




**City Council  
Special Meeting**

**Item #2: Related Santa Clara Post Closure Landfill Operation and Management Agreement (RTC # 20-464)**

**April 8, 2020**

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

**Agenda**

- Introduction of Team
- Background/Purpose
- Landfill Operation and Management Agreement
- Insurance Programs

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## **Risk Management Team**

- Curt Toll, Greenberg Traurig, LLP
- Giuliano Apadula, Greenberg Traurig, LLP
- Brian Doyle, City Attorney
- Liz Klotz, Assistant City Attorney
- Ruth Shikada, Assistant City Manager
- Greg Bych, Risk Manager
- Mark O'Brien, Environmental Risk Services
- Alliant, City of Santa Clara Insurance Broker
- Anna Shimko, Burke Williams Sorenson

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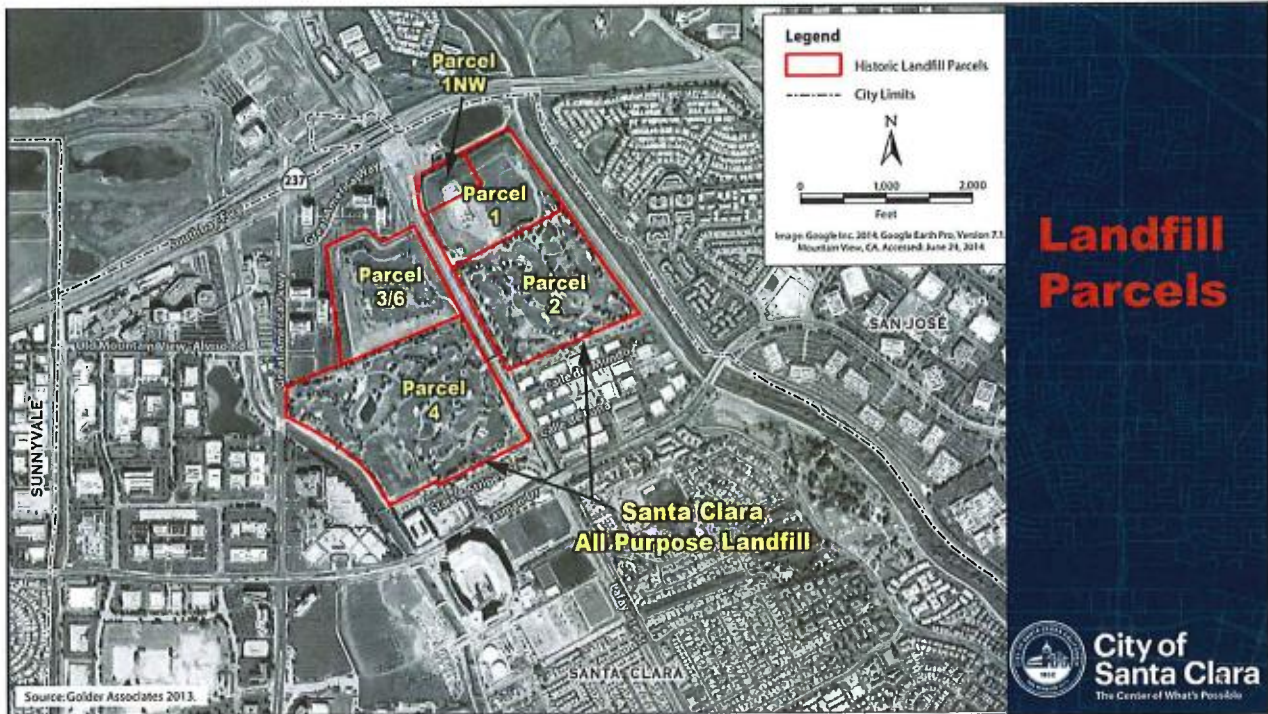


## **Related Santa Clara project**


- Project approvals – June 28, 2016
  - Zoning, GPA, EIR
  - Development Agreement
  - Disposition and Development Agreement (DDA)
- Landfill Post-Closure Operation and Management Agreement

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

## Landfill Post-Closure Operation and Management Agreement

- The “Landfill O&M Agreement” allocates responsibilities between City and Developer for:
  - Ownership, operation, maintenance, and management of the Landfill; and
  - The design and construction of the “Project Landfill Systems”.
    - These systems include the (1) landfill gas extraction system; and (2) leachate control system.

