

RESPONSE TO COUNCIL QUESTIONS RE: 2/9/21 CITY COUNCIL AGENDA

Agenda Item #3.B (21-1200)

Action on the Adoption of a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2020

Council Question: What is the current park's ratio in acres/1,000 residents and what are the numbers behind it: City estimated population and total acreage of parkland.

Staff Response: The information requested is found on page 19 (Table 8) of the City of Santa Clara Parks and Recreation Facilities Fee Study adopted by Council in 2019 (available on the City website: <https://www.santaclaraca.gov/home/showdocument?id=63995>).

Table 8: Level of Service Standards

Improved Park Acreage = 254.99
 Unimproved Park Acreage Equivalent = 73.42
 Total Park Acres = 328.41
 Service Population (Residents) = 126,408

Level of Service Standard (Acres per 1,000 Residents)
 Mitigation Fee Act Standard (2018) = 2.60

For further detail, see full report.

Council Question: Does Fund 594 account only for developer impact fees per AB1600? Given that this fund is \$116 million in deficits, it seems to me that impact fees for sewer connections are 1/30th of the costs (\$1.124M/\$30,027M) in which case we need to increase our sewer impact fees substantially. Otherwise we are heavily subsidizing the costs of sewer connections from our CIP. Is that a correct interpretation?

The following table summarizes activity for the Sanitary Sewer Connection Fee from 2015-16 through 2019-20.

| Fund 594 | <u>2015-16</u> | <u>2016-17</u> | <u>2017-18</u> | <u>2018-19</u> | <u>2019-20</u> |
|-------------------|------------------------|------------------------|------------------------|------------------------|-------------------------|
| Beginning Balance | \$ (26,936,382) | \$ (38,526,561) | \$ (50,329,856) | \$ (74,240,874) | \$ (87,737,999) |
| Developer Fees | 1,338,418 | 2,350,574 | 1,625,820 | 2,303,752 | 1,124,123 |
| Expenditures | (12,928,597) | (14,153,869) | (25,536,838) | (15,800,877) | (30,027,721) |
| Ending Balance | <u>\$ (38,526,561)</u> | <u>\$ (50,329,856)</u> | <u>\$ (74,240,874)</u> | <u>\$ (87,737,999)</u> | <u>\$ (116,641,597)</u> |

During 2019-20, the City collected \$1,124,123 from developer fees and spent \$30,027,721. The current year deficit along with prior cumulative deficits brought the impact fee balance to (\$116,641,597) as of 2019-20. Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 development fees.

Staff Response: Fund 594 is the Sewer Capital Improvement Program Fund, which accounts for sanitary sewer specific revenues including Connection Fee, Conveyance Fee, Outlet Fee, Sewer Modeling Fee, and Developer Contributions for the Sewer Hydraulic Modeling project. The Connection Fee, Conveyance Fee, and Outlet Fee are developer impact fees for the Sanitary Sewer System, and they are subject to the AB 1600 reporting requirement. Outlet fees are used to construct, reconstruction and replacement of sewer collection system. Connection fees are used to improve and expand capacity of the Regional Wastewater Facility (RWF) as

required. The City's share of RWF capital costs are applied against this fee as qualifying expenditures related to plant capacity expansion. With the recent rebuilding of the RWF, eligible expenditures can be used for expanding capacity when evaluating AB1600 requirements but currently there are no capacity issues at the RWF. To the extent, developer fees are insufficient to cover these, sewer use charges have been used to help offset the cost for system improvements. A fee study was initiated by the Water and Sewer Department to evaluate these impact fees; however, progress was postponed due to COVID-19. We anticipate that study to be completed later this calendar year.

Agenda Item #3.E (21-1183)

Action on an Agreement with Lee + Ro, Inc. for Design Professional Services for the Citywide Emergency Generator Replacement - Phase 2 Project (CE 20-21-10) and Related Budget Amendment

Council Question: Looks like four diesel generators are being replaced. I have the following questions.

EXHIBIT F - EQUIPMENT MATRIX

| Site | Site Name | Address | Flood Zone | Existing Model Yr | Existing kW / hp | Fuel | Inside building? | Replace? | Relocate? | Security Enclosure? | Power Outage Hr Tolerate | Work Hrs Restriction | ATS w/ bypass, Replace? | Portable Hookup? | Load Bank Cabinet? | Block Heater? | Remote Monitoring? | Note |
|------|---|--|--------------|-------------------|------------------|--------|------------------|----------|-----------|---------------------|------------------------------------|----------------------|-------------------------|------------------|--------------------|---------------|--------------------|---|
| 1 | Fairway Glenn Storm Drain Pump Station | 4751 Lick Mill Boulevard | X | 1988 | 855 / 1140 | Diesel | Y | Y | N | N | N/A | During dry months | Y | N | Y | Y | Y | Y Connectivity ? Load bank cabinet to be outside of the bldg. Remote monitoring via ex. SCADA. Remote fuel filling station required (Fire Dept. requirement) |
| 2 | Freedom Circle Storm Drain Pump Station | 3905 Freedom Circle (@ Mission College Blvd.) | AE (Partial) | 2000 | 440 / 587 | Diesel | N | Y | N | N | N/A | During dry months | Y | N | Y | Y | Y | Y Connectivity ? Above Base Flood Elevation Certificate required. Remote monitoring via ex. SCADA. |
| 3 | Water Well 15 | 657 Hubbard Avenue (north of Melody Ln.) | X | 1984 | 300 / 375 | Diesel | N | Y | N | N | 0 hr. Temp. power required | M - F 8 - 5 | N? | N | Y | Y | Y | Y Connectivity ? Existing portable setup needs to change to permanent setup. ATS is 1 yr old; evaluation needed for replacement. Remote monitoring required (fire code violation). |
| 4 | Water Well 28 | 1005 San Tomas Expressway (approx. 460' south of Benton St.) | X | 1986 | 350 / 480 | Diesel | N | Y | N | N | 24 hrs. max. No temp. power needed | M - F 8 - 5 | N? | N | Y | Y | Y | Y Connectivity ? Existing portable setup needs to change to permanent setup. ATS is 1 yr old; evaluation needed for replacement. Remote monitoring required (fire code violation). County Permit needed. |

Staff Response: The proposed Emergency Generators will all have to be reviewed, approved and permitted through the Bay Area Air Quality Management District (BAAQMD) and therefore must meet their requirements. Below are the responses to your questions.

1. Council Question: Do we have any data what the maximum number of continuous hours these generators have operated in the past?

Staff Response: Staff checked into the available log books and none show any extended continuous run times. The longest run time for these units has been approximately 1 – 2 hours.

2. Council Question: Do these generators have low levels of nitrous oxides (low emissions)?

Staff Response: The existing generators are old and are not built to current emissions standards. The proposed generators will comply with current BAAQMD emission standards which are some of the strictest requirements. The City also utilizes renewable diesel fuel which is cleaner burning compared to regular diesel.

3. Council Question: Do these generators have particulate filters?

Staff Response: The existing generators do not have particulate filters and the proposed generators will comply with BAAQMD standards. The designer does not anticipate that particulate filters will be required by BAAQMD for these proposed generators.

4. Council Question: How often do these generators have to be turned on for testing like the generators for data centers?

Staff Response: Typically, the generators will undergo monthly safety inspections and reliability testing for approximately 30 minutes, and annual load bank testing for approximately 1.5 hours.

5. Council Question: What happens to old diesel that just sits around in the tanks?

Staff Response: The generators are run during the testing protocols described in question 4 and the fuel is also tested annually. There has been no issue in recent years for having issues with diesel being too old. If there were ever any issues the first step would be to try and remedy it through fuel polishing.

6. Council Question: Are the block heaters on thermostats? Are they really needed in California?

Staff Response: Yes, the block heaters are controlled by internal thermostats. They are needed in California, as there is no warm-up period before putting a load on the engine.

