5-foot interior side yard building setback, to allow the current 9-inch side yard building setback for the existing garage and a 4-foot, 6-inch setback for the proposed 341 square foot living addition in the rear and interior side yard areas. The other Variance is to the minimum 20-foot rear yard setback requirement, to allow the current 2-foot rear yard garage setback to remain through this proposed infill addition which would connect the existing house and detached garage through the living area and interior hallway addition.

Conclusion

The proposed 341 square foot addition to the existing house and garage on the property, as designed, would allow the property owner to benefit from the use and enjoyment of a 1,507 square foot, three-bedroom and two-bathroom house that has been designed in a manner which would protect and preserve this historic character of the existing house and other homes on Park Court. The proposed project meets the purpose and intent of the Zoning Code in that there are unusual conditions applying to the land that do not generally in the same district. The findings required to approve the Variances are included in the attached resolution.

ENVIRONMENTAL REVIEW

The proposed project is exempt per CEQA section 15301(e)(1) - Existing Facilities, in that the proposed 341 square foot addition would not result in an increase of more than 50 percent of the floor area of the 1,166 square foot house before the addition. The project is also exempt per CEQA Section 15331, Historical Resource Restoration/ Rehabilitation, in that the project as proposed will be constructed in accordance with the Secretary of the Interior's Standards for Rehabilitation.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense typically covered by processing fees paid by the applicant.

COORDINATION

This report was coordinated with the City Attorney's Office.

PUBLIC CONTACT

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

On August 12, 2021, a notice of public hearing of this item was posted in at least three conspicuous locations within 300 feet of the project site and mailed to property owners within 300 feet of the project. At the time of this staff report, Planning staff has received two public comment letters in support of the proposed project.

One letter of in support of the project including the setback variances was received from homeowners and residents Ann and Darren Dunham of 792 Park Court, the immediately adjoining property to the south of the project site, dated April 21, 2021, and is attached to this report.

In addition, a letter providing background and comments in support of the variances was received from City Historian Lorie Garcia, dated August 18, 2021. In the letter, Ms. Garcia states, "794 Park Court's architectural style, form, size, massing and character-defining features are, and will remain, all compatible with the neighboring and nearby historic homes in the historic Park Court neighborhood. Thus, in order to not adversely impact the historic significance of the subject property and the character defining feature of the neighborhood's unique historic development-design, both a rear and side-yard variance for the proposed project for 794 Park Court are necessary."

ALTERNATIVES

1. Adopt a Resolution making the necessary findings and approving the Variances to allow substandard interior side and rear yard buildings setbacks at 794 Park Court, subject to conditions.
2. Deny the requested Variances to allow substandard interior side and rear yard building setbacks at 794 Park Court.

RECOMMENDATION

Alternative : 1: Adopt a Resolution making the necessary findings and approving the Variances to allow substandard interior side and rear yard buildings setbacks at 794 Park Court, subject to conditions.

Prepared by: Jeff Schwilk, Associate Planner
Reviewed by: Alexander Abbe, Assistant City Attorney
Approved by: Reena Brilliot, Planning Manager

ATTACHMENTS

1. Project Summary Data and Maps
2. Historical and Landmarks Commission Staff Report - June 3, 2021
3. Historical and Landmarks Commission Draft Minutes - June 3 2021
4. Applicant's Statement of Justification
5. Letter from Lorie Garcia
6. Letter from Ann and Darren Dunham
7. Resolution Approving the Variance
8. Conditions of Approval
9. Development Plans

1. Project Summary Data and Maps – 794 Park Court

File: PLN2021-14940 (PLN2021-14768)
Location: 794 Park Court, a 4,872 square foot lot, located at the southeast corner of Park Court and Alviso Street, APN: 269-52-054; property is zoned Single Family Residential (R1-6L).
Applicant: Robert Mayer, Architect
Owner: Megan Carter
CEQA Determination: Categorically Exempt per CEQA Section 15301 (e)(1) – Existing Facilities and Section 15331 - Historical Resource Restoration/Rehabilitation

	Existing	Proposed
General Plan Designation	Very Low density Residential	Same
Zoning District	Single Family Residential (R1-6L)	Same
Land Use	Single Family Residential	Same
Lot Size	4,872	Same
Living Area	1,166	1,507
Garage	407	407
Porch Cover	24	24
Gross Floor Area (sf)	1,573	1,914
Lot Coverage	1,597 / 4,872 = 32.8%	1,938 / 4,872 = 39.8%
Bedrooms/Bathrooms	2 / 1	3 / 2

Site Location and Context

Surrounding Land Uses: The project site is located in a residential tract developed predominantly with one-story single-family homes having detached garages. The project site is bordered to the north and east by Park Court and to the west (rear) by Alviso Street. The project site is bordered to the south by a two-story Craftsman style single family home with an attached two-car garage at the rear fronting Alviso Street.

General Plan Map:



The General Plan designation for the project site and surrounding properties is Very Low Density Residential. This designation allows residential densities of up to 10 units per acre with development that is single family in scale and character.

Project Site
 Very Low Density Residential

Zoning Map:



The project site and bordering property to the south and all other surrounding properties are zoned R1-6L.

Project Site
R1-6L - Single Family Residential



Agenda Report

21-744

Agenda Date: 6/3/2021

REPORT TO HISTORICAL AND LANDMARKS COMMISSION

SUBJECT

Public Hearing: Consideration of City Historic Resource Inventory Property Designation, Approval of a Historic Preservation Agreement (Mills Act Contract), and Architectural Review and SPA Permit to allow an addition and attachment of an existing detached twocar garage at 794 Park Court

BACKGROUND

The applicant has filed applications for listing on the Historic Resources Inventory (HRI), a Mills Act Preservation Agreement, Design Review, and a Significant Property Alteration (SPA) Permit application on January 8, 2021 as required under the Historic Preservation Ordinance (HPO), Chapter 18.106 of the Zoning Code. The project includes a request to allow foundation replacement and a 341 square foot bedroom, bathroom and closet addition to the rear and south sides of the existing house, creating an attachment and interior access door between the house to the existing detached two-car garage in the rear yard fronting Alviso Street.

The project also includes an application for variances to allow the addition at a substandard interior side yard setback, and addition to a detached two car garage resulting in a substandard rear and interior side yard setbacks. The Variance application (PLN2021-14940) will be considered separately by the City's Planning Commission.

The subject property is located on Park Court, which is a rectangular 1925 subdivision containing several homes on the City's Historic Resources Inventory of Bungalow, Cape Cod and Colonial Revival architectural styles, and a narrow elliptical street located in the Center. Attached to this report to provide additional background is a copy of the History of the Park Court Subdivision prepared by City Historian, Lorie Garcia.

DISCUSSION

The subject property contains a two-bedroom and one-bathroom, one-story house of vernacular Craftsman style architecture built in 1925. Property owner Megan Carter is requesting the property be added to the City's Historic Resource Inventory and approval of a Historic Preservation Agreement (Mills Act Contract) for the property including the adoption of a 10-Year Rehabilitation and Maintenance Plan associated with this historical preservation agreement. A requirement of the Mills Act is that the building must be a qualified structure, listed on either a local, State or National Register.

The existing house is not currently listed on the City's Historic Resource Inventory, though it has been found eligible for both Local and State listing in the attached Historical Resources Survey Report and State Department of Parks and Recreation Form (DPR), which was prepared for the City's consideration by Architectural Historian William Kostura. The property is also located within 200 feet of three other listed resources at 761 Park Court, 782 Park Court and the immediately adjoining

property to the south at 792 Park Court.

The property owner also proposes to replace the failing concrete brick foundation beneath the house with a new concrete pier and grade beam foundation system, and a 341 square foot bedroom and bathroom addition to the rear and south sides of the house. For the proposed work, the applicant has commissioned an additional Secretary of the Interior's evaluation, prepared by Arnie Lerner of Lerner Associates Architects, dated April 11, 2021.

The owner's proposed 10-Year Rehabilitation and Maintenance Plan, dated January 5, 2021, is attached to this report. Some of the notable work that would be performed under this 10 Year Plan include replacement of the house foundation as noted above, repair and restoration of the existing historic wood windows, update of the house electrical wiring including replacement of existing knob and tube wiring, replacement of the existing asphalt composition shingle roofing, and repainting of the entire house exterior.

The proposed development plans are attached at the end of this report. The proposed foundation replacement would not change the finished floor or overall existing building height. The proposed 341 square foot bathroom and bedroom expansion located on south side wall of the house would be setback back 4-feet, 6-inches from the south property line. The proposed new bedroom addition to the west side of the house would be setback 20-feet, 8-inches from the west rear property line. The proposed additional floor area would join the house with an existing detached two-car garage in the rear yard creating a single structure on the lot. The existing two-car garage is accessed from Alviso Street on the west, and this building is legal-nonconforming in that it is located only 9-inches from the south side property line and two-feet from the rear property line. In establishing the connection between the house and garage, the proposed design includes a shed roof off the rear wall of the house over the proposed addition that is set below the rear gable and primary roof ridge of the house, and which then ties into the lower garage roof. The addition would be clad in new asphalt composition shingles to match existing, and seven-inch horizontal cement composite siding to differentiate the addition from the narrower historic horizontal wood teardrop siding on the original house. The project proposes to reuse and relocate four historic double-hung wood windows from the original house walls onto the addition.

The project plans include a preservation treatment plan to guide the property owner and contractors in the proper techniques for construction of the addition according to the Secretary of the Interior's Standards for Rehabilitation.

The applicant has submitted an analysis of the proposed project applying the Secretary of the Interior's Standards (SIS) for Rehabilitation, prepared by Architect Arnie Lerner of Lerner Associates Architects, dated April 11, 2021, attached. This SIS Review states, "*A one story addition in the open space between the garage and the house was considered appropriate as it was set back and behind the original house in open space between the garage and the house. The addition's roof is lower than that of the original house and there is a setback "notch" at the meeting of the addition and the house. It creates a certain rhythm of the ridges of the 3 roofs step down from the front to the back. In terms of detailing, the flat wood trim around the reused original double hung wood windows will be of a slightly different size so as to distinguish the old from the new. The siding of the addition will acknowledge the horizontal wood siding of the original house but will be made of a modern cement board material.*" The report concludes that the proposed project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation Standards.

A letter of review of the proposed development plans, the historic resources survey report (DPR) and Secretary of the Interior's Standards analysis for the project by Honorary City Historian Lorie Garcia, dated April 30, 2021 is attached. In the letter Ms. Garcia raised some corrections to the Historic Resources Survey Report (DPR), which were subsequently made in the May 3, 2021 revision included with this report. Ms. Garcia also noted concurrence with the finding by Arnie Lerner in the April 11th SIS Review, that the proposed project for 794 Park Court meets the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation Standards. An additional letter of review of the proposed variances submitted by Lorie Garcia, dated April 29, 2021, is also attached to this report for information and additional context.

A letter of design review of the proposed development plans and SIS Review by Craig Mineweaser, AIA, Volunteer Architectural Advisor to the Commission, dated May 4, 2021 is attached. In the letter Mr. Mineweaser also noted his concurrence with conclusion in the April 11th SIS Review prepared by Arnie Lerner, that the project as proposed meets the Secretary of the Interior's Standards. Mr. Mineweaser also raised question for clarification on the proposed siding exposure as the plans referenced both 4-inch and 7-inch siding. The applicant has subsequently clarified with staff for mention in this report that the proposed siding is 7-inch James Hardie V-rustic siding on all sides of the addition (instead of 4-inch), intended to blend with the existing 1x8 V-Rustic siding of the garage.

Conclusions

Based upon the historic property resource survey (DPR) and the evaluator's conclusions contained therein, and Section 18.106.040 of the City's Historic Preservation Ordinance pertaining to designation, the property appears to meet all of the specified eligibility criteria for inclusion on the City's Historic Resource Inventory, in that:

- 1) The existing house constructed in 1925, at 96 years of age, exceeds the established 50-year age threshold;
- 2) The existing house retains a very high degree of historic integrity; and,
- 3) The property proposed for inclusion on the City's Historic Resources Inventory, is eligible for listing based upon the architectural significance of the house as a notable example of Craftsman style architecture in the City of Santa Clara.

Staff finds that the work proposed under the 10-Year Restoration and Maintenance Plan adheres to the Secretary of the Interior's Standards for Rehabilitation, and will need to be submitted for Secretary of the Interior's Standards Review and incorporated into the Preservation Treatment plan as necessary. Given the age, historic integrity, and the proposed 10-Restoration and Maintenance Plan, staff supports a Mills Act Preservation Agreement for the property. A copy of the draft contract is also attached to this report.

ENVIRONMENTAL REVIEW

The proposed project is exempt per CEQA section 15301(e)(1) - Existing Facilities, in that the proposed 341 square foot addition would not result in an increase of more than 50 percent of the floor area of the 1,166 square foot house before the addition. The project is also exempt per CEQA Section 15331, Historical Resource Restoration/ Rehabilitation, in that the project as proposed will be constructed in accordance with the Secretary of the Interior's Standards for Rehabilitation.

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>>

The notice of public meeting for this item was posted at three locations within 300 feet of the project site and was mailed to property owners within 300 feet of the project site. No public comments have been received at the time of preparation of this report. An on-site notification sign was also posted at the subject site.

One letter of in support of the project including the setback variances was received from homeowners and residents Ann and Darren Dunham of 792 Park Court, the immediately adjoining property to the south of the project site, dated April 21, 2021, and is attached to this report.

RECOMMENDATION

Staff recommends the Historical and Landmarks Commission find that the house will retain sufficient integrity as a significant example of Craftsman architecture through the construction of the proposed addition, subject to the procedures outlined in the Preservation Treatment Plan attached to the Development Plans, and recommend approval of the following:

- 1) That, based upon the historic survey (DPR) and the evaluations of the proposed remodel and additions to the property, the Commission forward a recommendation to the City Council for approval of the designation and addition of this property to the City's Historic Resource Inventory;
- 2) That, based upon the analysis and findings of the historical evaluation, the Commission forward a recommendation to the City Council for approval of the Mills Act Contract application, including the adoption of a 10-Year Rehabilitation and Maintenance Plan associated with this historical preservation agreement; and,
- 3) That, based upon the analysis and findings of the historical evaluation, the Commission forward a recommendation of approval for issuance of a Significant Property Alteration (SPA) Permit to the Director of Community Development for the proposed addition, subject to the procedures outlined in the Preservation Treatment Plan attached to the Development Plans.

Reviewed by: Rebecca Bustos, Senior Planner

Approved by: Gloria Sciara, Development Review Officer

ATTACHMENTS

1. History of the Park Court Subdivision
2. Legal Property Description
3. Historic Survey (DPR 523A)
4. Secretary of the Interior's Standards for Rehabilitation
5. 10-Year Restoration and Preservation Plan
6. Draft Historic Preservation Agreement
7. Secretary of the Interior Analysis of Project by Lerner
8. Letter from Lorie Garcia - HRSR and SIS Review
9. Letter from Lorie Garcia - Variances
10. Letter from Craig Mineweaser - Design Review

11. Letter from Ann and Darren Dunham
12. Development Plans

THE PARK COURT SUBDIVISION

1925

(A portion of Sub-Lot 50)

Park Court is a portion of a larger tract of land that was designated in the 1866 Survey as Sub-Lot 50. This Sub-Lot was a 134.87 acre tract owned by John Grandin Bray, a merchant and major landowner in the new Town.

By 1873 when The Plat of Santa Clara was drawn, it showed that Sub-Lot 50 and the surrounding area had undergone several changes from the survey of nine years earlier. By then, the Davis-Chapman subdivision had been created and Grant Street (The Alameda) , which previously ended at Bellomy Street, had been extended. This extension, named Union Avenue, bordered the northeastern edge of Sub-Lot 50. Bascom Avenue, a continuation of Washington Street, cut through the southwestern part of Sub-Lot 50. J. G. Bray had subdivided part of his property (Brays' Addition) and two new streets (later called Poplar and Maple), bordered this new subdivision, running from the southwestern edge of Sub-Lot 50 to Union Avenue.

By 1893 the remainder of Sub-Lot 50 had been subdivided into 9 lots. and John's son, Grandin Bray, owned lots, 5, 8 and 9. Along with the subdivision of Sub-Lot 50, Alviso Street had been extended south of Maple, Poplar Street now connected with Jackson Street and Cypress Street had been constructed running from Bascom to Union Avenue to the south of the new lots, 5 and 8 and north of lots 6 and 9.

At the request of Messrs. Barnett and Phelps in January 1925, H. B. Fisher surveyed the land which comprised lot 9 and laid out the Park Court subdivision. This map was recorded on February 16th of the same year. Rectangular in shape with a narrow elliptical street located in the center, access into the subdivision was at both Park Avenue (renamed from Union Avenue) and Alviso Street. Originally, on the survey, the southeastern half of the center street was named Park Court and the northwestern half, Altevogt Way. Within a few years, this had changed and the entire center street was called Park Court.

Santa Clara had experienced a period of agricultural and industrial growth after WWI and the Park Court Subdivision, developed between 1925 and 1930, was created to meet the needs of the burgeoning working class related to this growth. The homes constructed for this group of people were modest but contemporary for their time. Most of the first residents were laborers or employed in the nearby businesses.

Today, Park Court is significant as one of the only intact 1920-30s subdivisions in the City of Santa Clara. Most of homes in the Park Court Subdivision reflect the popular styles of domestic architecture during the first decades of the Twentieth Century, including Bungalow, Cape Cod and Colonial Revival. Although many of the Park Court homes are still in relatively original condition, few have individual distinction but as a whole provide a significant and distinguishable district in the City of Santa Clara. The visual continuity and individual integrity of the neighborhood captures a time frame important to the City, of its working class residents and the early twentieth century domestic architecture of the town.

Lorie Garcia
Honorary City Historian
City of Santa Clara
January, 2009

RECEIVED

MAR 03 2011

City of Santa Clara
Planning Division

HAND OUT AT
HLC MTG

Exhibit A

Legal Description

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA: Lot 23, AS SHOWN ON THAT CERTAIN MAP ENTITLED MAP OF PARK COURT WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 16, 1925 IN BOOK S OF MAPS AT PAGE(S) 38-39.

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary # _____
HRI # _____
Trinomial _____
NRHP Status Code _____

Other Listings _____
Review Code _____ Reviewer _____ Date _____

Page 1

*Resource Name or #: (Assigned by recorder) 794 Park Court, Santa Clara

P1. Other Identifier: _____

P2. Location: Not for Publication Unrestricted *a: County Santa Clara
and (P2c, P2e, and P2b or P2d. Attach Location Map as necessary.)

*b. USGS 7.5' Quad _____ Date _____ T _____; R _____; _____ 1/4 of _____ 1/4 of Sec _____; _____ B.M.

c. Address 794 Park Court City Santa Clara Zip 95050

d. UTM: (Give more than one for large and/or linear resources) Zone _____; _____ mE/ _____ mN

*e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate)

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

The Park Court subdivision

The Park Court subdivision consists of about 76 houses bounded by Park Avenue to the east, Alviso Street to the west, Cypress Alley to the north, and an unnamed alley to the south. Inside of these boundaries is a roughly circular street named Park Court, after the subdivision. All but about eleven of the houses front on Park Court, either in the inner perimeter or on the outer perimeter of that street. The other houses front on Alviso Street and Park Avenue. The subdivision is suburban in character, with most lots from 45 to 50 feet in width.

(See Continuation Sheet, next page.)

P5a. Photo or Drawing (Photo required for buildings, structures, and objects.)



*P3b Resource Attributes: (List attributes and codes) _____

*P4. Resources Present:
 Building Structure Object
 Site District Element of District

P5b. Description of Photo:
(View, date)

view looking west, May 2020

*P6. Date Constructed/Age and Source:
 Historic
 Prehistoric Both
1925

*P7. Owner and Address:

Megan Carter

794 Park Court

Santa Clara, CA 95050

*P8. Recorded by: (Name, affiliation, and address)

William Kostura

P. O. Box 60211

Palo Alto, CA 94306

*P9. Date Recorded: _____

July 2020

*P10. Survey Type: (Describe) intensive

P11. Report Citation*: (Cite survey report and other sources, or enter "none".) none

*Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other (List)

Page 2

Recorded by William Kostura

Resource Identifier: 794 Park Court, Santa Clara

*Date July 2020 Continuation Update

Description (continued)

It appears that the subdivision was almost completely developed during 1924 and 1925, and that all or almost all of the houses were one-story in height and clad in horizontal wood siding. Styles were mostly restrained examples of Craftsman, Tudor, and Classic Revival styles. Some houses lack strong style elements, so that it does not seem possible to assign a style name to them other than “bungalow.” Most houses, especially those that are Tudor or Craftsman feeling, have asymmetric compositions, though some are symmetrical. Not every house is different; several compositions are repeated in the subdivision.

On average these were modest vernacular houses that were probably intended for working class and lower middle class workers. Nevertheless, many of the houses do have distinctive forms, mainly in their rooflines and porches. Many have porches that project from the main body of the house and have gabled or hipped roofs supported by columns. Some of these columns have just enough articulation in their capitals to give the houses a “Classical Revival” style. Craftsman style houses, by contrast, may have tapering columns with or without capitals.

Today, all but about 26 of the houses still fit that description. Two houses have generously recessed or set-back second story additions but are otherwise little changed; several have coatings of stucco, wooden shingles, or aluminum siding; one is of uncertain integrity, and about nineteen are either more drastically altered or are replacement houses. On average, houses facing Park Court have much higher integrity than those facing Alviso Street and Park Avenue. Only two houses on the latter streets appear to be original.

Considering only the houses facing Park Court (and omitting those on Park Avenue and Alviso Street), about 49 houses, or 75 percent, retain most of their integrity, while 15 or 16 houses have lost half or more of their integrity. Houses that have had recessed second story additions, but are otherwise little changed, are included among those that retain integrity. Houses that have altered surfaces of stucco, shingles, etc., but are otherwise little changed, are included among those that have lost integrity.

These numbers are close but approximate, based on a single viewing in person plus additional viewing on Google Maps, without close attention to window sash and doors, and without having done individual research such as looking at building permits. On the whole, it seems clear that the Park Court subdivision largely retains its mid-1920s feeling.

The subject house, 794 Park Court

This is a one-story wood-framed house that is set back from the street to allow for a front yard that is lushly planted. The foundation, front steps, and porch floor are made of concrete, the roof is T-gabled, and the house is clad in double-ogee (or teardrop) horizontal wood siding on all sides.

(See Continuation Sheet, next page.)

Page 3
Recorded by William Kostura

Resource Identifier: 794 Park Court, Santa Clara
*Date July 2020 Continuation Update

Description (continued)

The house is roughly rectangular in shape, with a staggered massing in front. The left side of the house projects forward from the rest of the house by about two feet, and within this projection a shallow, rectangular bay window projects about a foot farther forward. Thus, from left to right, there is a series of setbacks in the front. At far right, the entrance porch is set back yet another step.

Both the roof over the main body of the house and that of the forward projection at left are front-gabled, creating a double-gable effect. The eaves extend a foot or two beyond the wall plane and are fronted by plain bargeboard. The eaves of the more forward gable are supported by two knee braces. A shed roof covers the bay window. At right, a hipped roof shelters the entrance. It is supported by a square column with simple moldings at the top that suggest a Classical capital.

The long right side of the house has a centrally-placed entrance and irregularly arranged fenestration to its right and left. A very broad side gable dominates this side of the house. The left side, by contrast, does not have a side-gabled roof. Here, an entrance is flanked by sidelights, and four other windows can be found to the right and left.

In the rear, the composition is symmetrical, with a small central window, four larger windows to right and left, and a louvered vent at top, just beneath the eave. This vent matches a louvered vent in the front gable.

On all four sides the windows have wooden sash, and almost all are double-hung, the exception being a large fixed window in the front bay. All appear to be original. Each window is surrounded by flat board casings and has a wooden sill. The double-hung windows have a variety of sash types, including six-over-one, four-over-one, and one-over-one. The windows are as follows:

In the projecting bay in the front of the house: a tripartite window, with a fixed window flanked by 4/1 double-hung sash. A 6/1 window can also be found to the right of the front door.

On the right side: two 6/1 sash, one 1/1 sash, and a paired window with 4/1 sash.

On the left side: the sidelights have 6/1 sash, two windows toward front are also 6/1, and two to the rear are 1/1.

In the rear: four 1/1 sash windows.

There have been two alterations to the exterior of the house. One is a plain, replacement wooden front door. The other has been the removal of a brick chimney from the left side of the house. It was not visible from the street and was damaged in the Loma Prieta Earthquake of 1989.

The property includes a newer, 2-car detached garage (c.1950's, that replaced the original single-car garage) accessed from Alviso Street whereas the original garage was accessed from the Park Court oval.

BUILDING, STRUCTURE, AND OBJECT RECORD

Page 4

*NRHP Status Code _____

*Resource Name or # (Assigned by recorder) 794 Park Court, Santa Clara

B1. Historic Name: _____

B2. Common Name: _____

B3. Original Use: residence B4. Present Use: residence

*B5. Architectural Style: Craftsman

*B6. Construction History: (Construction date, alterations, and date of alterations)
Built in 1925. Chimney removed in 1989. Replacement of front door at unknown date.

*B7. Moved? No Yes Unknown Date: _____ Original Location: _____

*B8. Related Features:
none

B9a. Architect: none/unknown b. Builder: Walter Altevogt

*B10. Significance: Theme vernacular Craftsman style architecture Area local (Santa Clara County)
Period of Significance 1925 Property Type residence Applicable Criteria 3

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

History

The Park Court Subdivision

The history of this site goes back to Mission Santa Clara, the eighth of the Spanish-era missions in California, founded in 1777. After the mission was secularized by Mexico in 1833, roughly half of the mission's vast lands were given to Native Americans and the rest was sold to private parties. By the late 1860s, 140 acres of the former mission land was owned by John G. Bray (1814-1871). Bray had been a merchant in his native New Jersey and then briefly in San Francisco, and from 1852 on was involved in business and real estate in San Jose and Santa Clara. In 1886, fifteen years after his death, his estate divided his land into twelve large parcels. The subject property is in lot 9 of that subdivision. Lot 9 was owned, first, by members of the Bray family, then by one R. D. Shimer, and finally by Walter and Katherine Altevogt.

(See Continuation Sheet, next page.)

B11. Additional Resource Attributes: (List attributes and codes) _____

*B12. References:

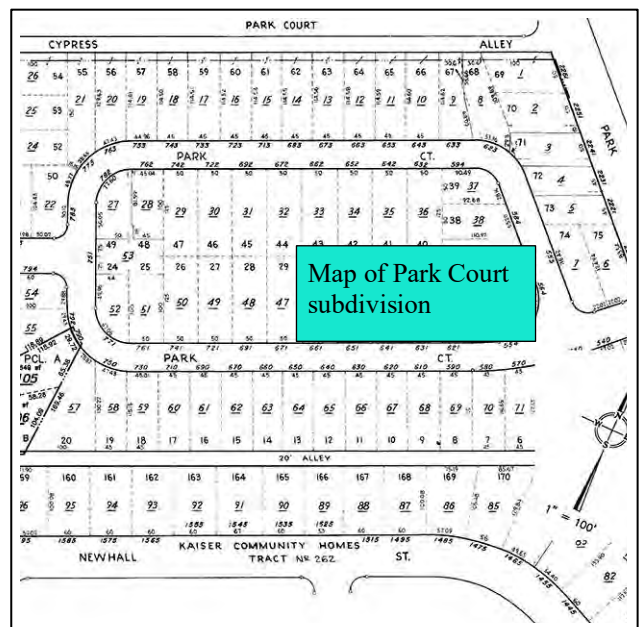
See continuation sheet.

B13. Remarks:

*B14. Evaluator: William Kostura

Date of Evaluation: July 2020

(This space reserved for official comments.)



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Resource Identifier: 794 Park Court

Recorded by William Kostura

*Date July 2020

Continuation Update

History (continued)

Walter Altevogt (b. 1886) was a native of Rotterdam, Holland, came to the United States in 1910, and worked in Martinez, Contra Costa County, as a carpenter during at least 1918-1920. In June 1924, in San Jose, he married Katherine Dinsmore, and during 1924-1927 they lived in San Jose while he worked as a carpenter and building contractor. Archives and Architecture (2015) reports that the Altevogts purchased a considerable amount of land in San Jose and Santa Clara and created several subdivisions in close proximity to each other at this time. They included Park Court, where the subject property is located; part of Burrell Park, near Park Avenue and Hedding Street; part of the Chapman and Davis Tract; and the Alameda Villa Tract.

Park Court consisted of 75 or 76 lots and was almost completely developed during 1924 and 1925. It is doubtful that Altevogt built on every lot, but judging from the appearance of the houses and records in *Building and Engineering News*, the great majority must have been built by him. As mentioned above, the houses were one-story in height, were clad in horizontal wood siding, and had a variety of styles and rooflines, with several repeating house types. They were mostly restrained examples of styles common to the time, although some houses were more animated in their compositions.

During August-October 1925 Altevogt completed 21 houses in Park Court without any legal troubles, as documented in *Building and Engineering News*. He then began to face major legal troubles. The same publication documented liens against 41 of Altevogt's Park Court properties during November 1925 through January 1926. The liens were filed by the Tilden Lumber and Mill Company (which Altevogt presumably purchased lumber from) and the University Electric Company (a contractor he must have hired). For another 15 houses, there is no record of either a completion or a lien.

Archives and Architecture (2015) reports that Walter Altevogt "was indicted on several counts of fraud, corruption and extortion in the late 1920s," and that he and his wife Katherine divorced then. Walter Altevogt left San Jose then, for Hayward, and subsequently lived in Santa Cruz (in 1932-1935) and Grass Valley (1940). He was drafted into the army in 1942, and later moved to Scurry County, in far west Texas, where he died in 1953.

Undoubtedly as a result of the Altevogts' insolvency, all but three lots in Park Court were sold at the end of 1925 to John Roy Phelps, a real estate and insurance salesman in San Jose. He must have then sold the completed houses one-by-one to individual home-owners. (Archives and Architecture, 2015.)

Despite Park Court's troubled origin, three houses in the subdivision were chosen to illustrate Santa Clara's new suburban lifestyle in a booklet called *Plan of Santa Clara: The Heart of Santa Clara Valley* (Santa Clara Chamber of Commerce, November 1925). The three houses include the subject house and two others to its left.

(See Continuation Sheet, next page.)

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Resource Identifier: 794 Park Court

*Date July 2020

Continuation Update

History (continued)

Historic houses in Santa Clara

The City of Santa Clara's website has a page on "Historic Properties." This page is almost entirely devoted to residential buildings and includes almost thirty houses that pre-date the 1920s. The oldest is the Women's Club Adobe, said to have been built in 1784-1792 and the last of thirty "apartments" built for neophyte Indians residing at the mission. The next oldest is the Berryessa adobe, which dates to the late 1840s. Two more date to the 1850s, three to the 1860s, one to ca. 1870, sixteen to the 1880s-1890s, and four to the 1900s-1910s. Two of the listed houses (at 725 Madison Street and 1543 Franklin Street) are in the Craftsman style, the style of the subject house.

Besides these, many other early houses can be found in the Old Quad neighborhood of Santa Clara. The Old Quad covers the original quadrangle shown in the 1866 survey by J.J. Bowen that encompasses the area bordered by Scott Boulevard to the west, Newhall Street to the south and east, and the railroad tracks to the north and east.

Another ca. 1920s subdivision in Santa Clara

Archives and Architecture (2015) writes: "The Park Court Subdivision is known to the City of Santa Clara to be the only intact subdivision from the 1920s and 1930s remaining today in Santa Clara, featuring homes styled as bungalows, including Craftsman, Colonial Revival, and Cape Cod, creating a unique neighborhood of like size, scale and lot sizes."

Another subdivision in Santa Clara (its name is not known to this writer) does appear to date to the 1920s or 1930s. It is bounded by The Alameda to the south and Sherwood Avenue to the north, and contains the internal streets Morris Court and O'Brien Court. It consists of about forty very small one-story stucco-clad houses and duplexes with simplified Mission Revival or Mediterranean Revival parapets. Parapets aside, the houses are plain and are much less expressive, architecturally, than are the Park Court houses.

The subject house, 794 Park Court

Because the County Clerk-Recorder's office is closed at this time due to the Covid-19 coronavirus, no chain of title for this property could be researched. However, a nearly complete list of the residents of this house for the period 1928-1974 has been researched using city directories and United States censuses. One of the residents is known to have been an owner, and one was a renter; but for the purpose of a historical evaluation the most important consideration is that their occupations are known.

One more preliminary note should be mentioned, namely, that the numbering system for this subdivision changed in the late 1950s. Through 1956 this house was numbered 44 Park Court. From 1961 on it was 794 Park Court.

(See Continuation Sheet, next page.)

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
CONTINUATION SHEET

Primary #
HRI/Trinomial

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*Date July 2020

Continuation Update

History (continued)

Because of Walter Altevogt's legal troubles, and the mass sale of Park Court properties to John Roy Phelps, it appears that some houses in Park Court, including this one, remained vacant for two or three years after they were completed. 1928 is the first year for which residents are known.

Residents include:

1928-1932. Marcus Mathew Soll (1881-1965), a farm machinery salesman, and his wife, Mary Elizabeth Soll (1883-1972). Both were natives of Iowa, and they owned the house.

1932. Francis Scott, an insurance agent, and Harriet Scott, a teacher.

1934. Emmett E. Nichols (1903-1996), a salesman; and Fern J. Nichols (1908-1983).

1935-1942. Stephen P. Dowell (1863-1940), and Elizabeth Dowell (b. ca. 1867). Both were natives of Missouri, and in 1940 both were in their 70s and neither had an occupation. Their children, who lived here some of these years, included James Albert Dowell, a life insurance salesman; Helen Dowell, a waiter at the Santa Clara Inn; and Izeth Dowell, a clerk. The Dowells were renters here.

1942. Wesley I. Lanham (b. ca. 1911), proprietor of retail fuel oils; and his wife Alice (b. ca. 1910).

1944. Lowell Thomas, a mechanic, and his wife Dorothy.

1945-1950. Clinton J. Nolan, a driver, and his wife Marguerite.

1952-1974. Elsie Bryson (1897-1983), a native of Massachusetts. In the 1950s she was a bookbinder for A. F. Brosius and Company, bookbinders in San Jose, and from 1961 on she was retired.

Haines directories do not list this address during the 1970s-1998. The next known residents are Frank Frederick (in 1999), Christopher Frederick (2002), and the current owner (beginning in 2003).

Alterations

As mentioned above, there have been two alterations to the exterior of this house. A brick chimney on the south side of the roofline was removed after it was damaged in the Loma Prieta earthquake of 1989, and the front door is a replacement.

(See Continuation Sheet, next page.)

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Continuation Update

Integrity

This property retains integrity in all seven areas, listed below:

Because this house has never been moved, it retains integrity of location.

Because the only alterations have been the replacement of a door and the removal of a chimney, this house retains integrity of design, materials, workmanship, feeling, and association.

Because most of the old houses in the Park Court subdivision still stand with good to high integrity, this property retains integrity of setting.

Evaluation under California Register criteria

Evaluation under Criterion 1 of the California Register: Resources that are associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.

This is one of the older houses in Santa Clara; the overwhelming majority in the city are much newer. Still, many houses are older, and most of the historic houses listed on the city's website are much older. About fifty other largely unaltered houses in the Park Court subdivision are the same age as this house. Thus, while the subject house does evoke an early period in Santa Clara's history, it does not do so in a way that many other houses do as well or better.

No other event or pattern of history associated with this house comes to mind, and thus the subject property does not appear to be eligible for the California Register under this criterion.

Evaluation under Criterion 2 of the California Register: Resources that are associated with the lives of persons important to local, California, or national history.

None of the residents of this house was historically important by California Register standards. The most interesting may be Elsie Byron, who worked as a bookbinder while living here in the 1950s.

Thus, the subject property does not appear to be eligible for the California Register under this criterion.

Evaluation under Criterion 3 of the California Register: Resources that embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of a master, or possess high artistic values.

This is a fine though restrained example of a 1920s bungalow, and it is one of the best houses in the Park Court subdivision. Its most characteristic features are a cross-gabled roof with a corresponding, smaller

(See Continuation Sheet, next page.)

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
CONTINUATION SHEET

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Continuation Update

Evaluation under California Register criteria (continued)

gable over a projection in the front; knee-braces that support broad eaves and that relate the building to the Craftsman style; and a square column with capital moldings in the porch. A rectangular bay window in the front adds interest to the composition. The house has unusually high integrity, including all of its original window sash. Many of these sash are divided by muntins into multiple lights (e.g. 4/4, 6/6).

Because of its characteristic features and exceptionally high integrity, this house is a distinctive example of the domestic architecture of 1920s Santa Clara. Accordingly, the property appears to be individually eligible for the California Register at the local level under this criterion. The Period of Significance is 1925, the year the house was built.

Investigation of a potential historic district in the vicinity

Park Court appears to qualify for the California Register as a historic district under both Criterion 1 and Criterion 3. Under Criterion 1 this is a remarkably intact residential subdivision of over seventy houses that was built at an early date by one developer. It was clearly aimed at working class and middle-class residents and provided them with housing in a comfortable, suburban setting, close to both downtown Santa Clara and downtown San Jose. This subdivision is a rare and excellent example of comfortable housing in a pleasing setting planned for workers of modest income.

Under Criterion 3, Park Court is likewise a rare and excellent example of a 1920s subdivision composed of bungalows built to near-uniform scale but with varied compositions and styles. The wooden cladding of the houses, and the decorative style features, which are also of wood, provide surface texture and create a rustic feeling throughout the subdivision. As a large collection of wooden bungalows this subdivision is almost certainly unmatched in the city of Santa Clara, and this may be true for a much larger surrounding area as well.

The integrity of the subdivision is high. If one includes only the houses facing Park Court itself (i.e., excluding buildings along Park Avenue and Alviso Street), the integrity seems to be very high. About fifty of the houses facing Park Court, or 77% of the whole, are mostly intact and should be considered to be contributors to the district. This may be a conservative estimate; some houses that have been altered with stucco but are otherwise mostly intact are considered here as non-contributors, but with more consideration might be considered as contributing to the district.

Under both Criterion 1 and Criterion 2 the subject property, 794 Park Court, is a contributor to this potential historic district. Under both criteria the Period of Significance is 1925, the year Park Court was developed.

(See Continuation Sheet, next page.)

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Continuation Update

Evaluation under City of Santa Clara criteria

The Criteria for Local Significance were adopted on April 20, 2004, by the City of Santa Clara City Council and are listed under Section 8.9.2 of the City of Santa Clara General Plan, Criteria for Local Significance. Under this section of the General Plan, any building, site, or property in the City that is 50 years old or older and meets certain criteria of architectural, cultural, historical, geographical or archeological significance is potentially eligible. The criteria are listed below.

Criterion for Historical or Cultural Significance

To be historically or culturally significant, a property must meet at least one of the following criteria:

1. The site, building or property has character, interest, integrity and reflects the heritage and cultural development of the city, region, state, or nation.

This house is an excellent example of a suburban house that was intended for blue collar or lower middle class residents when it was built in the 1920s.

5. A building's direct association with broad patterns of local area history, including development and settlement patterns, early or important transportation routes or social, political, or economic trends and activities. Included is the recognition of urban street pattern and infrastructure.

This house is part of the Park Court subdivision, one that was intended for working class and lower middle class residents. Regarding the number of houses in the subdivision, the street layout's court plan, and level of integrity, Park Court is probably the best subdivision of the 1920s in Santa Clara. The subject house contributes to this subdivision and thus seems to have significance under this criterion. It may be, however, that this aspect of the house's history is better considered under parts 1 and 2 of "Criterion for Geographic Significance," below.

Criterion for Architectural Significance

To be architecturally significant, a property must meet at least one of the following criteria:

1. The property characterizes an architectural style associated with a particular era and/or ethnic group.

This house was built in the Craftsman style, a style that was common in Santa Clara and San Mateo counties during the 1910s and 1920s. Although this is a restrained example as far as ornament is concerned, the house is particularly expressive in its roofline and use of setbacks. In addition, the integrity of the house is unusually high. In sum, this a fine example of a Craftsman style house that was intended for working class and lower middle class workers.

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Continuation Update

Evaluation under City of Santa Clara criteria (continued)

4. The property has a strong or unique relationship to other areas potentially eligible for preservation because of architectural significance.

This house is part of the Park Court subdivision, which was built in the mid-1920s by developer Walter Altevogt. It is suburban in character and was likely intended for blue collar and lower middle class residents. While most of the houses along Park Avenue and Alviso Street would not be contributors to a potential historic district, it appears that about 77% of the houses facing Park Court would be contributors. Because of its design features and high integrity, the subject house would be one of them.

7. A building's notable or special attributes of an aesthetic or functional nature. These may include massing, proportion, materials, details, fenestration, ornamentation, artwork or functional layout.

The complex roofline, setbacks, wooden materials, windows that are divided by muntins into multiple lights, a porch column with moldings, and knee-braces make this house a notable example of the Craftsman style.

Criterion for Geographic Significance

To be geographically significant, a property must meet at least one of the following criteria:

1. A neighborhood, group or unique area directly associated with broad patterns of local area history.

This house strongly contributes to the Park Court subdivision, a largely intact collection of wooden bungalows. Park Court is probably by far the best example of a suburban subdivision that was planned and built in Santa Clara during the 1920s-1930s, and may be one of the best in the immediate region.

2. A building's continuity and compatibility with adjacent buildings and/or visual contribution to a group of similar buildings.

All or nearly all of Park Court's early houses were one story in height, had wooden cladding materials, and were designed in a variety of compatible styles such as Craftsman, Tudor Revival, and Classical Revival. The subdivision, or at least the collection of houses facing the Park Court street, remains largely intact. The subject house relates very closely with the other largely unaltered houses and contributes strongly to the aesthetic of the subdivision.

Criterion for Archaeological Significance

This property is not being evaluated under this criterion.

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Continuation Update

References

Building and Engineering News, issues of August 22, September 5, October 31, November 7, and November 28, 1925; and January 2 and January 9, 1926. “Completion Notices” and “Liens Filed”, for the Park Court properties of Walter Altevogt. These included at least 21 completion notices and 40 liens filed. The subject property appears to have been lot 23 of Park Court and was recorded on November 28th under “Liens Filed.”

Building and Engineering News, issues of July 12, August 2, September 13 and 20, and November 15, 1924; and April 25 and August 1, 1925. “Completion Notices” for Walter Altevogt’s projects in Burrell Park (San Jose) and the Chapman and Davis Tract.

San Jose city directories 1924-1927 for Walter Altevogt

Santa Clara city directories 1928-1974 for Marcus and Mary Soll, Frances and Harriett Scott, Emmett and Fern Nichols, Stephen and Elizabeth Dowell, Wesley and Alice Lanham, Lowell Thomas, Clinton Nolan, and Elsie Bryson.