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## Construction, Operation and Maintenance of Landfill Systems

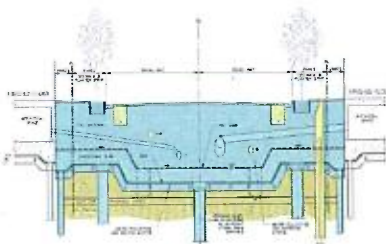
- **Developer Responsibilities:**
  - Design and construct the Project Landfill Systems at Developer's sole cost and expense.
  - Own, operate and maintain the Landfill Gas Mitigation Systems (LFGMS) under buildings and private streets.
- **City Responsibilities:**
  - Continue to own and is responsible for operation and maintenance of all Project Landfill Systems (new and old).
  - Operate the Project Landfill Systems during construction and obtain ownership of the upgraded Project Landfill Systems on a rolling basis.

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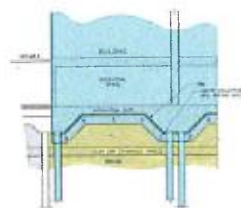


## Sample Exhibits of Responsibility Areas



PRIVATE STREETS W/ STRUCTURAL SLAB OVER FORMER LANDFILL  
TYPICAL SECTION  
R-15

- LEGEND**
- DEVELOPER RESPONSIBILITIES
    - ALL STRUCTURAL SLAB
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE
    - ALL GAS MITIGATION SYSTEM
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE
  - CITY RESPONSIBILITIES
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE
    - ALL GAS MITIGATION SYSTEM
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE
  - LANDFILL GAS MITIGATION SYSTEM
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    - LANDFILL GAS COLLECTION SYSTEM
  - LANDFILL GAS FLARE
    - LANDFILL GAS FLARE
    - LANDFILL GAS FLARE
    - LANDFILL GAS FLARE
    - LANDFILL GAS FLARE
    - LANDFILL GAS FLARE



BUILDINGS W/ STRUCTURAL SLAB OVER FORMER LANDFILL  
TYPICAL SECTION  
R-16

- LEGEND**
- DEVELOPER RESPONSIBILITIES
    - ALL STRUCTURAL SLAB
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE
  - CITY RESPONSIBILITIES
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE
    - ALL GAS MITIGATION SYSTEM
    - ALL GAS COLLECTION SYSTEM
    - ALL GAS FLARE

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## Apportionment of Costs

- Developer reimburses the City for Landfill operating costs up to \$550,000 annually as follows:
  - City pays its costs to operate and maintain the Landfill;
  - Developer reimburses the City once annually for City's actual out-of-pocket costs that exceed \$450,000;
  - Developer's reimbursement is capped at \$550,000 per year; and
  - City is responsible for all costs in excess of the reimbursement cap.
- Developer's reimbursement for expenses may include City's portion of insurance premiums and capital repairs on an amortized basis until hitting the reimbursement cap.

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## Summary of Insurance Programs

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## Phases of Insurance

- Different levels of insurance are required depending on the status and phasing of the Project. Specifically:
  1. **Pre-Phase Approved Activities** - work currently being performed by Developer under “Permits to Enter” with the City.
  2. **Pre-Landfill Activities** - activities on the Tasman Parcels prior to commencement of any intrusive work on the Landfill.
  3. **Landfill Phase Activities** - physical work on the Landfill that is in process and ongoing.
  4. **Post Substantial Completion**

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## Pre-Landfill Activities Insurance

- Pre-Landfill Activities are temporary in nature and will not involve any Landfill intrusive activities on the Landfill.
- Coverages will include:
  - **Builder’s Risk** (100% replacement value)
  - **Terrorism** (limits linked to underlying coverage)
  - **Owner’s Interest General Liability** *\*\*City as Additional Insured*
  - **Contractor’s Pollution Liability** *\*\*City as Named Insured*
  - **Pollution Legal Liability** *\*\*City as Named Insured*

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## Landfill Phase Activities Insurance

- Landfill Phase Activities involve intrusive work on the Landfill, represent the highest risk and therefore warrant the most robust coverage.
- The following slides describe the material lines of coverage required during Landfill Phase Activities.