Agenda Item #3.I (21-99)

Action on the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age")

Council Question: I recognize that enforcement of tobacco possession by minors could be applied unequally to different racial groups. I would like an update of the following which I think is a good idea:

The City is also pursuing tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products. In July 2020, the City executed a grant agreement with the Santa Clara County Public Health Department (PHD) to explore an ordinance to prohibit the sale of flavored tobacco products in the City. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah, and menthol cigarettes. Flavored tobacco products are considered "starter" products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addiction.

Staff Response: On April 7, 2020, Council approved a Grant Agreement with the County Department of Public Health that would include outreach regarding the potential adoption of an ordinance: requiring a tobacco retail license program; a ban on e-cigarettes; and a ban on the sale of flavored tobacco products. ([Council Staff Report](#) and Grant Agreement)

Given the impacts of COVID-19 on the business community, staff brought an item to the Economic Development Communications and Marketing Committee in November 2020 to request direction on whether or not to proceed with the implementation of the grant ([EDCM Staff Report](#) and Healthy Cities Program 2019 Dashboard). The EDCM Committee directed staff to continue with the outreach plan and the preparation of an ordinance for future full Council consideration.

As an initial step, staff will launch an online survey on **Open City Hall** to gauge the community's perspective on new tobacco policies this month. This effort will be followed by online community meetings in March: two general community meetings and one directed to businesses. Additional targeted outreach to the City's existing tobacco retailers will occur through direct mailers.

The outreach program is being coordinated with the County of Santa Clara Department of Public Health, Breathe California of the Bay Area, Silicon Valley Central Chamber of Commerce and distributed via the City's social media channels, the City Manager's Blog, and on Nextdoor to neighborhood groups.

Staff anticipates that following the outreach program, an ordinance will be brought forward for Council consideration in summer 2021.

Agenda Item #3.M (21-169)

Action on Agreement with Contractor Compliance and Monitoring, Inc. for Labor Compliance Consulting Services

Council Question: I have some questions regarding this contract, I see the following under statement of work:

7. Assist the Client with completion and filing of PWC-100 form (required on all State prevailing wage projects in excess of \$15,000 or maintenance and in excess of \$25,000 for construction). The PWC-100 form is to be filed within 30 days of contract award, but not later than the first day worked.
Approximately 30 minutes

And

Below are some examples using the proposed scope of work as set forth in Exhibit A:

- The flat fee price for obtaining an LCP for Prop 84 projects is \$1500.
- Annual Report to DIR each year is billed at \$300 a year.
- A \$2.5 million project with Prop 84 funding to be completed in 10 months with between 8-10 subcontractors would likely be billed as a flat fee of \$12,500. An hourly NTE price would be capped at \$15,500. It should be noted that when we provide an NTE price, it does not mean that we will reach that-final price. The project could well come in under that NTE price.

Questions:

1. A maintenance contract of \$15,000 will incur a flat LCP cost of \$1,500 which is a 10% overhead. Is that correct?
2. A \$2.5M will be between \$12,500 and \$15,500 which is 0.62%. What are the typical maintenance contracts and does it seem likely that \$20,000 will not be enough?
3. Is there any way to reduce the filing/auditing overhead, like only using well known union shops for all the work?
4. Does it make sense to change the minimum contract size that CCMI will work on?

Staff Response:

1. **A maintenance contract of \$15,000 will incur a flat LCP cost of \$1,500 which is a 10% overhead. Is that correct?**
Typical services provided by CCMI will be done by agreeing on a scope of work in advance and applying the hourly rates listed. The referenced flat fees listed in Exhibit B, Section 2., involve projects utilizing special funding sources that have increased compliance review requirements than regularly funded projects. The \$1,500 fee listed is in reference to Prop 84 funded projects. We do not anticipate Prop 84 funds at this point but it is listed in case those are ever used.
2. **A \$2.5M will be between \$12,500 and \$15,500 which is 0.62%. What are the typical maintenance contracts and does it seem likely that \$20,000 will not be enough?**
See response to Q1 above.

This fiscal year, the Stadium Manager only brought forth a limited number of projects that require prevailing wages. The recycled water line repairs referenced in today's agenda report is one example. There are two additional projects that the Stadium Authority is aware of that may require prevailing wage: HVAC repairs and the replacement/repair of Levi's signage in the Stadium. It is important to note that this limited number is not reflective of the work that is required to properly maintain Levi's Stadium. The Stadium Manager has a significant list of Capital Expense (CapEx) projects that it has requested to carry over to the next fiscal year. The Stadium Authority anticipates an increase in projects requiring prevailing wages and corresponding labor compliance services from CCMI based on the number of

carryover CapEx projects.

It is unclear whether the agreement's not-to-exceed amount of \$20,000 will be enough since there was limited activity this fiscal year and the Stadium Manager has never provided an annual report of the service agreements that it has entered into on behalf of the Stadium Authority, as required by the Stadium Authority Procurement Policy. The Stadium Authority staff have continued to request a capital projects workplan and procurement plan to understand how they are maintaining the Stadium and to plan for our own workload, however Stadium Manager has not provided this information. The request for additional authority to increase the agreement by an additional \$20,000 for a not-to-exceed amount of \$40,000 provides the Executive Director with some flexibility given these unknowns.

3. Is there any way to reduce the filing/auditing overhead, like only using well known union shops for all the work?

The use of "union shops" does not reduce prevailing wage requirements. California State law on worker prevailing wages establishes a complex reporting process that must be followed for the purpose of worker wage compliance. California's prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor. All bidders are required to use the same minimum wage rates when bidding on a public works project. California law requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a public works project. Prevailing wage also includes other items beyond salary such as fringe benefits and apprentice. There are also specific reporting to ensure contractors are following prevailing wage requirements. Regardless if union shops are used or not, there is always a requirement to file reports and certified payrolls with the State to demonstrate compliance with worker wage laws and reporting requirements.

All City/Stadium Authority public works contracts contain language requiring the contractor to comply with applicable prevailing wage laws. This requirement applies even when private funds are used to perform or construct the public work. Ultimately, however, City/Stadium Authority is legally and financially responsible for ensuring compliance because the City/Stadium Authority cannot seek indemnity for prevailing wage violations. In other words, if the State Department of Industrial Relations were to take enforcement action, the City/Stadium Authority (and not the contractor) would be on the hook for fines/penalties. In addition to CCMI's labor compliance services, the City uses software called LCP tracker as its mechanism for monitoring compliance (e.g. making sure contractors/subs submit complete certified payroll records in a timely fashion). In October 2020, the Stadium Manager requested Board approval to enter into an agreement with LCP tracker for similar services, which the Board denied due to significant issues with their request (e.g., request for a \$25,000 contract for services priced at \$13,180, mathematical errors in agreement, undocumented scope of work, undefined extension of agreement, and removal of provisions requiring compliance with Brown Act and Public Records Act).

4. Does it make sense to change the minimum contract size that CCMI will work on?

Staff does not feel that is necessary. State prevailing wage is required for projects in excess of \$15,000 for maintenance and in excess of \$25,000 for constructions. Services required by CCMI will vary and it is expected that smaller projects will cost less due to less reviews and less payroll data than larger projects. Upon receipt of a procurement strategy and capital projects schedule from the Stadium Manager, Stadium Authority staff can better access its needs for this service and bring forward an appropriate amendment.



Agenda Report

20-299

Agenda Date: 4/7/2020

REPORT TO COUNCIL

SUBJECT

Action on Grant from the County of Santa Clara's Healthy Cities Program - Tobacco - Free Communities Fund, and Related Budget Amendment [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

On February 5, 2019, Council adopted a Smoking and Tobacco Regulations Ordinance that expanded smoking restrictions in many public areas and multi-unit residences. These regulations aim to protect Santa Clara residents, employees and visitors from the harmful effects of secondhand smoke. The City received \$30,751 from the County of Santa Clara (County) to support its adoption and implementation of smoking regulations related to multi-unit residences. The grant was spent on mailers that were sent to almost 34,000 landlords, property managers, and multi-unit residents/tenants to notify them about the new smoking ordinance, 1,600 aluminum signs and window decals, and staffing resources.