1920 U. S. Census, Martinez, for Walter Altevogt

1930 U. S. Census, Hayward, for Walter Altevogt

1930 U. S. Census, 44 Park Court (today’s #794), for Marcus and Mary Soll

1940 U. S. Census, 44 Park Court (today’s #794), for Stephen and Elizabeth Powell

1940 U. S. Census, 64 Park Court, for Wesley Lanham

1940 U. S. Census, Santa Clara (address illegible), for Elsie Bryson

Find-A-Grave website listings for Marcus Mathew Soll, Mary Elizabeth Soll, and Stephen Price Dowell

1950 Sanborn insurance map, page 121

Archives and Architecture, LLC. Historical Evaluation of 651 Park Court, Santa Clara (2015). This report was useful for background information on Walter Altevogt and the Park Court subdivision.

City of Santa Clara. “Historic Properties” website. <https://www.santaclaraca.gov/our-city/about-santa-clara/maps/santa-clara-s-historic-properties-story-map/historic-properties> (accessed June 2020).

Santa Clara Chamber of Commerce. *Plan of Santa Clara: The Heart of Santa Clara Valley* (November 1925).

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Photographs of 794 Park Court



Top row: Two views of the front of the house.
Middle left: Eaves at front, with knee brace.
Middle right: Slightly-projecting bay window, with tripartite sash.
Bottom: Double-ogee (teardrop) siding.

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Top two photos: Front entrance, concrete porch and step, and porch post with moldings.
Bottom photo: Ceiling of the recessed entrance.

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Top photo: The north side of the house.

Middle left: North side entrance and window.

Middle right: The rear of the house.

Bottom: Garage (c.1950's) facing Alviso Street.

Other houses in the Park Court subdivision, all facing the street Park Court



These are some of the houses in Park Court that appear to retain good to high integrity. Several of the house plans were repeated, so that some of the ones shown here have two or three twins or near twins in the subdivision. One house, shown in the fourth row at far left, is a twin of 794 Park Court.

The black and white photo at bottom left is from the booklet "Plan of Santa Clara," published in 1925. It shows a row of three Park Court houses, including the subject house (at right).



Map of the land of the estate of John G. Bray. Copied from a report by Archives and Architecture, LLC (2015).

John G. Bray came to San Jose in 1852 and he purchased this large tract of land in the 1850s or 1860s. He or his heirs had it divided into twelve parcels; parcel 9, colored red, corresponds to the later Park Court subdivision.

Secretary of Interior's Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

10-Year Restoration Maintenance Plan

January 5, 2021

Megan Carter
794 Park Court
Santa Clara, CA 95050

Dear Planning Staff and Historic & Landmark Commissioners,

The following is my proposed 10-year plan for the restorations and maintenance of my historic home at 794 Park Court. All items to meet the Secretary of Interiors standards for Treatment of Historic Properties:

Years 1-3 (2022-2024)

Foundation: Replace failing concrete hollow brick foundation with new concrete pier and grade beam foundations. The final finish floor height will be set to the highest point of the existing finish floor. Note that the existing finish floor is higher in the middle of the house because the perimeter of the house has settled over the years due to poor rainwater management around the structure. A third bedroom and second bathroom will be added concurrently with the foundation replacement to adapt the home to meet the homeowners needs (adaptive reuse of a historic structure).

Entry Porch Slab & Steps: Replace existing cracked concrete porch slab and steps with new concrete porch slab and steps. The entry porch roof and tapered wood columns to remain unchanged.

Repair wood siding where required due to settling of existing foundations. Siding that will be removed as part of the proposed bedroom addition will be used where needed.

Years 4-5 (2025-2026):

Window Restoration: Restore / Repair existing historic wood window sashes. Where windows sashes are inoperable from being painted shut or where pulley ropes have been they will be restored to working order by cutting the paint and installing new pulley ropes where required. Any minor dry rot areas on the window sashes shall be repaired with epoxy filler and repainted to match. Where elements of the existing window sashes have excessive rot (stiles or rails) they shall be replaced with salvaged or custom milled wood to match. Glazing putty, where cracked, shall be replaced and the window sash shall be painted to match existing.

Years 6-7 (2027-2028):

Painting of the structure: New paint for all exterior wood siding, eaves, gutters / downspouts, all windows, doors and their associated trim.

Year 8 (2029): Electrical: Update all electrical systems including replacing knob and tube wiring.

Year 9 (2030): HVAC: Update all existing heating and ventilation systems.

Year 10 (2031):

Roofing: Replace existing asphalt composition shingle roofing with new triple layer (tri-lam) asphalt composition shingle roofing with a more similar profile and shadow line of wood shingles (what was originally on the home). Repair any dry rot at roof rafters at the eaves and install new ogee style gutter with 2" diameter round downspouts to be more historically sensitive than the current fascia gutters with rectangular downspouts.

I am excited about restoring and rehabilitating my wonderful historic home so that it can be preserved and enjoyed for many years to come.

Sincerely,

Megan Carter

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE SECTION 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Agreement, (herein, "Agreement"), is made and entered into this [REDACTED] day of [REDACTED], 2021, ("Effective Date"), by and between Megan L. Carter, owner of certain real property located at 794 Park Court, Santa Clara, CA 95050 ("OWNER") and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("CITY"). CITY and OWNER may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

A. **Recitals.**

(1) California Government Code Section 50280, et seq. authorizes the CITY to enter into a contract with the OWNER of qualified Historical Property to provide for the use, maintenance, and restoration of such Historical Property so as to retain its characteristics as property of historical significance.

(2) OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, shown on the 2020 Santa Clara County Property Tax Rolls as Assessors' Parcel Number 269-52-054, and generally located at the street address 794 Park Court, in the City of Santa Clara ("Historic Property"). A legal description of the Historic Property is attached hereto as "Legal Description," marked as "Exhibit A," and incorporated herein by reference.

(3) The Historic Property is on the City of Santa Clara Architecturally or Historically Significant Properties list. OWNER submitted a Mills Act Proposal to City on January 8, 2021. The Proposal included a Primary Record from the State of California's Department of Parks and Recreation. A true and correct copy of the Proposal is attached to this Agreement as "Exhibit B".

(4) CITY and OWNER, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to Section 439.2 of the California Revenue and Taxation Code.

B. **Agreement.**

NOW, THEREFORE, CITY and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

(1) **Effective Date and Term of Agreement.** The term of this Agreement shall commence on the effective date of this Agreement and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such term will automatically be extended as provided in paragraph 2, below.

(2) **Renewal.**

(a) Each year on the anniversary of the effective date of this Agreement, ("renewal date"), one (1) year shall automatically be added to the term of this Agreement unless notice of nonrenewal is mailed as provided herein.

(b) If either the OWNER or CITY desires in any year not to renew the Agreement, OWNER or CITY shall serve written notice of nonrenewal of the Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual renewal date, or served by CITY to OWNER at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the balance of the remaining term of the Agreement as provided herein.

(c) OWNER may make a written protest of a nonrenewal notice issued by CITY. CITY may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to OWNER of nonrenewal. If either CITY or OWNER serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, from either original execution date or the last renewal date of the Agreement, whichever is applicable.

(3) **Standards for Historical Property.** During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements, and restrictions:

(a) OWNER shall preserve and maintain the characteristics of historical significance of the Historic Property. "The Secretary of the Interior's Standards for Rehabilitation," marked as "Exhibit C" to this agreement, and incorporated herein by this reference, contains a list of those minimum standards and conditions for maintenance, use, and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

(b) OWNER shall, when necessary or as determined by the Director of Community Development, restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation and the California Historical Building Code and in accordance with the attached schedule of potential home improvements, drafted by the OWNERS and approved by the City Council, attached hereto as "The Description of the Preservation and Restoration Efforts," marked as "Exhibit D" to this agreement, and incorporated herein by this reference.

(c) OWNER shall allow, and CITY requires, that after five (5) years, and every five (5) years thereafter, an inspection of the property's interior and exterior shall be conducted by a party appointed by CITY, to determine OWNER'S continued compliance with the terms of this

Agreement. OWNER acknowledges that the required inspections of the interior and exterior of the property were conducted prior to the effective date of this Agreement.

(4) Provision for Information.

(a) OWNER hereby agrees to furnish CITY with any and all information requested by the CITY to determine compliance with the terms and provisions of this Agreement.

(b) It shall be the duty of the OWNER to keep and preserve, for the term of the Agreement, all records as may be necessary to determine the eligibility of the property involved, and the OWNERS compliance with the terms and provisions of this Agreement, including, but not limited to blueprints, permits, historical and/or architectural review approvals, and schedules of potential home improvements drafted by the OWNER and approved by the City Council.

(5) Cancellation.

(a) CITY, following a duly noticed public hearing as set forth in California Government Code Section 50280, et seq., shall cancel this Agreement or bring an action in court to enforce this Agreement if it determines any one of the following:

(i) the OWNER breached any of the terms or conditions of this Agreement; or

(ii) the OWNER allowed the property to deteriorate to the point that it no longer meets standards for a qualified historic property.

(b) CITY may also cancel this Agreement if it determines that:

(i) the OWNER allowed the property to deteriorate to the point that it no longer meets building standards of the City Code and the codes it incorporates by reference, including, but not limited to, the Uniform Housing Code, the California Historical Building Code, the California Fire Code, and the Uniform Code for the Abatement of Dangerous Buildings or;

(ii) the OWNER has not complied with any other local, State, or federal laws and regulations.

(iii) the OWNER has failed to restore or rehabilitate the property in the manner specified in subparagraph 3(b) of this Agreement.

(c) In the event of cancellation, OWNER shall pay those cancellation fees set forth in California Government Code Section 50280, et seq. As an alternative to cancellation, OWNER may bring an action in court to enforce the Agreement.

(6) No Waiver of Breach.

(a) No waiver by CITY of any breach under this Agreement shall be deemed to be a waiver of any other subsequent breach. CITY does not waive any claim of breach by OWNER if CITY does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for under the terms of this Agreement or in the City's laws and regulations are available to the City.

(7) Mediation.

(a) Any controversies between OWNER and CITY regarding the construction or application of this Agreement, and claim arising out of this contract or its breach, shall be submitted to mediation upon the written request of one party after the service of that request on the other party.

(b) If a dispute arises under this contract, either party may demand mediation by filing a written demand with the other party.

(c) The parties may agree on one mediator. If they cannot agree on one mediator, there shall be three: one named in writing by each of the parties within five days after demand for mediation is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the mediator(s) or to furnish the mediator(s) with any papers or information demanded, the mediator(s) may proceed ex parte.

(d) A hearing on the matter to be arbitrated shall take place before the mediator(s) in the city of Santa Clara, County of Santa Clara, State of California, at the time and place selected by the mediator(s). The mediator(s) shall select the time and place promptly and shall give party written notice of the time and place at least fifteen (15) days before the date selected. At the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the mediator(s). The mediator(s) shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties.

(e) The submission of a dispute to the mediator(s) and the rendering of a decision by the mediator(s) shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provisions of the California Mediation Act.

(f) Each party shall bear their own cost(s) of mediation.

(8) Binding Effect of Agreement.

(a) The OWNER hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations, and restrictions as set forth in this Agreement. CITY and OWNER hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the OWNER'S successors and assigns in title or interest to the Historic Property. Each and every contract, deed, or other instrument hereinafter executed, covering, encumbering, or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument.

(b) CITY and OWNER hereby declare their understanding and intent that the burden of the covenants, reservations, and restrictions set forth herein touch and concern the land in that OWNER'S legal interest in the Historic Property.

(c) CITY and OWNER hereby further declare their understanding and intent that the benefit of such covenants, reservations, and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the CITY, public (which includes, but is not limited to the benefit to the public street generally located at 794 Park Court), and OWNER.

(9) **Notice.**

(a) Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

CITY: City of Santa Clara
Attn: City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

OWNERS: Megan L. Carter
794 Park Court
Santa Clara, CA 95050

(b) Prior to entering a contract for sale of the Historic Property, OWNER shall give thirty (30) days notice to the CITY and it shall be provided at the address of the respective parties as specified above or at any other address as may be later specified by the parties hereto.

(10) **No Partnership or Joint Enterprise Created.** None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors, or assigns; nor shall such terms, provisions, or conditions cause them to be considered joint ventures or members of any joint enterprise.

(11) **Hold Harmless and Indemnification.** To the extent permitted by law, OWNER agrees to protect, defend, hold harmless and indemnify CITY, its City Council, commissions, officers, agents, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising there from for which OWNER shall become legally liable arising from OWNER'S acts, errors, or omissions with respect to or in any way connected with this Agreement.

(12) **Attorneys' Fees.** In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations, or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to costs and other relief ordered by the court.

(13) **Restrictive Covenants Binding.** All of the agreements, rights, covenants, reservations, and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner pursuant to this Agreement.

(14) **Mills Act Historic Property Contract Application Requirements.** An application for a Mills Act Historic Property Contract shall be made through the Planning Division and shall include the following:

- a. a Historic Resources Inventory form;
- b. the description of the preservation or restoration efforts to be undertaken as referenced in paragraph 3 (b) as Exhibit "D";
- c. a statement of justification for the Mills Act Historic Property designation and reassessment; and,
- d. the Mills Act Historic Property Contract filing fee pursuant to paragraph 17.

(15) **Mills Act Historic Property Contract Approval.** Based upon the Historical and Landmarks Commission's ("Commission") review of the Mills Act Historic Property Contract criteria and recommendation to Council, and based upon the recommendation and approval by Council, a Mills Act Historic Property Contract may be entered into with OWNER. The decision of the City Council shall be final and conclusive in the matter.

(16) **Recordation and Notice.** No later than twenty (20) days after the parties execute and enter into this Agreement, the CITY shall cause this Agreement to be recorded in the office of the County Recorder of the County of Santa Clara.

(17) **Fees.** The Planning Department may collect such Mills Act Historic Property Contract application fee of \$7,564.00 (seven thousand, five hundred, and sixty-four dollars), or other fees for the administration of this contract as are authorized from time to time by the City Council. Such fees do not exceed the reasonable cost of providing the service for which these fees are charged. OWNER shall pay the County Recorder's Office recordation fees for recordation of this Mills Act Historic Property Contract.

(18) **Ordinary Maintenance.** Nothing in this contract shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on any Historic Property covered by this contract that does not involve a change in design, material, or external appearance thereof, nor does this contract prevent the construction, reconstruction, alteration, restoration, demolition, or removal of any such external architectural feature when the Director of Community Development determines that such action is required for the public safety due to an unsafe or dangerous condition which cannot be rectified through the use of the California Historical Building Code and when such architectural feature can be replaced according to the Secretary of Interior's Standards.

(19) **California Historical Building Code.** The California Historical Building Code ("CHBC") provides alternative building regulations for the rehabilitation, preservation, restoration, or relocation of structures designated as Historic Properties. The CITY's building permit procedure shall be utilized for any Historic Property which is subject to the provisions of this Agreement, except as otherwise provided in this Agreement or the CHBC. Nothing in this Agreement shall be deemed to prevent any fire, building, health, or safety official from enforcing laws, ordinances, rules, regulations, and standards to protect the health, safety, welfare, and property of the OWNER or occupants of the Historic Property or the public.

(20) Conservation Easements.

(a) Conservation easements on the facades of the Historical Property may be acquired by the CITY, or on the CITY's behalf, by a nonprofit group designated by the CITY through purchase, donation, or condemnation pursuant to California Civil Code Section 815.

(b) The OWNER, occupant, or other person in actual charge of the Historical Property shall keep in good repair all of the exterior portions of the Historic Property, and all interior portions thereof whose maintenance is necessary to prevent deterioration and decay of any exterior architectural feature.

(c) It shall be the duty of the Director of Community Development to enforce this section.

(21) Severability. If any section, sentence, clause, or phrase of this Agreement is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, or by subsequent preemptive legislation, such decision shall not affect the validity and enforceability of the remaining provisions or portions of this Agreement. CITY and OWNER hereby declare that they would have adopted this Agreement, and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

(22) Integrated Agreement - Totality of Agreement. This Agreement embodies the agreement between CITY and OWNER and its terms and conditions. No other understanding, agreements, or conversations, or otherwise, with any officer, agent, or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

(23) Captions. The captions of the various sections, paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

(24) Statutes and Law Governing Contract. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

(25) Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, CITY and OWNERS have executed this Agreement on the day and year first written above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

Brian Doyle
City Attorney

Deanna J. Santana
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

Hosam Haggag
City Clerk

“CITY”

**Megan L. Carter,
Owner of 794 Park Court**

By: _____
Megan L. Carter
794 Park Court
Santa Clara, CA 95050

“OWNER”

Exhibits:

- A – Property Description
- B – Primary Record
- C – Standards for Rehabilitation
- D – Restoration Schedule

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LERNER + ASSOCIATES
ARCHITECTS

April 11, 2021

City of Santa Clara Planning Staff &
Historical and Landmarks Commission
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Rebecca Bustos, Senior Planner

Re: Preservation Design Review
Carter Residence
794 Park Court
Santa Clara, CA 95050



Dear Ms. Bustos,

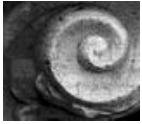
At the request of Ms. Megan Carter, the home owner of 794 Park Court, I performed a preservation design review based on the Secretary of the Interior's Standards for Rehabilitation (SIS) of the proposed alterations and addition as presented in the plans prepared by Architect, Robert Mayer (seven sheets: A1.0, A2.0, A3.0, A4.0, A5.0, A5.1, HP1 dated 4/9/21), that included a site visit on March 13, 2021, and a review of a CA Department of Parks and Recreation Primary Record (DPR) by Architectural Historian William Kostura dated July, 2020. In summary, I found that the preservation design of the proposed alterations and addition complies with the Secretary's Standards.

As to whether I am qualified to render such an opinion on preservation design, I more than qualify for the minimum professional qualifications in historic architecture as set by the National Park Service as I have a professional degree in architecture (from Kansas University), a State license to practice architecture in California, plus at least one year of full-time professional experience on historic preservation projects. For that, I served as staff architect for San Francisco's Architectural Heritage from 1983-88, and since then have been in private practice, winning design awards from the California Preservation Foundation, the California Governor's Office, and the Art Deco Society of California.

As noted in the Historic Resource Evaluation by Mr. William Kostura (July 2020):

"It appears that the subdivision was completely or almost completely developed during 1925, and that all or almost all of the houses were one-story in height and clad in horizontal wood siding. Styles were mostly restrained examples of Craftsman, Tudor, and Classic Revival styles. Some houses lack strong style elements, so that it does not seem possible to assign a style name to them other than "bungalow."

On average these were modest vernacular houses that were probably intended for working class and lower middle class workers. Nevertheless, many of the houses do have distinctive forms, mainly in their rooflines and porches. Many have porches that project from the main body of the house and have gabled or hipped roofs supported by columns.



Some of these columns have just enough articulation in their capitals to give the houses a "Classical Revival" style. Craftsman style houses, by contrast, may have tapering columns with or without capitals.

Alterations

There have been two alterations to the exterior of the house. One is a plain, replacement wooden front door. The other has been the removal of a brick chimney from the left side of the house. It was not visible from the street and was damaged in the Loma Prieta Earthquake of 1989.

Integrity

Mr. Kostura concluded:

This property retains integrity in all seven areas, listed below:

- *Because this house has never been moved, it retains integrity of location.*
- *Because the only alterations have been the replacement of a door and the removal of a chimney, this house retains integrity of:*
 - *design,*
 - *materials,*
 - *workmanship,*
 - *feeling, and*
 - *association.*
- *Because most of the old houses in the Park Court subdivision still stand with good to high integrity, this property retains integrity of setting.*

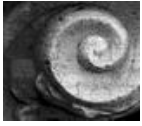
Evaluation under California Register criteria

Evaluation under Criterion 3 of the California Register: Resources that embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of a master, or possess high artistic values.

This is a fine though restrained example of a 1920s bungalow, and it is one of the best houses in the Park Court subdivision. Its most characteristic features are a cross-gabled roof with a corresponding, smaller gable over a projection in the front; knee-braces that support broad eaves and that relate the building to the Craftsman style; and a square column with capital moldings in the porch. A rectangular bay window in the front adds interest to the composition. The house has unusually high integrity, including all of its original window sash. Many of these sash are divided by muntins into multiple lights.

Because of its characteristic features and exceptionally high integrity, this house is a distinctive example of the domestic architecture of 1920s Santa Clara. Accordingly, the property appears to be individually eligible for the California Register at the local level under this criterion. The Period of Significance is 1925, the year the house was built."

Under Criterion 3, *Park Court is likewise a rare and excellent example of a 1920s subdivision composed of bungalows built to near-uniform scale but with varied compositions and styles. The wooden cladding of the houses, and the decorative style*



features, which are also of wood, provide surface texture and create a rustic feeling throughout the subdivision. As a large collection of wooden bungalows this subdivision is almost certainly unmatched in the city of Santa Clara, and this may be true for a much larger surrounding area as well.

Secretary of the Interior's Standards for Rehabilitation

Because the house is considered eligible for the California Register, the appropriateness of the design and construction were analyzed based on the Secretary's Standards for Rehabilitation. The Standards for Rehabilitation are regulatory for the Historic Preservation Tax Incentives program and are the Standards most often used by local historic district commissions nationwide. Below is my review:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

Response: Compliant. The house will continue to be used as a residence.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

Response: Compliant. The addition is situated in the open space between the house and the garage. Four of the original double hung windows towards the back of the house will be reused in the addition.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

Response: Compliant. The house will have an addition which will distinguish itself from the original design of the house by use of materials, the size and slope of the addition's roof, and cement board siding that while it will approximate the size and orientation of the existing wood siding, it will be of a modern material, cement board, that upon close observation, can be recognized as a new material.

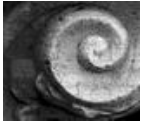
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

Response: Not Applicable. There are no new changes that have acquired historic significance in their own right.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

Response: Compliant. Examples of features of craftsmanship that characterize the property will remain. Where windows are removed, they shall be reused in new window locations. Where window sash or rails are deteriorated (dry rot), they will be repaired with a 2-part epoxy or replaced with new in kind window sash when more than 50% of the window parts are deteriorated.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old



in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

Response: Compliant. Deteriorated historic features will be repaired rather than replaced. The project proposed to replace the existing foundations that are failing (settling, listing) and causing major stress to the wood siding, wood windows and trim. Replacing the foundation will help rehabilitate these contributing elements and preserve them for many years to come.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

Response: Compliant. No physical treatments, such as sandblasting, that cause damage to historic materials will be used.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

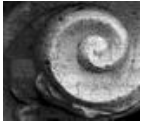
Response: Not Applicable. We are not aware of any archeological resources.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Response: In reviewing alternative designs, a 2nd story addition was considered and rejected as it was felt it would overpower the original house form. A one story addition in the open space between the garage and the house was considered appropriate as it was set back and behind the original house in open space between the garage and the house. The addition's roof is lower than that of the original house and there is a setback "notch" at the meeting of the addition and the house. It creates a certain rhythm of the ridges of the 3 roofs step down from the front to the back. In terms of detailing, the flat wood trim around the reused original double hung wood windows will be of a slightly different size so as to distinguish the old from the new. The siding of the addition will acknowledge the horizontal wood siding of the original house but will be made of a modern cement board material.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Response: Compliant. The addition is located in an open space between the historic house and garage. The addition, which is an infill in this space, could be removed in the future and the essential form, integrity and relationship of the historic house and garage easily restored since they will remain where they have always been. The proposed design will reuse 4 original windows that could be salvaged, if the addition is removed, and installed in their original places in the house.



In summary, it's my professional opinion that the proposed project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties - Rehabilitation Standards. The project could be found to be mitigated to a less-than-significant impact under the California Environmental Quality Act (CEQA) and in conformance with the intent of the proposed Mills Act contract.

Thank you in advance for your consideration of my opinions of the proposed project.

Sincerely,

Arnie Lerner, FAIA, CASp

cc. Megan Carter, Property Owner
Robert Mayer, Architect
William Kostura, Architectural Historian

attachments: Architect Robert Mayer's Drawings,
Architectural Historian William Kostura's Historic Resource Evaluation

April 30, 2021

To: Jeff Schwilk, AICP
Associate Planner, Community Development Department
City of Santa Clara

From: Lorie Garcia
City Historian, City of Santa Clara
Historical Advisor to the Historical and Landmarks Commission

RE: 794 Park Court, Santa Clara, California

- 1. Secretary of the Interior Standards Review (Arnie Lerner, April 11, 2021)**
- 2. Historic Resources Survey Report (William Kostura, July 2020)**

Dear Jeff,

I would like to submit the following comments on both the above referenced 2021 SIS Review and the 2020 HRSR.

1. With regards to the SIS Review, I completely concur with the finding made by Arnie Lerner that the proposed project for 794 Park Court “meets the Secretary of the Interior’s Standards for the Treatment of Historic Properties – Rehabilitation Standards.”
2. With regards to the HRSR, there is one important omission on the Historic Resources Survey Report made by William Kostura. On Page 1 (**Primary**)_section “**P7. Owner and Address**” he omits the name and address of the owner and this section is required to be filled in on the DPR.

I also feel that there are a few other corrections, which should be made.

On pages 2 and 5, Mr. Kostura refers to Park Court being developed during 1925. He writes on Page 2, “It appears that the subdivision was completely or almost completely developed during 1925” and on Page 5, “Park Court and was developed during 1925.” This is incorrect. It was almost completely developed during 1924 and 1925

I made a count of the construction dates for the historic Park Court houses, which face Alviso Street, Park Court and Park Avenue, and found 1 constructed in late 1923, 41 homes built in 1924 and 21 in 1925 with the remainder somewhat later.

And finally, on Page 5, Mr. Kostura gives the boundaries of the Old Quad neighborhood as being roughly bounded on the north by Lewis Street. This is incorrect as it completely ignores the area north of the El Camino between Lewis Street and the railroad tracks. Basically, the Old Quad covers the original quadrangle surveyed by J. J. Bowen and thus encompasses the area between Scott (from its juncture at the RR tracks) then south to Newhall and then is bordered by Newhall back to the RR tracks, which form the northernmost boundary.

Sincerely,

Lorie Garcia
City Historian, City of Santa Clara
Historical Advisor to the City of Santa Clara Historic and Landmarks Commission

April 29, 2021

To: Jeff Schwilk, AICP
Associate Planner, Community Development Department
City of Santa Clara

From: Lorie Garcia
City Historian, City of Santa Clara
Historical Advisor to the Historical and Landmarks Commission

RE: 794 Park Court, Santa Clara, California
APN: 269-52-054
Request for Variances for Rear and Side Yard setbacks

Dear Jeff,

I would like to submit the following comments in support of the Variance request:

The majority of the homes constructed as small bungalows, reflected the small working-class building styles of the era. This historic pattern with its up-and-down rhythm of the rooflines and the in-and-out rhythm of small detached garages set behind the main dwelling created a unified appearance with enough variety for individual identification, which is considered the essence of good neighborhood design and today is a character defining feature of historic neighborhoods.

Mainly constructed in 1924 (41 houses) and 1925 (21 houses), with the majority of the remainder erected up to the latter half of the 1930s, Park Court was developed in compliance with the new City regulations governing the construction of dwellings and garages in a Residential district. Since then, the Park Court neighborhood has only been minimally altered, and the majority of the original houses occupy their original footprints and the garages occupy their original locations.

The residence, located at 794 Park Court was built in 1925 and the placement of both the house and the garage on the lot met the regulations stated in the City's new zoning ordinance (Ordinance No. 384) for the City of Santa Clara, "Creating a Comprehensive Zoning Plan and Establishing Four Districts in the Town of Santa Clara," adopted on July 6, 1925. The subject property was located in "Residence District A" and under Section 4.b "Side Yards" and "Private Garages and Other Outbuildings," met the following set-back requirements: no residence (excluding eaves, window sills and other ornamental features) could "be placed closer than four (4) feet to either side yard lot-line" and no private garage could "be placed closer than three (3) feet" to "a rear or side property line."

Part of Ordinance No.444, enacted August 1, 1932, which established the use of the 1930 Uniform Building Code and Fire Zones within the City, was amended by Ordinance No. 457, enacted on November 20, 1933, which "provided that private garages detached from the residence or dwelling may be built up to the property line."

The new proposed addition between the existing house and garage is compatible with the historic pattern of development, as the 1925 Zoning Ordinance, in effect at the time the home was built, allowed 4' between structure and side lot-line and the proposed addition would be set at a 4' 6" setback. In 1950s, the garage was modified from a one to two car garage, giving it a 9-inch setback from the side property line. However, it retained the original setback from the street. It is interesting to note that after the modification of the garage, its setbacks from the side and rear property lines would have still complied with the 1933 Ordinance regarding garages. In both cases neither of the historic setbacks for construction meet the current Zoning Ordinance.

Adopted in 1969, the current Zoning Ordinance was written to regulate new construction occurring at that time and did not address the standards of development, i.e., height, building placement or setbacks, lot size or proportions, found in historic properties or neighborhoods.

According to the July 2020, Historic Resources Survey Report by William Kostura, Park Court is considered "probably by far the best example of a suburban subdivision that was built in Santa Clara in the 1920s-1930s, and may be one of the best in the immediate region." He also states that "Park Court appears to qualify for the California Register [of Historic Resources] as a historic district under Criterion 1 and Criterion 3.

No significant changes to the residence or garage or their placement on the property have occurred since its construction in 1925 and the current project proposed for 794 Park Court meets the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties. 794 Park Court's architectural style, form, size, massing and character-defining features are, and will remain, all compatible with the neighboring and nearby historic homes in the historic Park Court neighborhood. Thus, in order to not adversely impact the historic significance of the subject property and the character defining feature of the neighborhood's unique historic development-design, both a rear and side-yard variance for the proposed project for 794 Park Court are necessary.

During my 11 years and 11 months on the Santa Clara Planning Commission, we dealt numerous times with the problem of the City's historic neighborhoods and properties being completely unable to comply with the "modern" zoning ordinance due to the periods and manner in which they were constructed. We consistently made the findings for granting the needed variance requests due to these "unusual conditions applying to the land or the building" that were necessary for their preservation.

Thank you for allowing me the opportunity to provide this information. If you have any questions, please don't hesitate to contact me.

Sincerely,

Lorie Garcia
City Historian, City of Santa Clara

Park Court is a very important and unusual example of the history of development in town. There are not many developments laid out like this one. And there's not a collection of mostly intact cottages still so visible anywhere else in town that are arranged to create an instant neighborhood. The cultural story is as important as the architectural and land planning stories. If we ever able to get Historic Districts in this town to project a group of houses, not just one at a time, the Park Court neighborhood would likely be one of our first.

For years we have been reviewing individual projects within Park Court against the Secretary's Standards and what few rules we do have. Frankly, we have had mixed results, and the pressure to buy these small houses and turn them into bigger ones all over town is becoming intense because of the presence of jobs and money flowing in.

I say all this to remind us how important it is that we treat every alteration application in areas such as Park Court with great care. And is especially pleasing when an owner sends us one that is as sensitively done as this one.

I can say that I agree with the independent consultant's review that it meets the Secretary's Standards, but the Commission should talk about why they find that it does. This would be especially helpful for new Commissioners and the applicant. For learning purposes, lets contrast it to last month's submittal from another historically important neighborhood that has no protection either.

You remember in my review last month I cited a lot of criteria from Preservation Brief #14; that the addition should always be visually subordinate to the main house; that it should be set well back on the side or placed at the back only; that it needed the same rhythm to the openings even if the window was a different style, and more. It becomes increasing hard to meet these guidelines when the existing house is so tiny to begin with. But the design of this addition does exactly what PB#14 talks about. Instead of trying to double the square footage of the house, this proposal is very modest in size.

I further cited the Brief saying that the addition should be at the back or on the side at the back, this addition meets this requirement too. Yes its larger front wall is quite close to the side of the house facing the street, but it is only perhaps 1/3 as wide as the front of the house – clearly subordinate. And the elevation next to the front façade is very narrow and set back from the façade about 30ft behind a fence. Definitely subordinate.

I talked about PB#14's suggestion for a 'hyphen' shape as an interconnecting link between the main addition and the main house. This whole addition is so small compared to the two masses it links together that it doesn't just have a hyphen, it IS the hyphen. So points for this part of the design too.

This design is also clearly respectful of the architectural character of the house. It is not just a copy of the original, details have 'differentiation' yet the mass, placement, size, bulk, etc. are clearly 'compatible' with the original. Also reusing the historic windows is brilliant! In my "energy savings for historic buildings" seminar, I show how, if restored properly, a wood, double-hung window can equal or better the performance of affordable vinyl or fiberglass "energy efficient" windows – and as a bonus, it will last decades longer.

SIDING BACKGROUND: The use of cement-board siding is problematic everywhere as most often it replaces or covers the historic siding, erasing an important character-defining feature. In some parts of the country, in the 1980s and 90s, it became the scourge of historic remodels equal to that of vinyl, and aluminum siding. Several decades ago, the Parks Service issued Preservation Brief No. 8 (Yes, #8 out of 50) "*Aluminum and Vinyl Siding on Historic Buildings.*" We had our own scare with it here in Santa Clara,

as applicants wanted to replace historic wood siding in poor condition with ‘wonderful new cement board.’ Look in the Commission’s files. You’ll find the argument raging about 20 years ago, and both Gloria Sciara and I wrote about its detrimental effects.

One problem is that the building will behave differently – temperatures and moisture content, moisture migration, etc. – all are upset. A visual problem, whether it’s replacing siding or added to new sections, can be the shadow line. Cement board is heavy, so it’s usually thinner. The resulting shadow line on horizontal clapboard type siding is noticeably thinner. So one of the clues we read unconsciously to tell a building’s age is off.

Now, all of the above was to tell you, the Commission, how and why it shouldn’t be used without a good reason. But it does have its place (A section my own Ranch style house is clad with it.) Here at 794 it is being used to differentiate the addition from the older part of the house. It is only being proposed for the new construction not to replace existing siding. Now we should not be commanding that the siding on every addition the Commission reviews be a certain specific type, but kudos to the Architect for using it here to clearly differentiate the addition, yet keep it compatible with the historic feature. So, I agree with the consultant, this meets Criteria #9 of the Rehabilitation Standards.

QUESTION 1: WHICH EXPOSURE ON THE SIDING, 7” or 4”? The Right Elevation, Sheet A5.0, lists the new V-Rustic style siding as 7” exposure, to blend with the existing 1x8 V-Rustic wood siding of the garage. But then on the Rear Elevation, the siding is marked as 4” exposure? Usually, more than two styles of siding on such a small house can get visually chaotic. So my question is: Shouldn’t this note also say 7”?

QUESTION 2: CHANGE THE STYLE OF THE GARAGE DOOR? Of course, we would like the garage door to be changed to a more period type. It seems we always do. But an argument could be made to keep the existing 1990s design as if fits in with those on the rest of Alviso Street. I suggest however, that it might be could to make a statement about the part of Santa Clara’s heritage that is hidden back there in Park Court. Many citizens do not know it exists. This one looks so modern that it seems jarring against the wonderful little house. But change the style to what? And this used to be an expensive undertaking. But many different styles are available in metal roll-up doors now and one just picks from the catalog.

The “Period-of-Significance” (DPR Page 4, Item B10) is used to help us pick an appropriate style. The POS is usually a range of years when this style house would have fit most clearly or had the most influence on the local culture. But the DPR also says that Park Court was supposedly built in only one year, 1925. Still, we should look at what kind of doors would have been available then. During the 20s garages were starting to pop up all over town. Fords were now affordable. Horses were disappearing. The car was the modern age. But the building to store the car was still a design from an earlier age, a shed where either just a horse was kept, or if one had more money, a carriage. What existed were only hinged groups of relatively narrow panels that folded accordion style against the right and left jamb, or doors that rolled on tracks above to stack beyond the side of the opening. Either way, most often a cross-buck design of thin boards arranged in an X-pattern on the front of each panel was used as a brace. The fancier doors often had a glass panel in the top portion always. And no matter what style garage, these doors could be found all over town. And you’re in luck, because now, the overhead (roll-up) door industry reproduces these patterns in typical metal roll-ups. The cost difference is less only a few hundred, and the function is the same, just press the remote and up it goes.

Also, it is much appreciated that the trim sizes of the various windows are specifically listed right on the drawings. This way we can understand what is being proposed. Up until a couple years ago, formally requested that this information be on the drawings. It’s very helpful to see it here. And if a Commissioner has a question, it can be a very specific one discussing sizes etc. A minor point that the applicant might

want to consider: As “1x’s” are now ¾” thick. The older trim was a full 1” thick or sometimes more. If the siding butts to this, a modern (thinner) board may not be enough to stand proud of the siding. This not only looks substantially different (remember what I was saying about shadow lines) but it may be hard to get it sealed against the weather. Of course each situation is different, but often we put blocks, or a thin piece of plywood behind the new trim so that the siding butts properly and can be sealed properly.

CONCLUSION:

The proposal, as presented on the drawings we reviewed meets the Secretary’s Standards for Rehabilitation. The size, bulk and mass of the addition is less than that of the little house. Mainly it can only be seen at the corners at the back and the addition is clearly subordinate to the main house. Further it has been clearly differentiated while still looking compatible with the main house. In future, it should be used as an example of how to meet the Standards for an addition.

Volunteer Architectural Advisor to the HLC

Craig Mineweaser

Craig Mineweaser, AIA | Principal Preservation Architect

Mineweaser & Associates

architecture | preservation | building conservation services

building forensic investigations | historical building evaluations

Historic Structure Reports | Secretary of the Interior’s Standards Reviews

California Historical Building Code consulting

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File: //HLC_2021/794_ParkCourt_DesignRvw.docx

Planning Department
City of Santa Clara

April 25, 2021

Re: Letter in Support of 794 Park Ct. Variance Request

Dear Planning Commissioners and Planning Staff:

We are the residents and homeowners of 792 Park Ct. Our home is located directly south of 794 Park Ct., the property that is the subject of the variance request. Our house is the only house that borders the subject property so we are interested in any proposed developments to the property that may impact us.

We are writing to express our support for the project, and for the side yard and rear yard variances requested. We have reviewed the drawings prepared by architect Rob Mayer (dated April 09, 2021) that show the variances to reduce the side yard building setback from the required 5 feet to 4'-6" at the addition, and 9" at the existing garage, as well as a 2'-0" rear yard setback at the existing garage where 20 feet is required. We feel these variance requests are reasonable given the that the existing garage remains in its current location and will have no greater impact than it currently does; and that the variance at the addition, if granted, will only reduce the side yard setback by 6 inches.

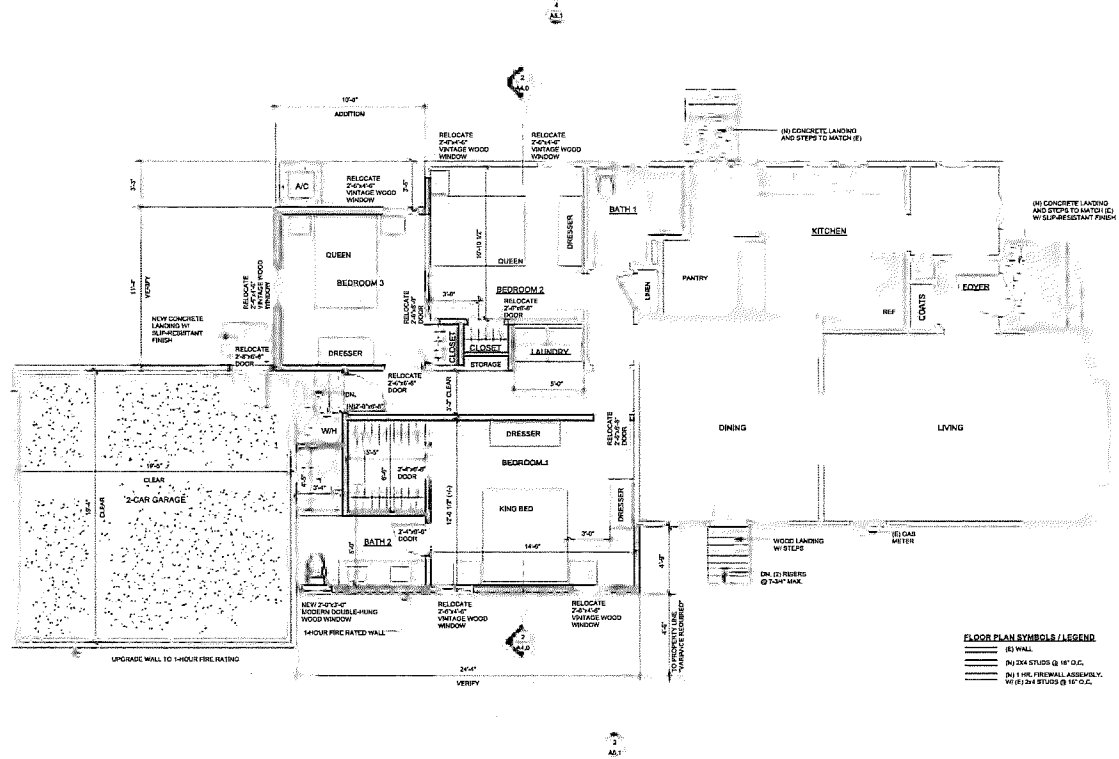
We wholeheartedly approve of the homeowner's proposed plans for 794 Park Ct. We have reviewed these plans in detail, and believe that the proposed project will be a significant improvement to the property while also helping to preserve the historical character of our unique street.

Regards,

The image shows two handwritten signatures in black ink. The signature on the left is 'Ann Dunham' and the signature on the right is 'Darren Dunham'. Both signatures are fluid and cursive.