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## Builder's Risk Program

- **Coverage Summary**
  - Provides first party property coverage for damage to real property incurred during construction (including City's Landfill systems) until Substantial Completion occurs.
- **City Insured Status**
  - City named as a "loss payee".

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## Terrorism

- **Coverage Summary**
  - First-party and third-party coverage for losses related to certified acts of terrorism.
- **City Insured Status**
  - City will have the same insured status as the underlying applicable program.

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## General Liability

- **Coverage Summary**
  - Provides general liability and excess (umbrella) coverage on an occurrence basis for each Ground Lease parcel, plus 10 years completed operations coverage.
  - Upon commencement of vertical construction on Phase 1 and for each of Phase 2 and Phase 3, Developer is required to satisfy the General Liability requirement through an Owner/Contractor Controlled Insurance Program (GL OCIP) which provides coverage for all tiers of horizontal and vertical contractors and subcontractors working on the Project.
- **City Insured Status**
  - Additional Insured status provided to the City.

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## Professional Liability Insurance (PLI) & Owner's Protective Professional Indemnity (OPPI)

- **Coverage Summary**

- PLI – design professionals will be required to maintain PLI (a/k/a Errors and Omissions) insurance.
- OPPI - PLI written for the owner that is excess of the design professionals' own PLI insurance (*i.e.*, coverage does not extend to design professionals).

- **City Insured Status**

- Coverage will be provided to the City for defense and payment of loss for third-party claims relating to the Project Landfill Systems.

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## Contractor's Pollution Insurance (CPL)

- **Coverage Summary**

- Contractor-based, claims-made policy providing bodily injury, property damage and cleanup costs coverage as a result of pollution conditions arising from contracting operations.

- **City Reimbursement Obligation**

- City to reimburse Developer for 10% of the total CPL cost up to a maximum reimbursement of \$200,000.
- City's contribution may be included in the O&M reimbursement from Developer and may be amortized over the policy period for purposes of calculating the Developer's annual reimbursement.

- **City Insured Status**

- Named Insured.

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## Pollution Legal Liability (PLL)

- **Coverage Summary**
  - Provides cleanup costs and third-party bodily injury and property damage coverage for pre-existing and new pollution conditions for the City and Developer only (no third-parties will be added). Fifteen (15) years of coverage required.
- **City Reimbursement Obligation**
  - City to reimburse Developer for 20% of the PLL cost with a maximum reimbursement of \$250,000.
    - City's contribution may be included in the O&M reimbursement from Developer and may be amortized over the term of the policy for purposes of calculating the Developer's annual reimbursement.
- **City Insured Status**
  - Named Insured.

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## Operational Policies/General

- After Substantial Completion of any improvement (or portion thereof), as applicable, the improvements will roll off the construction insurance programs and be placed on Developer's operational programs.
- **City Audit Rights**
  - City will have the right to audit Developer's insurance compliance at least once per year.

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## Operational Policies/General

- Amortization
  - The City may amortize (and include in each year's Landfill reimbursable expenses under the DDA) capital repairs or replacements of new equipment at the Landfill that costs more than \$50,000 over the shorter of: (a) the useful life of such repair/replacement; or (b) a 15 year period.
  - The City may also amortize the insurance premiums contribution (CPL, PLL) over the applicable term of such Project Insurance Program in the calculation of each year's Landfill reimbursable expenses under the DDA.

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## Recommendation

Approve and authorize the City Manager to execute the Landfill Post-Closure Operations and Management Agreement with Related Santa Clara, LLC for the Related Santa Clara development project and authorize the City Manager to obtain additional insurance programs to bolster the limits of liability available to City under the Project insurance programs

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The seal of the City of Santa Clara, California, is circular. It features a central illustration of a mission-style building with a red roof and a bell tower, set against a blue sky with clouds and a green field. The year "1852" is written below the building. The outer ring of the seal contains the text "CITY OF SANTA CLARA CALIFORNIA" at the top and "THE MISSION CITY" at the bottom, separated by a dotted line.

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