On September 13, 2019, the Santa Clara County Department of Public Health, Office of Education, and First 5 Santa Clara County held an inaugural Reverse the Vaping Epidemic - 2019 Summit to inform policy makers and other key stakeholders about the dangers of vaping. The Summit coincided with the cities of San Francisco, Livermore and Richmond's recent bans on electronic cigarette (e-cigarette) sales, Governor Newsom's executive order on September 16, 2019 to address the youth vaping epidemic, and recent headlines about the growing outbreak of lung diseases related to vaping that has claimed at least 19 lives and affected over 1,000+ people in the country. These recent reports are not shocking considering there are no manufacturing standards for e-cigarettes. Appealing designs, along with the availability of flavors, have contributed to e-cigarettes becoming the most commonly used tobacco product in recent years. The Centers for Disease Control and Prevention (CDC) has recommended that people consider refraining from using e-cigarettes or vaping products particularly those containing THC while there are ongoing investigations about what is causing the lung injuries associated with e-cigarette use.

As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online. Some of these flavors create an inflammatory response and others exhibit a monoamine oxidase inhibitor effect or are cytotoxic to lung cells. In separate studies, the Santa Clara County's Public Health Department found that almost one in three students in Santa Clara County have tried vaping before while Stanford Medicine reported that one in five high schoolers use e-cigarettes. The widespread use of e-cigarettes by youth has significant long-term public health consequences. Most e-cigarettes contain nicotine, which is highly addictive, can harm adolescent brain development, and can interfere with memory and attention processing. E-cigarettes can also contain other harmful

substances. Contrary to the misconception that e-cigarettes are a healthy substitute to tobacco consumption, the CDC warns that young people who vape may be more likely to start smoking traditional cigarettes.

On November 20, 2019, the County of Santa Clara released additional grant opportunities to support cities' efforts to adopt and implement new tobacco control policies and programs. The City applied for a grant in the amount of \$48,944 to conduct community outreach and to pursue regulations that would reduce youth access and exposure to tobacco products.

DISCUSSION

Tobacco control policies, like the Smoking Ordinance the City passed in 2019, have proven to be effective in preventing and reducing tobacco use. Despite recent interest at the federal government to regulate flavored tobacco, County public health staff and other public health advocates are encouraging local municipalities to pursue regulations at the local level. The County's Healthy Cities Program is focused on promoting tobacco-free communities.

Currently, the City has adopted six out of 12 recommended tobacco prevention strategies in the Healthy Cities Program (Attachment 1). Although the City prohibits smoking in many outdoor areas, it currently does not require a local tobacco retailer permit or prohibit the sale of flavored tobacco products or e-cigarettes.

Local jurisdictions that have established a tobacco retailer program include County of Santa Clara, City of Palo Alto, Town of Los Gatos and City of Cupertino. The City of Palo Alto and Town of Los Gatos have outsourced the management and enforcement of their tobacco retailer permit program to the County. The County will manage and enforce other jurisdiction's tobacco retailer permit programs if 1) the provisions of the jurisdiction's tobacco retailer permit ordinance are identical to the County program and 2) allow the County to collect the revenue from the tobacco retailer permits to offset the cost of management and enforcement.

If the City were to pursue a tobacco ordinance in keeping with the County's existing program, key items of note include the following:

Tobacco Retailer License Program - In order to monitor and enforce the sale of tobacco, a licensing program for retailers is necessary. The program would include:

- Retailers would be required to obtain and annually renew a tobacco retailer permit. The fee for the permit is expected to be \$425 per year.
- New tobacco retailers would be prohibited from locating within 1,000 feet of a school and within 500 feet of another tobacco retailer (existing retailers in these locations may continue to sell tobacco products assuming they are operating lawfully, renew their TRP on time, and do not transfer ownership).
- The sale of tobacco products in pharmacies would be prohibited.

Ban on E-Cigarette Sales

- The sale of e-cigarette products, including vaping products would be banned.

Ban on Flavored Tobacco Sales

- The sale of flavored tobacco products, including menthol cigarettes would be prohibited.

Community Outreach

The City's grant application included a community outreach prior to bringing an ordinance forward for Council consideration. Similar to the City's recent smoking ordinance efforts, outreach to the community and retailers would include:

Open City Hall - Launch an on-line survey to gauge the community's perspective on establishing a tobacco retailer program and ban flavored tobacco products and e-cigarette sales.

Community Meetings- Host 2-3 community meetings.

Business Outreach- Conduct targeted outreach to the City's existing tobacco retailers.

Outreach on the survey and meeting dates will be coordinated with the County of Santa Clara Department of Public Health, Breathe California of the Bay Area, Silicon Valley Central Chamber of Commerce and distributed via the City's social media channels, the City Manager's Blog, and on Nextdoor to neighborhood groups.

County Grant

As mentioned in the BACKGROUND section, the City applied for a grant in the amount of \$48,944 to reduce youth access and exposure to tobacco products. The County acknowledged that the City was awarded the grant (Attachment 2) to cover the anticipated implementation costs; however, the City and County have not finalized the required grant agreement as of the writing of this report. The recommended action requests authorization for the City Manager to negotiate and execute a grant agreement with the County and accept the anticipated grant amount in the amount of \$48,944 and appropriate the entire requested grant amount of \$48,944.

COORDINATION

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

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

On February 14, 2020, the City was notified by the Santa Clara County Public Health Department that Santa Clara was selected to receive funding to support our efforts to reduce youth access and exposure to tobacco products. The County and City will begin negotiations on the scope of work activities and budget in March 2020. The City anticipates receiving the full requested amount of \$48,944, which can only be used for staffing costs and efforts related to implementing the proposed changes per the grant guidelines. The anticipated costs of operating expenses associated with implementing the proposed changes is \$2,520 while staffing costs are estimated at \$46,424. Acceptance of the anticipated grant of \$48,944 and approval of its appropriation to the Other City Departments Operating Grant Trust Fund will help cover operating expenses for implementing the proposed changes with no fiscal impact to the City. There are no matching fund requirements. This grant operates on a reimbursement basis and it is anticipated that expenses will not be incurred until FY 2020/21, which is reflected in the below budget amendment table.

**FY 2020/21
Budget Amendment**

| <u>Other City Departments Operating Grant Trust Fund</u> | 2020/21 Current | Increase/ (Decrease) | 2020/21 Revised |
|--|----------------------------|---------------------------------|----------------------------|
| <i>Revenues</i> | | | |
| Grant Funding | \$0 | \$48,944 | \$48,944 |
| <i>Expenditures</i> | | | |
| Healthy Cities Program - Tobacco Free Communities | \$0 | \$48,944 | \$48,944 |

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. Authorize the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department to reduce youth access and exposure to tobacco products;
2. Do not authorize the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department to reduce youth access and exposure to tobacco products;
3. Approve the appropriation of the anticipated grant amount of \$48,944 to the City Manager's Office to help cover operating expenses for implementing the proposed revised ordinance;
4. Do not approve the appropriation of the anticipated grant amount of \$48,944 to the City Manager's Office to help cover operating expenses for implementing the proposed revised ordinance; or
5. Any other Council direction.

RECOMMENDATION

Alternatives 1 and 3:

1. Authorize the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department to reduce youth access and exposure to tobacco products; and
3. Approve the FY 2020/21 budget amendment in the Other City Departments Operating Grant Trust Fund to recognize grant revenue in the amount of \$48,944 and establish funding for the Healthy Cities Program - Tobacco Free Communities in the City Manager's Office to help cover operating expenses for implementing the proposed revised ordinance.