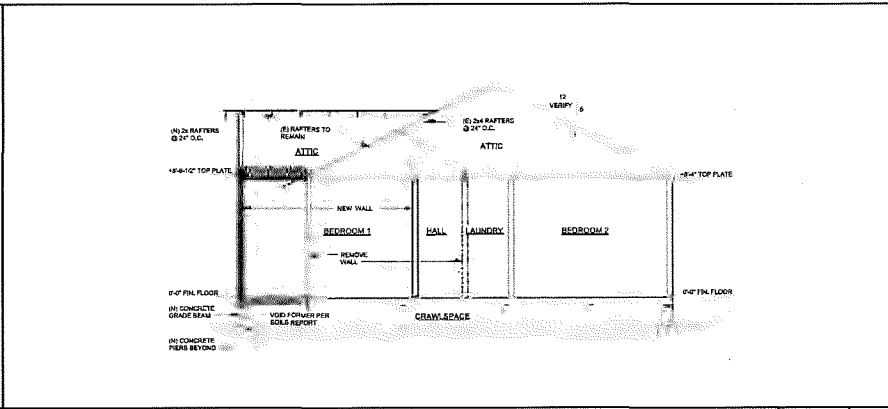
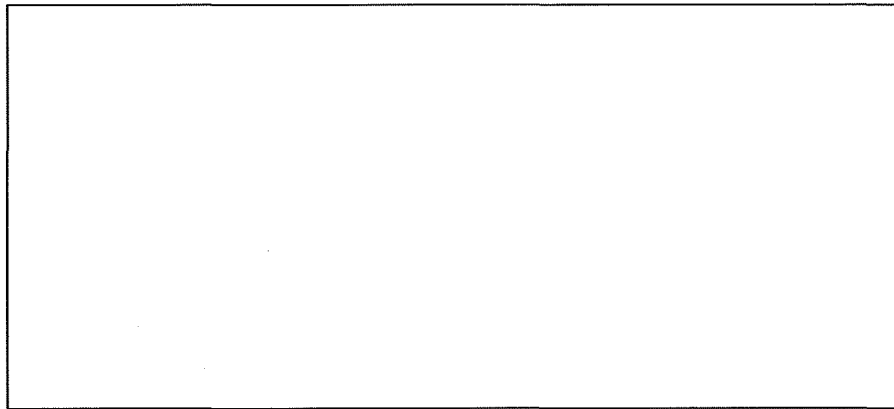
Ann and Darren Dunham
Homeowners and Residents of 792 Park Ct.

FLOOR PLAN



FLOOR PLAN SYMBOLS / LEGEND
 (S) WALL
 (D) 2X4 STUDS @ 16" O.C.
 (D) 1 HR. FIREWALL ASSEMBLY
 (D) 2X4 STUDS @ 16" O.C.

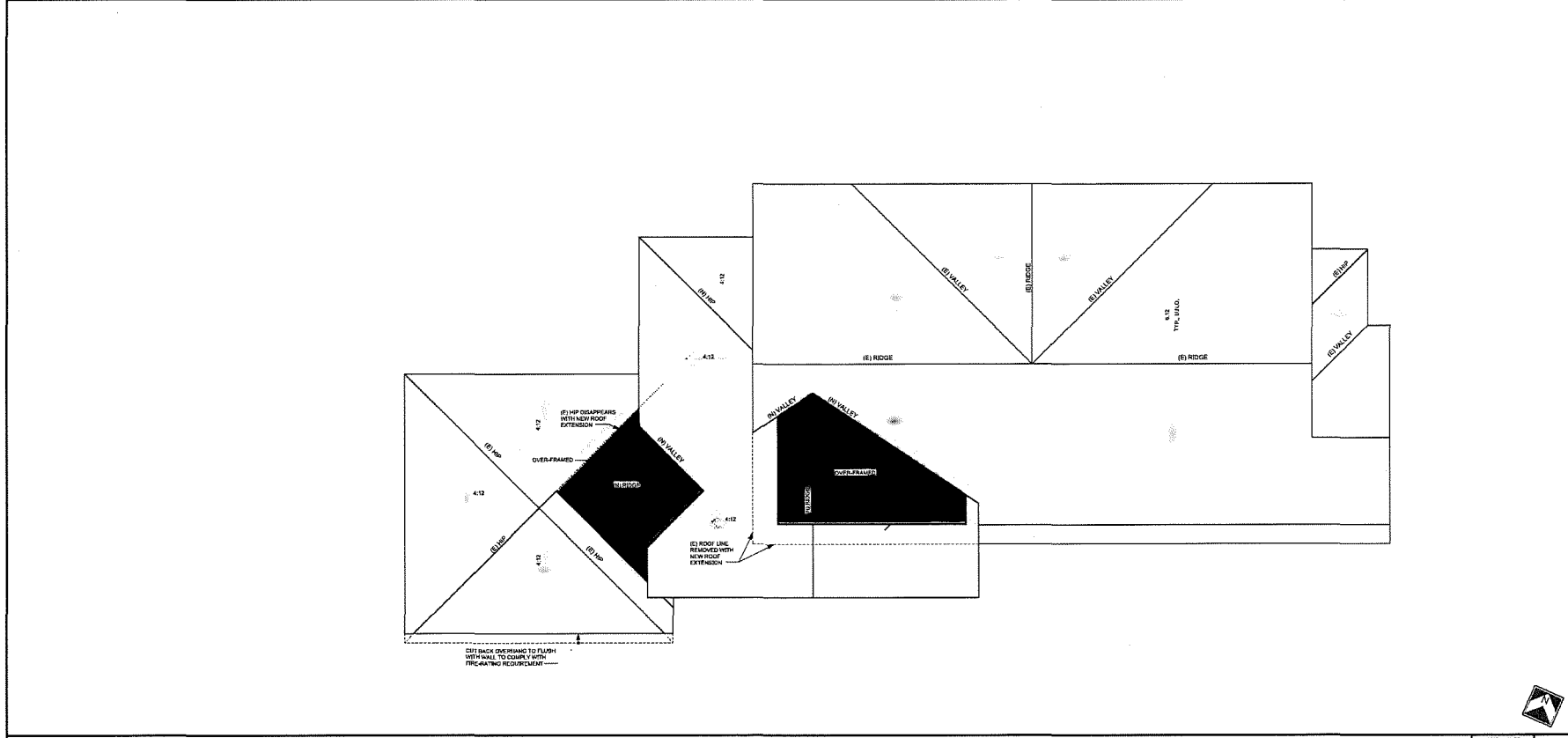
ARCHITECT	ROBERT MAYER 11110 Wilshire Blvd., Suite 1000 Beverly Hills, CA 90210 PH: 310.274.3000 RM@RMAA.COM	
CONSULTANT	ADDITION & REMODEL TO THE RESIDENCE AT: 794 PARK COURT SANTA CLARA, CA 95050 APN: 265.52.054	
REVISION	DATE	DESCRIPTION
ISSUE: PLANNING PROJECT #: 2020-04 DRAWN BY: RM CHECKED BY: RM ISSUE DATE: 04/01/21 SHEET TITLE: FLOOR PLAN		
DRAWING NO. A3.0		



Architect
ROBERT MAYER
 1500 Wilshire Blvd, Suite 2000, Los Angeles, CA 90027
 phone 310.276.2000
 fax 310.276.2001
 www.robertmayer.com

CONSULTANT

SECTION 1/4" = 1'-0" 2



ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
 SANTA CLARA, CA 95050
 APN: 268-00484

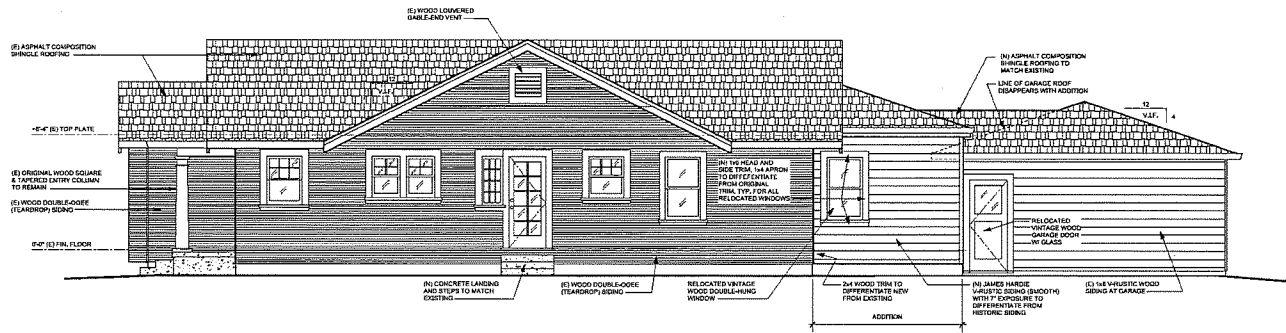
REVISION

NO.	DATE	DESCRIPTION

ISSUE: PLANNING
 PROJECT #: 2020-04
 DRAWN BY: RM
 CHECKED BY: RM
 ISSUE DATE: 04/09/21
 SHEET TITLE: ROOF PLAN

DRAWING NO. **A4.0**

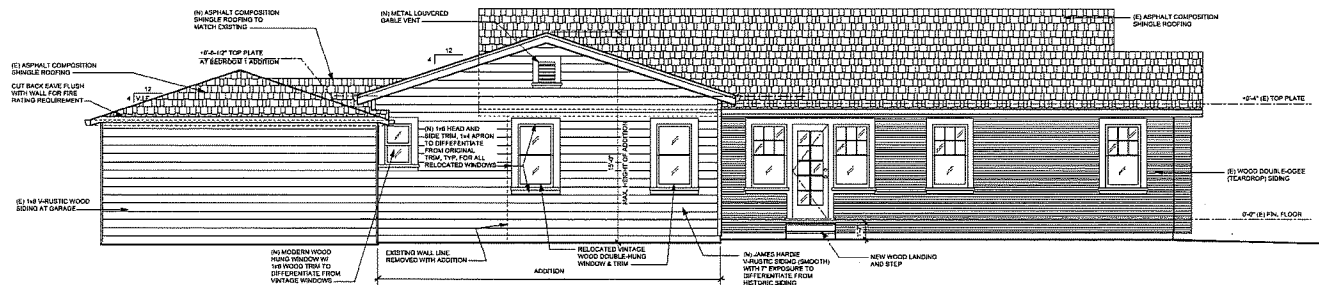
ROOF PLAN 1/4" = 1'-0" 1



RIGHT ELEVATION

1/4" = 1'-0"

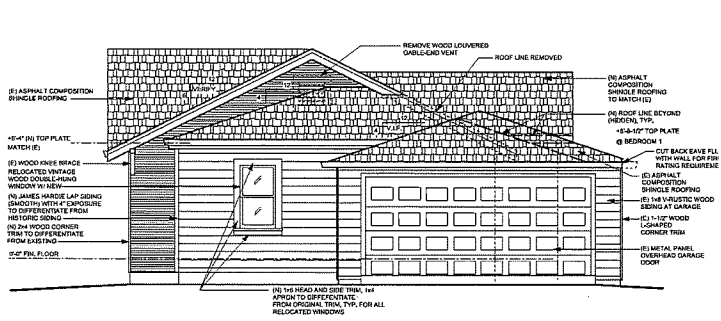
3



LEFT ELEVATION

1/4" = 1'-0"

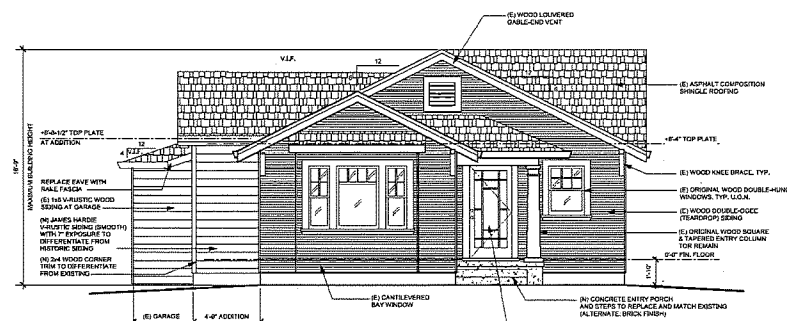
2



REAR ELEVATION

1/4" = 1'-0"

4



FRONT ELEVATION

1/4" = 1'-0"

1

Architect
ROBERT MAYER
 180 South Duane Street
 Santa Clara, CA 95050
 Phone: (408) 283-3333
 mayer@rmla.com

CONSULTANT

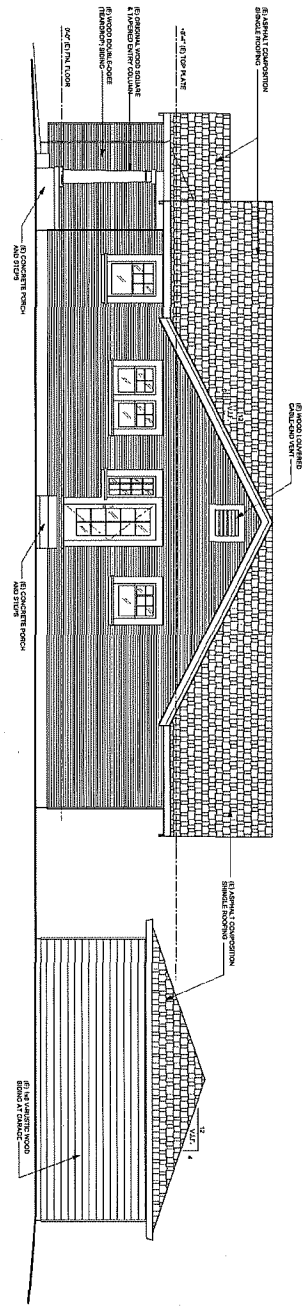
ADDITION & REMODEL TO THE RESIDENCE AT:
784 PARK COURT
 SANTA CLARA, CA 95050
 APN: 38552-004

REVISION	DATE	DESCRIPTION

ISSUE: PLANNING
 PROJECT #: 2020-04
 DRAWN BY: RM
 CHECKED BY: RM
 ISSUE DATE: 04/08/21
 SHEET TITLE

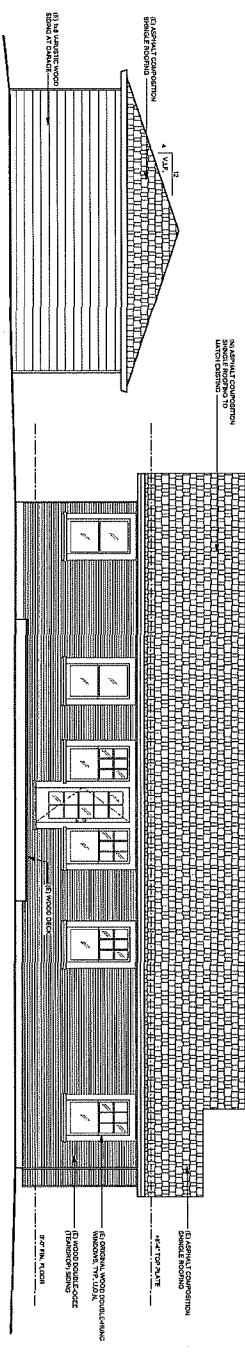
ELEVATIONS

DRAWING NO.
A5.0
 of 7



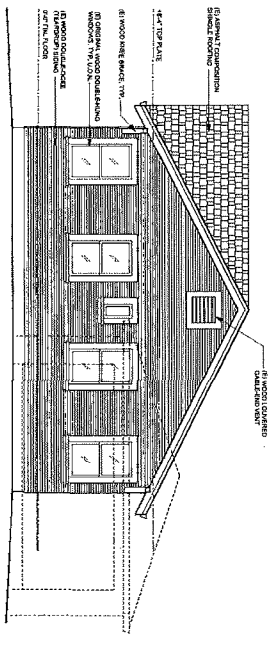
EXISTING RIGHT ELEVATION

1/8" = 1'-0"
3



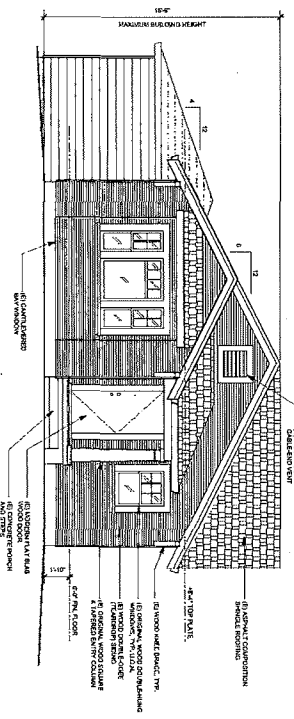
EXISTING LEFT ELEVATION

1/8" = 1'-0"
2



EXISTING REAR ELEVATION

1/8" = 1'-0"
4



EXISTING FRONT ELEVATION

1/8" = 1'-0"
1

Architect

ROBERT MAYER



1490 Santa Clara Street
Santa Clara, CA 95050
PHONE: 408.564.5043
RAY: ray@robertmayer.com

ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
SANTA CLARA, CA 95050
APN: 206-62-054

REVISION	DATE	DESCRIPTION

AS:1
1 of 7
202004 04/28/2004 04/28/2004 04/28/2004 04/28/2004



City of Santa Clara

Meeting Minutes

Historical & Landmarks Commission

06/03/2021

6:00 PM

Virtual Meeting

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, to prevent the spread of COVID-19, the City of Santa Clara has implemented the following method 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 no later than noon on the day of the meeting. Clearly indicate the project address, meeting body, and meeting date in the email. Historical and Landmarks Commissioners and Staff Liaison will be participating remotely.

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

Present 7 - Chair Patricia Leung, Vice Chair Stephen Estes, Commissioner J.L. "Spike" Standifer, Commissioner Ana Vargas-Smith, Commissioner Michael Celso, Commissioner Megan Swartzwelder, and Commissioner Kathleen Romano

CONSENT CALENDAR

1. [21-748](#) Historical and Landmarks Commission Minutes of May 6, 2021

Recommendation: Approve the Historical and Landmarks Commission Minutes of May 6, 2021.

Commissioner Vargas-Smith abstained from voting due to her absence at the May 6, 2021 meeting. **Commissioner Standifer** abstained from voting due to technical difficulties relating to Zoom.

A motion was made by Commissioner Celso, seconded by Commissioner Romano to approve the consent calendar.

Aye: 5 - Chair Leung, Vice Chair Estes, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

Abstained: 2 - Commissioner Standifer, and Commissioner Vargas-Smith

PUBLIC PRESENTATIONS

Commissioner Estes stated that the trees in his neighborhood will be replaced with Scarlet Oak trees as recommended by the City Arborist and expressed gratitude to the City for replacing them and discussing the process with the neighborhood residents. **Commissioner Estes** also announced his resignation from the Historical and Landmarks Commission due to his move to Oregon and that this meeting would be his last.

GENERAL BUSINESS

2. [21-744](#) Public Hearing: Consideration of City Historic Resource Inventory Property Designation, Approval of a Historic Preservation Agreement (Mills Act Contract), and Architectural Review and SPA Permit to allow an addition and attachment of an existing detached two-car garage at 794 Park Court

Recommendation: Staff recommends the Historical and Landmarks Commission find that the house will retain sufficient integrity as a significant example of Craftsman architecture through the construction of the proposed addition, subject to the procedures outlined in the Preservation Treatment Plan attached to the Development Plans, and recommend approval of the following:

- 1) That, based upon the historic survey (DPR) and the evaluations of the proposed remodel and additions to the property, the Commission forward a recommendation to the City Council for approval of the designation and addition of this property to the City's Historic Resource Inventory;
- 2) That, based upon the analysis and findings of the historical evaluation, the Commission forward a recommendation to the City Council for approval of the Mills Act Contract application, including the adoption of a 10-Year Rehabilitation and Maintenance Plan associated with this historical preservation agreement; and,
- 3) That, based upon the analysis and findings of the historical evaluation, the Commission forward a recommendation of approval for issuance of a Significant Property Alteration (SPA) Permit to the Director of Community Development for the proposed addition, subject to the procedures outlined in the Preservation Treatment Plan attached to the Development Plans.

Associate Planner Jeff Schwilk provided the staff presentation.

Applicant Rob Mayer and **Owner Megan Carter** spoke regarding the proposed changes to the residence and answered questions from the Commission regarding the foundation, garage, and plaque. **Architectural Advisor Craig Mineweaser** spoke regarding the siding.

Commissioner Standifer abstained from voting due to technical difficulties relating to Zoom.

A motion was made by Commissioner Romano, seconded by Commissioner Estes to approve staff recommendation and to approve a historical plaque circa 1925 with a friendly amendment by Commissioner Estes to recommend that the Planning Commission approve the variance.

Aye: 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

Abstained: 1 - Commissioner Standifer

3. [21-749](#) Public Hearing: Election of Historical and Landmarks Commission Chair and Vice Chair

Recommendation: There is no staff recommendation.

A motion was made by Commissioner Romano, seconded by Commissioner Standifer to re-elect Chair Leung as Chair and to elect Commissioner Vargas-Smith as Vice Chair.

Aye: 7 - Chair Leung, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

STAFF REPORT

Staff Liaison Rebecca Bustos informed the Commission that a new Historical and Landmarks Commissioner was appointed by City Council at the May 27, 2021 meeting and that the new Commissioner would be joining the Commission effective July 1, 2021. **Ms. Bustos** also notified the Commission that there will be an item on the next agenda for new Fiscal Year 2021-2022 Board and Committee assignments.

1. Berryessa Adobe Maintenance

Architectural Advisor Craig Mineweaser stated that there were no updates on the building's maintenance and announced that the building permit for the Harris-Lass Museum was recently approved.

COMMISSIONERS REPORT

1. Subcommittee Reporting - 20 minutes

There were no subcommittee reports.

2. Board and Committee Assignments - 15 minutes

Commissioners present reported on assignments.

Board/Committee

Lead/Alternate

Santa Clara Arts and Historic Consortium	Estes / Leung
Historic Preservation Society of Santa Clara	Vargas-Smith
Old Quad Residents Association	Leung / Vargas-Smith
Development Review Hearing	Romano / Vargas-Smith
Agnews Historic Cemetery Museum Committee	Standifer / Romano
BART/ High Speed Rail/ VTA BRT Committee	Vargas-Smith / Swartzwelder
Zoning Ordinance Update	Romano / Swartzwelder
El Camino Real Specific Plan Community Advisory Committee	Leung
Downtown Revitalization	Vargas-Smith / Romano

3. Announcements and Other Items - 10 minutes

Recognition of Outgoing Commissioners Estes and Standifer

Commissioner Standifer and **Commissioner Estes** spoke about their time on the Commission. **Commissioner Romano, Commissioner Vargas-Smith, Architectural Advisor Craig Mineweaser, Commissioner Celso, Chair Leung,** and **Staff Liaison Rebecca Bustos** thanked both Commissioners for their time on the Commission.

Public Speaker(s): Rob Mayer
Adam Thompson

4. Commissioner Travel and Training Requests - 10 minutes

The Commission requested a training from staff on the new Zoning Ordinance.

ADJOURNMENT

A motion was made by Commissioner Estes, seconded by Commissioner Standifer to adjourn the meeting.

The meeting adjourned at 7:40 p.m.

The next regular scheduled meeting is on Thursday, July 1, 2021.

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.

Planning Department
City of Santa Clara

April 25, 2021

Re: Variance Request

Variations: Request for setback variances

Project Location: 794 Park Ct. Santa Clara, CA 95050
APN: 269-52-054

Dear Planning Commissioners and Planning Staff:

This application includes plans to connect the property's existing house and existing, detached garage with an infill addition that will add a bedroom and bathroom, increasing the home from a 2 bedroom, 1 bath home to one that has 3 bedrooms and 2 baths. The property is a substandard lot at 50 feet wide (60 feet is standard) and 4,872 square feet (6,000 square feet is standard) located in the historic Old Quad and zoned R1-6L (single-family). We are requesting two variances. The first is a side yard variance, where 5 feet is required, to allow the current 9 inch setback to the existing garage and a 4'-6" setback to the proposed addition. The second is a rear yard variance where 20 feet is required to have a 2'-0" rear yard setback to the existing garage which gets triggered with this project because we are proposing to attach the house to the garage. These proposed variances are reasonable given the unusual configuration of this property, which is bordered on 3 sides by streets; and the fact that other homes on Park Ct., constructed at the same time in the 1920s as part of a housing development, are located less than 5 feet from the side yard property lines.

We understand that the Planning Commission must make the following 4 findings in order to grant the variances (Sec 18.108.040). Our justification for the variances is as follows:

(1) That there are unusual conditions applying to the land or building which do not apply generally in the same district:

The current Zoning Ordinance, adopted in 1969, defined the R1-6 Zoning district at a time when new tract developments were being built in Santa Clara. It defined a standard lot as having a 60 foot minimum width and 6,000 square foot minimum lot size. That ordinance did not address the City's existing, narrower lots typical in the historic Old Quad such as this property, which is 50 feet wide (10 feet less than the 60-foot minimum.) So, although a 50-foot-wide lot such as this is not unusual in the Old Quad, it is unusual when compared to the R1-6 zoning district across the entire city.

In addition, this particular property is bordered by three streets (to the east, north and west), which is unusual in the R1-6 zoning district; and the property has two large radiuses at the corners, making the property unusual when compared to other corner lots in the City. Also, this property is sub-standard in size at 4,872 square feet which is 19% smaller than the standard 6,000 square foot lot size for the R1-6 zoning district.

(B) That the granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner:

The home on this property is in heavy distress due to highly expansive soil conditions, a high water table and a failing, almost 100-year-old concrete block foundation. The homeowner had previously explored two other design scenarios: repairing the foundation and adding living space with a basement, which was not feasible given the property's high water table; and adding a second story, which was a less historically sensitive

design solution. Currently, the house is visibly sagging in all four corners; the floors noticeably slope, the walls and foundation have large cracks; the house and the foundation are separated; the windows and window frames are splitting due to the stress of the house moving; the doors stick as the door frames shift; and the lap siding is buckling at the base of the house as the house sinks.

To be clear: if the home's foundation is not completely replaced, eventually the home will reach a point where it is not salvageable. Unfortunately, this is a fate that has befallen other homes that are part of the Park Ct. subdivision, leading to the loss of some of the street's historic character. The foundation needs to be replaced if the home is to be preserved. However, due to the high cost of foundation replacement, and the need by the homeowner to have a 3 bedroom home with 2 bathrooms, the variance is necessary for the preservation and enjoyment of the homeowner. While 2 bedroom, 1 bath houses used to be typical, a 3 bedroom, 2 bath home is what the homeowner needs to accommodate her multigenerational family responsibilities while also being able to work at home.

(C) That the granting of such variance shall not, under the circumstances for the particular case, materially affect adversely the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood of the applicant's property, and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood:

The request for a variance at the rear of the property is merely because the project proposes attaching the home to the existing detached garage with the bedroom addition, making the garage part of the home, not a detached accessory structure which can have a lesser setback, and triggering the requirement for a 20 foot minimum rear yard setback. The proposed rear addition will have a 20'-8" rear yard setback (8 inches over the minimum setback) but, because this property backs up to a street, it has no impact on a property to the rear. The garage will maintain its current, unusual, rear-yard setback of 2 feet and, therefore, will not intensify the existing condition and will have no additional impact to its relationship to the street or the single, neighboring property to the south.

The second request is for a variance to the side yard setback. This includes the request for a 4'-6" side yard setback at the addition to allow a comfortable, albeit not over-sized, master bedroom. The existing garage will also require a side yard variance to maintain its current 9 inch side yard setback, but there is no change its relationship to the property line. However, the eave of the garage will be cut back flush with the wall and the wall will be 1-hour fire-rated as required by code for a portion of a house that is closer than 5 feet from a property line. The wall of the addition also will be 1-hour fire-rated as required by code. The property owner has reviewed this request with the neighboring property owners (see support letter from the Dunhams at 792 Park Court) most impacted by this request and they are supportive of the reduction.

(D) That the granting of the variance is in keeping with the purpose and intent of this title:

Granting these variances will allow the homeowner to preserve the home and reverse the damage that has been done by the failing foundation, while allowing the homeowner to reasonably expand the home to accommodate modern family responsibilities, while having a minimal impact on others in the neighborhood.

Thank you for your consideration of this request.

Regards,



Megan Carter, Homeowner and Resident of 794 Park Ct.

August 18, 2021

To: The City of Santa Clara Planning Commission

From: Lorie Garcia
City Historian, City of Santa Clara

RE: PLN2021-14940 (PLN2021-14768)
794 Park Court, Santa Clara, California (APN: 269-52-054)
Request for Variances for Rear and Side Yard setbacks

Dear Chair Nancy Biagini and Members of the Planning Commission,

I would like to submit the following comments in support of the Variance requests:

The majority of the homes constructed as small bungalows, reflected the small working-class building styles of the era. This historic pattern with its up-and-down rhythm of the rooflines and the in-and-out rhythm of small detached garages set behind the main dwelling created a unified appearance with enough variety for individual identification, which is considered the essence of good neighborhood design and today is a character defining feature of historic neighborhoods.

Mainly constructed in 1924 (41 houses) and 1925 (21 houses), with the majority of the remainder erected up to the latter half of the 1930s, Park Court was developed in compliance with the new City regulations governing the construction of dwellings and garages in a Residential district. Since then, the Park Court neighborhood has only been minimally altered, and the majority of the original houses occupy their original footprints and the garages occupy their original locations.

The residence, located at 794 Park Court was built in 1925 and the placement of both the house and the garage on the lot met the regulations stated in the City's new zoning ordinance (Ordinance No. 384) for the City of Santa Clara, "Creating a Comprehensive Zoning Plan and Establishing Four Districts in the Town of Santa Clara," adopted on July 6, 1925. The subject property was located in "Residence District A" and under Section 4.b "Side Yards" and "Private Garages and Other Outbuildings," met the following set-back requirements: no residence (excluding eaves, window sills and other ornamental features) could "be placed closer than four (4) feet to either side yard lot-line" and no private garage could "be placed closer than three (3) feet" to "a rear or side property line."

Part of Ordinance No.444, enacted August 1, 1932, which established the use of the 1930 Uniform Building Code and Fire Zones within the City, was amended by Ordinance No. 457, enacted on November 20, 1933, which "provided that private garages detached from the residence or dwelling may be built up to the property line."

The new proposed addition between the existing house and garage is compatible with the historic pattern of development, as the 1925 Zoning Ordinance, in effect at the time the home was built,

allowed 4' between structure and side lot-line and the proposed addition would be set at a 4' 6" setback. In 1950s, the garage was modified from a one to two car garage, giving it a 9-inch setback from the side property line. However, it retained the original setback from the street. It is interesting to note that after the modification of the garage, its setbacks from the side and rear property lines would have still complied with the 1933 Ordinance regarding garages. In both cases neither of the historic setbacks for construction meet the current Zoning Ordinance.

Adopted in 1969, the current Zoning Ordinance was written to regulate new construction occurring at that time and did not address the standards of development, i.e., height, building placement or setbacks, lot size or proportions, found in historic properties or neighborhoods.

According to the July 2020, Historic Resources Survey Report by William Kostura, Park Court is considered "probably by far the best example of a suburban subdivision that was built in Santa Clara in the 1920s-1930s, and may be one of the best in the immediate region." He also states that "Park Court appears to qualify for the California Register [of Historic Resources] as a historic district under Criterion 1 and Criterion 3.

No significant changes to the residence or garage or their placement on the property have occurred since its construction in 1925 and the current project proposed for 794 Park Court met the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties. 794 Park Court's architectural style, form, size, massing and character-defining features are, and will remain, all compatible with the neighboring and nearby historic homes in the historic Park Court neighborhood. Thus, in order to not adversely impact the historic significance of the subject property and the character defining feature of the neighborhood's unique historic development-design, both a rear and side-yard variance for the proposed project for 794 Park Court are necessary.

During my 11 years and 11 months on the Santa Clara Planning Commission, we dealt numerous times with the problem of the City's historic neighborhoods and properties being completely unable to comply with the "modern" zoning ordinance due to the periods and manner in which they were constructed. We consistently made the findings for granting the needed variance requests due to these "unusual conditions applying to the land or the building" that were necessary for their preservation.

Thank you for allowing me the opportunity to provide this information.

Sincerely,



Lorie Garcia
City Historian, City of Santa Clara

Planning Department
City of Santa Clara

April 25, 2021

Re: Letter in Support of 794 Park Ct. Variance Request

Dear Planning Commissioners and Planning Staff:

We are the residents and homeowners of 792 Park Ct. Our home is located directly south of 794 Park Ct., the property that is the subject of the variance request. Our house is the only house that borders the subject property so we are interested in any proposed developments to the property that may impact us.

We are writing to express our support for the project, and for the side yard and rear yard variances requested. We have reviewed the drawings prepared by architect Rob Mayer (dated April 09, 2021) that show the variances to reduce the side yard building setback from the required 5 feet to 4'-6" at the addition, and 9" at the existing garage, as well as a 2'-0" rear yard setback at the existing garage where 20 feet is required. We feel these variance requests are reasonable given the that the existing garage remains in its current location and will have no greater impact than it currently does; and that the variance at the addition, if granted, will only reduce the side yard setback by 6 inches.

We wholeheartedly approve of the homeowner's proposed plans for 794 Park Ct. We have reviewed these plans in detail, and believe that the proposed project will be a significant improvement to the property while also helping to preserve the historical character of our unique street.

Regards,

The image shows two handwritten signatures in black ink. The signature on the left is 'Ann Dunham' and the signature on the right is 'Darren Dunham'. Both signatures are fluid and cursive.

Ann and Darren Dunham
Homeowners and Residents of 792 Park Ct.

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA APPROVING VARIANCES TO THE SIDE AND REAR YARD BUILDING SETBACK REQUIREMENTS FOR THE PROPERTY LOCATED AT 794 PARK COURT, SANTA CLARA

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on January 7, 2021, Megan Carter (“Property Owner”) filed a Planning Application (PLN2021-14940) requesting Variances for the property located at 794 Park Court (APN: 269-52-054) (“Project Site”) in the City of Santa Clara;

WHEREAS, the Project Site is zoned Single Family Residential (R1-6L);

WHEREAS, the General Plan designation for the Project Site is Very Low Density Residential, which is intended to allow up to 10 dwelling units per acre; and,

WHEREAS, the Property Owner has submitted an application for Variances to the City’s required interior side and rear yard building setbacks in order to construct a 341 square foot living area addition at the rear of an existing two-bedroom and one-bathroom single family residence, resulting in a three-bedroom, two-bathroom house with an attached two-car garage;

WHEREAS, the Project is Categorically Exempt per Section 15301(e), Class 1 Existing Facilities, of the Guidelines of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq*, which exempts the construction of additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The proposed 341 square foot addition does not exceed 50 percent of the floor area of the 1,166 square foot house before the addition. The project is also exempt per CEQA Section 15331, Class 31 Historical Resource Restoration/ Rehabilitation, in that the project as proposed will be constructed in accordance with the Secretary of the Interior’s Standards for Rehabilitation.

WHEREAS, on August 12, 2021, the notice of meeting date for this item was posted within 300 feet of the Project Site and mailed to property owners within a 300-foot radius of the Project Site; and,

WHEREAS, on August 25, 2021, the Planning Commission held a duly noticed public hearing to consider the Variance application, during which the Planning Commission invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the proposed Variance.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. That the Planning Commission hereby approves the Variances to allow the addition at a substandard interior side yard setback, and addition to a detached two car garage resulting in a substandard rear and interior side yard setbacks in order to allow construction of a 341 square foot addition to the existing single family residence with the two-car garage to remain.

3. That pursuant to SCCC Section 18.108.040, the Planning Commission determines that the following findings exist in support of the Variances:

A. That there are unusual conditions applying to the land or building, in the same district, in that that the lot has a legal-nonconforming substandard area of 4,872 square feet where a minimum of 6,000 square feet is required (19% smaller), has a substandard lot width of 50 feet where a minimum of 60 feet is required, and has the unusual configuration of having three separate street frontages.

B. That the granting of the Variances is necessary for the preservation and enjoyment of substantial property rights of the Property Owner, in that it would allow the property owner to benefit from the use and enjoyment of a 1,507 square foot, three-bedroom and two-bathroom house more typical of the size of homes in the R1-6L zoning district

elsewhere in the City and which would provide additional living area to meet family needs without necessitating a significant remodel and reconstruction of the home creating a greater hardship than is generally expected for similar requests.

C. That the granting of such Variance will not, under the circumstances of the particular case, materially affect adversely the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of the Project Site, and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood, in that the rear yard variance is only required because the project proposes attaching the home to the existing detached garage with the infill bedroom and bathroom addition, making the garage part of the home, not a detached accessory structure which can have a lesser setback, and thereby triggering the requirement for a 20-foot minimum rear yard setback. The proposed rear addition will have a 20-foot, 8-inch rear yard setback, and because this property backs up to Alviso Street the proposed single-story addition would not impact any properties to the rear. The garage will maintain its current, unusual, nonconforming rear-yard setback of two feet and, therefore, will not intensify the existing condition and will have no additional impact to its relationship to the street or to the neighboring property to the south. Further, the second requested variance to the side yard setback will allow for a four-foot, six-inch side yard setback to the proposed one-story master bedroom addition as a minor reduction from the five-foot minimum, and also a side yard variance to allow the garage to maintain its current nine-inch side yard setback once attached to the house, but there would be no change to its setback from the side property line and therefore no impact.

D. That the granting of the Variance is in keeping with the purpose and intent of the Zoning Ordinance, in that granting the requested variances will allow the homeowner to preserve the home and reverse the damage that has been done by the failing foundation, while allowing the homeowner to reasonably expand the home to accommodate modern family responsibilities, in a manner that is compatible with the use, historic scale and architectural style

of the existing house and other homes on Park Court.

3. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 25th DAY OF AUGUST, 2021, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:
ABSTAINED:	COMMISSIONERS:

ATTEST: _____
ANDREW CRABTREE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Conditions of Approval
2. Development Plans

I:\PLANNING\2021\Project Files Active\PLN2021-14940 794 Park Ct\Resolution Approving the Variances.doc

CONDITIONS OF APPROVAL

CONDITIONS OF APPROVAL

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following conditions of approval are recommended:

GENERAL

- G1. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.
- G2. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

COMMUNITY DEVELOPMENT

- C1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof.
- C2. Submit plans to the Planning Department for final architectural review and approval prior to application for building permits.
- C3. The project shall preserve and maintain all existing exterior siding materials and windows around the house with the exception of those historic materials to be removed/relocated for the proposed living area addition, in accordance with the historic preservation treatment plan included with the Development Plans as Sheet HP1.
- C4. The two-car garage shall remain accessible and unobstructed for on-site vehicle parking.

PARKS & RECREATION

- PR1. Dwelling Unit Tax. A dwelling unit tax (DUT) is also due based on the number of units and additional bedrooms per City Code Chapter 3.15. The Project mix includes an additional bedroom for a total DUT of \$5.00.

PUBLIC WORKS

ENGINEERING

- E1. Obtain site clearance through Public Works Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Public Works Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Encroachment Permit issued by the City Public Works Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E3. Property owner shall pay \$1,315.55 for City's cost to construct Alviso Street improvements per covenant running with the land SC13,992 (Recording #4904669, B192 P483, 12/2/1974). Pay processing fee for release of covenant running with the land after payment is received.

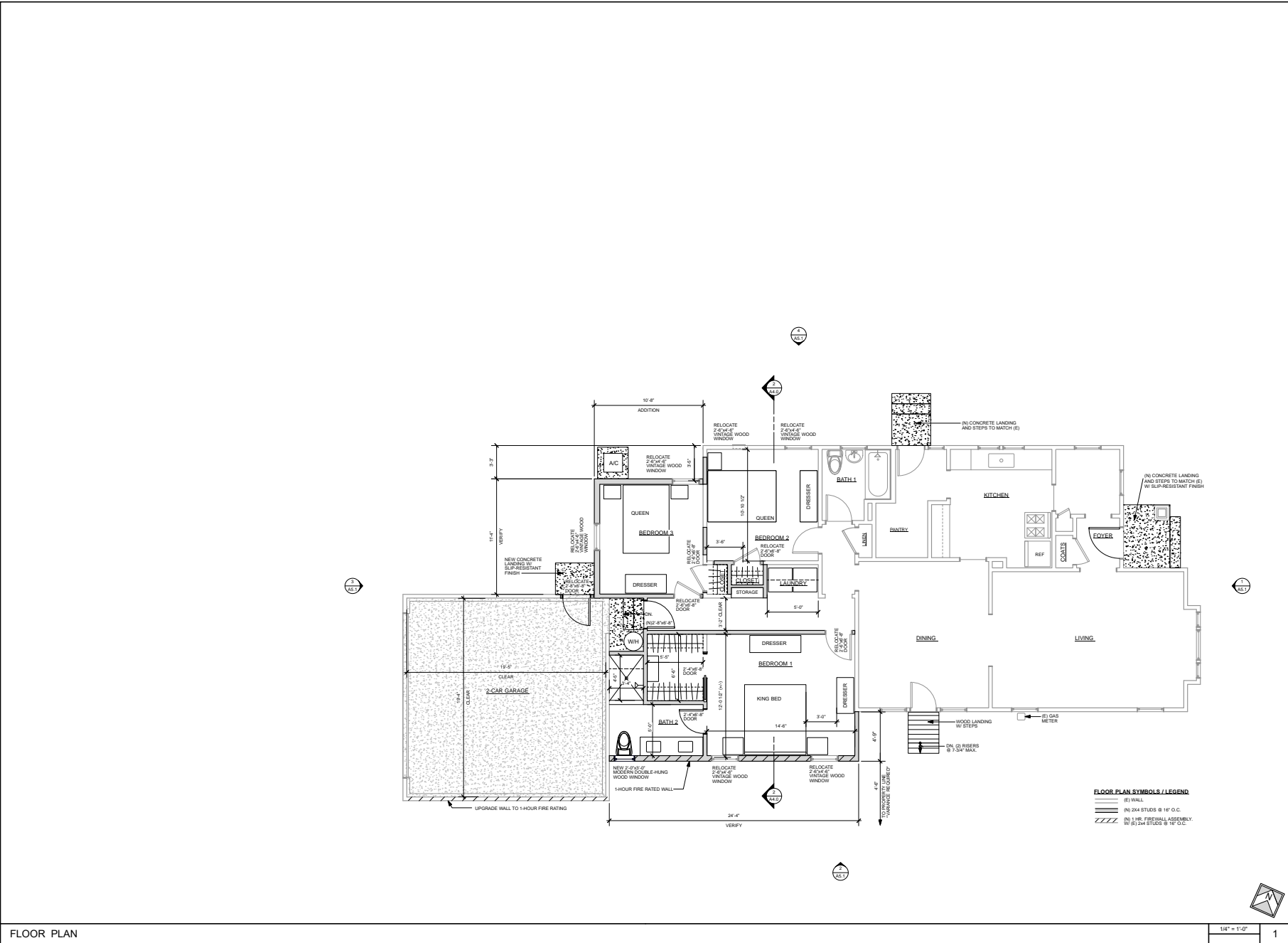
SILICON VALLEY POWER

- SVP1. Any relocation of existing electric facilities shall be at Developer's expense.