Prepared by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Healthy Cities Program, 2019 Dashboard
2. Healthy Cities Award Letter - Santa Clara



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

SECTION I: GENERAL INFORMATION

| | | | |
|---|---|--------------------|-----|
| Contractor Name: (As Displayed in SAP) | City of Santa Clara | | |
| Purchase Order Number: | 4400007952 | | |
| Agency/Department Name: | Public Health | Department Number: | 410 |
| Brief Description of Services | Prevent youth access and exposure to flavored tobacco and vaping products in the City of Santa Clara. | | |

Maximum Financial Obligation

| | |
|--|----------|
| The maximum amount payable to this Contractor under this agreement shall not exceed: | \$48,944 |
|--|----------|

Term of Agreement

| | |
|--|---------------------|
| Start Date: 7/20/2020 | End Date: 6/30/2021 |
| Note: When left blank, start date will be the date executed by Authorized County Representative. | |

For County Use Only

| | Account Assignment | Plant Number | General Ledger (Expense Code) | Cost Center (Dept. Code) | Amount | WBS (Capital Project Code) | Internal Order ("PCA" code - optional) |
|---------------|--------------------|--------------|-------------------------------|--------------------------|----------|----------------------------|--|
| Line 1 | H | 0410 | 5255500 | 2919 | \$48,944 | FY 2021 | |
| Line 2 | Select | | | | | | |
| Line 3 | Select | | | | | | |
| Line 4 | Select | | | | | | |
| Line 5 | Select | | | | | | |



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

SECTION II: PARTIES TO AGREEMENT

Legal notices and invoices pertaining to this Agreement shall be sent to the appropriate contact person listed below, except as otherwise specifically provided for herein. Notices shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows. Notice shall be deemed effective on the date that the notice is personally delivered or, if mailed, three (3) days after deposit in the mail. Either party may designate a different person and/or address for the receipt of notices by sending written notice to the other party, which shall not require an amendment to this Agreement.

CONTRACTOR

| | | | | | |
|--|--|--------|----|------|-------|
| Contractor Name: (As Displayed in SAP) | City of Santa Clara | | | | |
| Contact Person: | Jennifer Acuna, City Manager's Office | | | | |
| Street Address*: | City Manager's Office, 1500 Warburton Avenue | | | | |
| City*: | Santa Clara | State: | CA | Zip: | 95050 |
| Telephone Number*: | 408-615-2258 | | | | |
| Email Address*: | jacuna@santaclaraca.gov | | | | |
| SCC Vendor Number: (As Assigned in SAP) | 1002333 | | | | |

*To be completed for Independent Contractors Only – DO NOT COMPLETE FOR DEPENDENT CONTRACTORS

COUNTY OF SANTA CLARA

| | | | | | |
|---|------------------------------|--------|----|------|-------|
| Agency/Department: | Public Health | | | | |
| Program Manager/Contract Monitor Name: | Nicole Coxe, MPH | | | | |
| Street Address: | 976 Lenzen Avenue, 2nd Floor | | | | |
| City: | San Jose | State: | CA | Zip: | 95126 |
| Telephone Number: | 408-792-5040 | | | | |
| Fiscal Contact: (Accounts Payable Contact) | Nicole Coxe, MPH | | | | |
| Contract Preparer: | Paula Lacey | | | | |



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

SECTION III: CONTRACT AUTHORIZATION

It is agreed between County and Contractor that Contractor will, for the compensation described in this Agreement, perform the work described in Section V in accordance with all terms and conditions of this Agreement including all exhibits and attachments. In addition, County and Contractor assert that the tax withholding status and benefit documentation (Section IV) accurately reflect the anticipated working relationship between County and Contractor. Further, Independent Contractors shall comply with the County's insurance and indemnification requirements. Contractor certifies that any applicable insurance waiver information (Section VII, B) is true and correct. This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

SIGNATURES

Contract is not valid until signed by Contractor, County Counsel and County's Authorized Representative.

| | | | | |
|--|---|---|-------|-----------|
| DS RM | County Agency/Department Manager: | DocuSigned by: <i>Rocio Luna</i> 74A23F641E434ED... | Date: | 6/30/2020 |
| DS TT | County Agency/Department Fiscal Officer: | DocuSigned by: <i>John Cookinham</i> C86CC078205C43A... | Date: | 6/30/2020 |
| County Counsel Approval as to Form and Legality | | DocuSigned by: <i>Eria Liem</i> 714A08B4716540E... | Date: | 6/29/2020 |
| <i>(Signature required on <u>all</u> contracts before execution by Contractor and County Authorized Representative)</i> | | | | |
| Contractor: | | DocuSigned by: <i>Deanna J. Santana</i> 55DD401F5DAE4B5... | Date: | 6/30/2020 |
| County Authorized Representative: | | DocuSigned by: <i>Gene Clark</i> C685F692AC71492... | Date: | 7/20/2020 |
| <i>(Procurement Department; President, Board of Supervisors; or Delegated Authority)</i> | | | | |
| Office of the County Executive: | | | | |
| <i>(Signature required when Board approved contract by a delegation of authority)</i> | | | | |
| Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors. | | Attest: Megan Doyle Clerk of the Board of Supervisors <i>(Signature required when Board approved contract)</i> | Date: | |



COUNTY OF SANTA CLARA SERVICE AGREEMENT

SECTION IV: DETERMINATION OF RELATIONSHIP STATUS

Dependent/Independent status is an important relationship distinction. It determines the contractor's eligibility for Medicare and Social Security, Public Employees' Retirement System benefits, and other benefits and affects how the contractor files tax returns and the contractor's responsibility for various federal and state taxes.

Questionnaire to be Completed by Contracting Department to Determine Relationship Status of Contractor

Supervision: Will the County have the right to tell the contractor how to do the work, when to arrive or leave work, or when to take breaks? Do you have other employees performing similar work with a similar degree of supervision? **If the answer to any of these questions is YES, select YES from the dropdown.**

No

Training: Will the County instruct the contractor on how to do the job or pay for external training?

No

Incomplete Work: Will the Contractor be able to resign or terminate the contract without being held either financially or legally liable for unfinished work?

No

Place of Work/Tools: Will the County provide the Contractor with a place to work at a County location and tools to do the job, i.e. computers, telephones, etc.?

No

Length of Relationship: When the Contractor is hired to complete ongoing departmental duties or functions— **answer YES**. When the contractor is hired to complete a specific project that was not the regular tasks performed by County employees before— **answer NO**.

No

Other Customers: Does the County prevent the Contractor from performing similar services for other customers, either due to the amount of work (full-time), or by contractual provision?

No

Designation as Business Entity: If the Contractor has a business license or business certificate, or is a corporation, nonprofit organization, or school district, select "No" from the dropdown. (This does not pertain to professional licenses or certificates such as a license for a physician or architect.)
Enter below the business license number and the city/entity where issued.

No

Bus. License #:

Issued by:

Payment Schedule: Will payments be made either as an hourly wage or as weekly/monthly salary? If payment is by commission or based on project milestones or deliverables, answer "NO" to this question. Be sure this answer matches the contract payment schedule in Section V.

No

Support Services: Will County employees or other independent contractors provide assistance to this Contractor? Assistance is defined as clerical, technical or professional support.

No

If at least 5 of the above questions were answered "**NO**", Contractor is an **Independent Contractor**.

If 5 or more of the above questions were answered "**YES**", Contractor is a **Dependent Contractor**, where the relationship resembles that of employer/employee. Tax withholding is required, and benefits are provided. Complete and attach the following forms: Employee's Withholding Allowance Certificate—Federal Form W-4, State Withholding, Form DE-4, Determining PERS Eligibility and PERS Member Action Request. Visit www.ceo for more information regarding Dependent Contractors. County insurance requirements do not apply to Dependent Contractors.

Contractor understands and agrees that the tax withholding and benefit status checked above is correct. Any changes to the contractor's tax withholding and benefit status require a new contract. Contractor is responsible for any penalties and liabilities assessed by any taxing authority, based on a change of tax withholding and benefit status.

Contractor's Initials:

DS
DJS

**Dept. Fiscal Officer's
Signature:**

DS
K

DS
↑↑



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

SECTION V: CONTRACT SPECIFICS

A. SERVICE DESCRIPTION AND EXPECTED OUTCOME (SCOPE OF SERVICE)

[Empty space for service description and expected outcome]

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|----|-------------------------------------|-----------------|---|---------------------------------|
| Or | <input checked="" type="checkbox"/> | See Attachment: | A | incorporated by this reference. |
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B. DELIVERABLES, MILESTONES & TIMELINE FOR PERFORMANCE

[Empty space for deliverables, milestones & timeline for performance]

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| Or | <input checked="" type="checkbox"/> | See Attachment: | A | Incorporated by this reference. |
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COUNTY OF SANTA CLARA SERVICE AGREEMENT

C. PERFORMANCE STANDARDS

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| Or | <input checked="" type="checkbox"/> | See Attachment: | A | Incorporated by this reference. |
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D. PAYMENT SCHEDULE

Is contractor a Community Based Organization (CBO)?

Yes

No

Note: Dependent contractors are not permitted to work in excess of 40 hours per week

Attachment A includes deliverables and Attachment B is the budget.

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| Or | <input checked="" type="checkbox"/> | See Attachment: | A & B | Incorporated by this reference. |
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**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

SECTION VI: STANDARD PROVISIONS

Changes to the terms and conditions in this section require approval of County Counsel

A. ENTIRE AGREEMENT

This Agreement and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

B. AMENDMENTS

This agreement may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, who could be substantively involved in "mak[ing] a governmental decision" or "serv[ing] in a staff capacity" and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. GOVERNING LAW, VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

H. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

- (1) Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- (3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (4) Definitions: For purposes of this Subsection H, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.
- (5) **Prior Judgments, Decisions or Orders against Contractor**: By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Contractor violated an applicable wage and hour law or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

- (6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.
- (8) Pay Equity Notification: Contractor shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Contractor's Employees and Job Applicants.
- (9) Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
- (i) Suspend or terminate any or all parts of this Agreement.
 - (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
 - (iii) Offer Contractor an opportunity to cure the breach.
- (10) Subcontractors: Contractor shall impose all of the requirements set forth in this Subsection H on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

I. TERMINATION



Standard Termination Language

The County may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

-OR-



Alternate Termination Language Attached as Exhibit _____, incorporated by this reference.
(Requires County Counsel Approval)

J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

K. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

L. FOOD AND BEVERAGES STANDARDS

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option.

If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (*e.g.*, soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

M. CONTRACTING PRINCIPLES

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

N. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

O. THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

P. INTELLECTUAL PROPERTY RIGHTS

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County.

Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

Q. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

R. OWNERSHIP RIGHTS TO MATERIALS/RESTRICTIONS ON USE

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

S. COUNTY DATA

- (1) Definitions: "County Data" shall mean data and information received by Contractor from County. County Data includes any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under the control and management of a contractor for use by County. "County Confidential Information" shall include all material, non-public information (including material, non-public County Data) appearing in any form (including, without limitation, written, oral or displayed), that is disclosed, directly or indirectly, through any means of communication by County, its agents or employees, to Contractor, its agents or employees, or any of its affiliates or representatives.
- (2) Contractor shall not acquire any ownership interest in County Data (including County Confidential Information). As between Contractor and County, all County Confidential Information and/or County Data shall remain the property of the County. Contractor shall not, without County's written permission, use or disclose County Data (including County Confidential Information) other than in the performance of its obligations under this Agreement.
- (3) Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users. Upon termination or expiration of this Agreement, Contractor shall seek and follow County's direction regarding the proper disposition of County Data.
- (4) Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, and notifying County by phone or in writing within 24 hours of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users. If the initial notification is by phone, Contractor shall provide a written notice within 5 days of the incident. Contractor shall be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality, privacy, and information security requirements of this Agreement. Should County Confidential Information and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Contractor's sole expense. Contractor shall not charge County for any expenses associated with Contractor's compliance with these obligations.
- (5) Contractor shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County.

T. PAYMENT TERM [NOT APPLICABLE TO COMMUNITY BASED ORGANIZATIONS - Describe payment terms for CBO's in Section V. (D) PAYMENT SCHEDULE]

The parties agree that the payment term shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

| | |
|--------------------------|---|
| <input type="checkbox"/> | 2.25% 10 Net 45 (provides 35 days of cash acceleration) |
| <input type="checkbox"/> | 2.00% 15 Net 45 (provides 30 days of cash acceleration) |
| <input type="checkbox"/> | 1.75% 20 Net 45 (provides 25 days of cash acceleration) |
| <input type="checkbox"/> | 1.33% 25 Net 45 (provides 20 days of cash acceleration) |
| <input type="checkbox"/> | 1.00% 30 Net 45 (provides 15 days of cash acceleration) |
| <input type="checkbox"/> | Net 45 (full payment) |

Note: Payment term will default to "Net 45 (full payment)", if no other term was selected.

Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.



COUNTY OF SANTA CLARA SERVICE AGREEMENT

U. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

V. LIVING WAGE (IF APPLICABLE)

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 (“Division B36”) and Board Policy section 5.5.5.5 (“Living Wage Policy”), and their subcontractors, where the contract value is \$100,000 or more (“Direct Services Contract”), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- (a) Suspend, modify, or terminate the Direct Services Contract.
- (b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- (c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

SECTION VII: INSURANCE/INDEMNIFICATION

Independent Contractors shall comply with the County's insurance and indemnification requirements as indicated below. These requirements do not apply to Dependent Contractors.

A. TYPE OF INSURANCE LANGUAGE

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | The following standard insurance and indemnification language is attached and incorporated into this agreement: |
| | Insurance Exhibit Name: B-2B |
| <input type="checkbox"/> | Modification or Waiver Attached (if appropriate) |



**COUNTY OF SANTA CLARA
SERVICE AGREEMENT**

B. DETERMINATION OF INSURANCE REQUIREMENTS AND WAIVER DECLARATION

| | |
|---|-----|
| <p>Workers Compensation: Does the contractor have employees?</p> <p>If "YES", then, WORKER'S COMPENSATION/EMPLOYER'S LIABILITY INSURANCE IS REQUIRED.</p> | Yes |
| <p>Owned Auto Insurance: Will the contractor use any owned autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?</p> <p>If "YES", then INSURANCE FOR OWNED AUTOS IS REQUIRED.</p> | No |
| <p>Hired Auto Insurance: Will the contractor use any hired autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?</p> <p>If "YES", then INSURANCE FOR HIRED AUTOS IS REQUIRED.</p> | No |
| <p>Non-owned Auto Insurance Will the contractor be using any non-owned autos in the provision of direct services, such as transporting clients in non-owned autos or operating non-owned autos in performance of the work itself?</p> <p>If "YES" then, INSURANCE FOR NON-OWNED AUTOS IS REQUIRED.</p> | No |

When "NO" is checked, this declaration will serve as a waiver for the specified type of insurance.

SECTION VIII: FEDERAL/STATE REQUIRED PROVISIONS

(Examples include Drug-free Workplace Activity, Health Insurance Portability and Accountability Act (HIPAA), Business Associate Language, etc.)

| | |
|--------------------------|--|
| <input type="checkbox"/> | <p>A. Federal Required Language Attached Only add special language if services included in the contract require language different from or in addition to that in Section VI.</p> <p>Exhibit Name: _____</p> |
| <input type="checkbox"/> | <p>B. State Required Language Attached Only add special language if services included in the contract require language different from or in addition to that in Section VI.</p> <p>Exhibit Name: _____</p> |

The Exhibits named above are attached and incorporated by this reference.

SECTION IX: ADDITIONAL ATTACHED EXHIBIT(S)

Attachments and exhibits that conflict with County standard provisions or require risk assessment must be approved by County Counsel. Examples of attachments that require County Counsel approval are:

- 1) Contractor's terms and conditions that are different than, or add to the standard provisions' language,
- 2) Any changes to the language in Section VI—Standard Provisions.