CONDITIONS OF APPROVAL

WATER & SEWER

- W1. Prior to issuance of Building Permits, Developer shall indicate the disposition of all existing water and sewer services and mains on the development plans. If the existing service will not be used, then the developer shall properly abandon the service to the main at developer's expense per Water & Sewer Utilities standards and install new service to accommodate the water needs of the development.
- W2. Developer shall submit development plans showing all proposed water, sanitary sewer, and fire service (if required) connected to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Different types of water use (domestic, irrigation, fire) shall be served by separate water services, each separately tapped at the water main. Tapping onto existing fire service line(s) and services crossing parcel lines are prohibited.
- W3. Development plans for construction of water utilities shall be designed to comply with the latest edition of the Water & Sewer Utilities Water Service and Use Rules and Regulations, Water System Notes, and Water Standard Details and Specifications. Developer shall construct all public water utilities per the approved plans. City Water & Sewer Utilities staff will inspect all public water utility installations and all other improvements encroaching public water utilities.
- W4. The existing water service shall be abandoned and a new water service and meter installed a minimum of 10 feet from sanitary sewer (SS) lateral; or, the existing sanitary sewer lateral shall be abandoned and a new SS lateral and cleanout installed a minimum of 10 feet from the water service. New water meter and sewer cleanout must be installed entirely on the property within a landscape area.
- W5. A new Sanitary Sewer cleanout shall be installed on the property within one foot of the property line to replace the existing cleanout in the City right-of-way on the sidewalk.
- W6. No structures (fencing, foundation, biofiltration swales, etc.) are allowed over City sanitary sewer and/or water utilities and/or public utility easements.
- W7. Developer shall adhere to and provide a note indicating all horizontal and vertical clearances. Maintain a minimum 12 inches of vertical clearance at water service crossing with other utilities and the following required minimum horizontal clearances from water services: 10 feet from sanitary sewer utilities, 8 feet from storm drain utilities, 5 feet from fire and other water utilities, 3 feet from abandoned water services, 5 feet from gas and electric utilities, and 5 feet from the edge of the existing driveway. For sanitary sewer and water utilities, Developer shall maintain a minimum horizontal clearance of 10 feet from existing and proposed trees. If applicant installs tree root barrier(s) the minimum clearance from tree may be reduced to 5 feet (clearance must be from the edge of tree root barrier to edge of water facilities).



FLOOR PLAN SYMBOLS / LEGEND
 (E) WALL
 (N) 2x4 STUDS @ 16" O.C.
 (N) 1 HR. FIREWALL ASSEMBLY
 (N) 6x6 STUDS @ 16" O.C.

Architect
ROBERT MAYER
 1400 Santa Clara Street
 Santa Clara, CA 95050
 phone: (408) 554-0543
 mayer.robert@consultant.net

CONSULTANT

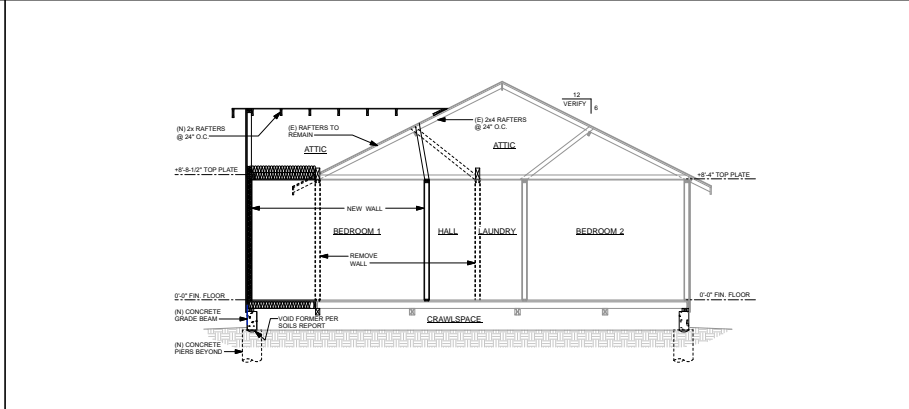
ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
 SANTA CLARA, CA 95050
 APN: 203-02-024

REVISION	DATE

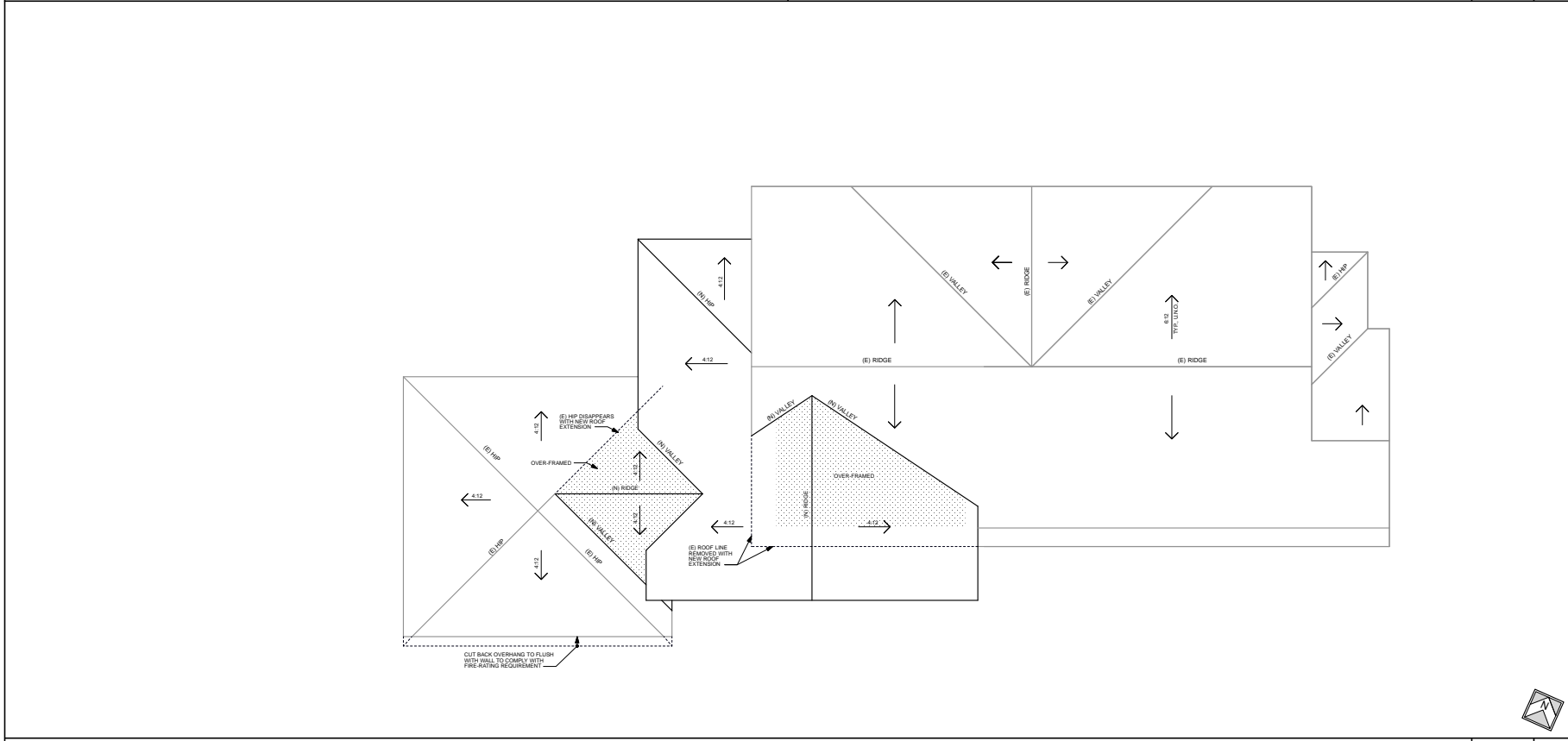
ISSUE: PLANNING	MARK:
PROJECT #: 2020-04	DATE:
DRAWN BY: RM	
CHECKED BY: RM	
ISSUE DATE: 04/09/21	
SHEET TITLE	
FLOOR PLAN	
DRAWING NO. A3.0	

FLOOR PLAN

OWENS-CORNING. ANY SUBSTITUTIONS MUST BE APPROVED BY ARCHITECT PRIOR TO INSTALLATION.
 2. AT LEAST 80 PERCENT AND NOT MORE THAN 90 PERCENT OF THE REQUIRED VENTILATING AREA IS PROVIDED BY VENTILATORS LOCATED IN THE UPPER PORTION OF THE ATTIC OR RAFTER SPACE. UPPER VENTILATORS SHALL BE LOCATED NO MORE THAN 3 FEET BELOW THE RIDGE OR HIGHEST POINT OF THE SPACE, MEASURED VERTICALLY, WITH THE BALANCE OF THE REQUIRED VENTILATION PROVIDED BY EAVE OR CORNICE VENTS.
 3. CONTRACTOR TO VERIFY ALL (E) VENT LOCATIONS AND CONTACT ARCHITECT IF NOT LOCATED AS ON DRAWINGS.




SECTION 1/4" = 1'-0" 2



ROOF PLAN 1/4" = 1'-0" 1

Architect

ROBERT MAYER



CONSULTANT

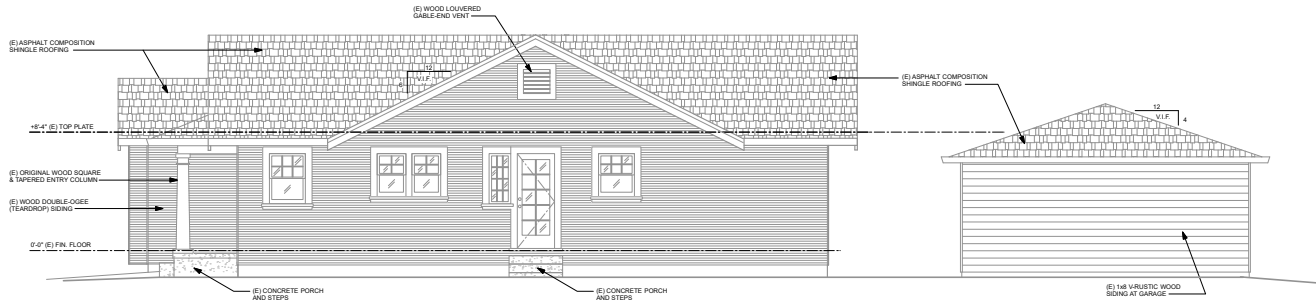
ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
 SANTA CLARA, CA 95050
 APN: 2019-02-004

REVISION	DESCRIPTION

ISSUE: PLANNING
PROJECT #: 2020-04
DRAWN BY: RM
CHECKED BY: RM
ISSUE DATE: 04/09/21
SHEET TITLE
ROOF PLAN

DRAWING NO. **A4.0**

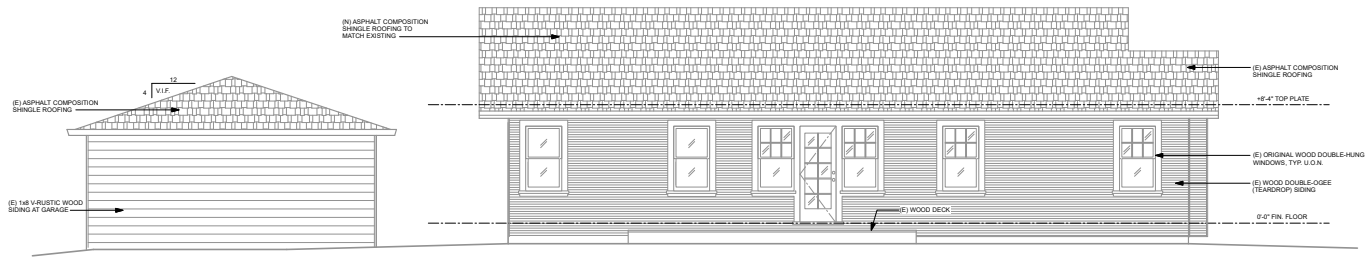
2020-04 CARTER_PHASE1_plan(rev1).vwx 48/21



EXISTING RIGHT ELEVATION

1/4" = 1'-0"

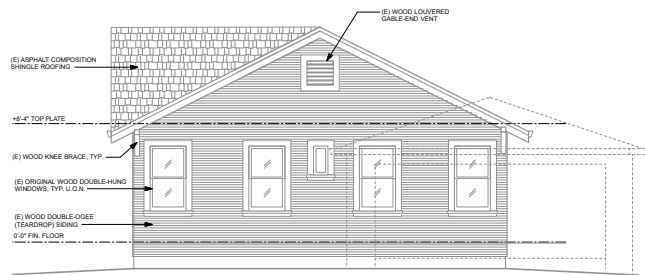
3



EXISTING LEFT ELEVATION

1/4" = 1'-0"

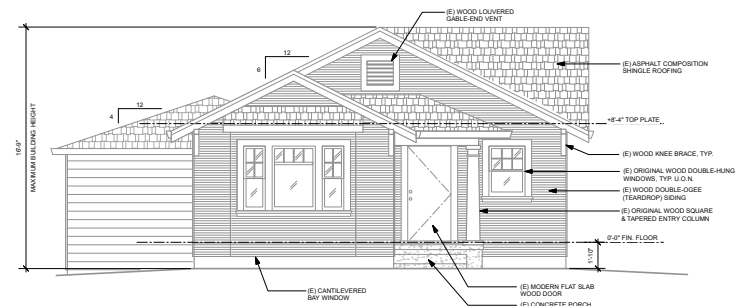
2



EXISTING REAR ELEVATION

1/4" = 1'-0"

4



EXISTING FRONT ELEVATION

1/4" = 1'-0"

1

Architect
ROBERT MAYER
 1400 Santa Clara Street
 Santa Clara, CA 95050
 phone: (408) 554-0544
 r.mayer@robertmayer.net



CONSULTANT

ADDITION & REMODEL TO THE RESIDENCE AT:
794 PARK COURT
 SANTA CLARA, CA 95050
 APR. 2020-02-04

REVISION	DATE	DESCRIPTION

ISSUE:	PLANNING
PROJECT #:	2020-04
DRAWN BY:	RM
CHECKED BY:	RM
ISSUE DATE:	04/09/21
SHEET TITLE:	EXISTING ELEVATIONS

DRAWING NO. **A5.1**



Agenda Report

21-1201

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Action to Adopt Resolution to Set the Regular Meeting Schedule and Dates of the Board of Library Trustees for Calendar Year 2022

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

City Charter section 1003 states that each of the boards and commissions of the City shall hold regular meetings as required by ordinance. City Code section 2.120.030 states that each board or commission shall hold regular meetings at the times and on the days indicated by resolution of the City Council, and that such resolutions may be amended from time to time by further Council resolution.

DISCUSSION

At the August 2, 2021 Board of Library Trustees meeting, the Board recommended the attached proposed regular meeting schedule for 2022, which includes ten (10) regular meetings and a start time of 6:00 p.m.

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 government organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact other than administrative time and expense to set the meetings.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt the attached resolution setting the 2022 Calendar of Regular Meetings for the Board of Library Trustees.

Prepared by: Justin Wasterlain, Management Analyst

Approved by: Cynthia Bojorquez, Assistant City Manager, Acting City Librarian

ATTACHMENTS

1. Resolution BOLT Calendar of Meetings 2022
2. BOLT Calendar of Meetings 2022

RESOLUTION NO. 21-

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA APPROVING THE 2022 BOARD OF
LIBRARY TRUSTEES CALENDAR OF MEETINGS, AND
SETTING THE NUMBER AND START TIME OF
REGULAR BOARD OF LIBRARY TRUSTEES MEETINGS**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Section 2.120.030 of the Santa Clara City Code (“SCCC”) requires City boards and commissions to hold regular meetings at the times and on the days indicated by resolution of the Council;

WHEREAS, Resolution 20-8922 adopted by the City Council on December 16, 2020, states that the Board of Library Trustees shall hold its meetings on the first Monday of every month with the exception of January and July at 6:00 p.m. subject to cancellation at the discretion of the City Manager for agenda management purposes and,

WHEREAS, the Board of Library Trustees, at its August 2, 2021 meeting recommended a regular meeting schedule for 2022, which proposes ten (10) regular meetings and a start time of 6:00 p.m.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City of Santa Clara hereby finds that the above Recitals are true and correct and by the reference makes them a part thereof.
2. That the City Council hereby approves setting the Board of Library Trustees regular meeting start time at 6:00 p.m., and establishes ten (10) meetings per year, to meet monthly except January and July, set on every first Monday of each month, beginning in February, as set forth in the attached Board of Library Trustees 2022 Meetings Dates document, which meetings may be cancelled at the discretion of the City Manager based upon best practices for agenda management.
3. Effective date: This resolution shall be effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2021, 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: Board of Library Trustees calendar of meetings



**BOARD OF LIBRARY TRUSTEES
2022 REGULAR MEETING CALENDAR**

All meetings start at 6:00 pm unless otherwise noted

Date	Location
February 7, 2022	Board Room, Central Park Library
March 7, 2022	Board Room, Central Park Library
April 4, 2022	Board Room, Central Park Library
May 2, 2022	Board Room, Central Park Library
June 6, 2022	Board Room, Central Park Library
August 1, 2022	Community Room, Mission Branch Library
September 12, 2022	Board Room, Central Park Library
October 3, 2022	Board Room, Central Park Library
November 7, 2022	Board Room, Central Park Library
December 5, 2022	Community Room, Northside Branch Library



Agenda Report

21-1465

Agenda Date: 10/26/2021

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Request from the Stadium Manager to Award Purchase Order to EYEP Solutions, Inc. for Genetec Omnicast Training and Synergic Technical Certification

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

DISCUSSION

On October 3, 2021, the Stadium Manager submitted the attached Recommendation for Award memo, along with supporting procurement documentation, to request approval from the Stadium Authority Board for the following:

- Award a purchase order to EYEP Solutions, Inc. for Genetec Omnicast training and Synergic Technical Certification, in the amount of \$5,520. Per the Stadium Manager, the cost for this training and certification will be charged to the FY 2021/22 Budget, Shared Expenses, Stadium Operations line item.

The Stadium Manager's Recommendation for Award has been redacted as it contains sensitive security information. The Stadium Manager recommended that any public disclosure/discussion of this item be limited given its sensitive nature.

ATTACHMENTS

1. Stadium Manager's Recommendation for Award



FORTY NINERS STADIUM MANAGEMENT COMPANY

Date: October 2, 2021

To: Jim Mercurio
Executive Vice President & General Manager

From: Jenti Vandertuig
Procurement Director

Subject: Recommendation for Award for Genetec Certification Training

Recommend approval to issue a Purchase Order to EYEP Solutions, Inc. for Genetec Certification Training.

Because this document contains information regarding Security systems at Levi's Stadium, we recommend that the SCSA limit the public disclosure/discussion of this particular item, to the extent possible.

Genetec Security Center system is used as a unified security system at the Stadium for access control and for closed-circuit television also known as CCTV for monitoring. Genetec Omnicast system is used for CCTV security and Genetec Synergis system is used for access control. These systems were installed during the construction of the Stadium in 2014. [REDACTED]


[REDACTED]

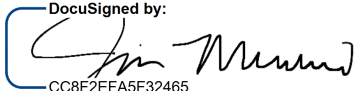
[REDACTED] Certification to operate the systems is required by Genetec.

[REDACTED] provide expertise and adequate system support at the Stadium. Genetec provides scheduled certification training throughout the year and offers only online training since the Covid-19 pandemic which must be procured through one of their resellers. Stadium Manager received a quotation from EYEP Solutions, Inc. for Genetec Omnicast Certification Training (SC-OTC-001) and Genetec Synergis Technical Certification (SC-STC-002) in the amount of \$5,520.

Therefore, approval is sought to issue a Purchase Order to EYEP Solutions, Inc. in the amount of \$5,520 for Genetec Omnicast Certification Training and Synergis Technical Certification.

The cost for this purchase is covered in the FY21/22 Stadium Operations budget.

Submitted By:  A4B5666F5BF147D Date: 10/2/2021
Jenti Vandertuig, Procurement Director

Approved By:  CC8F2EEA5F32465 Date: 10/2/2021
Jim Mercurio, Executive Vice President & General Manager



Agenda Report

21-14660

Agenda Date: 10/26/2021

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Report from the Stadium Authority Regarding Stadium Manager's Request to Award Purchase Order to EYEP Solutions, Inc. for Genetec Omnicast Training and Synergic Technical Certification

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

On October 8, 2019, the Stadium Authority Board (Board) approved Ordinance No. 2005 amending Chapter 17.30 of the City Code (Stadium Authority Procurement Policy), which rescinded the delegation to the Executive Director to enter into agreements without prior Board approval. As result of Ordinance No. 2005, the Stadium Manager is also required to request Board approval before entering into agreements on behalf of the Stadium Authority. As of the effective date of the Ordinance (November 8, 2019), all Stadium Authority agreements for services, supplies, materials, and equipment require the approval of the Stadium Authority Board.

As the Stadium Manager, Forty Niners Stadium Management Company, LLC is responsible for maintaining "the Stadium in the Required Condition and operate the Stadium as a quality NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility" as required by the Management Agreement between the Stadium Authority and Stadium Manager.

The Stadium Manager is requesting approval for the following:

- Award a purchase order to EYEP Solutions, Inc. for Genetec Omnicast training and Synergic Technical Certification, in the amount of \$5,520. Per the Stadium Manager, the cost for this training and certification will be charged to the FY 2021/22 Budget, Shared Expenses, Stadium Operations line item.

The Stadium Manager recommended that any public disclosure/discussion of this item be limited given its sensitive nature.

DISCUSSION

Staff reviewed the Recommendation for Award memo (attached to corresponding report #21-1465) and supporting procurement documentation that was submitted for the request. The documentation is in order and staff recommends approval of the requested purchase order. The Stadium Authority will require full supporting documentation including compliance with prevailing wage laws, if applicable, before respectively releasing public funds upon completion of training and certification. This requirement is consistent with the Stadium Authority Board's March 27, 2019 direction to staff to stop payment of any additional invoices for services unless there is substantial documentation of services

rendered which must also be in compliance with State law and City Code.

ENVIRONMENTAL REVIEW

The actions being considered do 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 or pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

The Stadium Authority FY 2021/22 Budget contains a Legal Contingency for Shared Expenses such as Security, Stadium Operations, Engineering, Guest Services, and Grounds. As part of its March 23, 2021 approval of the FY 2021/22 Budget, the Stadium Authority Board delegated budget amendment authority to the Executive Director for Shared Expenses from the Legal Contingency. There are sufficient funds in the FY 2021/22 Stadium Authority Legal Contingency, Stadium Operations line item to cover the amount of \$5,520 for the requested training and certification. The Executive Director will approve a budget amendment to reallocate \$5,520 from the Legal Contingency to the Shared Expenses, Stadium Operations line item upon the Board’s approval of staff’s recommendations.

COORDINATION

This report has been coordinated with the Stadium Treasurer’s Office and Chief Assistant City Attorney.

PUBLIC CONTACT

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

RECOMMENDATION

1. Approve the Stadium Manager’s request to award a purchase order to EYEP Solutions, Inc. for Genetec Omnicast training and Synergic Technical Certification, in the amount of \$5,520, and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager.

Prepared by: Christine Jung, Assistant to the Executive Director

Reviewed by: Deanna J. Santana, Executive Director



Agenda Report

21-14001

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Discussion and Possible Direction on Consideration of the Sale of the Loyalton Ranch Property

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City of Santa Clara owns and maintains approximately 10,270 rural acres of undeveloped land in Lassen and Sierra Counties near the California-Nevada border. The property is located in northeastern California, about 30 miles north of Truckee, CA, northeast of Sacramento and about 20 miles northwest of Reno, NV. The land is referred to locally as the Trosi Ranch, and within the City, as the Loyalton Ranch Property. The City purchased the property with electric utility funds in 1977 for \$1,613,850 or \$157/acre. The City's Electrical Department doing business as Silicon Valley Power (SVP), is responsible for the care of the property.

On August 17, 2021, the Council discussed a potential sale of the Loyalton Property and did not take any action on the agenda item: instead, Council continued the discussion to this meeting for additional input from the City Attorney. The staff report for the August 17 meeting (RTC 21-715) provides a comprehensive background of the property including location and size, purchase price, history, and many other details. Staff would like to reiterate the following information already included in the August 17, 2021 staff report to facilitate the discussion today:

Current Appraised Value

The Loyalton Ranch Property was appraised by Valbridge Property Advisors (VPA) dated April 2, 2021 (Attachment 2), prior to the wildfire experienced in August 2020. The appraised value was \$4,110,000 or \$400 per acre on effective date of value May 20, 2020. The 2019 property tax obligations to Sierra and Lassen Counties are outlined in the VPA appraisal at \$15,915. In their appraisal, VPA's Conclusion of the Highest and Best Use as improved, is continuation of the existing agricultural and recreational use. VPA's Most Probable Buyer is an owner/user who intends to graze the acreage or use for recreational purposes. VPA estimated that the marketing and exposure time of four to six months as reasonable and appropriate for the subject property.

The VPA appraisal concluded "In the near term, the outlook for 2020 is clouded by the unknowns associated with the new coronavirus. There are increasing impacts on many businesses as people curb their activity, and certain industries are already being severely affected. The outlook is for a market softening, but as is the case for other disasters, any extended marketing times or negative impacts on values will subsequently tend to wane and return to some degree of normalcy. The timeline remains unknown."

Previous Appraised Value and Real Estate Agent Estimate

In October 1999, the City engaged with Ralph F. Pavvey, a California Certified General Real Estate Appraiser, to perform an appraisal report completed in April 2000 which concluded that the "As Is" market value of the free simple interest was \$2,600,000 with an estimated marketing time for the sale of the property in the range of one to two years.

In October 2016, Far West's submitted proposal included their assessment of the value of the land based on the range of \$500 to \$1,000 per acre and proposed listing the property at the higher end of the estimated range of \$10,000,000.

City Policies Regarding Sale or Lease of Properties

The City Council has historically taken a strong position of leasing City property in lieu of property sale, however staff was not able to identify an adopted City Council policy.

Capital Projects

The property is located in a Tier 3 Extreme Wildfire area and experienced a major wildfire caused by lighting on August of 2020. Approximately 90% of the Loyalton Ranch Property was burned, the existing structures were destroyed, and the corrals fencing used for the grazing lease were damaged. The structures on the property were originally constructed between 1920 and early 1950 and were unusable prior to the fire. Prior to the fire, staff was pursuing demolition of the structures on the property to reduce potential liability exposure to the City. Initial estimates for demolition prior to the fire were approximately \$200,000. The project plans will need to be updated to reflect the fire damage and complete demolition of structures. In addition, the livestock corrals were damaged during the fire and discussions with the grazing lessee will be required to determine the extent of replacement corrals to be provided by the City.

The Loyalton Ranch Property has a perimeter of approximately 51 miles, though the entire property does not have a full perimeter fence. The property has been posted as "No Trespassing" and being "City of Santa Clara Property" at roadway entrances and gates. The majority of the fencing was damaged during the August 2020 wildfire. On September 7, 2021, staff presented a proposed amendment to the design contract with Bellecci & Associates, Inc. (RTC 21-530) to proceed with plans and specification to demolish the fire damaged buildings, aerial survey of the property fencing and design of new fencing and associated repairs. Council did not move forward with the contract pending decisions on the sale of the property.

DISCUSSION

City staff is returning to complete the policy discussion directed by Council to continue the August 17, 2021 discussion and the matters raised by the City Attorney are further addressed in this section of the report. At that meeting, staff presented the following three alternatives for Council consideration:

1. Direct staff to develop a strategy for the sale of the Loyalton Ranch Property and present it to the City Council at a future meeting;
2. Note and file this report and take no further action; and
3. Any other alternative as approved by Council.

Staff would like to provide additional context for Alternative 1 based on a recent correspondence received from the California Department of Fish and Wildlife (CDFW) and Councilmembers' questions from the August 17, 2021 discussion.

Correspondence from California Department of Fish and Wildlife

On September 27, 2021, the City received an email from CDFW expressing an interest in purchasing the Loylton property for conservation and open for public recreation. A copy of that email is attached to this report. Staff replied to CDFW staff to inform them of tonight's discussion.

Surplus Land Act Requirements

The former City Attorney raised concerns about the recent amendments to the Surplus Land Act that require the City to follow certain procedures before disposing of City-owned real property. These amendments are intended to advance the State's interest in increasing the inventory of land available primarily for affordable housing, but also for parks and recreation and open-space purposes. The California Department of Housing and Community Development (HCD) is responsible for enforcing the Surplus Land Act (includes possible monetary penalties). In addition, certain private entities may file a lawsuit to enforce the Surplus Land Act.

In general terms, before the City may begin negotiating the disposition of City-owned real property, it must adopt a resolution declaring the property as either "surplus" or "exempt surplus". Disposition includes both sales and long-term lease agreements. The City's determination on whether a property is surplus or exempt surplus is subject to review by HCD.

For land declared "surplus," the City must provide a notice of availability to certain entities, generally affordable housing developers and public agencies. If an eligible entity (or entities) sends the City a notice of interest, then the parties have a period of 90-days to negotiate the disposition of the surplus property. If no entity sends a notice of interest, or the negotiations are not fruitful, then the City may negotiate with any other interested party. Prior to any agreement on the proposed disposition of surplus land, the City must submit a report to HCD describing its actions taken in compliance with the Surplus Land Act.

For "exempt surplus" land, these procedures do not apply. However, the Surplus Land Act defines "exempt surplus" in terms of ten technical and somewhat complicated categories. For example, one category is for "local agency surplus land transfers to another local, state, or federal agency for that agency's use." As noted in the Report to Council, the City received an email from the California Department of Fish and Wildlife indicating interest in purchasing the property for conservation and public recreation purposes. It is unclear whether a "transfer" includes a sale of the property to the Department of Fish and Wildlife. In short, staff will need to undertake further research on whether the Loylton Ranch property would be surplus or exempt surplus.

If the Council decides to pursue a sale (or long-term lease) of the Loylton Ranch property, then staff from SVP and the City Attorney's Office will research and prepare a resolution with the appropriate determination under the Surplus Land Act for the Council's consideration, as well as an overview of the additional steps required (if any) prior to finalizing any transaction.

Alternative 1 - Strategy for the Sale

If the Council decides to proceed with the sale, staff will need consultant and realtor support for the process. Some of the steps required will include:

1. An RFP to select and recommend a realtor/broker;
2. Consultant support for the Surplus Land Act process including legal support;

3. Updated property appraisal;
4. Council consultant/realtor contract(s) award; and
5. Future Council discussion on sale strategy and next steps.

ENVIRONMENTAL REVIEW

The discussion on the potential sale of Government Property is not a project within the meaning of the California Environmental Quality Act ("CEQA"). If the City Council directs further action to proceed toward a proposed sale of a surplus government property, the project review will include analysis in accordance to CEQA Guidelines section 15206(b)(4), 15312 and 15061(b)(3).

FISCAL IMPACT

Fiscal impact will vary based on Council direction. If City Council requests further action, staff will return with analysis to include the fiscal impact of any option.

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>>.

ALTERNATIVES

1. Direct staff to develop a strategy for the sale of the Loyalton Ranch Property and present it to the City Council at a future meeting;
2. Note and file this report and take no further action; and
3. Any other alternative as approved by Council.

RECOMMENDATION

Staff has no recommendation and is seeking Council direction on whether additional steps toward the sale of the Loyalton Ranch Property should be implemented.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

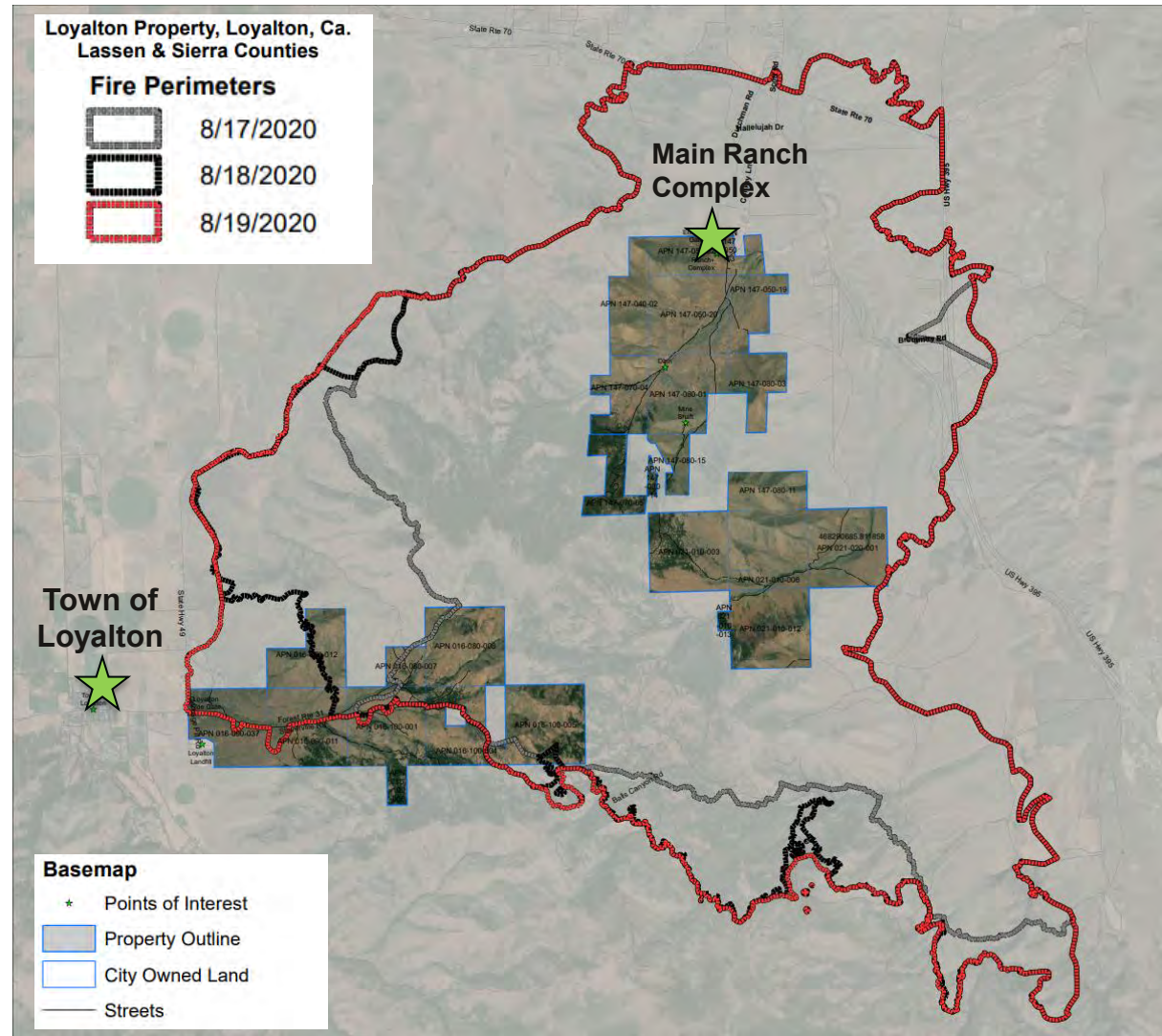
ATTACHMENTS

1. Loyalton Property Map and Pictures
2. Loyalton Appraisal
3. Councilmember Jain Presentation from August 17, 2021
4. Email from California Department of Fish and Wildlife (CDFW)

Attachment 1

Loyalton Wildfire

- Background on Loyalton Ranch Property: In 1977, the City purchased approximately 10,000 acres of undeveloped land located within Lassen, Sierra and Plumas Counties.
- Cause of Fire: Lightning
- Burned over 46,000 acres.
- **More than 90% of the City's** Loyalton Ranch Property affected by the fire.



Attachment 1

Loyalton Property (after Loyalton Fire)

After Loyalton Fire



Before Loyalton Fire



Attachment 1

Ranch House (after Loyalton Fire)



Attachment 1

Foreman's Cabin (after Loyalton Fire)



Attachment 1

Loyalton Property (after Loyalton Fire)





Valbridge
PROPERTY ADVISORS

Appraisal Report

Loyalton Ranch Property
Loyalton, Sierra & Lassen County, California

Report Date: April 2, 2021



FOR:

City of Santa Clara
Mr. Joseph Bruzzone P.E.
Electric Utility Engineer
1500 Warburton Avenue
Santa Clara, California 95050

**Valbridge Property Advisors |
Northern California**

2813 Coffee Road, Suite E2
Modesto, CA 95355
209.569.0450 phone
408.279.3428 fax
valbridge.com

Valbridge File Number:
CA05-20-0175



2813 Coffee Road, Suite E2
Modesto, CA 95355
209.569.0450 phone
408.279.3428 fax
valbridge.com

April 2, 2021

John A. Hillas, MAI, SRA
209.569.0450, ext. 7301
jhillas@valbridge.com

Mr. Joseph Bruzzone P.E.
Electric Utility Engineer
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050

RE: Appraisal Report
Loyalton Ranch Property
Loyalton, Sierra County, California 96118

Dear Mr. Bruzzone P.E.:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinions. This letter of transmittal does not constitute an appraisal report and the rationale behind the value opinion(s) reported cannot be adequately understood without the accompanying appraisal report.

The subject property, as referenced above, is located within the Sierra and Lassen counties, East of Loyalton and West of Cold Springs, and is further identified as tax parcel numbers 147-040-02-11, 147-050-02-11, 147-050-03-11, 147-050-19-11, 147-050-20-11, 147-070-04-11, 147-070-05-11, 147-080-01-11, 147-080-03-11, 147-080-11-11, 147-080-14-11, 147-080-15-11, 021-010-003, 021-020-001, 016-100-004, 016-090-059, 021-010-006, 021-010-012, 016-100-005, 016-080-008, 016-070-012, 016-090-011, 021-010-013, 016-100-001, 016-100-006 and 016-080-007. The subject is a 10,273.95-acre ranch with several smaller components as will be discussed herein.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The client in this assignment is the City of Santa Clara and the intended user of this report is Joseph Bruzzone with the City of Santa Clara and no others. The sole intended use is to determine a value for a possible sale of the property. The value opinions reported herein are subject to the definitions, assumptions, limiting conditions, and certifications contained in this report.

The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions, the use of which might have affected the assignment results:

Extraordinary Assumptions:

- In terms of physical characteristics of the property, we relied on information provided by our client, along with public record information and technology platforms including google earth. It is an extraordinary assumption of the appraisal that the information contained herein is accurate
- Legal access is assumed to exist for each of the three main property components. It is reported that the acreage has been used for grazing of livestock, and the acreage is thus assumed to be suitable for this use.

Hypothetical Conditions:

- None

Based on the analysis contained in the following report, our value conclusion is as follows:

Value Conclusion

Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	May 20, 2020
Value Conclusion	\$4,110,000
	<i>\$400.04 per acre</i>

Respectfully submitted,
Valbridge Property Advisors | Northern California



John A. Hillas, MAI, SRA
Managing Director
California Certified License #AG002432
January 21, 2021

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Summary of Salient Facts

Summary of Salient Facts

Property Identification

Property Name	Loyalton Ranch Property
Property Address	East of Loyalton and West of Cold Springs in Sierra and Lassen Counties
Latitude & Longitude	39.67918, -120.130868
Tax Parcel Numbers	147-040-02-11,147-050-02-11,147-050-03-11,147-050-19-11,147-050-20-11,147-070-04-11,147-070-05-11,147-080-01-11,147-080-03-11,147-080-11-11,147-080-14-11,147-080-15-11,021-010-003,021-020-001,016-100-004,016-090-059,021-010-006,021-010-012,016-100-005,016-080-008,016-070-012,016-090-011,021-010-013,016-100-001,016-100-006 and 016-080-007
Property Owners	City of Santa Clara

Site

Zoning	General Forrest, Mixed-industrial, Open Space (GF,MI,OS)
FEMA Flood Map No.	06091 C0250C (02/02/2012)
Flood Zone	Zone X, Not a Designated Flood Prone Area
Gross Land Area	10,273.950 acres
Usable Land Area	10,273.950 acres
Sierra County Acres	6,371.460 acres
Lassen County Acres	3,902.490 acres
Total Land Area	10,273.950 acres

Valuation Opinions

Highest & Best Use - As Vacant	Grazing land
Reasonable Exposure Time	Four to Six Months
Reasonable Marketing Time	Four to Six Months

Value Indications

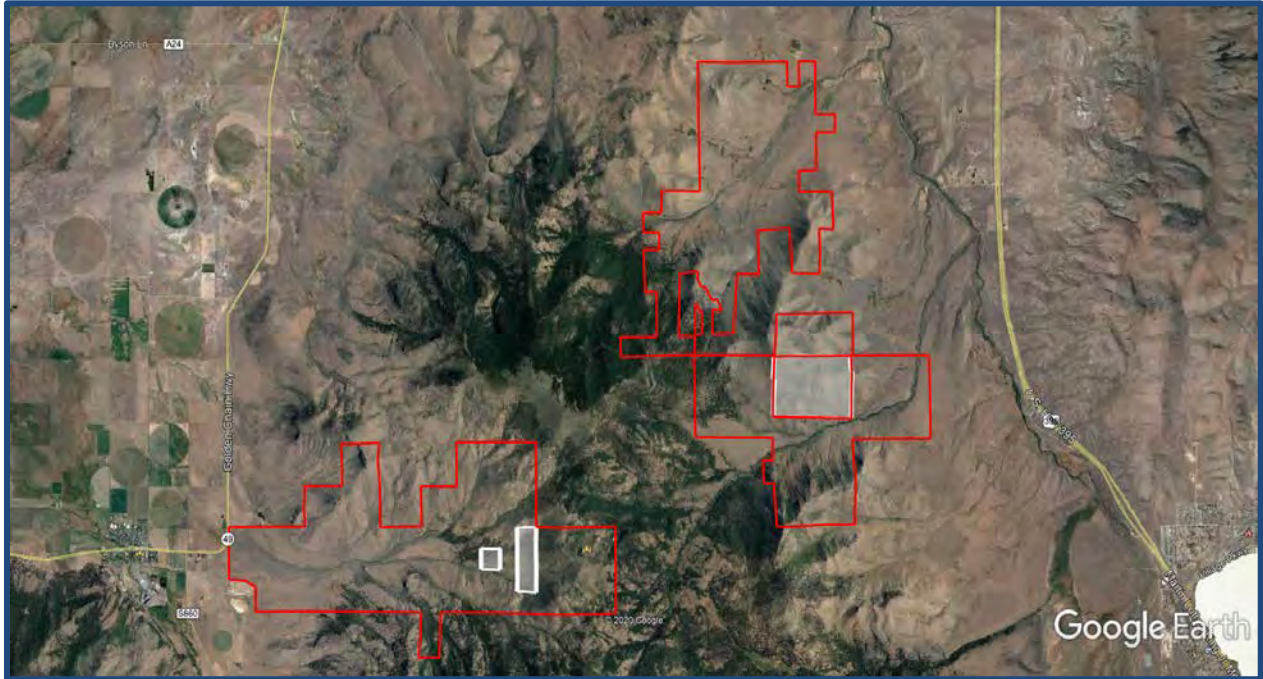
Approach to Value	As Is
Cost	Not Applicable
Sales Comparison	\$4,110,000
Income Capitalization	Not Applicable

Value Conclusion

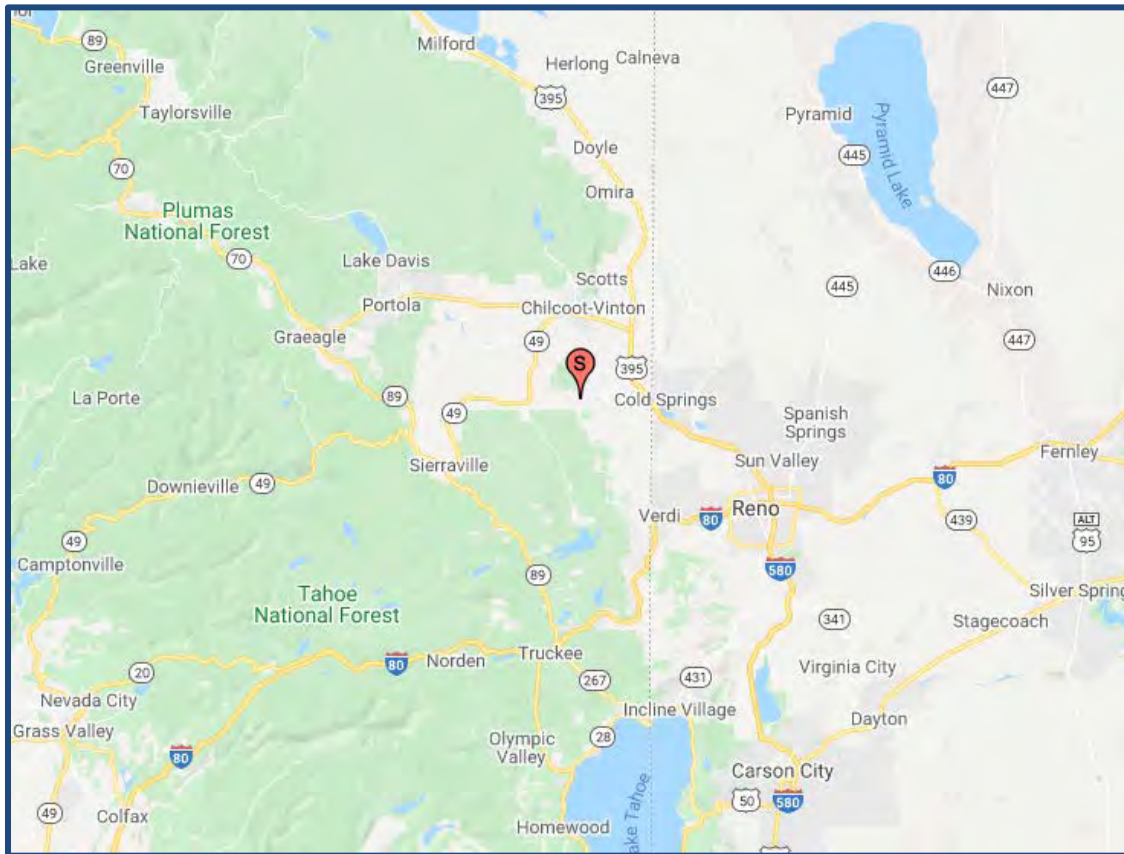
Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	May 20, 2020
Value Conclusion	\$4,110,000
	<i>\$400.04 per acre</i>

Aerial Photograph

AERIAL VIEW



Location Map



Introduction

Client and Intended Users of the Appraisal

The client in this assignment is the City of Santa Clara and the sole intended user of this report is Joseph Bruzzone with the City of Santa Clara.