Exceptions to County Counsel review include attachments that further explain the Contract Specifics as outlined in Section V, and insurance exhibits.

| | |
|--------------------------|--|
| <input type="checkbox"/> | <p>Exhibit Name (s)</p> <p>_____</p> <p>_____</p> |
|--------------------------|--|

The Exhibits named above are attached and incorporated by this reference.

Attachment A
City of Santa Clara
Scope of Work
Healthy Cities Program – Tobacco-Free Communities
(Upon Execution – June 30, 2021)

A. Introduction

This scope of work centers on the following: Prevent youth access and exposure to flavored tobacco and vaping products in the City of Santa Clara.

B. Reporting Requirements

The following documents will be submitted monthly, and no later than 15 days after the end of each quarter (e.g., January – March report due by April 15).

1. Contractor will prepare Monthly Progress Reports on their activities/progress.
2. Contractor will submit invoices on a monthly basis via email to Don Tran, Health Planning Specialist.

Program Contact Information:

Don Tran, Health Planning Specialist
County of Santa Clara Public Health Department
1775 Story Rd. Suite 120
San Jose, CA 95122
Email: don.tran@phd.sccgov.org

C. Phases and Task Description

| Objective #1 | <p>Overall Goal: Reduce youth access and exposure to tobacco products</p> <p>Objective: By June 30, 2021, implement a city-level strategy to restrict the sale of flavored tobacco and vaping products.</p> | | | |
|---------------------|---|-------------------|--------------------------------|--|
| Task #1 | Task Description | Timeline | Responsible Staff | Key Deliverables |
| 1.1 | The Policy Consultant will gather research on strategies to restrict the sale of flavored tobacco products. | Fall/ Winter 2020 | -City Staff, Policy Consultant | 1.1a Summary of research findings. |
| 1.2 | The Policy Consultant, in coordination with City staff, will develop a plan for stakeholder engagement and outreach. For example, this will include general mailers and the development of an online public opinion survey. | Winter 2021 | -City Staff, Policy Consultant | 1.2b Copies of developed materials and survey |
| 1.3 | The Policy Consultant, in coordination with City staff, will conduct stakeholder outreach. This will include mailers and hosted meetings catered to specific stakeholders such as businesses & retailers and school & education based stakeholders. | Winter 2021 | -City Staff, Policy Consultant | 1.3 a Copies of developed materials and survey 1.3b Stakeholder outreach findings |

| | | | | |
|-----|---|--------------------|---|--|
| 1.4 | The Assistant City Attorney, in coordination with the Policy Consultant, will develop draft recommendations for City Council consideration, to restrict the sale of flavored tobacco products & vaping products. This will include language to express interest for the City of Santa Clara to participate within the Santa Clara County "City-County Partnership" Program. | Spring 2021 | -City Staff, City Attorney, Policy Consultant | 1.4a Proposed recommendations for restricting flavored tobacco sales |
| 1.5 | The Policy Consultant, in coordination with City staff, will present the results of the following items to the City Council: research on strategies to restrict the sale of flavored tobacco products & vaping products, stakeholder outreach, the proposed recommendations to restrict the sale of flavored tobacco & vaping products, and enforcement options (City County Partnership) for City Council consideration. | Spring/Summer 2021 | -City Staff, Policy Consultant | 1.5a City Council report and presentation |
| 1.6 | Pending City Council direction, the Policy Consultant, in coordination with City staff, will develop a flavored tobacco and vaping products policy implementation plan and educational materials such as letters to tobacco retailers, website content, fact sheets and a frequently asked questions (FAQ) document to increase public awareness of any new requirements. | Spring/Summer 2021 | -City Staff, Policy Consultant | 1.6a Flavored tobacco policy implementation plan 1.6b Copy of educational material (letters, fact sheets and FAQ) |

D. Performance Standards

Performance is expected to adhere to the following standards in addition to evaluations completed by the Evaluation contractor:

1. Quality - Deliverables and final products will be as described in the Scope of Work and will be of high quality.
2. Timeliness - Deliverables and final products will be completed as scheduled.
3. Achievement of Project Goals – Project will achieve its goals as described in the Scope of Work.

Attachment B - Tobacco Free Communities

**Santa Clara County Healthy Cities Project
Upon Execution - June 30, 2021**

Budget and Justification Worksheet

City Name: City of Santa Clara

| | | | | |
|---|---|---|---|---|
| Step 1- Please indicate type of budget desired: | <input type="checkbox"/> Option 1 (Reimbursable) - skip Step 2 and continue | <input type="checkbox"/> Option 2 (In-kind Policy Consultant) - go to Step 2 and stop | <input checked="" type="checkbox"/> Option 3 (Hybrid budget) - go to Step 2 and complete budget | |
| Step 2- Needs for Options 2 or 3: (check all that apply) | <input checked="" type="checkbox"/> Research | <input checked="" type="checkbox"/> Ordinance Language | <input type="checkbox"/> Council Reports | <input checked="" type="checkbox"/> Stakeholder Outreach |
| | | | | <input checked="" type="checkbox"/> Implementation Plan and/or Activity |

BUDGET CATEGORY

| A. SALARIES (No payment for worker's comp) | | | | |
|---|---------------------------------|--------------------------------------|------------------|---------------------------------------|
| Position/Title | Annual Salary (Full Time Basis) | % of Full Time (FTE) Assigned to TFC | Months Requested | Salary Amount =(Salary x FTE%)/Months |
| First & Last Name | | | | |
| Management Analyst | | | | |
| Jennifer Acuña | \$ 125,000.00 | 15% | 10 | \$ 15,625 |
| Communications Coordinator | | | | |
| Maria Le | \$ 114,396 | 5% | 10 | \$ 4,767 |
| Consultant (City As-Needed Employee) | | | | |
| Benton Cheung | \$ 63,955 | 5% | 10 | \$ 2,665 |
| City Attorney | | | | |
| Sujata Reuter | \$ 200,932 | 5% | 8 | \$ 6,698 |
| Salary Subtotal: | | | | \$ 29,754 |

JOB DESCRIPTIONS:

Write a brief job description for each of the positions/titles listed above. The descriptions should correspond to the scope of work/workplan task and goals. It is not necessary to repeat descriptions for duplicated positions except for those positions whose work differs from the others of the same title/position. If hiring a consultant, list the purpose for hiring the consultant and the specific tasks and deliverables they will accomplish - these should align with the scope of work/workplan task and goals.

Management Analyst - The Management Analyst (Analyst) will be responsible for conducting community outreach to establish a Tobacco Retailer Permit Program and Ban Flavored Tobacco Products and E-Cigarettes Sales. If adopted, the Analyst will oversee the implementation process of the proposed expansion of the City of Santa Clara's Smoking and Tobacco Regulations Ordinance. Implementation will include preparing and sending a mailer to businesses, sending a Smoking Ordinance Factsheet Insert with our monthly utility bill, hosting informational meetings for businesses, announcing the new regulations through the City's TV and social media channels, updating and maintaining the City's Smoking Ordinance webpage, and serving as the point of contact for inquiries.

Communications Coordinator -The Communications Coordinator will provide outreach support and assist with drafting materials as needed and website updates.

Consultant - The Consultant will assist with designing outreach materials as needed.

City Attorney - The City Attorney will assist in drafting the proposed revisions to the existing ordinance. If adopted, the City Attorney will support the implementation process such as entering into an agreement with the County for program oversight.