Intended Use of the Appraisal

The sole intended use of this report is to determine a value for a possible sale of the property.

Real Estate Identification

The subject is located within Sierra and Lassen counties, East of Loyalton and West of Cold Springs, and is further identified by tax parcel numbers 147-040-02-11, 147-050-02-11, 147-050-03-11, 147-050-19-11, 147-050-20-11, 147-070-04-11, 147-070-05-11, 147-080-01-11, 147-080-03-11, 147-080-11-11, 147-080-14-11, 147-080-15-11, 021-010-003, 021-020-001, 016-100-004, 016-090-059, 021-010-006, 021-010-012, 016-100-005, 016-080-008, 016-070-012, 016-090-011, 021-010-013, 016-100-001, 016-100-006 and 016-080-007.

Legal Description

A legal description of the property was not provided. The assessor parcel numbers, maps and exhibits herein are considered to adequately identify the property.

Use of Real Estate as of the Effective Date of Value

As of the effective date of value, the subject was agricultural undeveloped land.

Use of Real Estate as Reflected in this Appraisal

Same as above.

Ownership of the Property

According to public records, title to the subject property is vested in the City of Santa Clara.

History of the Property

Ownership of the subject has not changed within the past three years. According to the City of Santa Clara, the property was purchased in 1977 for \$1,613,850 (\$157/acre). We have considered and analyzed the known history of the subject in the development of our opinions and conclusions.

Analysis of Listings/Offers/Contracts

The subject is not currently listed for sale or under contract for sale. There have been no known offers to purchase the subject.

Type and Definition of Value

The appraisal problem is to develop an opinion of the market value of the subject property. "Market Value," as used in this appraisal, is defined as "the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus." Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- *Buyer and seller are typically motivated.*
- *Both parties are well informed or well advised, each acting in what they consider their own best interests.*
- *A reasonable time is allowed for exposure in the open market.*
- *Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.*

The value conclusions apply to the value of the subject under the market conditions presumed on the effective date of value. Please refer to the Glossary in the Addenda section for additional definitions of terms used in this report.

Valuation Scenarios, Property Rights Appraised, and Effective Dates of Value

Per the scope of our assignment we developed an opinion of value for the subject property under the following scenario of value:

Valuation Scenario	Effective Date of Value
As Is Market Value of the Fee Simple Interest	May 20, 2020

Date of Report

The date of this report is April 2, 2021.

List of Items Requested but Not Provided

- None

Assumptions and Conditions of the Appraisal

This appraisal assignment and the opinions reported herein are subject to the General Assumptions and Limiting Conditions contained in the report and the following extraordinary assumptions and/or hypothetical conditions, the use of which might have affected the assignment results.

Extraordinary Assumptions

- In terms of physical characteristics of the property, we relied on information provided by our client, along with public record information and technology platforms including google earth. It is an extraordinary assumption of the appraisal that the information contained herein is accurate
- Legal access is assumed to exist for each of the three main property components. It is reported that the acreage has been used for grazing of livestock, and the acreage is thus assumed to be suitable for this use.

Hypothetical Conditions

- None

Scope of Work

The elements addressed in the Scope of Work are (1) the extent to which the subject property is identified, (2) the extent to which the subject is inspected, (3) the type and extent of data researched, (4) the type and extent of analysis applied, (5) the type of appraisal report prepared, and (6) the inclusion or exclusion of items of non-realty in the development of the value opinion. These items are discussed as below.

Extent to Which the Property Was Identified

The three components of the property identification are summarized as follows:

- Legal Characteristics - The subject was legally identified via county records and assessor plats from Lassen and Sierra County.
- Economic Characteristics - Economic characteristics of the subject were identified via information provided by the client, as well as a comparison to properties with similar locational and physical characteristics.
- Physical Characteristics - The subject was physically identified via information provided by our client, as well as aerial photography from Google Earth, topographic maps and other technology resources.

Extent to Which the Property Was Inspected

The property was not physically inspected by the appraiser. The subject property consists of over 10,000 acres of rural acreage, much of which has limited accessibility. Our analyses of available aerial photography and topographic maps was considered the best way to understand the physical characteristics of the property. The appraiser also has familiarity with the general area.

Type and Extent of Data Researched

We researched and analyzed: (1) market area data, (2) property-specific market data, (3) zoning and land-use data, and (4) current data on comparable listings and transactions. We also interviewed people familiar with the subject market/property type.

Type and Extent of Analysis Applied (Valuation Methodology)

We observed surrounding land use trends, the condition of any improvements, demand for the subject property, and relevant legal limitations in concluding a highest and best use. We then valued the subject based on that highest and best use conclusion.

Appraisers develop an opinion of property value with specific appraisal procedures that reflect three distinct methods of data analysis: the Cost Approach, Sales Comparison Approach, and Income Capitalization Approach. One or more of these approaches are used in all estimations of value.

All of these approaches to value were considered. We assessed the availability of data and applicability of each approach to value within the context of the characteristics of the subject property and the needs and requirements of the client. Based on this assessment, we relied upon the Sales Comparison Approach. The Cost Approach was not used because this is an appraisal of land only and there are no improvements for which costs can be estimated and accrued depreciation quantified. The Income

Capitalization Approach was not used because this is an appraisal of land only and market participants do not employ this approach for valuing land only. Such acreage is not traded on the basis of the revenue it would generate, but rather on the sale price per acre of land area (Sales Comparison Approach.)

Appraisal Conformity and Report Type

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

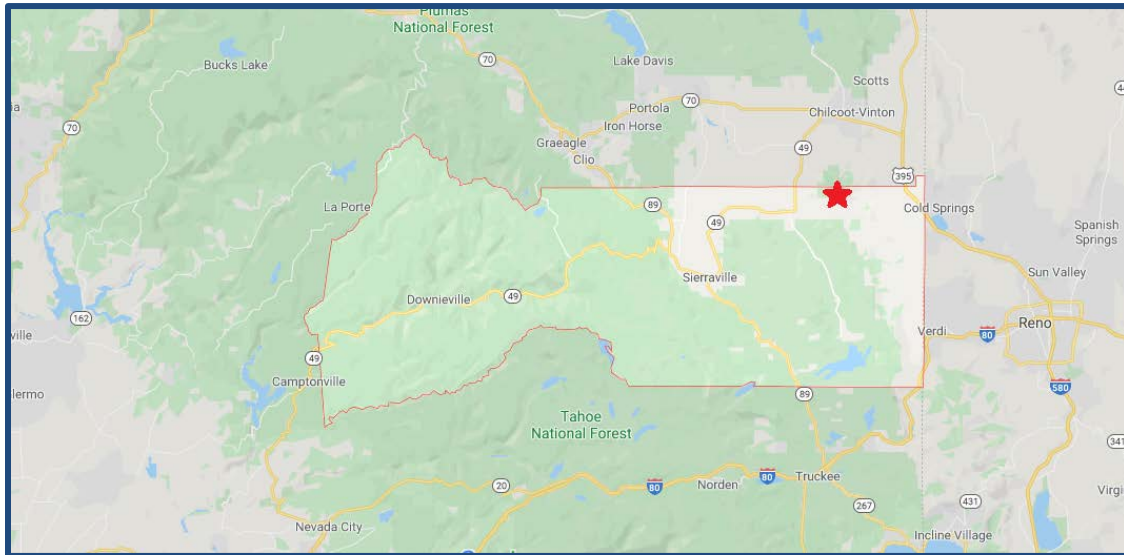
This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2a.

Personal Property/FF&E

All items of non-realty are excluded from this analysis. The opinion of market value developed herein is reflective of real estate only.

Regional and Market Area Analysis

REGIONAL MAP



Overview

The subject property is located near Loyalton, California with parcels sitting in both Sierra and Lassen counties. This area is in the northern/northeastern portion of the State. Both counties border the state of Nevada in a mountainous area rich in forestry and full of wildlife. These counties have a combined population of approximately 37,000 with only roughly 700 of those people residing in Loyalton. The area was settled in the 1950s, with the City being established in 1864. Loyalton is much the same today as it was back then and even refers to itself as the “city with more animals than people.”

Note that much of the following pertains to Sierra County but would be similar for Lassen County.

Population

Sierra county has a very small population with only about 3,214 residents, and while Lassen county is larger in population, housing 32,981 residents as of 2019, both counties are still very small compared to the rest of the state.

According to the Site to Do Business projections, presented below, both Sierra and Lassen counties are expected to see a decrease in population with a change of -0.4% annually between 2019-2024.

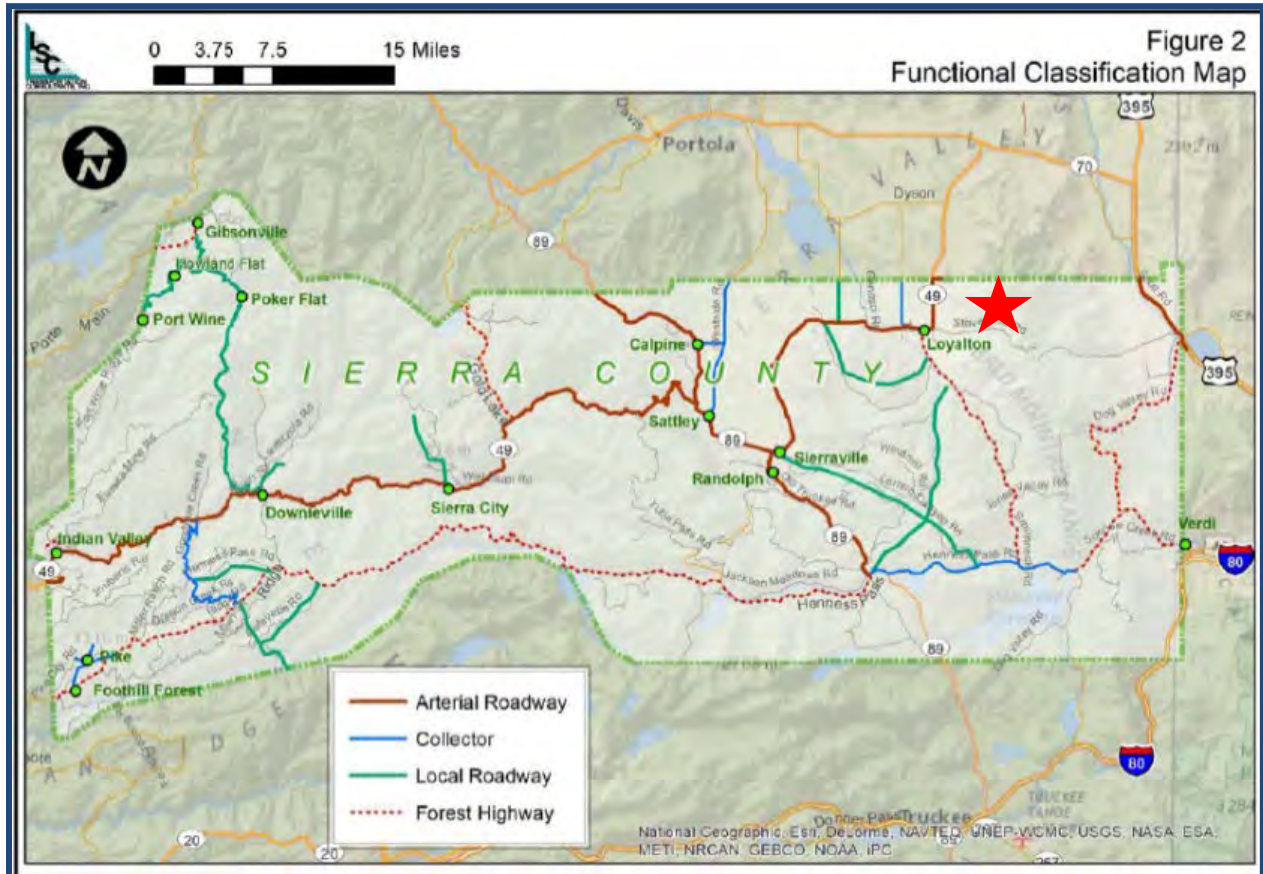
Population

Area	2000	2010	Annual % Change 2000 - 10	Estimated 2019	Projected 2024	Annual % Change 2019 - 24
United States	281,421,906	308,745,538	1.0%	332,417,793	345,487,602	0.8%
California	33,871,648	37,253,956	1.0%	39,813,541	41,166,386	0.7%
Lassen County	33,828	34,895	0.3%	32,981	32,284	-0.4%
Sierra County	3,555	3,240	-0.9%	3,214	3,149	-0.4%

Source: Site-to-Do-Business (STDB Online)

Transportation

Public transportation in Sierra County is very limited. There is no fixed route transit service, but public transportation is provided by two non-profit transit services, which services both Sierra County and the City of Loyalton. These services are open to the general public but primarily specialize in the elderly and disabled population. Considering the small population and the rural nature of Sierra County, there are currently no plans to increase or add public bus services as it is not necessary or financially feasible at this time.



Air service in the area is very minimal. The Sierraville Dearwater Field Airport is the only designated airport in Sierra County, and it is classified as a Basic Utility airfield. The airport provides a link for local and regional aviation uses. The field is used for recreation, ingress and egress for regional events, occasional charter services and emergency services. Air freight in the county is limited to occasional service by private aircraft. Residents in Sierra county typically use airports in Reno, Sacramento, and San Francisco for their commercial needs.

With such a small population, traffic congestion is not usually a problem in the City of Loyalton or the Sierra/Lassen County areas. About 64 miles of State Route 49 runs east-west through Sierra County and Loyalton. State Route 89 runs from Nevada County to the Plumas County line, crossing through about 30 miles of Sierra County. SR 89 largely carries local, commercial, and recreational traffic through undeveloped forest land with restricted access. US 395 runs through the northeastern corner of the county. A 1.6-mile-long section of I-80 passes through the southeastern corner of Sierra County.

Employment

The services sector provides the largest number of jobs in Sierra County. The second largest employment sector in the region is construction. The third largest percentage of jobs is provided by public administration.

Employment by Industry - Sierra County, CA

Industry	2019 Estimate	Percent of Employment
Agriculture/Mining	81	6.50%
Construction	284	22.70%
Manufacturing	42	3.40%
Wholesale trade	1	0.10%
Retail trade	51	4.10%
Transportation/Utilities	135	10.80%
Information	2	0.20%
Finance/Insurance/Real Estate Services	2	0.20%
Services	435	34.80%
Public Administration	214	17.10%
Total	1,249	100.0%

Source: Site-to-Do-Business (STDB Online)

Unemployment

The unemployment rate in Sierra County is currently higher than the rates of the state and nation. The County unemployment rate was 8.5% as of March 2020 (most recent available). That is almost double what it was the year prior. The State of California is at 5.6% while the Nation sits at 3.5% for the same time period.

Unemployment rates locally and nationwide had been on a decreasing trend over the last several years but more recently have increased, as shown in the table below. Due to the recent spread of Covid-19, California issued a "Shelter in Place" order which has led to massive lay-offs throughout the state causing unemployment rates to rise. The full scope of that impact is yet to be seen.

Unemployment Rates

Area	YE 2013	YE 2014	YE 2015	YE 2016	YE 2017	YE 2018	YE 2019	YTD 2020
United States	6.7%	5.6%	5.0%	4.7%	4.1%	3.9%	3.5%	3.5%
California	8.0%	6.6%	5.6%	5.1%	4.3%	4.2%	3.7%	5.6%
Sierra County	11.9%	10.2%	8.4%	8.3%	5.8%	5.8%	4.5%	8.5%

Source: Bureau of Labor Statistics - Year End - National & State Seasonally Adjusted

Median Household Income

Lassen and Sierra Counties have a median household income which is quite a bit lower than that of the state and national average but is expected to grow by about 1.5-3 percent over the next four years. Total median household income for the region is presented in the following table. Overall, the subject compares unfavorably to the state and the country.

Median Household Income

Area	Estimated 2019	Projected 2024	Annual % Change 2019 - 24
United States	\$60,548	\$69,180	2.9%
California	\$74,520	\$86,333	3.2%
Lassen County	\$54,165	\$62,166	3.0%
Sierra County	\$53,341	\$57,386	1.5%

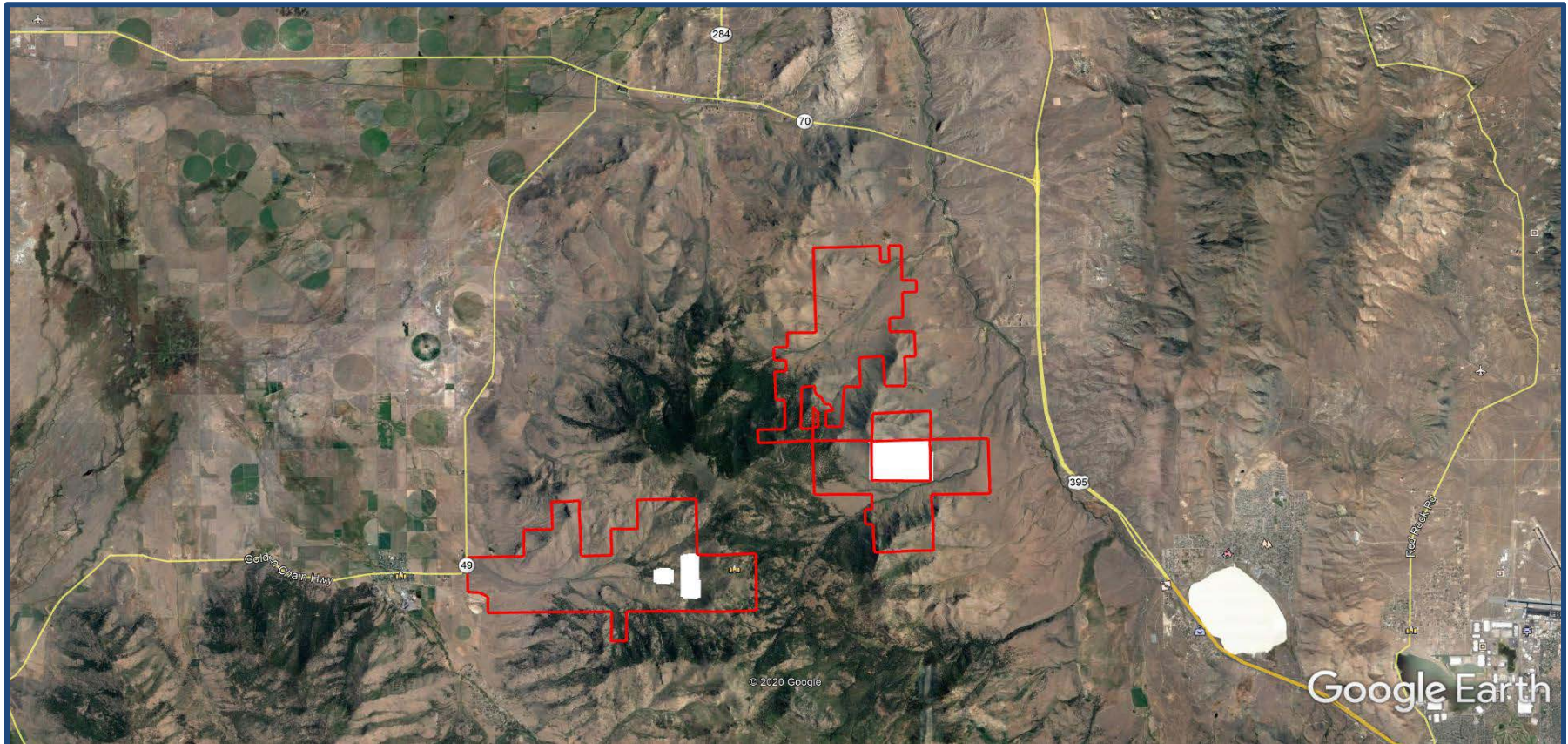
Source: Site-to-Do-Business (STDB Online)

Conclusions

Sierra County and Lassen County are well up into the Sierra Nevada and consist mostly of rural/remote acreage and small communities. With a decreasing population, aging work force and limited local training options the pool of workers in this area is quite small and talent attraction is difficult due to lack of housing availability. Most of the housing is owner occupied with limited rental options. There is a significant amount of land that is owned by the Federal or State Government. Although Loyalton is the biggest community within Sierra County it has been called “the loneliest town in America” because visitors are few and far between. Despite the scenic views and pleasant small-town atmosphere, there is not much to attract tourism keeping the town much as it was 150 years ago: small, quiet, and full of wildlife and natural beauty.

In the near term, the outlook for 2020 is clouded by the unknowns associated with the new coronavirus. There are increasing impacts on many businesses as people curb their activity, and certain industries are already being severely affected. The outlook is for a market softening, but as is the case for other disasters, any extended marketing times or negative impacts on values will subsequently tend to wane and return to some degree of normalcy. The timeline remains unknown.

GOOGLE AERIAL



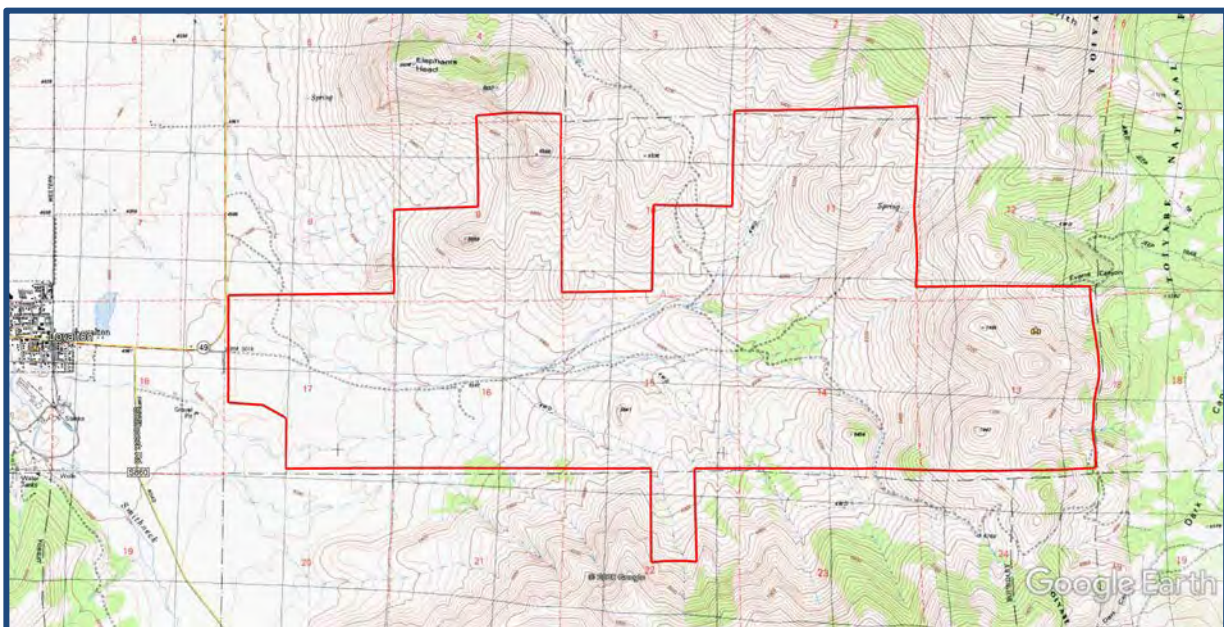
The subject acreage is outlined in red. The white shaded areas within the boundaries of the subject acreage are Federal or State owned land. The town of Loyaltan is to the southwest, Cold Springs and other suburbs of Reno are to the east/southeast.

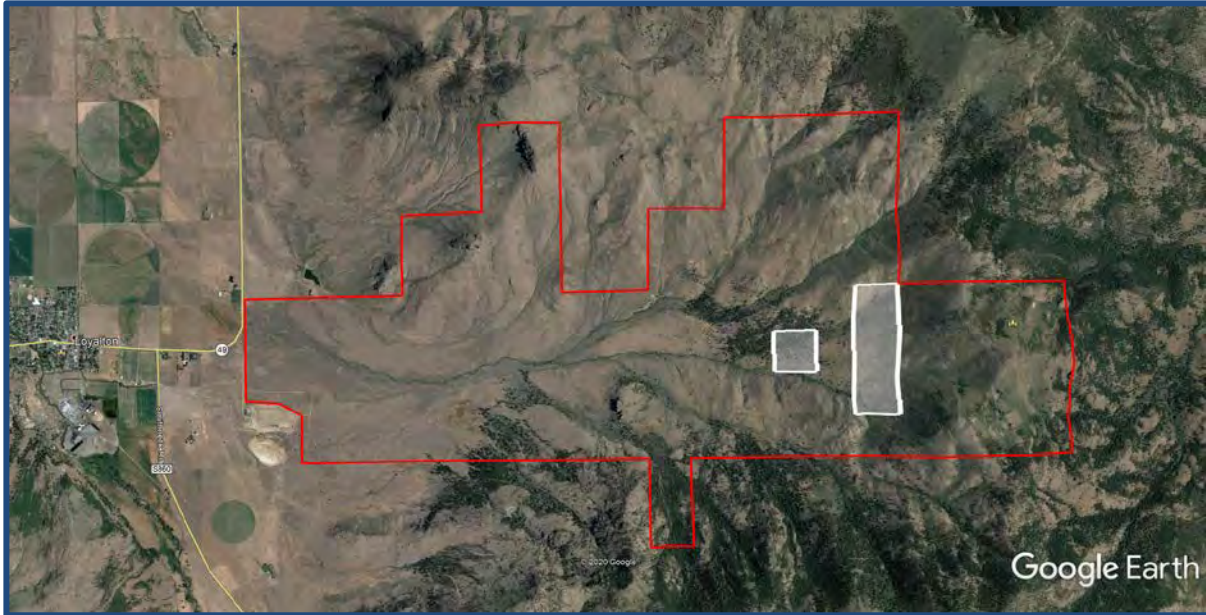
Site Description

The subject property is located in northeastern California, about 100 air miles northeast of Sacramento, and about 20 air miles northwest of Reno. The property is just east of Loyalton, and northwest of Cold Springs, Nevada. The characteristics of the site are summarized as follows:

Site Characteristics

Summary:	The property consists of three components of acreage that is remote and in a generally native state. The acreage has historically been used as seasonal grazeland.
Location:	The acreage is within Sierra County and Lassen County, CA, just east of Loyalton, CA and just west of Cold Springs, Nevada.
Gross Land Area:	10,273.95 Acres
Lassen County Acres:	3,902.49 Acres
Sierra County Acres:	6,371.46 Acres
Shape:	Irregular
Topography:	Topography ranges from lower mildly sloping flatlands to steep sloping areas and peaks. Following is a brief description of each of the three main components of the property.
Western Acreage:	The western acreage, just east of Loyalton, is relatively flat in the western portion at about 5,000 feet elevation, extending easterly to peaks that are almost 7,500 feet high. There is somewhat of a valley that extends upward in elevation from the west to the east, sloping up also toward the north and south. There are several "jeep" trails identified on the topographic map, and one named "road" (Staverville Road) that is basically a trail.



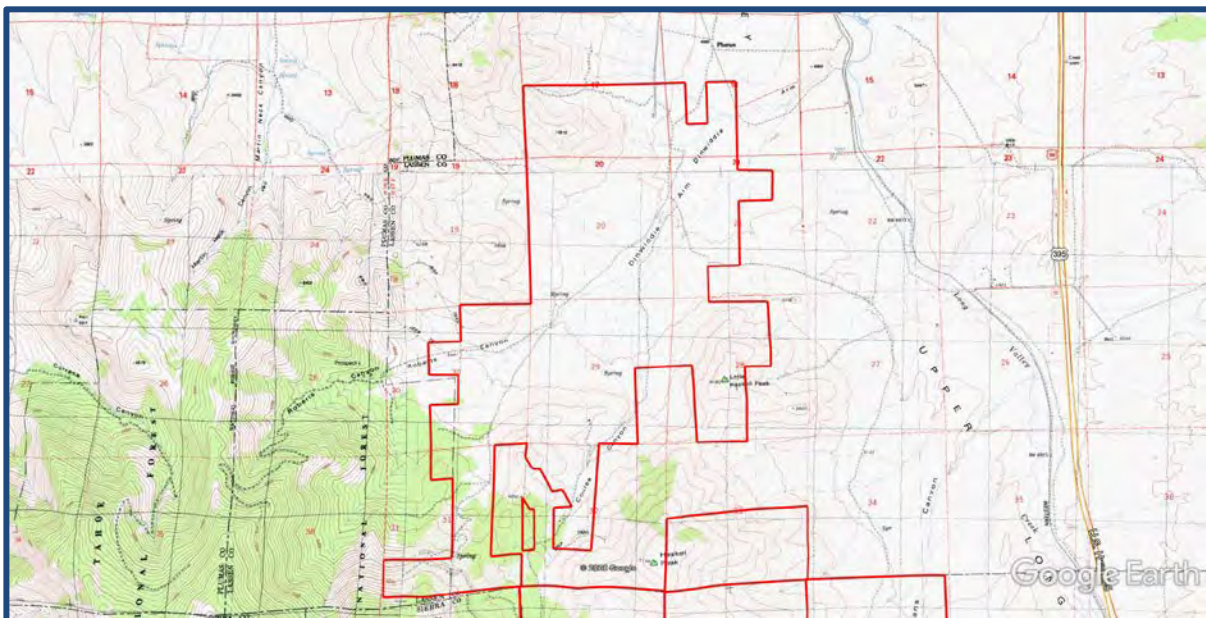
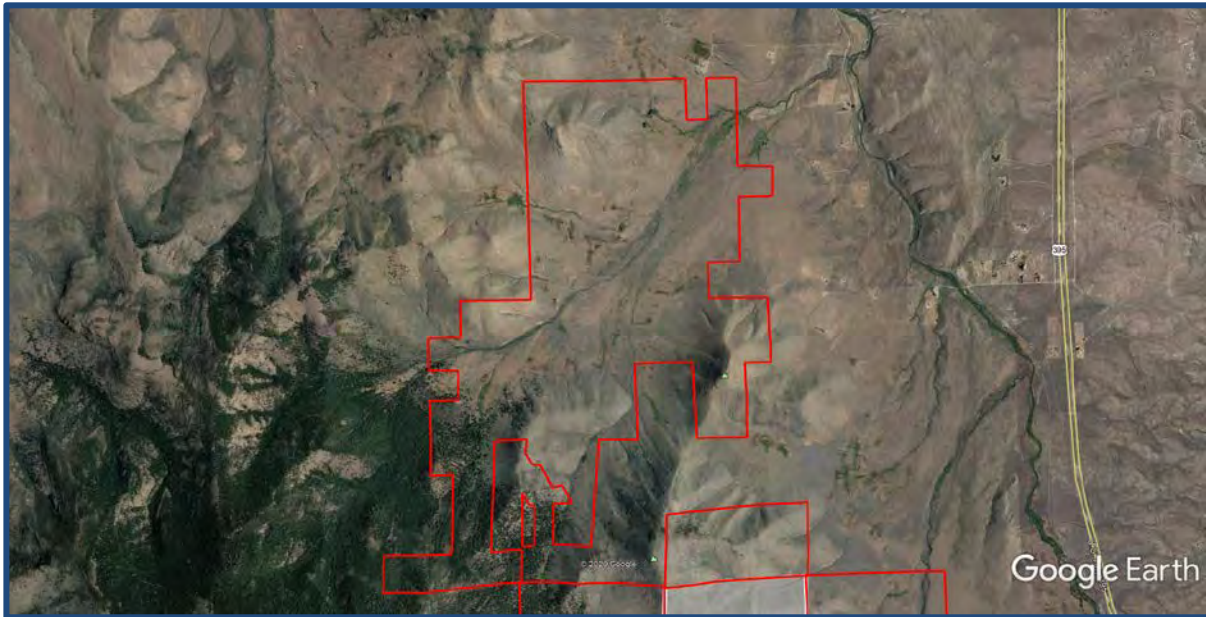


There are several high peaks in this portion of the property. Notably, there are two “islands” of public land reflected in the white shaded areas in the aerial image above.

Northeastern Acreage:

The northeastern acreage is southwest of the intersection of Highway 70 and the 395 Freeway, just east of Reno Junction. This is considered the main ranch area with a farmstead in the northern portion.

This acreage has a significant amount of nearly level or gently sloping acreage, sloping up to the south and southeast, as well as to the northwest. The lower area in the northeast part of this acreage is at about 5,000 feet elevation, extending southerly to just over 6,000 feet, with higher areas up to 7,000 feet to the southwest.

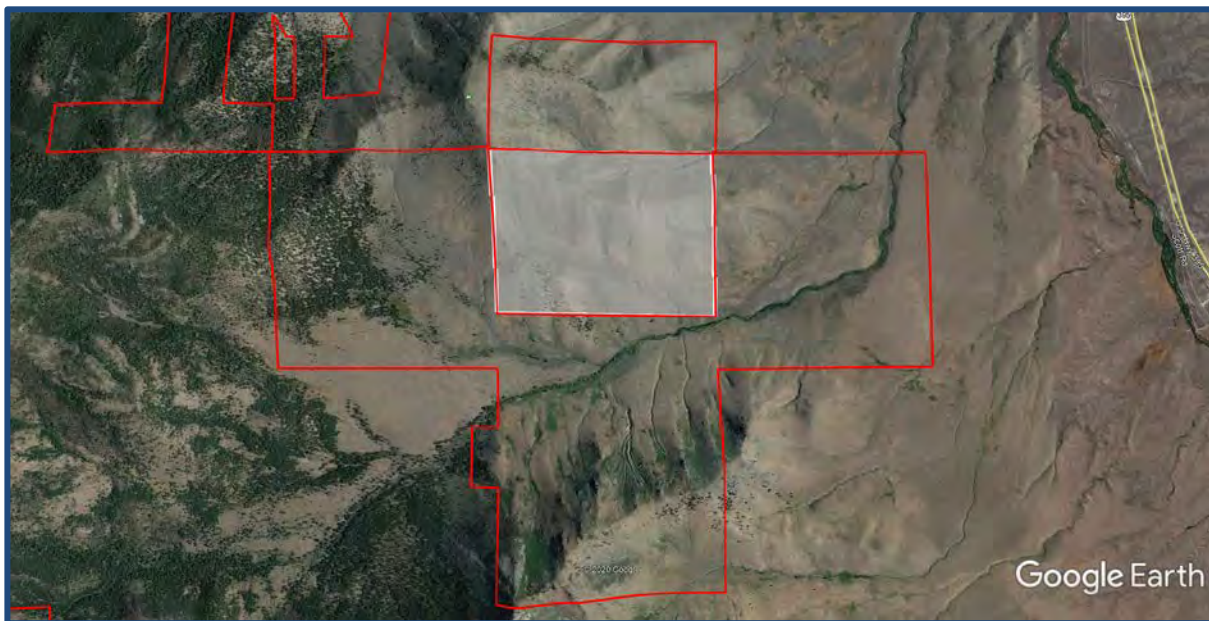
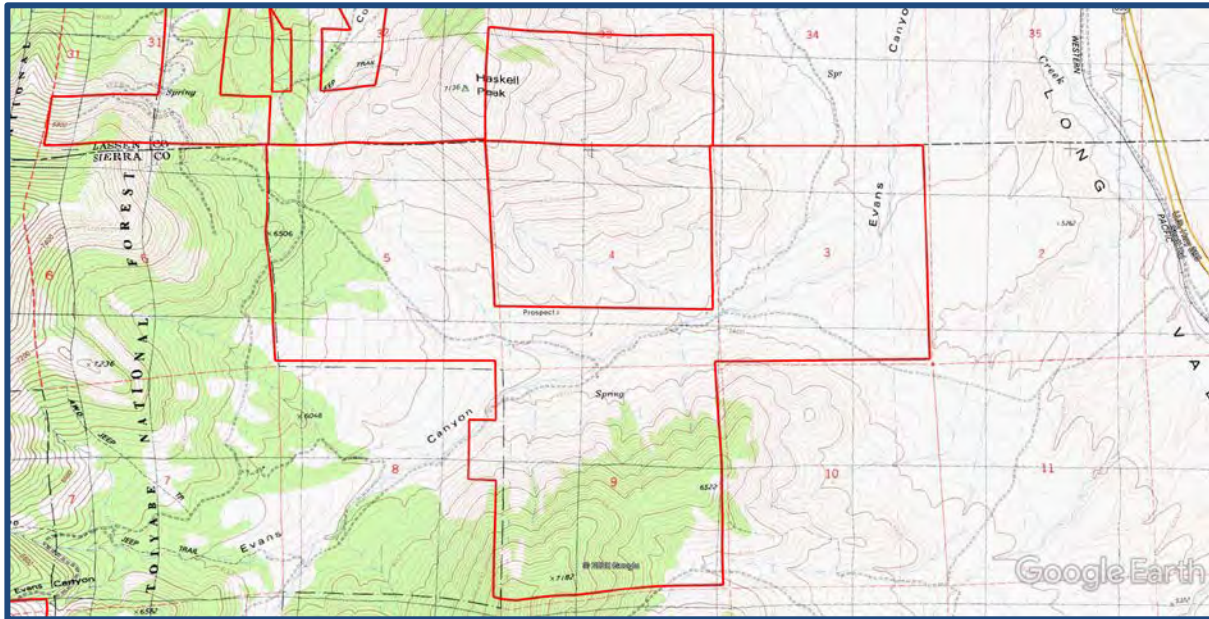


There is publicly owned land adjacent to the south. One small portion of the subject is an island within this public land.

Southeastern Acreage:

The southeastern component of the property is similar to the others in that it has valley areas and high peaks, but it differs from the other two property components in that it has inferior access.

As reflected in the aerial photo below, there is a portion of public land (white shaded) that extends into the subject acreage, with additional subject acreage north of that. Aside from "touching" the southern edge of the northeastern part of the property, it is not technically adjoining.



Note in the topographic map above where the Lassen/Sierra County line crosses the property.

Utilities:

Electric power is believed to exist at the western edge near Loyaltan, and in the northeastern part of the property near the existing farmstead. The main ranch site has a domestic well.

Access:

The acreage is considered remote. The property is accessible from the southwest corner where Garbage Pit Road connects with Staverville Road. Staverville Road runs West-East through the Southern portion of the Sierra County parcels.

There is also access from the northeast, with ranch roads extending southwesterly. There is also a ranch road which appears to extend easterly from the northeast acreage to Bringman Road and the 395 freeway.

The southeast part of the property has inferior access when compared to the other two property components. There is a trail/road which extends from the 395 freeway toward the southeastern part of this southeastern acreage, but it would require an offroad vehicle.

Significantly, legal access is assumed to exist for each of the three main property components. It is reported that the acreage has been used for grazing of livestock, and the acreage is thus assumed to be suitable for this use.

Other Site Conditions

Soil Type:	This is remote hilly acreage at 5,000 to 7,500 feet elevation. It is rocky and typically consists of soils that would not be highly rated for productive agriculture, other than seasonal grazeland.
Environmental Issues:	An environmental site assessment report was not furnished for our review. The appraisers are not considered experts in hazardous materials. The client is advised to obtain a report from an environmental expert if further investigation is desired. It is assumed that the property is free of any environmental concerns.
Easements/Encroachments:	A Preliminary Title Report was not provided for review. We note that appraisers are not experts with regard to matters of title. We assume that there are no easements or encumbrances or other matters of record that would materially affect the value of the subject property either positively or negatively.
Earthquake Zone:	The property is not located in an Alquist-Priolo Special Studies Zone for earthquake hazard. Earthquake hazard is typical for the overall area.
Wetlands Classification:	Not applicable

Zoning Designation

Zoning Jurisdiction:	Sierra County and Lassen County
Zoning Classification:	Sierra: GF (General Forest) and A1 (Agriculture 1) Lassen: OS (Open Space)
General Plan Designation:	Sierra: Agricultural, Forest Lassen: Extensive Agriculture
Permitted Uses:	Permitted uses are primarily agricultural in nature. Limited residential use is also allowed. The forest designation provides for the harvest of timber where there is adequate supply/access.