B. FRINGE BENEFITS

Attachment B - Tobacco Free Communities

| | | | | | | |
|---|----|--------|--|--|----|--------|
| Fringe benefits for the Management Analyst are calculated at 70% of salary | \$ | 10,938 | | | \$ | 10,938 |
| Fringe benefits for the Communication Coordinator are calculated at 51% of salary | \$ | 2,383 | | | \$ | 2,383 |
| Fringe benefits for the City Attorney are calculated at 51% of salary | \$ | 3,349 | | | \$ | 3,349 |
| The Consultant is an as-needed City employee and does not receive fringe benefits | | | | | | |
| Fringe Benefits Subtotal: | | | | | \$ | 16,670 |

For expense categories C-F, please provide a short narrative of the expense details that makes clear the expense and the purpose in general. In those cases where expenses may be significantly different, you may enter multiple expenses for that category. For example, category E could use separate lines for local mileage, costs to travel to a meeting or conference and the expenses related to hosting a conference or meeting, if applicable. PLEASE REFER TO PROPOSITIONS 56 & 99 ALLOWABLE EXPENSES for assistance in completing these sections.

| | | | | | | |
|------------------------------------|---|----|--|--|----|--------|
| C.. | Operating Expenses [Office Supplies; Printing (external vendor)- smoke-free signage, factsheets, etc.; Postage; Duplicating (internal small jobs)] | | | | | |
| | Mailer to businesses and business owners to engage them in the community input process | \$ | | | | 150 |
| | Point of Sale Signage (Store signs and window decals) | \$ | | | | 1,500 |
| | Mailer to businesses and business owners to notify them of the new regulations and requirements | \$ | | | | 150 |
| | Postage for mailers | \$ | | | | 100 |
| | Tobacco Retail Ordinance Factsheet - Insert that will be mailed to all businesses owners | \$ | | | | 200 |
| | Tobacco Retail Ordinance Factsheet - Copies for general distribution at City Facilities for business owners and residents | \$ | | | | 120 |
| | Misc. supplies for community meetings | \$ | | | | 300 |
| Operating Subtotal: | | | | | \$ | 2,520 |
| D. | Travel/Mileage (no out-of-state travel; TFC trainings OK) | | | | | |
| | Travel/Mileage will include... | | | | | |
| Travel/Mileage Subtotal: | | | | | \$ | - |
| E. | Subcontracts/Consultants | | | | | |
| | | \$ | | | | - |
| Subcontractor/Consultant Subtotal: | | | | | \$ | - |
| F. | Other Costs (Educational Materials- signage, training guides, posters, etc.; Paid Media- ads on tv, radio, newspaper, or billboards, etc.) | | | | | |
| | | \$ | | | | - |
| Contracts | | | | | \$ | - |
| G. | INDIRECTS/Administrative Overhead | | | | | |
| | INDIRECTS MAY NOT EXCEED 10% OF SALARIES (salary subtotal from above). If indirects are claimed as an expense please indicate the basis for the charge. For example 5% of salaries would be 5% x 131 = 7. | | | | | |
| Indirects Subtotal: | | | | | \$ | - |
| BUDGET TOTAL: | | | | | \$ | 48,944 |

EXHIBIT B-2B (revised)

INSURANCE REQUIREMENTS FOR
STANDARD SERVICE CONTRACTS
BETWEEN \$10,001 AND \$50,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2B (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$500,000
- b. General aggregate - \$500,000
- c. Products/Completed Operations aggregate - \$500,000
- d. Personal Injury - \$500,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2B (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$100,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$100,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT B-2B (revised)

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

From: [DeGruy, DeOnna](#)
To: [Seaton, Michele](#)
Cc: [Cody, Sara \(Health Officer\)](#)
Subject: Designation of Signature Authority
Date: Thursday, April 30, 2020 5:08:44 PM
Attachments: [image001.png](#)
[image002.png](#)

Dear all,

Dr. Sara Cody is responding to Covid-19 and would like to designate full signature authority to Rocio Luna, PH Deputy Director, who will be covering all administrative functions during this time.

Dr. Cody is copied on this email as well.

Please let me know if you need anything else.

Warmest Regards,

DeOnna DeGruy

Executive Assistant II- Confidential
County of Santa Clara, Public Health Administration

976 Lenzen Avenue, 2nd Floor

San Jose, CA 95126

DeOnna.DeGruy@phd.sccgov.org





Agenda Report

20-997

Agenda Date: 11/18/2020

REPORT TO ECONOMIC DEVELOPMENT, COMMUNICATIONS, AND MARKETING COMMITTEE

SUBJECT

Report and Direction on Grant from the County of Santa Clara's Healthy Cities Program - Tobacco Free Communities

BACKGROUND

On April 7, 2020, Council authorized the City Manager to negotiate and execute a grant agreement with the Santa Clara County Public Health Department (PHD) to explore tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products. The City executed the grant agreement on July 20, 2020 in the amount of \$48,944 for FY 2020/21.

Staff is seeking feedback from the Economic Development, Communications and Marketing Committee on whether or not to proceed with grant implementation and/or forgo the use of grant funds.

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or disease, such as cancer, heart disease, and respiratory diseases. More than 1 in 10 youth in the County currently use tobacco products, including electronic smoking devices, and nearly 1 in 3 Santa Clara County teens report that they have used an e-cigarette at least once.

The Santa Clara County's Healthy Cities Program seeks to address these tobacco-related health concerns by promoting policies and practices to provide tobacco-free and smoke-free communities. Currently, the City has adopted 6 out of 12 recommended tobacco prevention strategies in the Healthy Cities Program (Attachment 1). Although the City prohibits smoking in multi-unit residences and many outdoor areas, it does not prohibit the sale of flavored tobacco products or require a local tobacco retailer permit (Attachment 2).

The PHD has provided funding to cities to support tobacco prevention strategies known to have the highest impact on reducing tobacco-related disparities and inequities.

DISCUSSION

As mentioned in the Background section, the City received a grant to explore an ordinance to prohibit the sale of flavored tobacco products in the City. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah, and menthol cigarettes. E-liquids are nicotine solutions that are used with e-cigarettes. These liquid solutions are available in thousands of flavors that are attractive to youth, such as gummy bear and cotton candy.

Flavored tobacco products are considered “starter” products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addiction. Youth believe that flavored products are safer and less addictive than non-flavored varieties. In Santa Clara County, 82.3% of teens currently using tobacco reported using a flavored product and 80% of youth who have ever used tobacco started with a flavored product.

Nationally, e-cigarette use more than doubled among high school students (from 11.7% to 27.5%) and tripled among middle school students (from 3.3% to 10.5%) from 2017 to 2019.

In Santa Clara County, 93% of tobacco retailers sell menthol cigarettes and nearly 80% of tobacco retailers (including those near schools) sell flavored, non-cigarette tobacco products. Almost half of Santa Clara County teens (45.5%) reported purchasing their own e-cigarettes, with over a quarter of this group saying they buy them directly from a local store.

As of May 2020, 54 communities in California have passed laws to restrict the sale of flavored tobacco products. In Santa Clara County, the cities of Cupertino, Los Altos, Los Gatos, Morgan Hill, Palo Alto, Saratoga, and County of Santa Clara prohibit the sale of flavored tobacco products.

Although federal law prohibits the sale of candy and fruit-flavored cigarettes, this law does not prohibit the sale of menthol cigarettes or flavored, non-cigarette tobacco products, such as cigars, little cigars, smokeless tobacco, hookah tobacco, electronic smoking devices, and the e-liquid used in these devices.

On August 28, 2020, California passed a law prohibiting the sale of most flavored tobacco products (SB 793). The state law contains three exemptions:

1. Hookah and shisha products (if sold by an adult-only hookah tobacco retailer);
2. Premium cigars with a wholesale price of no less than \$12; and
3. Loose leaf tobacco (other than tobacco for roll-your-own-cigarettes).

The California law is scheduled to take effect on January 1, 2021. However, opponents of the law have submitted a proposed referendum to overturn the law. If the referendum qualifies for the ballot, the State law will be suspended until the referendum vote in November 2022.

The State law explicitly allows local governments to pass stricter local ordinances. Because of the uncertainty around implementation of the State law, the Santa County Public Health Department recommends that local governments continue to adopt laws to prohibit the sale of flavored tobacco products in order to remove the exemptions provided in State law.