Analysis/Comments on Site

The subject consists of acreage in the northeast part of the state of California, just northwest of Reno, Nevada. It includes $\pm 6,371.46$ acres in Sierra County, and $\pm 3,902.49$ acres in Lassen County. There are three separate ranch components, including the $\pm 3,582.49$ acre main headquarters ranch accessible from the north, $\pm 4,272.46$ acres in the southwest portion, just east of Loyalton, and a third component east of Loyalton and south of the main headquarters ranch. This third component in the southeast is more remote with inferior access. It amounts to $\pm 2,419$ acres. The main headquarters ranch includes a farmstead, but the property is otherwise unimproved but for fencing. There are no known developed irrigation systems, the acreage is served by natural ponds and creeks, etc.

The property has historically been used for seasonal grazeland. With elevations of 5,000 to over 7,000 feet in the Sierra Nevada, snow limits grazing during winter and into the early spring.

Assessment and Tax Data

Assessment Methodology

The State of California has provided for a unified system to assess real estate for property taxes. Assessment Districts are established on a county basis to assess real estate within the county. The appraised property falls under the taxing jurisdiction of Lassen and Sierra Counties and is subject to both general taxes and direct assessments.

Assessed Values and Property Taxes

The subject's assessed values, applicable tax rates and total taxes including direct assessments are shown in the following table. The first 12 parcels are in Lassen County, the others are in Sierra County.

There are no tax bills for two of the subject parcels.

Tax Schedule

Tax Year	Parcel Number	Assessed Value - Land	Assessed Value - Imp.	Assessed Value	Tax Rate	Special Assessments	Tax Expense
1	2019 147-040-02-11	\$16,407		\$16,407	1.000000%		\$164
2	2019 147-050-02-11	\$22,975	\$38,607	\$61,582	1.000000%		\$616
3	2019 147-050-03-11	No Data		No Tax Bill			----
4	2019 147-050-19-11	\$13,126		\$13,126	1.000000%		\$131
5	2019 147-050-20-11	\$26,258		\$26,258	1.000000%	\$275	\$538
6	2019 147-070-04-11	\$15,989		\$15,989	1.000000%		\$160
7	2019 147-070-05-11	\$13,126		\$13,126	1.000000%		\$131
8	2019 147-080-01-11	\$22,524		\$22,524	1.000000%		\$225
9	2019 147-080-03-11	\$14,729		\$14,729	1.000000%		\$147
10	2019 147-080-11-11	\$34,812		\$34,812	1.000000%		\$348
11	2019 147-080-14-11	\$1,097		\$1,097	1.000000%		\$11
12	2019 147-080-15-11	\$8,283		\$8,283	1.000000%		\$83
13	2019 016-070-012	\$98,400		\$98,400	1.047000%	\$144	\$1,174
14	2019 016-080-007	\$27,579		\$27,579	1.047000%	\$48	\$337
15	2019 016-080-008	\$131,200		\$131,200	1.047000%	\$192	\$1,566
16	2019 016-090-011	\$131,200		\$131,200	1.047000%	\$192	\$1,566
17	2019 016-090-059	\$104,796		\$104,796	1.047000%	\$154	\$1,251
18	2019 016-100-001	\$131,200		\$131,200	1.047000%	\$192	\$1,566
19	2019 016-100-004	\$98,400		\$98,400	1.047000%	\$144	\$1,174
20	2019 016-100-005	\$103,421		\$103,421	1.047000%	\$51	\$1,134
21	2019 016-100-006	No Data		No Tax Bill			----
22	2019 021-010-003	\$131,200		\$131,200	1.047000%		\$1,374
23	2019 021-010-006	\$25,855		\$25,855	1.047000%		\$271
24	2019 021-010-012	\$65,600	\$1,243	\$66,843	1.047000%		\$700
25	2019 021-010-013	\$5,330		\$5,330	1.047000%		\$56
26	2019 021-020-001	\$113,980		\$113,980	1.047000%		\$1,193
Total		\$1,357,487	\$39,850	\$1,397,337		\$1,392	\$15,915

General Taxes

The amount of General Taxes due is quantified by multiplying the assessed value by the tax rate. In the State of California, real estate is assessed at 100% of market value as determined by the County Assessor's Office. The tax rate consists of a base rate of 1% plus any bonds or fees approved by the voters. The County Tax Rate for the Sierra County acreage is 1.047%. The rate in Lassen County is 1.0%

Direct Assessments

Direct assessments are tax levies that are not dependent upon the assessed value of the property. They are levied regardless of assessment. According to the Lassen and Sierra County Tax Collector's Offices, the direct assessments for the subject are \$1,392.

Current and Future Taxes

Proposition 13 was passed by voters in June 1978 and substantially changed the taxation of real estate in California. This constitutional amendment rolled back the base year for assessment purposes to the tax year 1975-1976. Annual increases in assessed value are limited to 2 percent per year, regardless of the rate of inflation. Real estate is subject to re-appraisal to current market value upon a change in ownership or new construction. Property assessments in years subsequent to a change of ownership or new construction are referred to as factored base values.

Proposition 8, which passed in November 1978, states that the Assessor shall lower tax roll values to fair market value whenever the assessed value exceeds fair market value. It mandates that the lower of fair market value or factored base value be placed on the assessment roll. When fair market values are enrolled, the Assessor reassesses the property annually until such time as fair market value again equals or exceeds the factored base year value. For properties that have been owned for several years, the assessed value may not reflect the current fair market value. Furthermore, due to adjustments following a Prop 8 reduction, increases in assessed value can increase substantially more than 2% per year until the assessment again matches the factored base year value.

Conclusions

According to the Lassen and Sierra County Tax Assessors Offices the subject's property taxes are current as of the date of value.

Highest and Best Use

The Highest and Best Use of a property is the use that is legally permissible, physically possible, and financially feasible which results in the highest value. An opinion of the highest and best use results from consideration of the criteria noted above under the market conditions or likely conditions as of the effective date of value. Determination of highest and best use results from the judgment and analytical skills of the appraiser. It represents an opinion, not a fact. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

Analysis of Highest and Best Use As Though Vacant

The primary determinants of the highest and best use of the property As Though Vacant are the issues of (1) Legal permissibility, (2) Physical possibility, (3) Financial feasibility, and (4) Maximum productivity.

Legally Permissible

The subject site is zoned General Forest, Open Space and Agriculture. The zoning controls the general nature of permissible uses but is appropriate for the location and physical elements of the subject, providing for a consistency of use with the general neighborhood. The location of the subject property is appropriate for the uses allowed, as noted previously, and a change in zoning is unlikely. There are no known easements, encroachments, covenants, or other use restrictions that would unduly limit or impede development.

Physically Possible

The physical attributes allow for a number of potential uses. Elements such as size, shape, availability of utilities, known hazards (flood, environmental, etc.), and other potential influences are described in the Site Description and have been considered. There are no items of a physical nature which would adversely impact development with the legal permitted uses. The property has historically been used for livestock grazing and recreational uses.

Financially Feasible

The probable use of the site for agricultural and recreational uses conforms to the pattern of land use in the market area. An agricultural ranch and/or recreational use is feasible and most likely. A residential use as an accessory to the agriculture use is also quite common.

Maximally Productive

Among the financially feasible uses, the use that results in the highest value (the maximally productive use) is the highest and best use. Considering these factors, the maximally productive use as though vacant is for grazing land.

Conclusion of Highest and Best Use As Though Vacant

The conclusion of the highest and best use as though vacant is for continuation of the current agricultural and recreational use.

Analysis of Highest and Best Use as Improved

In determining the highest and best use of the property as improved, the focus is on three possibilities for the property: (1) continuation of the existing use, (2) modification of the existing use, or (3) demolition and redevelopment of the land.

The only improvements to the property consist of fencing and a farmstead. Retaining the improvements as they exist meets the tests for physical possibility, legal permissibility, and financial feasibility. The improvements are reportedly in serviceable condition and any alternative use of the existing improvements is unlikely to be economically feasible.

Conclusion of Highest and Best Use As Improved

The highest and best use of the subject property, as improved, is continuation of the existing agricultural and recreational use.

Most Probable Buyer

As of the date of value, the most probable buyer of the subject is an owner/user who intends to graze the acreage or use for recreational purposes.

Sales Comparison Approach

Methodology

The Sales Comparison Approach develops an indication of market value by analyzing closed sales, listings, or pending sales of properties similar to the subject, focusing on the difference between the subject and the comparables using all appropriate elements of comparison. This approach is based on principles of supply and demand, balance, externalities, and substitution, or the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership.

The process of developing the Sales Comparison Approach consists of the following: (1) researching and verifying transactional data, (2) selecting relevant units of comparison, (3) analyzing and adjusting the comparable sales for differences in various elements of comparison, and (4) reconciling the adjusted sales into a value indication for the subject.

Unit of Comparison

The primary unit of comparison selected depends on the appraisal problem and nature of the property. The primary unit of comparison in the market for properties such as the subject is the price per acre.

Elements of Comparison

Elements of comparison are the characteristics or attributes of properties and transactions that cause the prices of real estate to vary. The primary elements of comparison considered in sales comparison analysis are as follows: (1) property rights conveyed, (2) financing terms, (3) conditions of sale, (4) expenditures made immediately after purchase, (5) market conditions, (6) location, and (7) physical characteristics.

Comparable Sales Data

We conducted a search for market data in a variety of resources and public records, as well as interviews with knowledgeable real estate professionals in the area.

We considered many transactions but focused our analysis on the six most relevant sales of agricultural properties in the area. The data presented herein were judged to be the most comparable to develop an indication of market value for the subject property.

While some of the sales are not as recent as would be ideal, the market for this type of property has been generally trending very moderately upward.

There is a general trend evident where the smaller magnitude sales reflect higher prices per acre, and the opposite is generally true. Other factors can offset this size/price relationship.

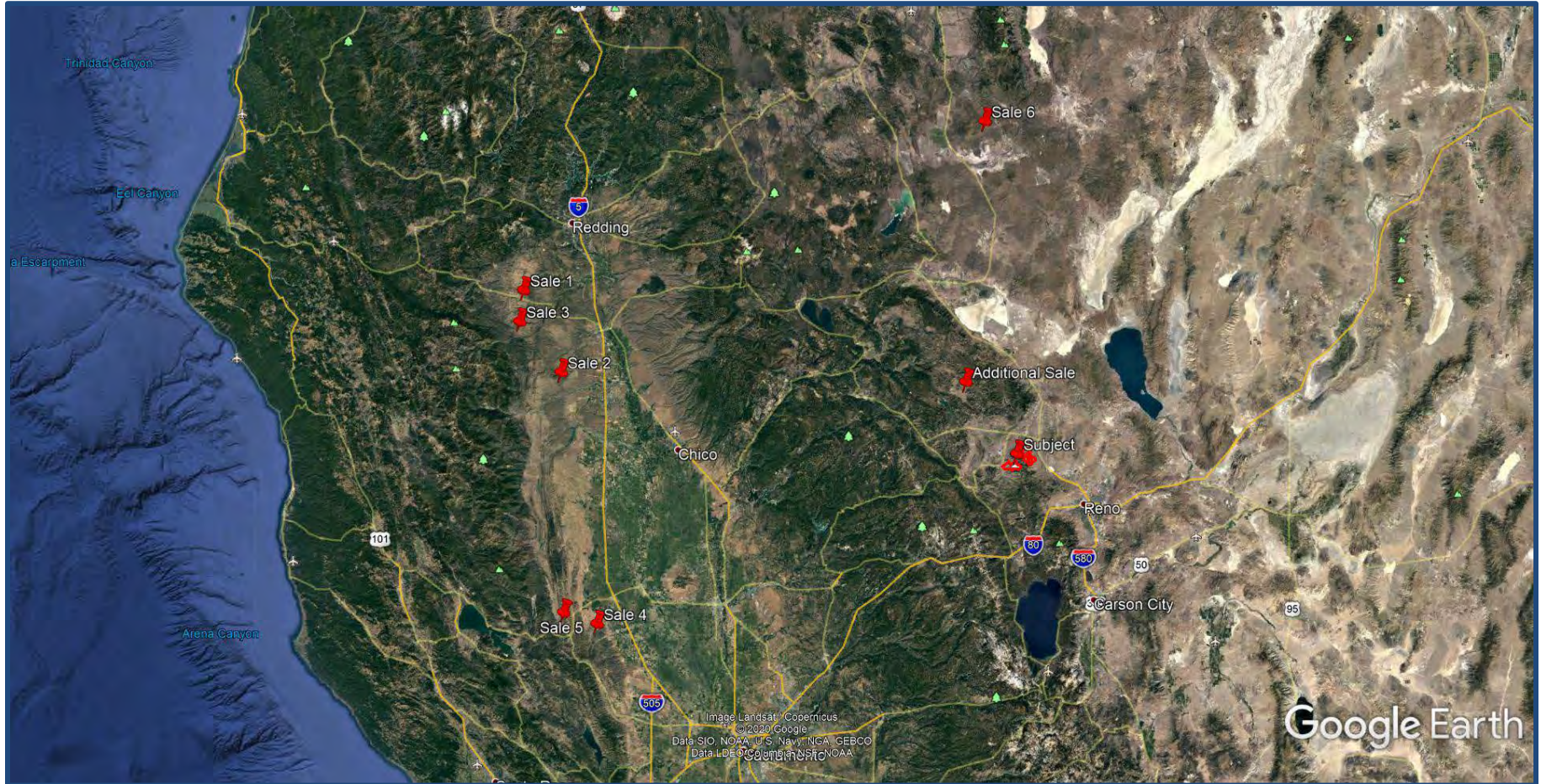
The table on the following page summarizes the sales, followed by a map displaying the location of each comparable in relation to the subject, and a land sale ranking grid which illustrates our analyses.

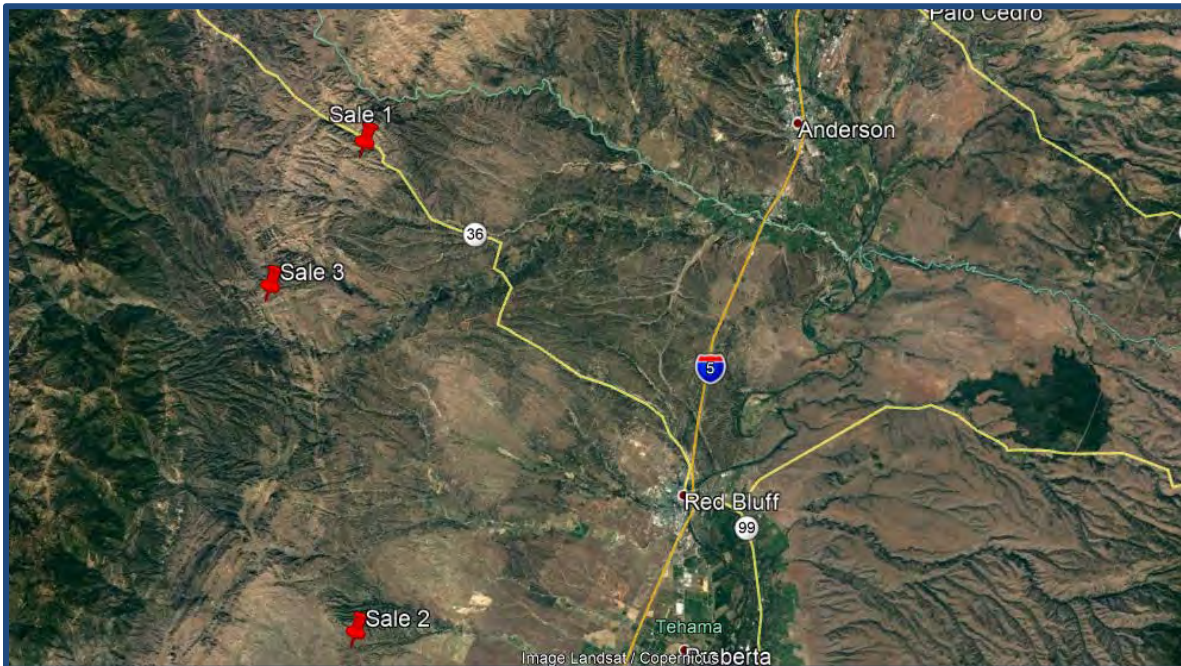
COMPARABLE SALES DATA

Sale No.	Location	Grantor	Sale Date	Size (acres)
		Grantee Reference No.		Struct Impr Price/Acre
1	24 Miles NW of Red Bluff Red Bluff, Tehama County	Various (Diamond)	6/8/2018	6,579.28
		Lazy Spade	\$6,977,000	None
		Doc#2018-6384		\$1,060
2	14 Miles NW of Corning Flournoy, Tehama County	Lammers Properties, LLC	2/15/2018	5,379.85
		Lowe Trust	\$5,900,000	Farmstead
		Doc#2018-001529		\$1,097
3	Intersection of Pettyjohn and Weemasoul Roads Red Bluff, Tehama County	Cliff Cattle Co.	10/26/2017	16,127.80
		Peyton Pacific Properties, LLC	\$9,000,000	Farmstead
		Doc#2017-13622	\$390,000	\$582
			\$9,390,000	
4	17 Miles W of Williams on Spring Valley Rd & 7 Miles W of Arbuckle by easement off the end of Hahn Road Arbuckle, Colusa County	Brackett Ranches	4/17/2017	8,392.80
		M & R LaGrande	\$6,500,000	Yes
		Doc#2017-1352		\$774
5	18 Miles SW of Williams off of Bear Valley Rd Williams, Colusa County	Brackett Ranches	3/27/2017	12,896.46
		Nobmann, LLC	\$10,000,000	Farmstead
		Doc# 2017-1109		\$775
6	12 miles NE of Ravendale Ravendale, Lassen County	Roberts Trust	7/22/2016	23,500
		Dodge Ranch, LLC	\$9,200,000	Farmstead
		Doc# 2016-3293	(\$1,800,000)	\$315
			\$7,400,000	

Sale 3 is adjusted upward for a cash equivalency adjustment. Sale 6 is adjusted downward to exclude the estimated contributory value of improvements. Some of the other sales also had improvements but they were not significant enough to warrant formal adjustment.

COMPARABLE SALES MAP



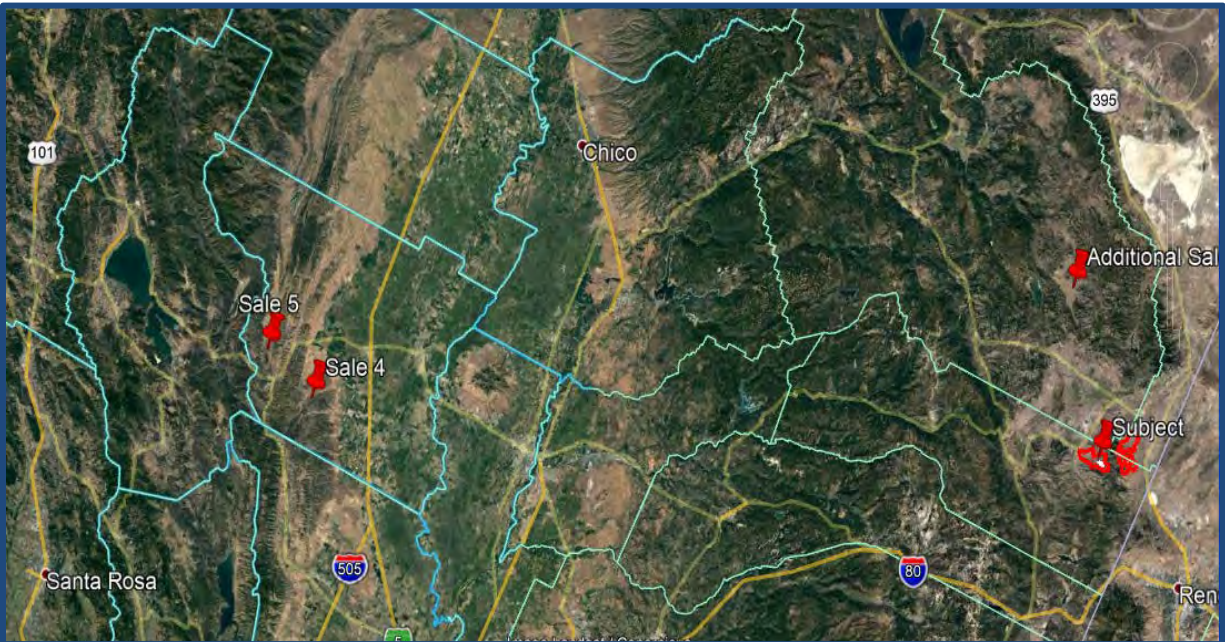
SALES 1, 2 AND 3

Sale 1 (\$1,060 per acre) This is the sale of approximately 6,578.28 acres of grazeland that abuts Highway 36 on the north end. It has rolling hills in the interior portion and has been used for yearlings for a number of years. The property was purchased with four separate purchase agreements. The property receives surface water but does not have an irrigation system. There is no conservation easement on this property.

Sale 2 (\$1,097 per acre) This is the sale of approximately 5,379.85 acres of grazing land that also consists of improvements. This property has perimeter fencing, single wide mobile home, a hay/pole barn with attached tack room and horse stalls plus a steel corral area with lead up, squeeze, and loading chute. The property has adequate stock water from a variety of reservoirs and a hill water system that is comprised of a well with tank, troughs, and underground pipelines. The topography ranges in elevation from 630'-1050'. The contributory value of the improvements is nominal.

Sale 3 (\$582 per acre) This sale consists of approximately 16,127.82 acres of dry/ native foothill rangeland pasture located 16 miles west of Red Bluff and Interstate 5, south of Highway 36 in Tehama County. The sale is improved with three main farmstead areas that were reportedly modest and offered minimal to no contributory value. The property is perimeter fenced with some cross fencing and is reported to accommodate 700 pair on a seasonal basis. The topography varies from generally flat terrain to steeply rolling/ sloping land and the elevations range from 800'-2,066'. The native cover ranges from open/sparsely oak studded areas to dense brush, thick tree cover and significant rock outcroppings. The property does not receive water from an irrigation district, and there are no ag or deep wells on the property. There are several stock water ponds/reservoirs located throughout the property. Stock water is also derived from three solar powered domestic wells. The property sold for \$9,000,000, with favorable owner financing resulting in a cash equivalency adjustment of \$390,000 per the confirming source.

SALES 4 AND 5



Sale 4 (\$774 per acre) This is the sale of approximately 8,392.80 acres of grazing land that is located west of Williams and west of Arbuckle. The property is improved with a cabin and barn that are of negligible value. The topography ranges from flat, to moderately sloping and undulating, to steep. The carrying capacity for this ranch is reportedly to be around 700 pair per season. PG&E is available in some areas, and stock water is provided by seasonal creeks, ponds, and springs.

Sale 5 (\$775 per acre) Approximately 12,896.46 acres of winter livestock range, with flat and gently sloping, to moderately sloping and undulating, to steep variations in topography. Access to the property is via paved and gravel based public roads. There is no irrigation water available to the property, stock water is provided from creeks, ponds, and wells with troughs. Utilities are minimal with only telephone service available. Electric power is provided by private hydroelectric plant supplied by the creek and backup solar panels. The property is improved with a manufactured home, cabin, powerhouse, and stock barn. The contributory value of the improvements is approximately \$70,000 which is considered negligible at about \$5 per acre overall. Some of the property is within a designated flood zone. This ranch is encumbered by an American Land Conservancy Conservation Easement which is nominally restrictive to (livestock grazing, no subdivision, and limits on residential improvements). The conservation easement has only a minor negative value impact as it does not change the highest and best use of the land. This property is within the Williamson Act.

SALE 6

Sale 6 (\$315 per acre) This is the sale of Dodge Ranch near Ravendale. The ownership totaled 23,500 acres in 27 nearby but non-contiguous parcels that are connected by BLM acreage. The acreage is at 5,000 to 6,000 feet in elevation making it similar to the subject in this regard. The property is improved with three dwellings, one bunkhouse, a shop, haybarn, along with livestock corrals and working facilities. The improvements were reported at \$200,000. Farm equipment was included in the sale which was valued at \$1,600,000. The property had been used for hay production.

An **additional sale** was also considered, but it is quite stale, and confirmation was not complete. It sold in 2014 and consists of about 12,000 acres at about 4,000 to 5,000 feet elevation in the Dixie Valley area about 20 miles north of the subject, plus about 5,100 acres of winter range west of Red Bluff. The sale also included 103,000 acres of adjoining BLM/USFS acreage under lease. The acreage features multiple dwellings, some of which are significant, as well as numerous other smaller structures and improvements. Including the improvements, the gross price is reported at \$586 per acre, but due to the laws in existence at the time, the sale price is not reflected in the deed and cannot be confirmed. We have considered this as an additional sale due to its proximity to the subject and similarity in altitude.

Sales Comparison Analysis

When necessary, adjustments were made for differences in various elements of comparison, including property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions, location, and other physical characteristics. If the element in comparison is considered superior to that of the subject, we applied a negative adjustment. Conversely, a positive adjustment to the comparable was applied if inferior. A summary of the elements of comparison follows.

Transaction Adjustments

These items are applied prior to the application of market conditions and property adjustments. Transaction adjustments include: Real Property Rights Conveyed, Financing Terms, Conditions of Sale, and Expenditures made immediately after purchase.

Sale 3 involved favorable owner financing, and this has already been adjusted. Sale 5 sold with a conservation easement, but it does not change the highest and best use of the land and the impact on value is not profound. Nonetheless, Sale 5 involved inferior property rights, and it warrants upward adjustment for this factor. None of the other sales required adjustment for these transactional factors.

Market Conditions Adjustment

Market conditions change over time as a result of inflation, deflation, fluctuations in supply and demand and other factors. The sales are arranged in descending order by sale date. The comparables are considered to represent generally recent sale transactions, relatively near the date of value. Furthermore, the market for this type of property has been relatively level, with a slight upward trend. Overall, while no formal adjustment is applied, we have considered the improving general economic trends in our reconciliation.

Property Adjustments

Property adjustments are based on locational and physical characteristics and are applied after the application of transaction and market conditions adjustments. We have summarized our adjustment analyses below. The pertinent elements of comparison and adjustments, if warranted, are based on our market research, best judgment, and experience in the appraisal of similar properties.

We have considered location with regard to proximity to linkages and accessibility. We have also considered the differences in topography, water improvements and structures, and magnitude. Severe topography limits productivity. Water and structural improvements are a factor in value enhancement, and there is a recognized relationship between size and price. Larger magnitude sales will almost universally sell for less per unit of measure than smaller magnitude sales, although this factor can sometimes be offset to some extent by other elements of comparison.

The valuation analyses are summarized in the following ranking array. The sales are arranged in descending order by sale price per acre. In such an array, the indicated value for the subject is shown on the following page below those which require downward adjustment, and above those which require upward adjustment.

RANKING ARRAY

No.	Location	Sale Date	Size (Acres)	Price/Acre	Comment
2	Lowe Trust - Corning Tehama County	2/15/2018	5,379.85	\$1,097	Downward adjustment is required for the smaller magnitude and lower elevation, superior accessibility and year round utility.
1	Lazy Spade - Red Bluff Tehama County	6/8/2018	6,579.28	\$1,060	Downward adjustment is required for the smaller magnitude and lower elevation, superior accessibility and year round utility.
5	Nobmann, LLC - Williams Colusa County	3/27/2017	12,896.46	\$775	Downward adjustment is required for the lower elevation, superior accessibility and year round utility. These offset a slight upward adjustment for inferior property rights.
4	M & R LaGrande - Arbuckle, Colusa County	4/17/2017	8,392.80	\$774	Downward adjustment is required for the smaller magnitude and lower elevation, superior accessibility and year round utility.
3	Peyton Pacific - Red Bluff Tehama County	10/26/2017	16,127.80	\$582	Downward adjustment is required for the lower elevation, superior accessibility and year round utility. These offset a slight upward adjustment for larger magnitude.
Subject	Loyalton Ranch	5/20/2020	10,273.95	\$400	Three acreage components of 4,272, 3,582 and 2,419 acres with the larger portions having access from a public road, and the third being very remote and accessible only via eaeament.
6	Dodge Ranch	7/22/2016	23,500.00	\$315	Upward adjustment for greater magnitude, and a slight upward adjustment for improved market conditions.

Reconciliation and Conclusion

The sales reflect range of \$315 to \$1097 per acre. Sale 6 is the lowest indicator which is the largest in magnitude. A reasonable value for the subject would be higher than the indication from Sale 6. The highest indicators are Sales 2 and 1, both of which are much smaller in magnitude, and both have superior access and utility. The remaining sales reflect a range from \$582 per acre to \$775 per acre.

All of the sales are agricultural grazeland in nature and offer varying degrees of improvements. Sale 4 (\$774/acre) is closest in size compared to the subject but has superior access. A reasonable value for the subject would be less than \$774 per acre. Sale 3 (\$582/acre) has lower elevation, superior accessibility, and is larger in magnitude. A reasonable value for the subject would lower than \$582/acre. A value of \$400 per acre is concluded.

Sales Comparison Approach Conclusion

Overall, we have concluded that the value of the subject property, as of the effective date of value of May 20, 2020 can be calculated on the basis of \$400 per acre. This figure results in a value indication of \$4,110,000.

Value Indication via Sales Comparison Approach	
Total Acres	10,273.95
Value per Acre	\$400
Value Indication via Sales Comparison Approach	\$4,109,580
	<i>rounded</i>
	\$4,110,000

Reconciliation

Only one approach to value was considered applicable, therefore, no formal reconciliation is required.

The indicated value from the applicable approach and our concluded market value for the subject property are summarized in the following table.

Value Indications

Approach to Value	As Is
Cost	Not Applicable
Sales Comparison	\$4,110,000
Income Capitalization	Not Applicable

Value Conclusion

Component	As Is
Value Type	Market Value
Property Rights Appraised	Fee Simple
Effective Date of Value	May 20, 2020
Value Conclusion	\$4,110,000
	<i>\$400.04 per acre</i>

The acceptance of this appraisal assignment and the completion of the appraisal report submitted herewith are subject to the General Assumptions and Limiting Conditions contained in the report. Our findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions which might have affected the assignment results:

Extraordinary Assumptions:

- In terms of physical characteristics of the property, we relied on information provided by our client, along with public record information and technology platforms including google earth. It is an extraordinary assumption of the appraisal that the information contained herein is accurate
- Legal access is assumed to exist for each of the three main property components. It is reported that the acreage has been used for grazing of livestock, and the acreage is thus assumed to be suitable for this use.

Hypothetical Conditions:

- None

Exposure Time and Marketing Period

Based on statistical information about days on market, escrow length, and marketing times gathered through national investor surveys, sales verification, and interviews of market participants, similar marketing and exposure time estimates of four to six months are considered reasonable and appropriate for the subject property.

General Assumptions and Limiting Conditions

This appraisal is subject to the following general assumptions and limiting conditions:

1. The legal description – if furnished to us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Northern California will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Northern California is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions. Appraiser is not responsible for determining whether the date of value requested by Client is appropriate for Client's intended use.
10. The sketches, maps, plats, and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.
11. The information, estimates and opinions, which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.

12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise that would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Northern California and Client. The Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability, or accountability to any third party.
15. Distribution of this report is at the sole discretion of the client, but third parties not listed as an intended user on the face of the appraisal or the engagement letter may not rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. We will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Northern California.
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed, nor have we contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
19. The flood maps are not site specific. We are not qualified to confirm the location of the subject property in relation to flood hazard areas based on the FEMA Flood Insurance Rate Maps or other surveying techniques. It is recommended that the client obtain a confirmation of the subject property's flood zone classification from a licensed surveyor.
20. If the appraisal is for mortgage loan purposes 1) we assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with our "Income and Expense Projection" are anticipated.
21. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.

22. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated. Should the client have concerns in these areas, it is the client's responsibility to order the appropriate inspections. The appraiser does not have the skill or expertise to make such inspections and assumes no responsibility for these items.
23. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
24. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
25. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire more precise measurement, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer) as an alternative source. If this alternative measurement source reflects or reveals substantial differences with the measurements used within the report, upon request of the client, the appraiser will submit a revised report for an additional fee.
26. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, upon request of the client, the appraiser will submit a revised report for an additional fee.
27. If only preliminary plans and specifications were available for use in the preparation of this appraisal, and a review of the final plans and specifications reveals substantial differences upon request of the client the appraiser will submit a revised report for an additional fee.

28. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment, or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
29. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
30. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
31. No changes in any federal, state, or local laws, regulations, or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and non-insurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.

35. You and Valbridge Property Advisors | Northern California both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Northern California and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Valbridge Property Advisors | Northern California or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by such claimant shall be the amount actually received by Valbridge Property Advisors | Northern California for this assignment, and under no circumstances shall any claim for consequential damages be made.
36. Valbridge Property Advisors | Northern California shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Northern California. "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Northern California and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | Northern California harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | Northern California in such action, regardless of its outcome.
37. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Valbridge Property Advisors | Hulberg & Associates, Inc. Neither Valbridge Property Advisors, Inc., nor any of its affiliates has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.
38. If any claim is filed against any of Valbridge Property Advisors, Inc., a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages, and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.
41. The global outbreak of a "novel coronavirus" (known as COVID-19) was officially declared a pandemic by the World Health Organization (WHO). It is currently unknown what direct, or indirect, effect, if any, this event may have on the national economy, the local economy, or the market in which the subject property is located. The reader is cautioned and reminded that the conclusions presented in this appraisal report apply only as of the effective date(s) indicated. The appraiser makes no representation as to the effect on the subject property of this event, or any event, subsequent to the effective date of the appraisal.

Certification – John A. Hillas, MAI, SRA

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The undersigned has not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. John A. Hillas has personally inspected the subject property.
10. No one provided significant real property appraisal assistance to the person signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, the undersigned has completed the continuing education program for Designated Members of the Appraisal Institute.



John A. Hillas, MAI, SRA
Managing Director
California Certified License #AG002432

Addenda

Glossary

Qualifications

- John A. Hillas, MAI, SRA - Managing Director

Information on Valbridge Property Advisors

Office Locations

Glossary

Definitions are taken from The Dictionary of Real Estate Appraisal, 6th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP) and Building Owners and Managers Association International (BOMA).

Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance, building reserves, and management, often a long-term lease to a credit tenant. (Dictionary)

Amortization

The process of retiring a debt or recovering a capital investment, typically through scheduled, systematic repayment of the principal; a program of periodic contributions to a sinking fund or debt retirement fund. (Dictionary)

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date. (Dictionary)

Base Rent

The minimum rent stipulated in a lease. (Dictionary)

Base Year

The year on which escalation clauses in a lease are based. (Dictionary)

Building Common Area

In office buildings, the areas of the building that provide services to building tenants, but which are not included in the office area or store area of any specific tenant. These areas may include, but shall not be limited to, main and auxiliary lobbies, atrium spaces at the level of the finished floor, concierge areas or security desks, conference rooms, lounges or vending areas, food service facilities, health or fitness centers, daycare facilities, locker or shower facilities, mail rooms, fire control rooms, fully enclosed courtyards outside the exterior walls, and building core and service areas such as fully enclosed mechanical or equipment rooms. Specifically excluded from building common area are floor common areas, parking space, portions of loading docks outside the building line, and major vertical penetrations. (BOMA)

Building Rentable Area

The sum of all floor rentable areas. Floor rentable area is the result of subtracting from the gross measured area of a floor the major vertical penetrations on that same floor. It is generally fixed for the life of the building and is rarely affected by changes in corridor size or configuration. (BOMA)

Bulk Value

The value of multiple units, subdivided plots, or properties in a portfolio as though sold together in a single transaction.

Certificate of Occupancy (COO)

A formal written acknowledgment by an appropriate unit of local government that a new construction or renovation project is at the stage where it meets applicable health and safety codes and is ready for commercial or residential occupancy. (Dictionary)

Common Area Maintenance (CAM)

The expense of operating and maintaining common areas; may or may not include management charges and usually does not include capital expenditures on tenant improvements or other improvements to the property. (Dictionary)

The amount of money charged to tenants for their shares of maintaining a [shopping] center's common area. The charge that a tenant pays for shared services and facilities such as electricity, security, and maintenance of parking lots. Items charged to common area maintenance may include cleaning services, parking lot sweeping and maintenance, snow removal, security, and upkeep. (ICSC – International Council of Shopping Centers, 4th Ed.)

Condominium

A multiunit structure, or a unit within such a structure, with a condominium form of ownership. (Dictionary)

Conservation Easement

An interest in real estate restricting future land use to preservation, conservation, wildlife habitat, or some combination of those uses. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature as well as some types of conservation-oriented development to continue, subject to the easement. (Dictionary)

Contributory Value

A type of value that reflects the amount a property or component of a property contributes to the value of another asset or to the property as a whole.

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. Also called deprival value in some countries. (Dictionary)

Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service (DCR = NOI/Im), which measures the relative ability of a property to meet its debt service out of net operating income; also called *debt service coverage ratio (DSCR)*. A larger DCR typically indicates a greater ability for a property to withstand a reduction of income, providing an improved safety margin for a lender. (Dictionary)

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Depreciation

In appraisal, a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.

In accounting, an allocation of the original cost of an asset, amortizing the cost over the asset's life; calculated using a variety of standard techniques. (Dictionary)

Disposition Value

The most probable price that a specified interest in property should bring under the following conditions:

Consummation of a sale within a specified time, which is shorter than the typical exposure time for such a property in that market.

The property is subjected to market conditions prevailing as of the date of valuation.

Both the buyer and seller are acting prudently and knowledgeably.

The seller is under compulsion to sell.

The buyer is typically motivated.

Both parties are acting in what they consider to be their best interests.

An adequate marketing effort will be made during the exposure time.

Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto; and

The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

EIFS

Exterior Insulation Finishing System. This is a type of exterior wall cladding system. Sometimes referred to as dry-vit.

Effective Date

The date on which the appraisal or review opinion applies. (SVP)

In a lease document, the date upon which the lease goes into effect. (Dictionary)

Effective Gross Income (EGI)

The anticipated income from all operations of the real estate after an allowance is made for vacancy and collection losses and an addition is made for any other income. (Dictionary)

Effective Rent

Total base rent, or minimum rent stipulated in a lease, over the specified lease term minus rent concessions; the rent that is effectively paid by a tenant net of financial concessions provided by a landlord. (TIs). (Dictionary)

EPDM

Ethylene Propylene Diene Monomer Rubber. A type of synthetic rubber typically used for roof coverings. (Dictionary)

Escalation Clause

A clause in an agreement that provides for the adjustment of a price or rent based on some event or index. e.g., a provision to increase rent if operating expenses increase; also called *escalator clause*, *expense recovery clause* or *stop clause*. (Dictionary)

Estoppel Certificate

A signed statement by a party (such as a tenant or a mortgagee) certifying, for another's benefit, that certain facts are correct, such as that a lease exists, that there are no defaults, and that rent is paid to a certain date. (Black's) In real estate, a buyer of rental property typically requests estoppel certificates from existing tenants. Sometimes referred to as an *estoppel letter*. (Dictionary)

Excess Land

Land that is not needed to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately. (Dictionary)

Excess Rent

The amount by which contract rent exceeds market rent at the time of the appraisal; created by a lease favorable to the landlord (lessor) and may reflect unusual management, unknowledgeable or unusually motivated parties, a lease execution in an earlier, stronger rental market, or an agreement of the parties. (Dictionary)

Expense Stop

A clause in a lease that limits the landlord's expense obligation, which results in the lessee paying operating expenses above a stated level or amount. (Dictionary)

Exposure Time

The time a property remains on the market. The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.

Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market. (Dictionary)

Extraordinary Assumption

An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Uncertain information might include physical, legal, or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or the integrity of data used in an analysis. (USPAP)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Floor Common Area

In an office building, the areas on a floor such as washrooms, janitorial closets, electrical rooms, telephone rooms, mechanical rooms, elevator lobbies, and public corridors which are available primarily for the use of tenants on that floor. (BOMA)

Full Service (Gross) Lease

A lease in which the landlord receives stipulated rent and is obligated to pay all of the property's operating and fixed expenses; also called a *full-service lease*. (Dictionary)

Furniture, Fixtures, and Equipment (FF&E)

Business trade fixtures and personal property, exclusive of inventory. (Dictionary)

Going-Concern Value

An outdated label for the market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the *market value of the going concern* or *market value of the total assets of the business*. (Dictionary)

Gross Building Area (GBA)

Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls of the above-grade area. This includes mezzanines and basements if and when typically included in the market area of the type of property involved.

Gross leasable area plus all common areas.

For residential space, the total area of all floor levels measured from the exterior of the walls and including the superstructure and substructure basement; typically does not include garage space. (Dictionary)

Gross Measured Area

The total area of a building enclosed by the dominant portion (the portion of the inside finished surface of the permanent outer building wall which is 50 percent or more of the vertical floor-to-ceiling dimension, at the given point being measured as one moves horizontally along the wall), excluding parking areas and loading docks (or portions of same) outside the building line. It is generally not used for leasing purposes and is calculated on a floor by floor basis. (BOMA)

Gross Up Method

A method of calculating variable operating expenses in income-producing properties when less than 100% occupancy is assumed. Expenses reimbursed based on the amount of occupied space, rather than on the total building area, are described as "grossed up." (Dictionary)

Gross Retail Sellout

The sum of the separate and distinct market value opinions for each of the units in a condominium, subdivision development, or portfolio of properties, as of the date of valuation. The aggregate of retail values does not represent the value of all the units as though sold together in a single transaction; it is simply the total of the individual market value conclusions. Also called the *aggregate of the retail values*, *aggregate retail selling price* or *sum of the retail values*. (Dictionary)

Ground Lease

A lease that grants the right to use and occupy land. Improvements made by the ground lessee typically revert to the ground lessor at the end of the lease term. (Dictionary)

Ground Rent

The rent paid for the right to use and occupy land according to the terms of a ground lease; the portion of the total rent allocated to the underlying land. (Dictionary)

HVAC

Heating, ventilation, air conditioning (HVAC) system. A unit that regulates the temperature and distribution of heat and fresh air throughout a building. (Dictionary)

Highest and Best Use

The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical

possibility, financial feasibility, and maximum productivity.

The use of an asset that maximizes its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid. (IVS)

[The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions) (Dictionary)

Hypothetical Condition

A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purpose of analysis.

Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP)

Industrial Gross Lease

A type of modified gross lease of an industrial property in which the landlord and tenant share expenses. The landlord receives stipulated rent and is obligated to pay certain operating expenses, often structural maintenance, insurance, and real property taxes, as specified in the lease. There are significant regional and local differences in the use of this term. (Dictionary)

Insurable Value

A type of value for insurance purposes. (Typically this includes replacement cost less basement excavation, foundation, underground piping, and architect's fees). (Dictionary)

Investment Value

The value of a property to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment criteria that are not necessarily typical of the market. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken. (Dictionary)

Leased Fee Interest

The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires. (Dictionary)

Leasehold Interest

The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease. (Dictionary)

See also Positive Leasehold and Negative Leasehold.

Lessee (Tenant)

One who has the right to occupancy and use of the property of another for a period of time according to a lease agreement. (Dictionary)

Lessor (Landlord)

One who conveys the rights of occupancy and use to others under a lease agreement. (Dictionary)

Liquidation Value

The most probable price that a specified interest in property should bring under the following conditions:

- Consummation of a sale within a short time period.
- The property is subjected to market conditions prevailing as of the date of valuation.
- Both the buyer and seller are acting prudently and knowledgeably.
- The seller is under extreme compulsion to sell.
- The buyer is typically motivated.
- Both parties are acting in what they consider to be their best interests.
- A normal marketing effort is not possible due to the brief exposure time.
- Payment will be made in cash in U.S. dollars (or the local currency) or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Loan to Value Ratio (LTV)

The ratio between a mortgage loan and the value of the property pledged as security, usually expressed as a percentage. (Dictionary)

Major Vertical Penetrations

Stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls. Atria, lightwells and similar penetrations above the finished floor are included in this definition. Not included, however, are vertical penetrations built for the private use of a tenant occupying office areas on more than one floor. Structural

columns, openings for vertical electric cable or telephone distribution, and openings for plumbing lines are not considered to be major vertical penetrations. (BOMA)

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting the conditions and restrictions of a specified lease agreement, including the rental adjustment and revaluation, permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options and tenant improvements (TIs). (Dictionary)

Market Value

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

Buyer and seller are typically motivated.

Both parties are well informed or well advised and acting in what they consider their own best interests.

A reasonable time is allowed for exposure in the open market.

Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Marketing Time

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Appraisal Standards Board of the Appraisal Foundation)

Master Lease

A lease in which the fee owner leases a part or the entire property to a single entity (the master lease) in return for a stipulated rent. The master lessee then leases the property to multiple tenants. (Dictionary)

Modified Gross Lease

A lease in which the landlord receives stipulated rent and is obligated to pay some, but not all, of the property's operating and fixed expenses. Since assignment of expenses varies among modified gross leases, expense

responsibility must always be specified. In some markets, a modified gross lease may be called a *double net lease*, *net net lease*, *partial net lease*, or *semi-gross lease*. (Dictionary)

Negative Leasehold

A lease situation in which the market rent is less than the contract rent. (Dictionary)

Operating Expense Ratio

The ratio of total operating expenses to effective gross income (TOE/EGI); the complement of the net income ratio, i.e., OER = 1 – NIR (Dictionary)

Option

A legal contract, typically purchased for a stated consideration, that permits but does not require the holder of the option (known as the *optionee*) to buy, sell, or lease real estate for a stipulated period of time in accordance with specified terms; a unilateral right to exercise a privilege. (Dictionary)

Partial Interest

Divided or undivided rights in real estate that represent less than the whole, i.e., a fractional interest such as a tenancy in common, easement, or life interest. (Dictionary)

Pass Through

A tenant's portion of operating expenses that may be composed of common area maintenance (CAM), real property taxes, property insurance, and any other expenses determined in the lease agreement to be paid by the tenant. (Dictionary)

Positive Leasehold

A lease situation in which the market rent is greater than the contract rent. (Dictionary)

Potential Gross Income (PGI)

The total income attributable to property at full occupancy before vacancy and operating expenses are deducted. (Dictionary)

Prospective Future Value Upon Completion

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. ... The prospective market value –as completed– reflects the property's market value as of the time that development is expected to be complete. (Dictionary)

Prospective Future Value Upon Stabilization

A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report ...The prospective market value – as stabilized – reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties. (Dictionary)

Replacement Cost

The estimated cost to construct, at current prices as of a specific date, a substitute for a building or other improvements, using modern materials and current standards, design, and layout. (Dictionary)

Reproduction Cost

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the deficiencies, superadequacies, and obsolescence of the subject building. (Dictionary)

Retrospective Value Opinion

A value opinion effective as of a specified historical date. The term *retrospective* does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." (Dictionary)

Sandwich Leasehold Estate

The interest held by the sandwich leaseholder when the property is subleased to another party, a type of leasehold estate. (Dictionary)

Sublease

An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another, the sublessee, for a specific period of time, which may or may not be coterminous with the underlying lease term. (Dictionary)

Subordination

A contractual arrangement in which a party with a claim to certain assets agrees to make his or her claim junior, or subordinate, to the claims of another party. (Dictionary)

Surplus Land

Land that is not currently needed to support the existing use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel. (Dictionary)

TPO

Thermoplastic polyolefin, a resilient synthetic roof covering.

Triple Net (Net Net Net) Lease

An alternative term for a type of net lease. In some markets, a net net net lease is defined as a lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management; also called *NNN lease, net net net lease, or fully net lease*. (Dictionary)

(The market definition of a triple net lease varies; in some cases tenants pay for items such as roof repairs, parking lot repairs, and other similar items.)

Usable Area

The measured area of an office area, store area, or building common area on a floor. The total of all the usable areas for a floor shall equal floor usable area of that same floor. (BOMA)

Value-in-Use

The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually. (Dictionary)

VTAB

Value of the Total Assets of a Business. The value of a going concern (i.e. the business enterprise). (Dictionary)

Qualifications

Qualifications of John A. Hillas, MAI, SRA
Managing Director
Valbridge Property Advisors | Northern California



Independent Valuations for a Variable World

State Certifications

Certified General RE Appraiser
State of California

Formal Education

B.B.A.
Business Administration
University of Oregon

A.A.S.
Business Administration
Anchorage Community College

Contact Details

209-623-1451 (p)

jhillas@valbridge.com

Valbridge Property Advisors |
Northern California
2813 Coffee Road, Suite E-2
Modesto, CA 95355

www.valbridge.com

Memberships/Affiliations/Honors

Member	Appraisal Institute
2012 Chair	Appraisal Institute Fall Conference
2009 & 2020 Chair	Appraisal Institute Spring Conference
2008 Chair	Appraisal Institute Region One
2007-08 Director	Appraisal Institute Board of Directors
2004 President	Northern CA Chapter, Appraisal Institute
1998 President	Sierra Chapter, Appraisal Institute
Associate Member	American Society of Farm Managers & Rural Appraisers (ASFMRA)
Expert Witness	Superior Courts of Stanislaus, Merced, Placer and Sacramento Counties

Appraisal Institute Related Courses & Examinations Passed

Appraisal Institute: All courses and examinations required for the MAI and SRA designations, as well as thousands of hours of continuing education.

Speaking Engagements:

Nor-Cal Chapter, Appraisal Institute:

Authored/Presented Workshops:

- "Analyzing Operating Expenses"
- "Adjustments in Valuation Analyses"
- "Appraisal of Small Residential Income Properties"
- "Mastering Marshall – Using Marshall & Swift Cost Data"

Risk Management Association (RMA) Central Valley Chapter:

Authored/Presented Workshop:

- "Real Estate Overview"

California Chapter, ASFMRA

Authored/Presented Workshop:

- "Valuation of Transitional Property"

San Joaquin County Assessor In-house Training:

Authored/Presented Seminar:

- "Valuation of Subdivision Properties"

Related Valuation Experience

Valuation experience includes all sorts of general commercial, industrial, retail, office, multiple-unit residential, existing, and proposed residential, commercial, and industrial subdivisions and transitional land, commercial and agricultural lands including large ranches, orchards, and cropland. Work has been performed for a wide variety of needs including estate planning/filing, lending, condemnation, and general litigation support.

Managing Director

ValbridgePropertyAdvisors | Northern California (2013-Present)
Modesto, California

Senior Vice President, Branch Manager

Hulberg & Associates, Inc. (2007-2013 joined to create Valbridge Property Advisors in 2013)
Modesto, California

Owner/Appraiser

Sierra Valuation Consultants (1996-2007)
Modesto, California

Senior Appraiser

National Valuation Consultants, Inc. (1995-1996)
Denver, Colorado

Senior Appraiser

San Francisco Federal Savings and Loan (1992-1995)
Modesto, California

Senior Appraiser

Private Real Estate Valuation Firm (1991-1992)
Modesto, California

Appraiser

Stockton Savings Bank (1987-1991)
Modesto, California

Appraiser

Hillas Appraisal Company (1980-1987)
Homer, Alaska



Valbridge
PROPERTY ADVISORS



FAST FACTS

COMPANY INFORMATION

- Valbridge is the largest independent national commercial real estate valuation and advisory services firm in North America.
 - Total number of MAI-designated appraisers: 200+ on staff
 - Total number of office locations: 70+ across U.S.
 - Total number of staff: 675+ strong
- Valbridge covers the entire U.S. from coast to coast.
- Valbridge services all property types, including special-purpose properties.
- Valbridge provides independent valuation services. We are not owned by a brokerage firm or investment company.
- Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.
- Valbridge is owned by our local office leaders.
- Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements.



Valbridge

PROPERTY ADVISORS

ALABAMA

4732 Woodmere Boulevard
Montgomery, AL 36106
334.277.0077

200 Cahaba Park Circle
Suite 213
Birmingham, AL 35242
205.440.2999

ARIZONA

6061 E. Grant Road
Suite 121
Tucson, AZ 85712
520.321.0000

CALIFORNIA

4915 Calloway Drive
Suite 101
Bakersfield, CA 93312
861.587.1010

1370 N. Brea Boulevard
Suite 255
Fullerton, CA 92835
714.449.0852

2813 Coffee Road
Suite E-2
Modesto, CA 95355
209.569.0450

59 S. Lake Avenue
Suite 21
Pasadena, CA 91101
626.744.0428

3090 File Circle
Suite 202
Sacramento, CA 95827
916.361.2509

55 South Market Street
Suite 1210
San Jose, CA 95113
408.279.1520

1306 Higuera Street
San Luis Obispo, CA 93401
805.544.2472

3160 Crow Canyon Place
Suite 245
San Ramon, CA 94583
925.327.1660

COLORADO

7445 E. Peakview Avenue
Centennial, CO 80111
303.443.9800

5345 Arapahoe Avenue
Suite 7
Boulder, CO 80303
303.443.9800

23272 Two Rivers Road
Unit 101
Basalt, CO 81621
970.340.1016

1099 Main Avenue
Suite 311
Durango, CO 81301
970.340.1016

CONNECTICUT

15 Concord Street
Glastonbury, CT 06033
860.246.4606

17 Covewood Drive
Norwalk, CT 06853
203.286.6520

FLORIDA

2240 Venetian Court
Naples, FL 34109
239.514.4646

301 Almeria Avenue,
Suite 350
Coral Gables, FL 33134
305.639.8029

10950 San Jose Boulevard
Jacksonville, FL 32223
844.822.7825

734 Rugby Street
Orlando, FL 32804
844.822.7825

2601 W Horatio Street
Unit 6
Tampa, FL 33609
844.822.7825

2711 Poinsettia Avenue
West Palm Beach, FL 33407
561.833.5331

GEORGIA

2675 Paces Ferry Road
Suite 145
Atlanta, GA 30339
678.644.4853

IDAHO

1459 Tynell Lane
Suite B
Boise, ID 83706
208.336.1097

1875 N. Lakeswood Drive
Suite 100
Coeur d'Alene, ID 83814
208.292.2965

ILLINOIS

566 W. Lake Street
Suite 240
Chicago, IL 60661
312.288.8687

INDIANA

820 Fort Wayne Avenue
Indianapolis, IN 46204
317.687.2747

KANSAS

10990 Quivira Road
Suite 100
Overland Park, KS 66210
913.451.1451

KENTUCKY

9000 Wessex Place
Suite 306
Louisville, KY 40222
502.585.3651

LOUISIANA

2030 Dikory Avenue
Suite 200
New Orleans, LA 70123
504.541.5100

MARYLAND

11100 Dovedale Court
Marriottsville, MD 21104
443.333.5522

MASSACHUSETTS

260 Bear Hill Road
Suite 106
Waltham, MA 02451
781.780.5645

MICHIGAN

1420 Washington Blvd.
Suite 501
Detroit, MI 48226
313.986.3313

MICHIGAN (cont'd)

2127 University Park Drive
Suite 200
Okemos, MI 48864
517.338.0001

MINNESOTA

255 East Kellogg Boulevard
Suite 102A
St. Paul, MN 55101
651.370.1475

MISSISSIPPI

1010 Ford Street
Gulfport, MS 39507
228.604.1900

MISSOURI

737 Highway 51
Suite 1C
Madison, MS 39110
601.853.0736

501 Highway 12 West
Suite 150-M
Starkville, MS 39750
662.617.2350

MISSOURI

1118 Hampton Avenue
Suite 208
St. Louis, MO 63139
314.255-1323

10990 Quivira Road
Suite 100
Overland Park, KS 66210
913.451.1451

NEVADA

3034 S. Durango Drive
Suite 100
Las Vegas, NV 89117
702.242.9369

6490 S. McCarran Blvd
#51
Reno, NV 89509
775.204.4100

NEW JERSEY

2740 Route 10 West, Suite 204
Morris Plains, NJ 07950
973.970.6333

3500 Route 9 South, Suite 202
Howell, NJ 07731
732.807.3113

NEW YORK

424 West 33rd Street
Suite 630
New York, NY 10001
212.268.1113

NORTH CAROLINA

432 E. Chatham Street
Cary, NC 27511
919.859.2666

5950 Fairview Road, Suite 405
Charlotte, NC 28210
704.376.5400

OHIO

1655 W. Market Street
Suite 130
Akron, OH 44313
330.899.9900

OHIO (cont'd)

8291 Beechmont Ave.,
Suite B
Cincinnati, OH 45256
513.785.0820

1422 Euclid Avenue
Suite 616
Cleveland, OH 44115
216.387.9690

OKLAHOMA

5909 NW Expressway
Suite 104
Oklahoma City, OK 73132
405.603.1553

6666 South Sheridan Road
Suite 104
Tulsa, OK 74133
918.712.9992

PENNSYLVANIA

150 S. Walner Road
Suite 440
King of Prussia, PA 19406
215.545.1900

4701 Baptist Road
Suite 304
Pittsburgh, PA 15227
412.881.6080

SOUTH CAROLINA

11 Cleveland Court
Greenville, SC 29607
864.233.6277

920 Bay Street
Suite 26
Beaufort, SC 29902
843.342.2302

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843.881.1266

TENNESSEE

5205 Maryland Way
Suite 300
Brentwood, TN 37027
615.369.0670

701 Broad Street
Suite 209
Chattanooga, TN 37402
423.265.8435

213 Fox Road
Knoxville, TN 37922
865.522.2424

756 Ridge Lake Blvd
Suite 225
Memphis, TN 38120
901.753.6977

TEXAS

901 Mopac Expressway South
Building 1, Suite 300
Austin, TX 78746
737.242.8585

10210 North Central Expressway
Suite 115
Dallas, TX 75231
214.446.1611

974 Campbell Road
Suite 204
Houston, TX 77024
713.467.5858

2731 81st Street
Lubbock, TX 79423
806.744.1188

TEXAS (cont'd)

9901 IH-10 West
Suite 1035
San Antonio, TX 78230
210.227.6229

UTAH

321 North County Boulevard
Unit D
American Fork, UT 84003
801.492.9328

1100 East 8600 South
Suite 201
Salt Lake City, UT 84121
801.282.3388

20 North Main
Suite 304
St. George, UT 84770
435.773.6300

VIRGINIA

856 Independence Parkway
Suite 220
Chesapeake, VA 23320
757.410.1222

4914 Fitzhugh Avenue
Suite 102
Richmond, VA 23220
757.345.0010

5107 Center Street
Unit 2B
Williamsburg, VA 23188
757.345.0010

WASHINGTON

18728 Bothell Way, NE
Suite B
Bothell, WA 98011
425.450.0040

2927 Colby Avenue
Suite 100
Everett, WA 98201
425.258.2611

419 Berkeley Avenue
Suite A
Fincastle, VA 98466
253.274.0099

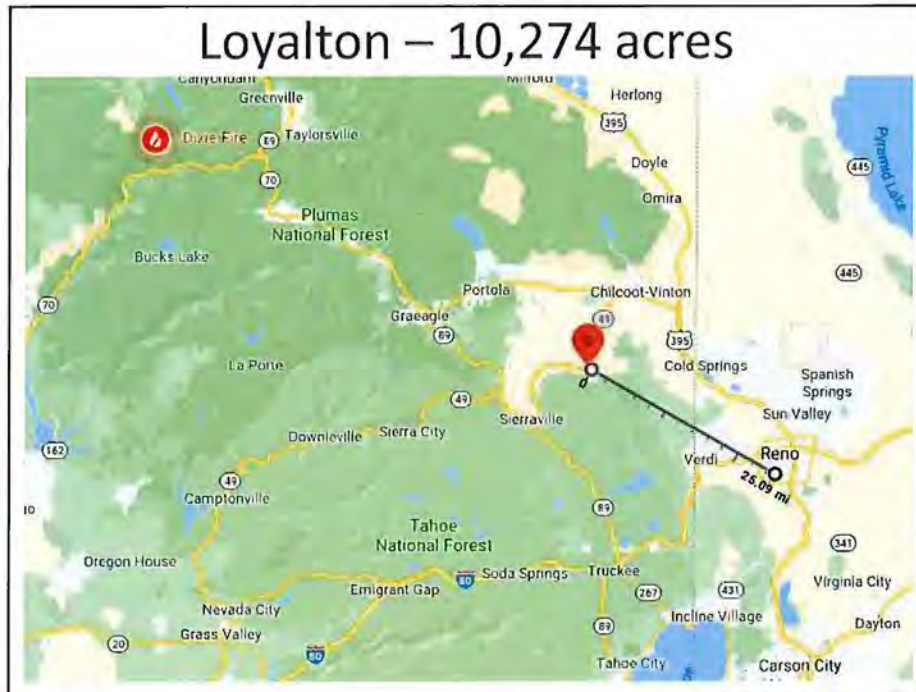
8378 W. Grandridge Boulevard
Suite 110-D
Kennebec, WA 99336
509.221.1540

506 Second Avenue
Suite 1001
Seattle, WA 98104
206.209.3016

324 N. Mullan Road
Spokane Valley, WA 99206
509.747.0999

WISCONSIN

12660 W. North Avenue
Brookfield, WI 53005
262.782.7990



1

History

- May 10, 1977 Council Meeting approved \$2000 for 60 day option to permit analysis of geothermal.
- July 8, 1977 Geonomics, Inc report after drilling 2,200 foot well
"With present evidence, it appears that the temperatures are not sufficient for electrical power generation, but the data is not conclusive."
- July 12, 1977, Chair of Parks and Rec Commission recommended purchase of site as *"a potential out-of-the-city Park for camping, hiking and water resources"*
Councilmembers Texera, Kiely and Mahan did not want land used for recreation. Council voted unanimously to purchase the land with utility funds appropriating \$1.703M. (Note : Gary Gillmor was realtor representing sellers)

2

History

- 2014: 50 acres sold to County for landfill
- Aug 29, 2017: *"City Staff recommends to the Council that the Loyalton Property be deemed surplus and sold".*
"City would also be free of liability hazards caused by trespassers." Debi Davis continued item
- March 27, 2018 SVP again recommended selling Loyalton to build new SVP offices
- July 2019 New grazing contract for \$43K but amended in October to \$21.7K
- April 2020 Property assessed at \$4.11 Million by Valbridge
- August 17-19, 2020 : Loyalton Fire burned 90%
- Sept 8, 2020 Staff visits to assess damage. Structures completely destroyed

3

April 2020 Appraisal – before fire

- + Full Valbridge Property Advisors appraisal report is in Coucil Packet
- + Appraised at \$4.11 Million or \$400.04/acre
- ***"Highest & Best Use - As Vacant : Grazing land"***
- *"the property was purchased in 1977 for \$1,613,850 (\$157/acre)."*
- *"The property was not physically inspected by the appraiser." "10,000 acres of rural acreage, much of which has limited accessibility"*

"The property has historically been used for seasonal grazeland... snow limits grazing during winter and into the early spring"

*"Although Loyalton is the biggest community within Sierra County it has been called **"the loneliest town in America"** because visitors are few and far between. Despite the scenic views and pleasant small-town atmosphere, **there is not much to attract tourism keeping the town much as it was 150 years ago: small, quiet, and full of wildlife and natural beauty.**"*

4

A terrible investment

- Purchased for \$1.614 Million in 1977
- Valued before fire at \$4.11 Million
- 5 year grazing lease in 2019 for \$21,750/year
- Property Tax in 2019 was \$13,497
- Staff time is 5% of FTE = approx. \$7500 including benefits
- $\$13,497 + 7500 = \$20,997$
- SVP estimates \$24,000 aerial survey of fences + \$20,000 demolition of structures
- =====
- Taking \$1,613,815 into online inflation calculator → \$7.053 Million in 2021
- City's average return on investments is 1.49%, CalPERs return 6.5%
- **$0.0149 * \$4.11M = \$61,239$, $0.065 * \$4.11M = \$267,150$**

5

Dixie Fire and Climate Change

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Climate crisis in the American west

Dixie fire threatens thousands of California homes amid wind and lightning

Firefighters faced 50mph gusts while working to contain the month-old fire, the largest among more than 100 blazes in the west

Guardian staff and agencies
Mon 16 Aug 2021 15:17 EDT

f t e



CalFire: 8/16/2021

569,707 Acres

34% Contained

Active Active for 33 days

4 Counties Butte, Plumas and Lassen

The Dixie Fire is now the second-largest fire in California history. It has charred an area larger than the city of Los Angeles and destroyed at least 1,173 structures.

<https://www.theguardian.com/us-news/2021/aug/16/dixie-fire-california-latest-wind-lightning>

6

From: Bush, Joshua@Wildlife <Joshua.Bush@wildlife.ca.gov>

Sent: Monday, September 27, 2021 1:33 PM

To: City Attorney <CityAttorney@SantaClaraCA.gov>; Manager <Manager@santaclaraca.gov>; Lisa Gillmor <LGillmor@SantaClaraCA.gov>; Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>

Subject: Loyalton Ranch - CDFW Interest

Hi:

After watching the City Council Meeting recording from 9/18/21, I am writing to convey CDFW's interest in purchasing the City's Loyalton Ranch Property (Property). CDFW's Hallelujah Junction Wildlife Area (HJWA), operated for wildlife oriented recreation and wildlife habitat conservation, is adjacent to your Property and we have had a longstanding desire to purchase for conservation and open for public recreation. The Property is critical winter range for the migratory Loyalton-Truckee deer herd and well situated to add to a network of conserved lands in the area. We work with several NGO conservation partners in the area who would be happy to pledge support for sale to CDFW. Since the 2020 fire, CDFW staff have been actively restoring the HJWA in order to graze cattle and would be happy to talk fire recovery, reclamation costs, and share information if you desire to hold interest in the ranch.

I am happy to chat about our acquisition process any time. Please keep me in the loop as you work toward a decision on the Loyalton Ranch Property.

Thanks for your time.

Josh

Joshua Bush
Unit Wildlife Biologist: Colusa, Lake and Yolo Counties
Regional Land Acquisition Coordinator
California Department of Fish and Wildlife
North Central Region (2)



Agenda Report

21-1122

Agenda Date: 10/26/2021

REPORT TO COUNCIL

SUBJECT

Informational Report Regarding an Amendment to the Santa Clara Police Department's Automated License Plate Reader (ALPR) Policy

COUNCIL PILLAR

Deliver and enhance high quality efficient services and infrastructure

BACKGROUND

Automated / automatic license plate readers (ALPRs) capture computer-readable images that allow law enforcement to compare plate numbers against plates of stolen cars or cars driven by individuals wanted on criminal charges. The devices are mounted on police cars, road signs or traffic lights and capture thousands of images of plates. The data collected can enhance law enforcement's ability to investigate and enforce the law.

On January 1, 2016, Senate Bill 34 went into effect. SB 34 created California Civil Code (CCC) Title 1.81.23 entitled "Collection of License Plate Information" (Section 1798.90.5, et seq.) that requires any public agency, including a law enforcement agency, that operates Automated License Plate Reader (ALPR) technology to maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure. SB 34 also requires the agency to implement a usage and privacy policy that meets certain requirements, including:

- The authorized purposes for using the ALPR system and collecting ALPR information;
- A description of the job title or other designation of the employees and independent contractors who are authorized to use or access the ALPR system, or to collect ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors;
- A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws;
- The purposes of, process for, and restrictions on, the sale, sharing, or transfer of ALPR information to other persons;
- The title of the official custodian, or owner, of the ALPR system responsible for implementing this section;
- A description of the reasonable measures that will be used to ensure the accuracy of ALPR information and correct data errors;
- The length of time ALPR information will be retained, and the process the ALPR operator will utilize to determine if and when to use, destroy, modify or disclose retained ALPR information;
- Ensure that collection, use, maintenance, sharing and dissemination of information gathered

through the use of ALPR technology complies with all applicable law and is consistent with individual privacy and civil liberties; and

- Post the usage and privacy policy on the agency's website.

DISCUSSION

Automatic license plate readers use a combination of cameras and computer software to indiscriminately scan the license plates of every car passing by. The readers, which can be mounted on stationary poles (e.g. road signs, traffic lights, etc.), handheld devices and mobile patrol vehicles, log the time and date of each scan, the vehicle's GPS coordinates and pictures of the car.

The devices send the data to ALPR software, which can compare each license plate against a designated "hot list." ALPR technology shall not be used for any purpose other than legitimate law enforcement or public safety purposes with a need and right to know the information provided by an ALPR to:

- Locate stolen or wanted vehicles and vehicles that are the subject of a legitimate law enforcement investigation;
- Locate and apprehend suspects that are lawfully sought by law enforcement;
- Locate witnesses and victims of violent crime;
- Locate at-risk missing persons (including responding to Amber and Silver Alerts);
- Support local, state and federal safety departments in the identification of vehicles associated with targets of criminal investigations, including investigations of serial crimes;
- Protect participants at special events; and,
- Protect critical infrastructure sites.

These queries happen automatically, in real-time though officers can also query license plates manually via their mobile data computer in their patrol vehicle. When law enforcement receives a "hot hit," they shall attempt to verify data provided by ALPR technology using other law enforcement information sources in order to confirm the vehicle or subject's identity and justification before making contact. To the fullest extent possible, law enforcement personnel shall visually confirm that the plate characters generated by the ALPR technology correspond with the digital image of the license in question.

Santa Clara Police Department Policy 98.4

Since implementation of SB 34, the Police Department has had its ALPR policy (Attachment 1 - SCPD Policy 98.4), last issued in April, 2016, on our website www.scpd.org <<http://www.scpd.org>> in the Policy Information and Training Summary tab on the home page.

The Police Department currently has four (4) patrol vehicles equipped with ALPR mounted on them. From August 1, 2020 through August 1, 2021, the devices read 114,837 license plates resulting in 126 "hot hits." The data is downloaded directly to the Northern California Regional Intelligence Center (NCRIC).

NCRIC is one of 79 State Governor designated and Department of Homeland Security recognized fusion centers in the United States, and serves as the regional intelligence fusion center for all major crimes for the Federal Northern District of California.

Pending Expansion of ALPR Use by the Police Department

On September 17, 2019, the City Council approved \$750,000 in Board of State and Community Corrections (BSCC) one-time grant funding (Attachment 2 - RTC 19-941) to allow law enforcement agencies to work collaboratively and develop a task force to share resources and develop a comprehensive plan that will include community education, equipment procurement, staff costs and other creative prevention strategies to end auto break-ins in our communities.

On October 5, 2020, the Police Department presented materials to the Chief's Advisory Committee regarding the potential for the implementation of a pilot community camera program. The Police Department entered into a two-year Agreement with Flock Group Incorporated for 12 solar powered, fixed cameras to be installed on existing light poles at major entrance and exit intersections of our city. These leased devices are capable of reading two lanes of traffic at once, operate over wireless network with cloud storage, and download data directly to the NCRIC. The cost for the two-year pilot program (tentatively scheduled for January 1, 2022 - December 31, 2024) is approximately \$63,000 which was funded from the BSCC grant; at this time, there is not an on-going funding source.

The presentation included a summary of existing laws negatively impacting law enforcement's crime prevention efforts, the Police Department's existing use of ALPR technology and its' corresponding policy, benefits of mobile cameras, example locations for fixed cameras and data use, storage and retention.

Committee members had a thoughtful discussion (e.g. mining the data, who the information can be shared with, profiling, facial recognition, concern regarding the ability for the Police Department to replace damaged cameras, etc.). Following the dialogue, Committee members fully supported the use of BSCC funding toward the implementation of a community camera program.

On December 16, 2020, the Police Department presented an Information Report to City Council regarding Automobile Burglaries, including Strategies for Prevention (Attachment 3 - RTC 20-1350). The City Council was supportive of the past and pending initiatives, including the potential for a community camera program.

The coronavirus pandemic and staffing issues have negatively impacted the Police Department's ability to make progress with this initiative.

Lexipol Policy 428 and Standardized Operating Procedures

In 2017, the Police Department entered into an Agreement with Lexipol LLC (Lexipol). Lexipol provides policy manuals, training bulletins and consulting services to law enforcement agencies, fire departments, and other public safety departments based on current legislation, case law and industry best practices. Lexipol retains copyright over all manuals they create, including those modified by local agencies based on specifics to their community. As of March 2020, Lexipol services 8,100 agencies throughout the U.S. Gradually, the Police Department is transitioning from its established policies to that of Lexipol.

One primary distinction between the Police Department's former policy manual and the new Lexipol manual is policy and practice are now two separate documents. In this instance, the standardized operating procedures are a separate document that articulates the steps for successfully implementing the policy.

Lexipol Policy 428 (Attachment 4) complies with SB 34 and establishes:

- ALPR Administration
- Operations
- Data Collection and Retention
- Accountability
- Releasing ALPR data
- Training

In doing so, it also sets forth defined parameters for the use of ALPRs in the collection and use of data in a manner consistent with respect for individual's privacy and civil liberties.

The standardized operating procedures (Attachment 5) serve as a tool for staff in training, process and accountability.

Of note, Policy 428 takes into consideration California Civil Code §§ 1798.29 and 1798.90.5, et seq., which established regulations on the privacy and usage of ALPR data and expands the meaning of "personal information" to include information or data collected through the use or operation of an ALPR system. It imposes privacy protection requirements on entities that use ALPR information, including:

- Prohibits public agencies from selling or sharing ALPR information, except to another public agency, as specified; and,
- Requires operators of ALPR systems to use that information only for authorized purposes.

Community Engagement on this Topic

On September 27, 2021, the Police Department and Flock Group Incorporated (FLOCK) facilitated a virtual Town Hall meeting via Zoom. The meeting details were advertised on the City's website and information encouraging participation was distributed on GovDelivery, Facebook, Nextdoor, Nixle and Twitter to include:

- Highlight City of Santa Clara crime statistics
- Share current Automatic License Plate Reader (ALPR) policy
- Discuss current use of mobile ALPR's and community benefits
- Introduce Board of State and Community Correction grant funding to fund the use of FLOCK stationary ALPR's
- Discuss privacy issues
- Highlight pilot program and anticipated community benefits
- Questions and community feedback

17 individuals, including two Councilmembers (Jain and Watanabe), one media outlet, five City staff and one representative from FLOCK, participated in this virtual meeting.

A large portion of the discussion was spent clarifying the Police Department's existing use of ALPR technology in patrol vehicles, differentiating mobile versus stationary use of ALPR's and enhancements to this technology since its inception. In addition, staff and the FLOCK representative

fielded questions and concerns on the following topics:

- Q - Will this technology would be utilized to identify cars associated with undocumented individuals
- A - The Police Department will not conduct sweeps or other coordinated efforts, such as attempting to identify undocumented individuals by their mode of transportation, to detain suspected undocumented immigrants. It is neither the Police Department's mission or role. The Police Department will not detain, question or arrest a person for the sole purpose of discovering a person's citizenship or status under civil immigration laws.

The responsibility for enforcement of civil immigration laws rests with the U.S. Immigration and Customs Enforcement (ICE) and Removal Operations (ERO).

As a result, the Police Department will not utilize this technology to identify cars with undocumented individuals.

- Q - Will data collected be shared with immigration
- A - The data is downloaded directly to the Northern California Regional Intelligence Center (NCRIC).
- Q - Determining what data is saved to help solve a crime
- A - SB 34 requires agency's with ALPR to implement a usage and privacy policy that includes the length of time ALPR information will be retained, and the process the ALPR operator will utilize to determine if and when to use, destroy, modify or disclose retained ALPR information. The Department's retention policy varies according to the specific situation.
- Q - Will incentives to offered to FLOCK for crimes solved
- A - No.
- Q - Overall cost, pilot and on-going
- A - The FLOCK Agreement is a two-year pilot program for \$63,000 (Year 1, \$33,000; Year 2, \$30,000). was approved by City Council on 12/16/2020.
- Q - What data, if any, will be made available to the public
- A - None.
- Q - Measures which will be used to determine the success of the pilot program
- A - The use of ALPR cameras will increase the Police Department's investigative tools. Following implementation, the Police Department intends to track the number of times detectives utilize ALPR footage compared with success rates associated with identifying vehicle(s) connected with crime.
- Q - Connection, if any, between residential surveillance cameras
- A - There is no connection between the two types of surveillance cameras.
- Q - Use of ALPR cameras in and around Levi's Stadium

- A - The City of Santa Clara has multiple traffic cameras on the northside of town to help drivers make traffic decisions based on road conditions. These are not ALPR cameras.

Additionally, there are cameras in and around Levi's Stadium operated by stadium personnel.

Overall, the participants in the virtual meeting were supportive of the proposed changes to the ALPR policy and stationary camera use.

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 Amendment to the Santa Clara Police Department's Automated License Plate Reader Policy will have no financial impact.

On December 16, 2020, use of Board of State and Community Corrections (BSCC) grant funding was previously approved by City Council (Attachment #3, RTC 20-1350) in the following areas:

- Equipment
- Staff overtime
- Contractual services
- Community Education

BSCC is not an on-going funding source for the stationary community camera program.

COORDINATION

This report was coordinated with the City Attorney's and City Manager'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>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file Information Report.

Reviewed by: Pat Nikolai, Chief of Police

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. SCPD Policy 98.4

2. RTC 19-941
3. RTC 20-1350
4. Lexipol Policy 428
5. ALPR SOP
6. Flock Group Incorporated Agreement

SANTA CLARA POLICE DEPARTMENT GENERAL ORDER 98.4

AUTOMATED LICENSE PLATE READERS (ALPR)

ISSUED APRIL 2016

Purpose and Scope

Automated License Plate Reader (ALPR) technology can provide automated detection of license plates from a vehicle mounted or fixed post system. Santa Clara Police Department utilizes ALPRs to gather and convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen vehicles, stolen license plates, Amber Alerts, and missing persons. ALPRs may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction, and stolen property recovery.

This ALPR policy sets forth defined parameters for the use of ALPRs in the collection and use of data in a manner consistent with respect for individual's privacy and civil liberties.

This policy should be publicly accessible and viewable.

Training and Responsibilities

ALPR Operators shall be personnel of the Santa Clara Police Department who are been certified in the use of CLETS Criminal Justice Information and Department of Motor Vehicles Record Information and have received formal training prior to using the ALPR system. This training shall include, but not be limited to:

- Legal authorities, developments, and issues involving the use of ALPR data and technology.

- Current Police Department policy regarding appropriate use of ALPR systems.

- Technical, physical, administrative, and procedural measures to protect the security of ALPR data against unauthorized access or use.

- Practical exercises in the use of the ALPR system.

It shall be the responsibility of each ALPR Operator to ensure the download of the most recent hot list occurs on the mobile computer prior to deployment of the ALPR equipment.

Some ALPR Operators will be assigned as trainers and may assist with the training of Operators, troubleshooting problems with the ALPR system, helping their co-workers

understand the value of the ALPR system, and improving the operations of the ALPR system.

ALPR Operation

Absent exigent circumstances of a life safety nature, use of an ALPR is restricted to the purposes outlined below. Department personnel shall not use, or allow others to use the equipment or database records for any unauthorized purpose.

- An ALPR shall only be used for official and legitimate law enforcement business.
- No member of this department shall operate ALPR equipment or access ALPR data without first completing department approved training.
- An ALPR may be used in conjunction with any routine patrol operation or criminal investigation, Reasonable suspicion or probable cause is not required before using an ALPR.
- While an ALPR may be used to canvass license plates around any crime scene, particular attention should be given to utilizing ALPR equipped vehicles to canvass areas around homicides, shootings, abductions, and other major crime scenes. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspects and suspect vehicles.
- If practical, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert. The officer must also to the fullest extent possible, visually confirm the plate characters match those generated by the ALPR.
- No ALPR operator may access CLETS data unless otherwise authorized to do so and has a need and right to know.

ALPR Data Collection and Retention

All data images gathered by an ALPR are for the official use of the Santa Clara Police Department and because such data may contain confidential CLETS information, it is not open to public review. ALPR information gathered and retained by the department, may be used and shared with prosecutors or others only as permitted by law.

ALPR data should be stored for minimum of one year (Government Code 34090.6), and thereafter may be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances, the applicable data, should be either downloaded from the server onto portable media and booked into evidence or marked so that it will not be purged automatically without review.

Custodian of Records

The Santa Clara Police Department shall retain control and ownership of the information collected with ALPR and shall be the official custodian of records. To the extent permitted by law, requests for information under the California Public Records Act or Freedom of Information Act or similar applicable laws will be directed to the Police Department Records Manager.

Accountability and Safeguards

All saved data will be closely safeguarded and protected by both procedural and technological means. The Santa Clara Police Department will observe the following safeguards regarding access to and use of stored data.

- All non-law enforcement requests for access to stored ALPR data shall be referred to the Records Manager and processed in accordance with applicable law.
- All ALPR data downloaded to the mobile workstation and server shall be accessible only through a login/password protected system capable of documenting all access of information by name, date and time.
- Persons approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department related civil or administrative action.
- Such ALPR data may be released to other authorized and verified law enforcement officials and agencies at any time for legitimate law enforcement purposes.
- ALPR system audits should be conducted on a regular basis.
- In the event the security of the server or data is breached and the possibility exists that an individual's personal information may have been accessed or exposed beyond the scope of law enforcement, upon discovery of the breach, the affected individuals will be noticed of the breach and any necessary instruction or direction will be provided.



Agenda Report

19-941

Agenda Date: 9/17/2019

REPORT TO COUNCIL

SUBJECT

Action to Approve California Board of State and Community Corrections Funding to Combat Auto Burglaries and Related Budget Amendment

BACKGROUND

Established in 2012, the California Board of State and Community Corrections (BSCC) is an independent statutory agency that provides leadership to the adult and juvenile criminal justice systems, expertise on Public Safety Realignment issues, a data and information clearinghouse, and technical assistance on a wide range of community corrections issues. In addition, the BSCC declares regulations for adult and juvenile detention facilities, conducts regular inspections of those facilities, develops standards for the selection and training of local corrections and probation officers and administers significant public safety-related grant funding.

The BSCC Corrections Planning and Grant Programs (CPGP) Division develops, administers and evaluates state and federally funded grant programs designed to improve the effectiveness of state and local correctional systems, reduce costs, maximize resources and enhance public safety. CPGP works closely with federal, state and local government agencies, as well as the private sector and nonprofit service providers, to foster collaborative approaches to address crime and delinquency.

DISCUSSION

The realignment in the California criminal justice system (Assembly Bill 109, Criminal Justice Realignment Act, passed by voters in October 2011) eliminates state prison as a sentence option for various felonies and transfers responsibility of these offenders to county jails and probation offices. Proposition 47 (passed by voters in November 2014) reduced certain drug possession felonies to misdemeanors. It also requires misdemeanor sentencing for petty theft, receiving stolen property and forging/writing bad checks when the amount involved is \$950 or less. Proposition 57 (passed by voters in November 2016) allows parole consideration for nonviolent felons, changes policies on juvenile prosecution and authorizes sentence credits for rehabilitation, good behavior and education. In some cases, certain felony convictions were also retroactively erased.

In addition, persons released from state prison on or after October 2011, are released into Release Community Supervision (PRCS). The type of supervision is determined by the California Penal Code. Penal Code 3451 provides that only the following offenders released from California Department of Corrections and Rehabilitation are supervised on parole:

- An offender serving a current term for a serious felony, as described in PC Section 1192.7(c).
- An offender serving a current term for a violent felony, as described in PC Section 667.5(c).
- An offender serving a current term of life.

- An offender classified as a High-Risk Sex Offender.
- An offender determined to be a Mentally Disordered Offender.

The above actions have resulted in unintentional consequences. “Smash and grab” automobile burglaries were declining state-wide from 2007-2014 to roughly 24 incidents per 100,000 residents. Immediately after the passage of Proposition 47, thefts from vehicles started to increase and have skyrocketed since.

Meanwhile, unlucky victims face significant costs. Window repairs generally cost several hundred dollars and often involve lost time from work/school. Victims are out the value of stolen property, are burdened by the cost to replace the stolen item(s), use valuable time to work with insurance companies and may see an increase in their insurance rates. Some victims also suffer feelings of helplessness and personal violation that come from having an intruder destroy one’s property and rummage through their possessions.

The Police Department has taken proactive steps to address preventing thefts from vehicles among residents, property owners and visitors, including:

- Educational messages on the City/SCPD website and social media;
- Community meetings;
- Flyer distribution in targeted areas encouraging drivers not to leave valuables in their vehicle;
- Conversations with car rental companies and supply them with educational flyers to provide to renters;
- Meetings with hotel management and shopping center property managers to encourage ample lighting, security personnel, signage, video surveillance and maintain an open line of communication;
- High visibility patrols in areas where break-ins have occurred; and
- Undercover operations to locate in-progress thefts and apprehend suspects.

Currently, funding for this education and enforcement has come from the General Fund. Despite these efforts, the statistics in Santa Clara in recent years is staggering.

In 2018, Assistant Chief Dan Winter testified in front of a State Legislature Committee on the need for more resources to combat auto burglaries.

In June 2019, the California legislature approved a state budget with improvements in funding for education, mental health services, affordable housing, etc. As part of the budget, Assemblymember Kansen Chu secured \$3.75 million in funding to combat the rising number of “smash and grab” car break-ins in Assembly District 25. Each police department in Assembly District 25 - Milpitas, Fremont, Newark, Santa Clara and San Jose - is the recipient of \$750,000. A press conference commemorating such was held by Assemblymember Chu at the Milpitas Police Department on August 9, 2019.