Implementation and Enforcement

Most communities that have adopted a restriction on the sale of flavored tobacco products delay the effective date of the ordinance by approximately six months. This grace period gives the cities an opportunity to educate retailers and to allow retailers to sell their existing inventory of flavored tobacco products. As of the ordinance’s effective date, retailers would no longer be able to sell flavored tobacco products. Typically, communities adopt a restriction on the sale of flavored tobacco products and on the location and type of tobacco retailers as a condition of a local tobacco retailer license (TRL).

Although the State of California requires a license to sell tobacco products, more than 150 cities and

counties also require a local TRL. A local TRL is generally adopted to:

- Create more comprehensive restrictions than State law on the sale or marketing of tobacco products in the retail environment;
- Allow for meaningful penalties for violation of tobacco control laws such as license suspension; and
- Help fund local enforcement of tobacco control laws through the local licensing fee.

The City does not currently require a TRL. Although it is possible to adopt a prohibition on the sale of flavored tobacco products without a local TRL, the City would not have a dedicated source of funding to monitor compliance with the flavored tobacco restrictions. Currently, all but two of the California communities that restrict the sale of flavored tobacco also require a TRL.

Santa Clara County is willing to partner with the City to administer, implement and monitor its tobacco retailer license law if the City adopts a TRL that mirrors the County's requirements below. To cover the costs of the program, the County typically collects a \$425 license fee paid by tobacco retailers. To participate, the City's TRL ordinance must include the following:

1. Require retailers to obtain and annually renew a tobacco retailer license.
2. Require retailers to post a notice saying that the sale of tobacco products to anyone under 21 years of age is illegal and subject to penalties.
3. Require retailers to check the identification for any purchaser who appears to be under 30 years of age.
4. Prohibit the sale of tobacco products from a vending machine.
5. Prohibit retailers from covering more than 15% of windows and clear doors with any type of ads or signs.
6. Prohibit the sale of flavored tobacco products, including menthol cigarettes.
7. Prohibit the sale of all electronic smoking devices and vaping products.
8. Prohibit new tobacco retailers from locating within 1,000 feet of a school (existing retailers within this radius may continue to sell tobacco products assuming they are operating lawfully, renew their TRL on time, and do not transfer ownership).
9. Prohibit new tobacco retailers from locating within 500 feet of another tobacco retailer (existing retailers in these locations may continue to sell tobacco products assuming they are operating lawfully, renew their TRL on time, and do not transfer ownership).
10. Prohibit the sale of tobacco products from pharmacies.
11. Prohibit mobile tobacco retailing or tobacco retailing at a temporary event.

As of October 8, 2020, there are 69 state-licensed tobacco retailers in the City. Approximately six of those businesses are tobacco shops (e.g. hookah lounge, smoke shop), and are likely to experience the greatest impact if the City adopts its own TRL. Ten of the businesses are pharmacies (e.g. pharmacy chains), who would be required to stop selling tobacco products altogether, and the remaining 53 businesses are mostly gas stations and convenience stores.

Grant Implementation and Community Outreach

The grant implementation includes a community outreach process prior to bringing an ordinance forward for Council's consideration. This process is slated to begin in January 2021. Similar to the City's recent smoking ordinance efforts, outreach to the community and retailers would include:

Open City Hall - Launch an on-line survey to gauge the community's perspective on establishing a

tobacco retailer program and ban flavored tobacco products and e-cigarette sales.

Community Meetings - Host 2-3 community meetings.

Business Outreach - Conduct targeted outreach to the City's existing tobacco retailers.

Outreach on the survey and virtual meeting dates will be coordinated with the County of Santa Clara Department of Public Health, Breathe California of the Bay Area, Silicon Valley Central Chamber of Commerce and distributed via the City's social media channels, the City Manager's Blog, and on Nextdoor to neighborhood groups.

The project timeline (January - June 2021) for exploring an ordinance to prohibit the sale of flavored tobacco products, falls during what staff expects to be the continued COVID-19 Public Health Emergency. Recognizing that Social Distancing Protocols and Risk Reduction Health Orders are expected to remain in force for the foreseeable future; therefore, threatening increased economic impacts to businesses, staff is seeking the Committee's recommendation as to whether or not to proceed with the implementation of the grant in the current fiscal year. Staff has made inquiries regarding a possible extension of the grant and have been advised that the grant must be utilized by June 2021.

FISCAL IMPACT

The City has been awarded \$48,944 to cover staffing costs and efforts related to community outreach and implementation in FY 2020/21. The anticipated costs of associated operating expenses are \$2,520 while staffing costs are estimated at \$46,424. If the City were to expand the project timeline beyond June 30, 2021, the City would not be eligible to seek reimbursement for the grant and will need to absorb the associated costs incurred after June 30, 2021.

PUBLIC CONTACT

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

ALTERNATIVES

- 1) Provide feedback to staff to proceed with grant implementation including outreach and the preparation of an ordinance to prohibit the sale of flavored tobacco products in the City including a tobacco retailer license program
- 2) Recommend that City forgo the grant and delay work on modifications to the City's tobacco ordinance

RECOMMENDATION

Alternative 1:

Provide feedback to staff to proceed with grant implementation including outreach and the preparation of an ordinance to prohibit the sale of flavored tobacco products in the City including a tobacco retailer license program.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Healthy Cities Program, 2019 Dashboard
2. Santa Clara County Tobacco Control Policy Grid, July 2020

Healthy Cities Program, 2019 Dashboard

City of Santa Clara

Promoting policies and environments that support racial health equity

Active & Safe Communities

Total Strategies Achieved

5 of 9

Healthy Food & Beverage Environments

Total Strategies Achieved

2 of 9

Tobacco-Free Communities

Total Strategies Achieved

6 of 12

Cross-Cutting Strategies

Total Strategies Achieved

3 of 4

Promote Healthy Recreation & Transportation

- Vision Zero Action Plan
- Complete Streets
- NACTO Street Design Guidelines
- Bicycle Master Plan
- Pedestrian Master Plan
- Parks, Trails, and Recreation Areas Master Plan
- Achieve Bike and/or Walk Friendly Designation
- Safe Routes to School Resolution and Coordination
- Transportation Demand Management Policies

Increase Healthy Food & Water Access

- Procurement Standards for City-Sponsored Meetings and Celebrations
- Procurement Standards for City-Sponsored Events
- Procurement Standards for Vending on City Properties
- Procurement Standards for City-Sponsored Programming
- Procurement Standards for City-Sponsored Establishments
- Drinking Water Access Policy
- Community Gardens on City Property/Parks

Reduce Exposure to Sugary Drinks

- Require Warning Labels on Sugary Drink Advertisements
- Resolution to Decline Funding from the Beverage Industry

Reduce Exposure to Secondhand Smoke

- Smoke-Free Multi-Unit Housing
- Smoke-Free Parks, Trails, and Recreation Areas
- Smoke-Free Outdoor Dining
- Smoke-Free Entryways
- Smoke-Free Service Areas
- Smoke-Free Public Events

Reduce Youth Access to Tobacco

- Adopt and Implement a Tobacco Retail License
- Reduce Density of Tobacco Outlets
- Flavored Tobacco Restrictions (Including Menthol Cigarettes)
- Price-Discounting Restrictions
- Limit Tobacco Sales to Adult Tobacco Stores Only
- Conduct Enforcement to Verify Retailers Are Not Selling Tobacco to Minors

Increase Access to Healthy & Safe Environments

- Health Language in General Plan
- Climate Action Plan
- Workplace Wellness Policies
- Age-Friendly Community

City Spotlight

Since fall 2018, Santa Clara has been working to develop the City's first Pedestrian Master Plan. In coordination with the Bicycle and Pedestrian Advisory Committee (BPAC) and other stakeholders, a final draft is being considered that will make walking a more viable transportation option in Santa Clara and will reduce environmental impacts while making the community healthier and safer.

Legend

- A model level policy or strategy is **possible** but jurisdiction has not met criteria to earn a star
- Jurisdiction has met criteria to earn a check and achieved this policy or strategy
- Jurisdiction has met criteria to earn a star and achieved a model level policy or strategy