BSCC funding will allow law enforcement agencies to work collaboratively and develop a task force to share resources and develop a comprehensive plan that will include community education, equipment procurement, staff costs and other creative prevention strategies to end auto break-ins in our communities.

Assemblymember Chu plans to update the public in one year with a summary of the initiatives implemented.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

Acceptance and approval of the BSCC grant funding will allow the Police Department to maintain, or increase, the level of education and enforcement necessary to continue to address this epidemic. Without the funding, auto burglaries are one of many competing priorities for General Fund dollars.

Budget Amendment
FY 2019/20

	Current	Increase/ (Decrease)	Revised
<u>Police Operating Grant Trust Fund Revenues</u>			
Board of State and Community Corrections Grant	\$0	\$750,000	\$750,000
<u>Expenditures</u>			
Board of State and Community Corrections	\$0	\$750,000	\$750,000

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Approve California Board of State and Community Corrections Funding to Combat Auto Burglaries and Related Budget Amendment in the amount of \$750,000.

Approved by: Deanna J. Santana, City Manager



Agenda Report

20-1350

Agenda Date: 12/16/2020

REPORT TO COUNCIL

SUBJECT

Information Report Regarding Automobile Burglaries, including Strategies for Prevention

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

In 2018, retired Assistant Chief of Police Dan Winter testified in front of a State Legislature Committee on the need for more resources to combat automobile burglaries.

In June 2019, the California legislature approved a state budget with improvements in funding for education, mental health services, affordable housing, etc. As part of the budget, Assemblymember Kansen Chu secured \$3.75 million in funding to combat the rising number of “smash and grab” car break-ins in Assembly District 25. Each police department in Assembly District 25 (Milpitas, Fremont, Newark, Santa Clara and San José) was the recipient of \$750,000 in California Board of State and Community Corrections (BSCC) grant funding.

On September 17, 2019, the City Council approved the BSCC grant funding to combat automobile burglaries and a related budget amendment.

A press conference commemorating such was held by Assemblymember Chu at the Milpitas Police Department on August 9, 2019.

DISCUSSION

On January 30 and 31, 2020, the City Council held a two-day goal and priority setting session at the Central Park Library. The City Council discussed and established citywide priorities to serve as a policy framework for budget decisions and how City resources are aligned to support these objectives. During the session, the City Council requested the Police Department return to a future City Council meeting to discuss automobile burglaries, including strategies for prevention.

This report summarizes:

- California Laws Impacting Property Crimes
- California Penal Code Crime Definitions and their associated penalties
- Santa Clara Police Department Pursuit Policy
- City of Santa Clara Crime Statistics
- Impact of “Smash and Grab” Property Crimes
- Law Enforcement Identification of the Problem

- Santa Clara Police Department Goals in Addressing the Issue
- Police Department Initiatives, Past and Proposed as a result of BSCC funding
- Pending Legislation
- Future Financial Considerations

California Laws Impacting Property Crimes

The realignment in the California criminal justice system (Assembly Bill 109, Criminal Justice Realignment Act, passed by voters in October 2011) eliminates state prison as a sentence option for various felonies and transfers responsibility of these offenders to county jails and probation offices. Proposition 47 (passed by voters in November 2014) reduced certain drug possession felonies to misdemeanors and eliminated the criminal statute for serial theft. It also requires misdemeanor sentencing for petty theft, receiving stolen property and forging/writing bad checks when the amount involved is \$950 or less. Proposition 57 (passed by voters in November 2016) allows parole consideration for nonviolent felons, changes policies on juvenile prosecution and authorizes sentence credits for rehabilitation, good behavior, and education. In some cases, certain felony convictions were also retroactively erased.

In addition, persons released from state prison on or after October 2011, are released into Release Community Supervision (PRCS). The type of supervision is determined by the California Penal Code (PC). Penal Code 3451 provides that only the following offenders released from California Department of Corrections and Rehabilitation are supervised on parole:

- An offender serving a current term for a serious felony, as described in PC Section 1192.7(c).
- An offender serving a current term for a violent felony, as described in PC Section 667.5(c).
- An offender serving a current term of life.
- An offender classified as a High-Risk Sex Offender.
- An offender determined to be a Mentally Disordered Offender.

This has resulted in thousands of reviews and the approval of over 500 offenders for release.

In addition, the above actions have resulted in unintentional consequences. "Smash and grab" automobile burglaries were declining state-wide from 2007 to 2014 to roughly 24 incidents per 100,000 residents. Immediately after the passage of Proposition 47, thefts from vehicles started to increase throughout the state, and have significantly increased since.

California Penal Code Crime Definitions and their Associated Penalties

In California, Penal Code 459 provides a summary of the following general crimes:

Automobile burglary - Auto burglary is defined as entering any vehicle when there is: 1) evidence of forced entry into a locked vehicle, and 2) intent to commit theft or one or more felonies. Individuals charged with auto burglary can be charged with petty or grand larceny, or other appropriate crime.

If the crime does not satisfy all of the elements of burglary (e.g. enter an unlocked vehicle, lack of intent, insufficient evidence, duress or threats, etc.), an individual may still be charged with attempted burglary (e.g. unable to enter due to car alarm being set off), tampering with a vehicle (e.g. enter a vehicle and search for valuables but steal nothing), vandalism (e.g.

purposely slash the tires) or looting (e.g. auto burglary during a state of emergency, such as a riot or earthquake). Each of these charges are separate.

Larceny - To commit the crime of larceny, also known as theft, petty theft, or grand theft, a person must take someone else's property without permission and with the intention to permanently deprive the owner of its use or possession. A theft may occur during the course of a burglary, but it can also occur as a separate incident.

Petty larceny - Also referred to as petty theft, is generally when the value of the money, labor, real or personal property taken does not exceed \$950.

Grand Larceny - Also referred to as grand theft, is committed when the money, labor, or real or personal property taken is of a value exceeding \$950. Grand larceny is also committed when the property taken is an automobile.

In California, auto burglary is considered to be a form of second-degree burglary, which is a wobbler offense. Penalties will differ based on whether you are convicted of a misdemeanor or felony burglary charge.

- The penalty for a misdemeanor auto burglary charge is up to one year in County Jail.
- The penalty for a felony auto burglary charge may be a jail sentence of 16 months, two years, or three years.

The exception to these penalties is the burglary of a trailer coach, such as an RV, which is considered to be an "inhabited" structure. In this case, it may be considered a felony first-degree burglary with penalties of two to six years in California state prison.

City of Santa Clara Crime Statistics

Currently, California reports crimes under the Uniform Crime Reporting (UCR) method. UCR classifies crimes into Part I violent crimes and Part II property crimes, with 8 index offenses representing 21 crimes. When multiple offenses occur in one crime incident only the most serious offense is counted, known as the hierarchy rule. For instance, if an individual commits a burglary (e.g. forcible entry) and then rapes a victim only the rape would be reported to the FBI.

Effective January 1, 2021, the National Incident Based Reporting System (NIBRS) will replace UCR. NIBRS collects data for 52 offenses, plus 10 additional offenses for which only arrests are reported. The hierarchy rule does not apply with NIBRS and law enforcement agencies will be required to submit detailed information about all the offenses committed in a single incident. NIBRS also includes detailed information about the victim, the offender, any witnesses and the nature and type of the offense. NIBRS also provides information about the circumstances under which the criminal offense took place and the known characteristics of the victim and the offender such as their age, sex, race and the relationship between them. In the example above, both the burglary and rape would be reported to the FBI.

SCPD is sharing this information with the City Council because the City's crime statistics will look very different beginning in 2021.

The current data for vehicle burglaries and thefts from vehicles is as follows:

Year	Number of vehicle burglaries and thefts from vehicles	Percent increase / decrease over previous year
2016	1,052	
2017	1,850	+ 75.9%
2018	1,907	+ 3.1%
2019	2,970	+ 55.7%
January 1- October 31, 2020	1,030	-55.6%

The above chart does not include tampering with a vehicle or vehicle vandalism.

Impact of “Smash and Grab” Incidents

Victims of vehicle burglaries can face significant costs. Window repairs generally cost several hundred dollars and often involve lost time from work/school. Victims are out the value of stolen property, are burdened by the cost to replace the stolen item(s), use valuable time to work with insurance companies and may see an increase in their insurance rates. Some victims also suffer feelings of helplessness and personal violation that come from having an intruder destroy one’s property and rummage through their possessions.

Law Enforcement Identification of the Problem

Addressing property crimes is not a simple matter. Research indicates there are multiple challenges facing law enforcement, including:

- Incident occurrence location varies
- Thefts from vehicles span an extended period of time each day
- Suspects use a stolen vehicle when committing a crime, or remove and replace the license plate with that from another car (referred to as cold plate)

Santa Clara Police Department Goals in Addressing the Issue

- Create awareness among individuals who live, work and visit Santa Clara to not leave valuables in their vehicle
- Establish partnerships among car rental companies, hotels, retail establishments and high-tech businesses, particularly those near expressways and freeways, about their guardianship over their vehicles and/or parking facilities (e.g. lighting, gates, video cameras, security personnel, etc.)
- Identify perpetrators, both professionals and amateurs
- Pinpoint avenues where suspect(s) are reselling valuables (e.g. pawn shops, online sales - eBay, Craigslist, OfferUp, etc.)
- Identify recipients and/or movers of stolen goods to later resell for profit, known as fences
- Support legislation that increases penalties for property crimes

Efforts to Combat “Smash and Grab” Incidents to Date

Prior to the receipt of BSCC funding, the Police Department took several proactive steps to address

preventing thefts from vehicles among residents, property owners and visitors, including:

- Educational messages on the City / SCPD website and social media;
- Community meetings;
- Flyer distribution in targeted areas encouraging drivers not to leave valuables in their vehicle;
- Conversations with car rental companies and supply them with educational flyers to provide to renters;
- Meetings with hotel management and shopping center property managers to encourage ample lighting, security personnel, signage, video surveillance and maintain an open line of communication;
- High visibility patrols in areas where break-ins have occurred *;
- Undercover operations to locate in-progress thefts and apprehend suspects; and,
- Partnered with the Santa Clara County Special Enforcement Team, a county-wide Task Force, and the San Jose Police Department's Burglary Prevention Unit to assist in the successful prosecution of suspects connected with automobile burglaries and the fencing of property connected with automobile burglaries.

* The Police Department's Crime Analyst is identifying areas of common occurrence on a daily basis and recommending deployment of resources accordingly.

Funding for this education and enforcement has been paid for from the Police Department's operating budget.

The Police Department's arrest and prosecution of 21 members of the Ghost Town Gang in December 2015, resulted in a temporary reduction in automobile burglaries. However, Police Department investigations have shown these crimes are no longer exclusively being performed by organized criminal groups. With the number of independent criminals committing automobile burglaries increasing, the statistics continue to escalate.

New Initiatives as a Result of California Board of State and Community Corrections Funding

BSCC funding has allowed the Police Department to work collaboratively with the Milpitas, Fremont, Newark and San José Police Department's. A Task Force has been established to discuss common issues, share resources and brainstorm solutions. As a result of the task force, the following new community education strategies have been implemented:

- Obtained support from the Santa Clara County District Attorney's Office to support the enforcement efforts on a regional basis;
- Development of the "Remove It or Lose It" slogan;
- Design of a logo using the slogan and patches for use on marketing materials for participating agencies;
- Purchase of A-frame signs with crime prevention messaging for use at special events and in City-owned parking lots;
- Purchase of Waze advertising, a traffic and navigation app, cautioning users from leaving anything of value visible in their vehicle (launch delayed as a result of COVID-19); and
- Creation of an agency specific promotional video in multiple languages demonstrating how

quickly “smash and grab” automobile burglaries take place, sharing ways to protect your valuables and stressing the importance of reporting suspicious activity.

In addition, the Task Force is working with the Santa Clara County District Attorney’s Office to fund a Crime Analyst in the Crime Strategies Unit. A Memorandum of Understanding is being drafted by the District Attorney’s Office.

The Police Department has incorporated language in the City’s Legislative Advocacy Positions regarding criminal activity, particularly property crimes.

Finally, the Police Department is working with the City’s Purchasing Division to procure the following equipment:

- Vehicle trackers
- Automatic License Plate Reader (ALPR)
- Camera Systems
- Leads Online - web-based tool that allows Detectives to search selling websites (e.g. eBay, Craig’s List, OfferUp, etc.) for stolen property by serial number and description
- Vigilant - web-based ALPR analytical program to identify and track automobile burglary subjects

As a result of these initiatives, the Police Department has spent \$290,803 in BSCC funding as of February 28, 2020. An additional \$55,200 is in the procurement process.

California Board of State and Community Corrections Grant	Amount Spent to Date	Amount in the Procurement Process
Equipment	\$49,710	
Staff - Regular time	\$0	
Staff - Overtime	\$228,968	
Contractual Services	\$53,329	\$55,200
Community Education	\$2,608	
Miscellaneous	\$12	
Total	\$334,628	\$55,200

Changes in Behavior as a Result of Shelter-in-Place

The Santa Clara County Public Health Department issued a Health Order to shelter-in-place on March 17, 2020. Ironically, in the early phases of the Health Orders, thefts from vehicles were significantly reduced.

As a result, the BSCC participating agencies postponed some of the new initiatives (e.g. use of A-frame signs at City-wide special events, Waze advertising, etc.). In addition, our Department greatly reduced high visibility patrols and undercover operations due to lack of need.

Since that time, the Police Department has observed four significant trends:

- Thefts of catalytic converters are on the rise
- An increase in bicycle thefts
- Commercial burglaries have doubled
- Thefts from vehicles have transitioned from retail areas to residential neighborhoods

The Police Department has distributed messaging on these topics (Crime Trend - Catalytic Converter Thefts on the Rise, April 27, 2020; Community Crime Information and Prevention Tips, April 28, 2020; Don't Get Complacent you're your Security Efforts, July 27, 2020) on its website and social media, as well as provided details about specific incidents in the Police Blotter.

Meanwhile, deployment efforts have mirrored prior practice for vehicle burglaries. The Department's Crime Analyst identifies trends amongst the crime data and determines the best times of day to deploy officers to specific locations.

Pending Legislation

In March 2020, the Police Department provided feedback on a Legislative Advocacy position titled "Reducing Crime and Keeping California Safe Act." This draft bill qualified for the November 2020 ballot, and amends state law to increase penalties for certain theft-related crimes, as well as makes changes to the release consideration process to exclude inmates that have committed certain crimes, allow for broader appeals of release decisions, expand the grounds on which a release can be denied and require victims to be notified of release reviews. It also changes community supervision practices and requires DNA collection from adults convicted of certain misdemeanors. Finally, the measure establishes new crimes for serial theft as well as organized retail theft.

The Legislative Analyst's Office anticipates that this measure would result in increased state and local correctional costs, primarily related to increases in penalties for certain theft-related crimes and the changes to the nonviolent offender release consideration process. Additionally, there are likely to be minor state and local costs associated with processing probation revocations and additional felony theft filings, as well as for the collecting and processing of DNA samples from additional offenders.

The proposed initiative has a significant level of support, including from the law enforcement community, cities and counties across the state, state-level law enforcement associations, the League of California Cities and other community-based leaders.

Chief's Advisory Committee Feedback on a Community Camera Program

On October 5, 2020, Captain Greg Hill presented materials to the Chief's Advisory Committee regarding the potential for the implementation of a community camera program. The presentation included a summary of existing laws negatively impacting law enforcement's crime prevention efforts (previously discussed in this report), SCPD's existing use of ALPR technology and its' corresponding policy, benefits of mobile cameras, example locations for fixed cameras and data use, storage and retention.

Committee members had a thoughtful discussion (e.g. mining the data, who the information can be shared with, profiling, facial recognition, concern regarding the ability for SCPD to replace damaged cameras, etc.). Following the dialogue, Committee members fully supported the use of BSCC funding toward the implementation of a community camera program.

Future Financial Consideration

Santa Clara's receipt of BSCC funding is expected to garner results and add essential resources to the Department for future use, however, it is one-time funding. To support these initiatives after BSCC funding has been exhausted, SCPD anticipates needing two additional police officer positions. With salary and benefits, the cost to the City, outside the BSCC funding, is estimated at approximately \$500,000.

One Police Officer would work in the Investigations Division, while the second Police Officer would be assigned to work a traditional 11-hour shift and primarily focus on automobile burglaries.

While the Police Department would like to request these positions as part of the FY 2021/22 operating budget cycle, given the forecasted General Fund deficit, it is unlikely any position additions will be recommended as part of the FY 2021/22 operating budget.

Without additional funding (e.g. positions or equivalent overtime budget increase), the Police Department has three options: 1) reduce services to maintain automobile burglary suppression at the level equivalent to what was conducted as a result of BSCC funding, 2) reduce automobile burglary initiatives to match availability of funding, or 3) discontinue an emphasis in automobile burglary initiatives.

ENVIRONMENTAL REVIEW.

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

FISCAL IMPACT

There is no fiscal impact from this report.

COORDINATION

This report was coordinated with the City Manager's Office.

PUBLIC CONTACT

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

RECOMMENDATION

Note and file the Information Report regarding Automobile Burglaries, including Strategies for Prevention.

Reviewed by: Patrick Nikolai, Chief of Police

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Report to Council 19-941

Automated License Plate Readers (ALPRs)

428.1 PURPOSE AND SCOPE

Best Practice

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

428.2 POLICY

Best Practice MODIFIED

The policy of the Santa Clara Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

428.3 ADMINISTRATION

Best Practice MODIFIED

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Santa Clara Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Administrative Services Division Commander. The Administrative Services Division Commander will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

428.3.1 ALPR ADMINISTRATOR

State MODIFIED

The Administrative Services Division Commander shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information: Only properly trained sworn police personnel, community service officers, office specialists, crime analysts, records specialists, public safety dispatchers, vendor representatives and any other personnel who have received the required training with the approval of the Administrative Services Division Commander or their designee.

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Automated License Plate Readers (ALPRs)

- (b) Training requirements for authorized users: All authorized users shall complete the California Department of Justice CLETS access certification every two years. All authorized users shall also receive additional training from the vendor and the Police Training Unit, as set forth in the guidelines and procedures document.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring that procedures are followed for system operators and to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the operation: The Administrative Division Commander or their designee shall oversee the ALPR program.
- (f) The Administrative Services Division Commander or designee, who shall oversee the ALPR program operation, shall be responsible for ensuring that the program is maintained, and shall continuously work with the Custodian of Records on the retention of destruction of ALPR data.
- (g) The ALPR policy and related procedures shall be conspicuously posted on the department's website.

428.4 OPERATIONS

State

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (f) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

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Automated License Plate Readers (ALPRs)

428.5 DATA COLLECTION AND RETENTION

Best Practice

The Administrative Services Division Commander is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

ALPR data shall not be sold, shared or transferred except as specifically set for in this policy and applicable law.

428.6 ACCOUNTABILITY

All data will be closely safeguarded and protected by both procedural and technological means. The Santa Clara Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All ALPR data downloaded to the mobile workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52). The user's unique identifier shall be recorded each time ALPR data is accessed.
- (b) Members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- (c) The Administrative Services Division Commander or their designee should perform monthly audits to ensure proper use of the ALPR data.

For security or data breaches, see the Records Release and Maintenance Policy and the guidelines and procedures prepared by the Department.

428.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - (a) The name of the agency.
 - (b) The name of the person requesting.
 - (c) The intended purpose of obtaining the information.

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Automated License Plate Readers (ALPRs)

- (b) The request is reviewed by the Administrative Services Division Commander or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed in accordance with applicable law including but not limited to Civil Code § 1798.90.55(b).

428.8 TRAINING

The Police Training Unit should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90) or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

428.6 ACCOUNTABILITY

State

All data will be closely safeguarded and protected by both procedural and technological means. The Santa Clara Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All ALPR data downloaded to the mobile workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- (c) ALPR system audits should be conducted on a regular basis.

For security or data breaches, see the Records Release and Maintenance Policy.

428.7 RELEASING ALPR DATA

Best Practice **MODIFIED**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - (a) The name of the agency.
 - (b) The name of the person requesting.
 - (c) The intended purpose of obtaining the information.
- (b) The request is reviewed by the Administrative Services Division Commander or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

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Automated License Plate Readers (ALPRs)

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

428.8 TRAINING

State

The Police Training Coordinator should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Automated License Plate Readers (ALPRs)

PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage, and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

DEFINITIONS

- (a) **Automated License Plate Reader (ALPR):** A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) **ALPR Operator:** Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) **ALPR Administrator:** The Administrative Services Division Commander or the designee, serves as the ALPR Administrator for the Department.
- (d) **Hot List:** A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) **Vehicles of Interest:** Including, but not limited to vehicles which are reported as stolen; display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- (f) **Detection:** Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- (g) **Hit:** Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates along with the vehicle make, model, color and unique identifiers through the Santa Clara Police Department's ALPR's system and the vendor's vehicle identification technology. The technology is used by the Santa Clara Police Department to convert data associated with vehicle license plates and vehicle descriptions for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Public Safety Information Technology Manager. The Public Safety Information Technology Manager will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

ALPR ADMINISTRATOR

The Administrative Services Division Commander shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Only properly trained sworn officers, crime analysts, and police assistants are allowed access to the ALPR system or to collect ALPR information.
- (b) Ensuring that training requirements are completed for authorized users.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring that procedures are followed for system operators and to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation is maintained. Continually working with the Custodian of Records on the retention and destruction of ALPR data.
- (f) Ensuring this policy and related procedures are conspicuously posted on the department's website.

426.2 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation; reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert. Once an alert is received, the operator should confirm

that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDC or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)

- (f) Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:

(1) **Verification of status on a Hot List.** An officer must receive confirmation, from a Santa Clara Police Department Public Safety Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

(2) **Visual verification of license plate number.** Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

(3) Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

(4) General Hot Lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

(5) All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR

Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
- Related case number.
- Short synopsis describing the nature of the originating call

(g) Training. No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.

(h) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Santa Clara Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- (1) Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- (2) Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- (3) Use Based on a Protected Characteristic. It is a violation of this policy to use the LPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
- (4) Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
- (5) First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- criminal prosecution,
- civil liability, and/or
- administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

DATA COLLECTION AND RETENTION

The Administrative Services Division Commander or designee is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

All ALPR data downloaded to the server should be stored for no longer than one year, and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

ALPR vendor, Flock Safety will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. Flock Safety will purge their data at the end of the 30 days of storage. However, this will not preclude VPD from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Santa Clara retention schedule mentioned above or outlined elsewhere.

Restrictions on use of ALPR Data: Information gathered or collected, and records retained by Flock Safety cameras or any other Santa Clara Police Department's ALPR system will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

ACCOUNTABILITY and SAFEGUARDS

All data will be closely safeguarded and protected by both procedural and technological means. The Santa Clara Police Department's will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All non-law enforcement requests for access to stored ALPR data shall be processed in accordance with applicable law.
- (b) All ALPR data downloaded to the mobile workstation shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date, and time.
- (c) Persons approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.

- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (e) Every ALPR Detection Browsing Inquiry must be documented by either the associated Santa Clara Police Department case number or incident number, and/or a reason for the inquiry.

For security or data breaches, see the Records Release and Maintenance Policy.

POLICY

The policy of the Santa Clara Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Santa Clara Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

ALPR DATA DETECTION BROWSING AUDITS

It is the responsibility of the Administrative Services Division Commander or the designee to ensure that an audit is conducted of ALPR detection browsing inquiries at least once during each calendar year. The Department will audit a sampling of the ALPR system utilization from the prior 12-month period to verify proper use in accordance with the above- authorized uses. The audit shall randomly select at least 10 detection browsing inquiries conducted by department employees during the preceding six-month period and determine if each inquiry meets the requirements established in policy section 428.4.

The audit shall be documented in the form of an internal department memorandum to the Chief of Police or the designee. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police or the designee, the memorandum and any associated documentation shall be filed and retained by Administrative Services Division Commander or their designee.

RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

- (a) The agency makes a written request for the ALPR data that includes:
 - (1) The name of the agency.
 - (2) The name of the person requesting.
 - (3) The intended purpose of obtaining the information.

- (b) The request is reviewed by the Administrative Services Division Commander or the authorized designee and approved before the request is fulfilled.
- (c) The Administrative Services Division Commander or the authorized designee will consider the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq), before approving the release of ALPR data. The Santa Clara Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).
- (d) The approved request is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

TRAINING

The Police Training Unit should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).



**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

The attached documents describe the relationship between Flock Group Inc. (“Flock”) and the customer identified below (“Customer”) (each of Flock and Customer, a “Party”). The documents attached to this order form (“Order Form”) will consist of the document entitled “Terms and Conditions” (the “SaaS Terms”), any schedules attached thereto, and the Customer’s **Supplemental Conditions Addendum** attached hereto and incorporated herein by reference, which describe and set forth the general legal terms governing the relationship (collectively, the “Agreement”). The SaaS Terms contain, among other things, warranty disclaimers, liability limitations and use limitations. However, the parties agree that the Supplemental Conditions Addendum shall prevail in the event of any conflict with any other term in the Agreement, including the SaaS Terms.

The Agreement will become effective when this Order Form is executed by both Parties (the “Effective Date”).

Customer: City of Santa Clara	Contact: Greg Hill
Address: 601 El Camino Real Santa Clara, CA 95050	Phone: 408-615-4810
	E-Mail: Ghill@santaclaraca.gov
Usage Fees: \$30,000 per Year (the “Payment Period”) Number of Cameras: 12	Billing Term: Annual Payment due net 30 per terms and conditions Initial Term: 24 Months Renewal Term: 12 Months
Installation Fee (one-time) \$3,000 Pole Fee (one-time) \$ 0	Year 1 Total: \$33,000 Recurring Total: \$30,000

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc	Customer: City of Santa Clara
By: <i>Alex Latraverse</i> Name: Alex Latraverse Title: VP of Growth Date: 12/17/2020	By: <i>Deanna Santana</i> Name: Deanna Santana Title: City Manager Date: 1/6/2021

Sujata
Reuter

Digitally signed
by Sujata Reuter
Date: 2020.12.23
07:34:09 -08'00'

CITY OF SANTA CLARA SUPPLEMENTAL CONDITIONS

For purposes of this Addendum to the Agreement between Flock Group, Inc. and the City of Santa Clara, the term "Contractor" shall refer to Flock Group, Inc., and the term "City" or "Agency" shall be used to refer to the Customer, which is the City of Santa Clara.

1. California Civil Code Compliance. Contractor is advised of, and agrees it will comply with the requirements of the California Civil Code, Division 3, Part 4, Title 1.81.23 COLLECTION OF LICENSE PLATE INFORMATION [§§1798.90.5 - 1798.90.55] as applicable to an automated license plate recognition (ALPR) operator (also referred to as an "ALPR operator"). Contractor shall maintain reasonable security procedures and practices to protect ALPR information from unauthorized access, destruction, use, modification or disclosure that are at least as protective as the "Flock Safety End to End Data Security Overview," "Flock Safety CJIS Compliance Overview," and "Flock Safety Internet Security Policy," (collectively, referred to as the "Flock Security Policies") as each such policy was in effect as of January 29, 2020. Any amendment to the Flock Security Policies shall be transmitted to the City within 10 days. In the event the City determines in its sole discretion that any amendment to the Flock Security Policies either substantially reduces the privacy or security of Customer Content (including ALPR Footage) or the amendments would violate any State or Federal law, then the City shall have the right to terminate the Agreement and Flock will refund to City a pro-rata portion of the pre-paid Fees for Services not received due to such termination.
2. Disclosure of Security Breach. Contractor is advised of the requirements of the California Civil Code, section 1798.29, requiring notification to any resident of California in the event of breach of the security of the system. Contractor agrees it will notify the City immediately (and in no event more than 24 hours) upon the occurrence of any breach in the security of data that may potentially trigger the need for security breach notifications pursuant to Civil Code section 1798.29 or similar State or Federal law. The parties agree that the City will control the timing and content of any required security breach notification, and agree that Contractor shall fully pay or reimburse the City for the costs of providing any security breach notification required by Civil Code, section 1798.29, or similar State or Federal law, resulting from any security breach of the Flock Safety platform. Contractor's responsibility for the costs of providing such security breach notifications shall not be limited by any disclaimer or limitation of liability in the Agreement, including but not limited to Sections 2.1, 7.4 and 8 of the SaaS Terms of this Agreement.
3. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of or relating to any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under the contract does not relieve Contractor from liability under this indemnification

and hold harmless clause. This indemnification and hold harmless clause is a material element of the Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. This Section 3 shall survive termination or expiration of this Agreement. Contractor's indemnification obligation pursuant to this Section shall not be limited by any disclaimer or limitation of liability in the Agreement, including but not limited to, Sections 2.1, 7.4 and 8 of the SaaS Terms of this Agreement.

4. Infringement. Without limiting the generality or applicability of Section 3, above, if a third party makes a claim against the City that any use of the Services in accordance with the terms of this Agreement infringes such third party's intellectual property rights, Contractor, at its sole cost and expense, will defend City against the claim and indemnify City from the damages, losses, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Contractor, provided that City: (i) notifies Contractor promptly in writing of the claim; (ii) gives Contractor sole control of the defense and any settlement negotiations; and (iii) gives Contractor reasonable assistance in the defense of such claim. If Contractor believes or it is determined that the Services violated a third party's intellectual property rights, Contractor may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Contractor may terminate City's use rights and refund any unused, prepaid fees City may have paid to Contractor.
5. California Public Records Act Compliance. Notwithstanding Section 4 of the SaaS Terms, Contractor expressly understands that City is a public agency subject to the California Public Records Act (Cal. Government Code § 6250 et seq.). In the event that City receives a public records request seeking the disclosure of information that Contractor has designated as its "Proprietary Information," City shall notify Contractor, and Contractor shall be allowed to take any reasonable action to preserve the confidentiality of such information. City's obligation shall only extend to notifying Contractor of the request, and City shall have no obligation to preserve the confidentiality unless doing so is in full compliance with the law.
6. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any employees used by Contractor in providing said services.
7. Subcontractors. Notwithstanding Section 2.1 of the SaaS Terms, if Contractor utilizes a third-party subcontractor or other vendor to provide the Services under this Agreement, Contractor shall ensure that such subcontractor(s) or vendor(s) complies with the terms of this Agreement, and shall be jointly and severally liable with the subcontractor/vendor for any breach by the subcontractor/vendor.
8. Insurance. During the entire term of this Agreement and any extension or modification thereof, the Contractor shall keep in effect insurance policies meeting the following insurance requirements: See Exhibit B – Insurance Requirements General.
9. Appropriation. City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Contractor acknowledges that the City is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. The parties agree that the Initial Term and any renewal term(s) is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. City shall pay Contractor for any services performed in accordance with this Agreement up to the date of termination.

10. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Santa Clara City Manager's Directive Procedure Number 131 'Equal Employment Opportunity Policy and Discrimination Complaint Procedure' and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Santa Clara for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
11. Assignment. Contractor shall not assign this Agreement, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City. Notwithstanding, for purposes of this Contract, a merger, acquisition, reorganization, spin-off or other transaction involving a transfer of substantially all of the assets or common stock of either party hereto shall not be deemed an assignment.
12. Business License. Flock will procure a business license from the city prior to conducting business in Santa Clara.
13. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without giving effect to principles of conflict of laws. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Santa Clara, San Jose, California.

flock safety

EXHIBIT A

Statement of Work

Based on the mutually agreed deployment plan, installation services includes the following:

- Installation of Flock Cameras
- Installation of 6' or 12' Flock Camera poles as defined in the plan

flock safety

TERMS AND CONDITIONS

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1

1.1 "*Authorized End User*" shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.2 "*Agency Data*" will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Content will include the Footage and geolocation information and environmental data collected by sensors built into the Units.

1.3 "*Documentation*" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.4 "*Embedded Software*" will mean the software and/or firmware embedded or preinstalled on the Hardware.

1.5 "*Flock IP*" will mean the Flock Services, the Documentation, the Hardware, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.6 "*Footage*" means still images and/or video captured by the Hardware in the course of and provided via the Services.

1.7 "*Hardware*" shall mean the Flock Gate Cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term "*Hardware*" excludes the Embedded Software.

1.8 "*Installation Services*" means the services provided by Flock regarding the installation, placements and configuration of the Hardware, pursuant to the Statement of Work attached hereto.

1.9 "*Flock Services*" means the provision, via the Web Interface, of Flock's software application for automatic license plate detection, searching image records, and sharing Footage.

1.10 "*Non-Agency End User*" means a Flock's non-Agency customer that has elected to give Agency access to its data in the Flock System for investigative purposes.

1.11 *“Non-Agency End User Data”* means the Footage, geolocation data, environmental data and/or Notifications of a Non-Agency End User for investigative purposes only.

1.12 *“Unit(s)”* shall mean the Hardware together with the Embedded Software.

1.13 *“Web Interface”* means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

1.14 *“Aggregated data”* means information that relates to a group or category of customers, from which individual customers' identities have been removed, that is not linked or reasonably linkable to any customer, including via a device.

2. FLOCK SERVICES AND SUPPORT

2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Service Term and No-Fee Term, solely for the Authorized End Users. The Footage will be available for Agency to access via the Web Interface for 30 days. Authorized End Users will be required to sign up for an account, and select a password and username (*“User ID”*). Flock will also provide Agency the Documentation to be used in accessing and using the Flock Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Flock Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, including without limitation using a third party to host the Web Interface which make the Flock Services available to Agency and Authorized End Users. Flock will pass-through any warranties that Flock receives from its then current third-party service provider to the extent that such warranties can be provided to Agency. SUCH WARRANTIES, AS PROVIDED AS HONORED BY SUCH THIRD PARTIES, ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FLOCK'S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

2.2 **Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware by Flock; in each case, solely as necessary for Agency to use the Flock Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, nontransferable right and license to use the Documentation during the Service Term for Agency's internal purposes in connection with its use of the Flock Services as contemplated herein.

2.4 Usage Restrictions. Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; (vi) use the Flock Services for timesharing or service bureau purposes or otherwise for the benefit of a third party or any purpose other than the Purpose; or (viii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3. Non-agency data may only be accessed for investigative purposes.

2.5 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

2.6 Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock Service disrupts or poses a security risk to the Flock Service or any other customer or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Flock Services to Agency or any Authorized End User is prohibited by applicable law; or (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Application Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured.

Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension.

2.7 Installation Services.

2.7.1 Designated Locations. Prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. While Flock will provide advice regarding the location of positioning of such Units, Agency will have the ultimate decision regarding the location, position and angle of the Units (each Unit location so designated by Agency, a “*Designated Location*”). Due to the fact that Agency selects the Designated Location, Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations. After an installation plan with Designated Locations and equipment has been agreed upon by both Flock and the Agency, any subsequent changes to the installation plan driven by Agency’s request will incur a \$250 charge in addition to any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, changes to heights of poles, and removing foliage.

2.7.2 Agency’s Installation Obligations. Agency agrees to allow Flock and its agents reasonable access to the designated installation locations at all reasonable times upon reasonable notice for the purpose of performing the installation work (together with the preceding sentence, the “*Agency Installation Obligations*”). It is understood that the Installation Fees do not include any permits or associated costs, any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or any other services performed in connection therewith and that Agency shall be solely responsible for the foregoing. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

2.7.3 Flock’s Installation Obligations. The Hardware shall be installed in a workmanlike manner in accordance with Flock’s standard installation procedures, and the installation will be completed within a reasonable time from the time the Designated Locations are selected by Agency. Following the initial installation of the Hardware, Flock’s obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units. Agency understands and agrees that the Flock Services will not function without the Hardware.

2.7.4 Security Interest. The Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Agency agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Agency default in any payment for the Flock Services or any part thereof or offer to sell or auction the

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Hardware, then Agency authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

2.8 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Agency and shall be paid promptly upon billing.

2.9 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("*Monitoring Services*"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("*On-Site Services*") in-person or by email at hello@flock-safety.com. Flock will use commercially reasonable efforts to respond to requests for support.

3. AGENCY RESTRICTIONS AND RESPONSIBILITIES

3.1 Agency Obligations. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone and must protect the security of its account and password. Agency is responsible

for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities and Agency equipment, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content and retention thereof.

4. CONFIDENTIALITY; AGENCY DATA; NON-AGENCY DATA

4.1 Confidentiality. Each Party (the “*Receiving Party*”) understands that the other Party (the “*Disclosing Party*”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “*Proprietary Information*” of the Disclosing Party). Proprietary Information of Flock is non-public information including but not limited to features, functionality, designs, user interfaces, trade secrets, intellectual property, business plans, marketing plans, works of authorship, hardware, customer lists and requirements, and performance of the Flock Services. Proprietary Information of Agency includes non-public Agency Data, Non-Agency End User Data, and data provided by Agency or a Non-Agency End User to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services. The Receiving Party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Proprietary Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Proprietary Information and the parties’ respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Proprietary Information of the other party to those employees or agents who require access in order to perform hereunder. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock’s use of the Proprietary Information may include processing the Proprietary Information to send Agency Notifications or alerts, such as when a car exits Agency’s neighborhood, or to analyze the data collected to identify motion or other events.

The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by Receiving Party prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to Receiving Party without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party.

Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any subpoena, summons, judicial order or other judicial or governmental process, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to obtain a protective order or otherwise oppose the disclosure. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2 Agency and Non-Agency End User Data. As between Flock and Agency, all right, title and interest in the Agency Data and Non-Agency End User Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, nonexclusive, royalty-free, worldwide license to use the Agency Data and Non-Agency End User Data and perform all acts with respect to the Agency Data and Non-Agency End User Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify the Agency Data and Non-Agency End User Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Flock and Agency, Agency is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Agency Data and Non-Agency End User Data. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency.

4.3 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data and Non-Agency End User Data input into the Services (the “*Aggregated Data*”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Flock offerings, and (ii) disclose the Agency Data and Non-Agency End User Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1 Fees. Agency will pay Flock the first Usage Fee and the Installation Fee (the “Initial Fees”) as set forth on the Order Form on or before the 7th day following the Effective Date of this Agreement. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each Payment Period. All payments will be made by either ACH, check, or credit card.

5.2 Changes to Fees. Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). Such Fee increase shall not exceed five percent (5%) of the Usage Fee. If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s customer support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

5.3 **Invoicing; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income.

5.4 **No-Fee Term Access.** Subject to Flock's record retention policy, Flock offers complimentary access to the Flock System for 30 days ("**No Fee Term**") to Agency when Non-Agency End Users intentionally prescribe access or judicial orders mandate access to Non-Agency End User Data. No hardware or installation services will be provided to Agency. No financial commitment by Agency is required to access the Flock Services or Footage. Should such access cause Flock to incur internal or out-of-pocket costs that are solely the result of the access, Flock reserves the right to invoice these costs to Agency under Section 5.3 and Agency agrees to pay them. For clarity, No-Fee Terms and Service Terms can occur simultaneously, and when a No-Fee Term overlaps with a Service Term, Agency agrees to pay the Initial Fees and Usage Fees payments according to Section 5.1.

6. TERM AND TERMINATION

6.1 **Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Initial Term**"). *Following the Initial Term, this Agreement will automatically renew for successive renewal terms of the length set forth on the Order Form* (each, a "**Renewal Term**", and together with the Initial Term, the "**Service Term**") *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.2 **Termination.** Agency may terminate this Agreement prior to the end of the Service Term by providing thirty (30) days prior written notice to the other party. In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's breach, Flock will refund to Agency a pro-rata portion of the pre-paid Fees for Services not received due to such termination.

6.3 **Effect of Termination.** Upon any termination of the Service Term, Flock will collect all Units, delete all Agency Data, terminate Agency's right to access or use any Services, and all licenses granted by Flock hereunder will immediately cease. Agency shall ensure that Flock is granted access to collect all Units and shall ensure that Flock personnel does not encounter

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Hazardous Conditions in the collection of such units. Upon termination of this Agreement, Agency will immediately cease all use of Flock Services.

6.4 No-Fee Term. The initial No-Fee Term will extend, after entering into this Agreement, for 30 days from the date a Non-Agency End User grants access to their Footage and/or Notifications. In expectation of repeated non-continuous No-Fee Terms, Flock may in its sole discretion leave access open for Agency's Authorized End Users despite there not being any current Non-Agency End User authorizations. Such access and successive No-Fee Terms are deemed to be part of the No-Fee Term. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon 30 days' notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon 30 days' notice.

6.5 Survival. The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Hardware or Embedded Software (a "Defect"), Customer must first make commercially reasonable efforts to address the problem by contacting Flock's technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to, in its sole discretion, repair or replace the Hardware or Embedded Software suffering from the Defect. Flock reserves the right to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit; provided that such inspection and test shall occur within 72 hours after Customer notifies the Flock of defect. Flock agrees to replace cameras containing a Defect at no cost to Customer. Flock will replace lost, stolen, or damaged units at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer shall not be required to replace subsequently lost, damaged or stolen units; however, Customer understands and agrees that functionality, including Footage, will be materially affected due to such subsequently damaged or stolen units and that Flock will have no liability to Customer regarding such affected functionality nor shall the Fees owed be impacted.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 above if any of the following exclusions apply: (a) misuse of the Hardware or Embedded Software in any manner, including operation of the Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Hardware or Embedded Software in any way; or (c) combination of the Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE HARDWARE AND/OR EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND THE SUPPLEMENTAL CONDITIONS ADDENDUM, EXCEPT AS SET FORTH IN THE SUPPLEMENTAL CONDITIONS ADDENDUM, THE SERVICES AND INSTALLATION SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE .

8. LIMITATION OF LIABILITY AND INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY EXEMPLARY DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED FOUR TIMES THE

AMOUNT OF FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO MATTERS STATED IN SECTION 3 IN THE SUPPLEMENTAL CONDITIONS ADDENDUM. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE NO-FEE TERM EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE..

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data and Non-Agency End User Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to store the Agency Data or the Non-Agency End User Data, Agency agrees to preserve and securely store this data on Flock's behalf so that Flock can delete the data from its servers and, should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 **Entire Agreement.** This Agreement and the Order Form(s) are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.3. **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.6 **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. The federal and state courts sitting in California will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

10.8 **Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.9 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.10 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.12 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

flock safety

EXHIBIT B

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$2,000,000 Each occurrence
 - \$2,000,000 General aggregate
 - \$2,000,000 Products/Completed Operations aggregate
 - \$2,000,000 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, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall

provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of

premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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.

F. 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.

G. 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 emailed to ctsantaclara@ebix.com:

Or by mail to:

EBIX Inc.
City of Santa Clara – Police Department
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

H. 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.

Signature Certificate

Document Ref.: 5I2S2-UGSKN-QYBSV-NHNJL

Document signed by:

	<p>Alex Latraverse Verified E-mail: lat@flocksafety.com</p>	
<p>IP 76.97.107.29</p>	<p>Date 18 Dec 2020 15:59:26 UTC</p>	

Document completed by all parties on:
18 Dec 2020 15:59:26 UTC

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